

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE-OPELOUSAS DIVISION

UNITED STATES OF AMERICA, : DOCKET NO. 04-20075  
 :  
 Plaintiff, :  
 vs. : August 24, 2004  
 :  
 GREGORY JAMES CATON, :  
 :  
 Defendant. : Lafayette, Louisiana

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REPORTER'S OFFICIAL TRANSCRIPT OF THE SENTENCING HEARING  
BEFORE THE HONORABLE TUCKER L. MELANCON  
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

FOR THE PLAINTIFF: LARRY J. REGAN  
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FOR THE DEFENDANT: LEWIS O. UNGLESBY  
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COPY

## P R O C E E D I N G S

1 THE COURT: Good afternoon. Please be seated.

2  
3 The first matter before the Court today is Criminal  
4 Action Number 04-20075, United States of America vs. Gregory  
5 James Caton. The matter is before the Court for sentencing.

6 At this time I would ask that the attorneys in this  
7 case, starting with the Assistant United States Attorney  
8 representing the government, to identify themselves for record  
9 purposes.

10 MR. REGAN: Larry J. Regan representing the government.

11 MR. UNGLESBY: Lewis Unglesby for Mr. Caton, Your  
12 Honor.

13 THE COURT: And, Mr. Unglesby, are you and your client  
14 ready to proceed?

15 MR. UNGLESBY: Yes, sir.

16 THE COURT: And Mr. Regan?

17 MR. REGAN: The government is ready to proceed, Your  
18 Honor.

19 THE COURT: All right. Now, let me say -- or ask,  
20 Mr. Unglesby, you and your client have had an opportunity to --  
21 have received and reviewed a copy of the presentence report?

22 MR. UNGLESBY: Yes, sir.

23 THE COURT: And Mr. Regan?

24 MR. REGAN: Yes, sir.

25 THE COURT: All right. And I understand that the

1 defendant has objections to the presentence report.

2 Is that right, Mr. Unglesby?

3 MR. UNGLESBY: Yes.

4 THE COURT: The government has no objection?

5 MR. REGAN: No objection, Your Honor.

6 THE COURT: All right. Mr. Unglesby, if you'd come up  
7 here and let me know what it is that you're objecting to. I  
8 reviewed what you had to say and let's hear why.

9 And, Mr. Regan, I'm going to give you an opportunity to  
10 make whatever response you think is appropriate.

11 MR. REGAN: Yes, sir.

12 MR. UNGLESBY: Your Honor, I trust you have the actual  
13 written objections that I've provided.

14 THE COURT: Absolutely. This is your opportunity to  
15 show me the error of the ways of the system to this point.

16 MR. UNGLESBY: Well, I'm actually not suggesting that  
17 Mr. Helo is in error, Judge. I think Mr. Helo's erred perhaps on  
18 the side of caution.

19 THE COURT: He's a hell of a guy besides all of that,  
20 too.

21 MR. UNGLESBY: But I think that the interpretation he's  
22 made of the 2F enhancement is incorrect both on a factual basis  
23 and a legal basis.

24 And I've read his response, which I find actually  
25 fairly supportive of my position. I've cited to you the cases.

1           There's two different interpretations of what the  
2           conscious and reckless requirement is. One would be that there's  
3           an actual mens rea intent in some of the circuits. The other  
4           would be that the action itself is self-evident, that you know if  
5           you do certain things, then there's a high likelihood that there  
6           would be some kind of commensurate serious bodily injury. I  
7           don't believe that the actions in this case support either of  
8           those.

9           I'm prepared to introduce testimony, but first I think  
10          Mr. Regan wants to make at some point here a short statement as  
11          to the government's position on the facts.

12          But I think that the facts not only of the actual  
13          injury to the lady involved, but the facts leading up to  
14          Mr. Caton's -- to her contact with Mr. Caton's product would  
15          mitigate in his favor in a reduction by those two points.

16          There's nothing in Mr. Caton's background -- I don't  
17          mean that in an individual basis, but speaking expansively in  
18          terms of the Cansema and the history of his disbursement of that  
19          product, there's nothing in his historical background that would  
20          give him any reason to believe that any kind of injury, much less  
21          one nearly as serious as is reflected in this case, could or  
22          would occur.

23          We have -- if the Court wishes to hear from them -- two  
24          individuals. Mr. Rodney Owens, who is in exactly the same  
25          situation as Ms. Gilliatt, has photographs here to show you of

1 how his nose looked prior to the application of the Cansema and  
2 you can see for yourself when you see him the results that he  
3 received.

4 Likewise, we have Dr. D.E. Smith who has prescribed it  
5 and used it in his practice for years. Neither of them have  
6 anything but positive information to say in terms of any belief  
7 that it would cause -- or any reason for Caton to think that it  
8 would cause --

9 THE COURT: What type of doctor is Dr. Smith?

10 MR. UNGLESBY: General practitioner. And he's here,  
11 Judge. I mean --

12 THE COURT: You didn't happen to bring that fellow that  
13 might have been a male breast cancer survivor, huh?

14 MR. UNGLESBY: No, I did not.

15 THE COURT: I was kind of interested in hearing what he  
16 might have to say in light of my own history.

17 MR. UNGLESBY: Well --

18 THE COURT: Go ahead.

19 MR. UNGLESBY: I really hesitated whether I ought to  
20 even put that in there to tell you the truth because I knew that,  
21 but it was a testimonial.

22 And the reason for the testimonials was simply to  
23 demonstrate again on the two-point issue, the idea that Mr. Caton  
24 had no conscious nor -- certainly no conscious desire or  
25 knowledge that would cause him to believe this would happen, but,

1 in reality, he had no recklessness in the context of believing  
2 that it would happen.

3 The crime, as the probation officer points out in his  
4 response, is the fact that he was marketing a product that had  
5 not been tested. He was marketing a product that didn't have  
6 quality control. He was marketing a product that had not been  
7 approved by the FDA. And so from that, the probation officer  
8 says so, therefore, it's possible that harm could occur.

9 And on that just flat -- if we just leave it there as a  
10 thought process, you would say, well, sure, you know, it is  
11 possible that harm could occur, and if the first or second or  
12 third or hundredth time that Caton sent out Cansema harm did  
13 occur, I might not be standing here, but in his situation,  
14 there's years of use, of successful use.

15 So when we talk about was he conscious or reckless in  
16 believing that serious personal injury would occur, I don't think  
17 that anyone could meet that burden.

18 Uniquely it turns out -- and this wasn't known when --  
19 I don't believe this was known to Mr. Regan, not that it would  
20 change perhaps the charging process that he did, and it wasn't  
21 known to me.

22 When we started this case, it was about -- or the  
23 fulcrum, if you want to, the personal interest of the case was  
24 the terrible injury of this lady and the loss of her nose. I  
25 don't think any of us knew when we started that that there had

1 been intervening causes involved in the loss of her nose.

2 I don't think any of us knew that she used another  
3 product that had nothing to do with Greg Caton on multiple  
4 occasions nor that she mixed them together.

5 Now, the only point of that -- I'm not here to defend  
6 and say, well, therefore, Cansema is not -- didn't play or did  
7 play a contributing role in the injury. I don't know. But it is  
8 relevant again when we're talking about a sentencing function of  
9 whether we add those two points.

10 THE COURT: And this goes to your second objection on  
11 restitution?

12 MR. UNGLESBY: Well, similarly, you know, that a  
13 portion of the restitution -- you know, we don't deny that under  
14 -- if you take her affidavit, if it's a hundred percent true, in  
15 civil law there would be a legitimate argument that there was a  
16 contributing factor there. Whether that means we ought to have  
17 to pay the whole \$101,000, you know, is up to the Court.

18 Caton has already paid through just the natural  
19 forfeiture provisions. I mean, he's forfeited significant  
20 properties. He's forfeited all of the guns that were seized from  
21 his home. And he's forfeited quite a bit of product, some of  
22 which was -- would fall under the definition, if you will, of  
23 contraband and a lot which would not, a lot which was just --  
24 anyone could have it for any reason.

25 But the storage problem was such -- and trying to

1 parcel out what's -- you know, what would fall under the  
2 contraband issue in terms of forfeiture versus what would just be  
3 benign, that it was easier for the government -- and we didn't  
4 have any problem with that -- to agree that they could destroy  
5 the whole process, you know, all of them, because it was too much  
6 trouble. It was taking too much room if I recall exactly. And  
7 I'll defer to Mr. Regan on that, but it was an administrative  
8 problem. We helped solve the problem by just sacrificing  
9 everything, but Caton has lost financially a tremendous amount.

10 THE COURT: But has the alleged victim been the  
11 beneficiary of his loss?

12 MR. UNGLESBY: No. I mean, not to -- nothing that we  
13 would know about. Now, her benefit, if there is a benefit, is  
14 this, though.

15 Now, I don't know how this all factors into how you  
16 sentence somebody, but he is -- Caton is the only responsible  
17 insured party in that lawsuit. There were three different groups  
18 in that lawsuit. He's the only one that had the responsibility  
19 to go out and buy insurance of a million dollars that's in  
20 effect.

21 THE COURT: So this lady's damages in the civil suit  
22 will be covered up to a million dollars if there's a causal  
23 connection between whatever it is the defendant in this case did  
24 that caused -- through the use of this product that caused the  
25 plaintiff or the alleged victim in this case damage?



1 MR. UNGLESBY: Yes, sir. Through the insurance, not  
2 from Greg's pocket.

3 THE COURT: I understand.

4 MR. UNGLESBY: Yes. That's correct, Your Honor. And  
5 they are mediating that case in October. Like I said, I don't  
6 know how it's going to turn out.

7 THE COURT: And jumping ahead to Objection Number 2,  
8 which would -- you just touched on it in response to my question.

9 Do you have any doubt -- or what's your view as an  
10 officer of this court, rather, Mr. Unglesby -- and I'm going to  
11 ask Mr. Regan to be thinking about this, too, when he gets up  
12 here -- that if I said, for instance, as it relates to  
13 restitution -- and I'm going to hear what you've got to say,  
14 anything more about that, and whatever the government has got to  
15 say in light of what the probation officer has determined -- that  
16 I could say, for instance, restitution in this case will be the  
17 sum that is awarded in the civil case, if any award is made, up  
18 to the sum of \$103,000 or whatever the amount is.

19 Can a district judge do that?

20 MR. UNGLESBY: I am on real thin ice here and I am  
21 going to defer to Mr. Helo. I'm going to quote him probably  
22 wrong. All right? He and I discussed this.

23 But if I recollect -- and I want all of these caveats  
24 because I may be dead wrong. But I think, if I recollect, there  
25 was something about the fact that if a person gets restitution

1 from whatever -- I guess from a third source, you know, they  
2 recover their money and there's no one else to pay it, as opposed  
3 to just -- like if, you know, the bank fails because I stole the  
4 money from the bank and so the FDIC pays it, but I still owe the  
5 restitution because there's a party, the FDIC, that had to absorb  
6 the loss.

7 But when there's a situation like this where it's going  
8 to be covered presumably if there is proof sufficient to justify  
9 a cause of action or if there's a settlement by the insurance  
10 that he paid for, then there is no actual restitution to give to  
11 Ms. Gilliatt, but I could be wrong.

12 THE COURT: No. I understand that, and I think that's  
13 right.

14 But the question I have is in your view -- and it would  
15 be -- if I don't have that authority, it would be you to raise  
16 it, I suppose, to the Fifth Circuit. Restitution is ordered in  
17 the -- any sum that's awarded in the civil suit up to the sum of  
18 \$103,000. So that means if it goes to trial and there's a  
19 defense verdict, then there's no restitution. Can I do that?

20 MR. UNGLESBY: Judge, I know y'all hear this all the  
21 time, but there's only one opinion in this room that counts.

22 THE COURT: I understand. I want you to --

23 MR. UNGLESBY: If you're asking me --

24 THE COURT: This is one of those officer of the court  
25 questions.

1 MR. UNGLESBY: I think you could, and, of course, it's  
2 in my interest to say that you could. You know, whatever you do,  
3 I can tell you right now, I'm not going to appeal on any of these  
4 issues, but of course you could. I mean, of course you could do  
5 that.

6 And if hypothetically Ms. -- I hate to mispronounce her  
7 name, I think it's Gilliatt -- got a \$25,000 verdict, Greg would  
8 owe the difference, and, you know, begin to pay the restitution  
9 in accordance with the order.

10 THE COURT: Well, no. Under what I asked you and what  
11 I meant to say, if I said it poorly, if she -- if the award of  
12 the civil case was \$25,000, that would be the restitution in this  
13 case, and it would be up to the full sum of the \$103,000. Any  
14 civil jury verdict less than that, that's what the restitution  
15 is. Anything more than that, insurance covers the 103, there's  
16 nothing.

17 MR. UNGLESBY: Correct. Yeah. I think we're  
18 responsible, if I understand what you're saying, Judge, because  
19 you say we're responsible up to \$103,000.

20 THE COURT: And if the insurance covers --

21 MR. UNGLESBY: And if she recovers it somewhere else,  
22 then we wouldn't have to pay it if I appreciate Mr. Helo's --

23 THE COURT: And if there's a judgment in her favor for  
24 two million dollars and he's got -- Mr. Caton has got insurance  
25 for one million, well, then there's one million dollars in

1 benefits to turn over to the plaintiff and she's got a deficiency  
2 judgment for a million dollars or whatever the excess would be,  
3 right?

4 MR. UNGLESBY: So he would owe another hundred or he  
5 wouldn't?

6 THE COURT: No, he would not. It's the first \$103,000.

7 MR. UNGLESBY: Yes. I think you can do that. I mean,  
8 you know, I would be real happy if that's what you did because  
9 I'm confident that she'll do better than that.

10 THE COURT: It's the same standard, it seems like, in a  
11 civil case that I'm supposed to use here, and I'm going to ask  
12 the government about that, but I've got a stack of papers from  
13 the plaintiff's lawyer. I've never met a plaintiff's lawyer that  
14 didn't believe everything they said and here's the documents to  
15 show it. Of course, when you get in front of a judge or a jury,  
16 sometimes it doesn't work out that way.

17 MR. UNGLESBY: Judge, you asked me an officer of the  
18 court question and I'm going to give you an officer of the court  
19 answer. I've talked to Bob Kelso who's the defense lawyer for  
20 the insurance company. I've never met Mr. Kelso, but I've talked  
21 to him on the phone off and on. He is confident that they're  
22 going to pay some money.

23 THE COURT: And hopefully they will settle through  
24 mediation.

25 MR. UNGLESBY: He's confident that he has some good

1 defenses, but he's also confident that the nature of his business  
2 is such that they're going to pay some money, and, I mean, common  
3 sense tells you that. Greg has pled guilty to distributing a  
4 nonapproved product. The lady used it. She had a terrible  
5 result.

6           There may be effort -- there are issues of her  
7 contributory fault and issues of comparative fault as it relates  
8 to improper use of it and issues as to what other additional  
9 factors the other products had in enhancing -- either this  
10 enhancing theirs or theirs enhancing his, or maybe it not playing  
11 any role at all.

12           But common sense tells you that when you get in front  
13 of a jury with a circumstance of this nature, you're going to  
14 lose with those set of facts. Kelso knows that and I'm sure in  
15 October they're going to pay or they're going to try to pay some  
16 money, and if it fails, it's going to be because the plaintiff  
17 lawyer wants the whole million and for whatever reason the  
18 insurance company doesn't feel like they want to pay without a  
19 fight.

20           THE COURT: Okay. Let me ask the government. Come on  
21 up here, Mr. Regan. Do you think I can do what I'm -- the  
22 officer of the court question to you.

23           MR. REGAN: Sir, I've been an officer of the court for  
24 about 25 years now at different levels and judges can do anything  
25 they want to do. I mean --

1 THE COURT: Well, you know, that's the popular  
2 misconception, and, again, you give me the lead-in, so I'm going  
3 to take the opportunity to pound a little bit.

4 It gripes me to no end when you hear these --  
5 particularly nonlawyers or sometimes lawyers with an agenda, it  
6 doesn't matter which side of the political spectrum they're on,  
7 that just talk about activist judges.

8 And I will say to you, because I believe to my core it  
9 doesn't matter how a district judge got this job, through a  
10 republican appointment or a democratic appointment, that I don't  
11 know anybody in the almost eleven years I've been a judge that  
12 wouldn't as soon cut off their little finger as before they would  
13 intentionally violate their oath.

14 And all the time we do things that we don't believe in,  
15 and you probably have heard me say under the Catholic vernacular,  
16 what I'm about to do is going to cause me to burn in purgatory  
17 for a long time. It ain't right, but it's the law, and that's  
18 the oath I took when they gave me this wonderful job.

19 MR. REGAN: I understand.

20 THE COURT: So I just had to do that because I don't  
21 want anybody to misconstrue that.

22 Now, under that idea that --

23 MR. REGAN: The only concern I have as a prosecutor is,  
24 one, the statutes or the criminal code pertaining to restitution.  
25 If what the Court has proposed is not violative, then certainly I

1 think you have a right to fashion that any way you wish to as  
2 long as there's some provision for restitution to the lady.

3 In a perfect world we wouldn't be here, but in a  
4 perfect world also, the other gentleman that provided the Cansema  
5 to the victim, Ms. Sue Gilliatt, would have insurance or money to  
6 where that person could pay for half of the damage or whatever,  
7 or any other party that contributed to it, but if that's not the  
8 case, then we're left with his insurance or Mr. Caton's money if  
9 there's any left.

10 THE COURT: Well, do I have anything from your  
11 perspective -- and, again, I think I know the answer to this, but  
12 if I'm missing it, I want you to point it out.

13 Anything else but this stack of papers from the  
14 plaintiff's lawyer about these are the -- these are the costs of  
15 medical treatment and that's what we expect?

16 MR. REGAN: No, sir, I don't.

17 THE COURT: So if I held the government right now to  
18 the preponderance of the evidence standard, which I think is what  
19 I'm supposed to do before I can name an award, I'm sitting here  
20 saying, gee, all I've got is what the alleged victim's lawyer  
21 says is related to whatever it is that this defendant has pled  
22 guilty to.

23 MR. UNGLESBY: Yes, Your Honor.

24 THE COURT: So it would seem to me, if that's all I've  
25 got, it wouldn't be much of a stretch to say, well, that's not

1 going to do it for me in this case to meet the preponderance.

2           However, I'm keenly aware that the same standard will  
3 be used in whatever state or federal court action that's pending  
4 wherever it's pending that may be mediated in October, and I  
5 haven't done violence to my oath and I haven't put the plaintiff  
6 in the civil suit in any greater risk than she is at anyhow and I  
7 haven't subjected the defendant in this case to any greater risk  
8 than he deserves.

9           MR. REGAN: Yes, sir. And I understand that. I mean,  
10 I'm not opposing what the Court is proposing to do.

11           THE COURT: We're playing a mental game to help the  
12 judge so that if he messes up and doesn't follow the law, it's  
13 unintentional, and I want the benefit of these two great lawyers  
14 to help me. That's what I'm trying to do.

15           MR. REGAN: I understand that, Your Honor. You know,  
16 and I certainly have -- once again, I guess looking at it from a  
17 standpoint of who I represent, our concern is that some  
18 restitution be given. If it can't be given completely, then  
19 that's understood also.

20           Sometimes people are ordered to make restitution and  
21 they're never able to make it in the full amount, but I think  
22 that the Court is faced with the task of ordering some  
23 restitution.

24           THE COURT: Well, isn't it a little bit about being  
25 pregnant, you either are or you aren't? I mean, what, besides



1 the lawyer papers, do I have that says anything is causally  
2 connected to the product that Mr. Caton sold that this lady used?

3 MR. REGAN: Well, I think -- was he provided with  
4 Mr. -- Ms. Gilliatt's affidavit? Do you have it?

5 THE COURT: Yeah. Under the preponderance of the  
6 evidence standard, I'm trying to figure out what a plaintiff in a  
7 civil action affidavit -- what role that would play in the  
8 sentencing of a defendant as far as determining what restitution  
9 would be proper in the criminal case.

10 I mean, you know, there's all kind of -- it's kind of  
11 like -- what's the case -- Kobe Bryant when the lady ended up  
12 filing the civil lawsuit. I mean, here we are. Now, what's  
13 going on here?

14 MR. REGAN: Right. I understand, Your Honor.

15 All I was asked to do as the government was to find out  
16 what the cost was, and I had to take the lawyer's  
17 representations. It's in Illinois.

18 THE COURT: I understand. You're doing your job and  
19 I'm trying to do mine.

20 Okay. Now, as it relates to Mr. Unglesby's Objection  
21 Number 1 -- and I've got to say when I read what he wrote and I  
22 discussed with Mr. Helo his response, it seems like it makes a  
23 lot of sense to me what Mr. Unglesby is saying.

24 MR. REGAN: It does, Your Honor.

25 And the only thing the government would say in response

1 to that, because I think in good faith we tried to work this  
2 thing out from the beginning -- and I will put on the record that  
3 absolutely Mr. Unglesby is correct.

4           When we first got into this, I didn't know that there  
5 was a gentleman from North Carolina involved in providing any  
6 products to Ms. Gilliatt. The information that FDA investigators  
7 had and that we had was that Greg was the only supplier.  
8 Mr. Caton was the only supplier.

9           It was not until we began to get notice from some of  
10 the attorneys -- in fact, until I got an affidavit from  
11 Mr. Unglesby in which Ms. Gilliatt only addressed the gentleman  
12 from North Carolina or whatever it is.

13           MR. UNGLESBY: If it weren't for the civil case, Your  
14 Honor, we'd be standing here taking responsibility for this.

15           MR. REGAN: Yeah. And, see, that's when I found out.

16           So my point being, Your Honor, in response to what he  
17 was saying is -- very quickly is that, you know, the standard in  
18 civil law, particularly in Louisiana, is if you hurt, you pay.

19           Now, federal law may be a little bit different because  
20 then you look at degrees of harm. You look at specific intent,  
21 whether a person had specific intent to do it, whether they acted  
22 reckless in doing so.

23           Now, I guess the very simple answer, Your Honor, is  
24 that one of the primary purposes of the Federal Drug  
25 Administration is to ensure that testing is done, proper testing

1 on any article that's going to be placed into the stream of  
2 commerce which is represented to be, quote, unquote, a drug for  
3 treatment of individuals, and we know that even with that, we  
4 still have problems sometimes because of effects on a certain  
5 percentage of people, even on FDA-approved drugs.

6 But the point being is that I don't for a minute  
7 believe that Mr. Caton sat in his business place every day and  
8 said, good, I'm sending this stuff out and I know -- I just want  
9 to make a buck off of it. I know it's going to hurt people.

10 I'm not trying to impugn that mens rea on Mr. Caton,  
11 but what I'm saying is if you introduce into the stream of  
12 commerce -- and this is the gravamen of the offense -- a new and  
13 improved drug in this case through mail or by commercial carrier,  
14 then I don't think you can say, well, I didn't really intend for  
15 this to hurt anybody, but it did. I mean, somewhere the  
16 responsibility has to be there.

17 And I'm not arguing specific intent. I'm not even  
18 arguing a gross negligent -- well, no gross recklessness on the  
19 part of Mr. Caton, but if you put mens rea into that stream of  
20 commerce, people use it, people sometimes that are very  
21 vulnerable and believe they need this.

22 THE COURT: Or people who will do anything to try to --

23 MR. REGAN: Or people who are trying to live, Your  
24 Honor. Then --

25 THE COURT: I certainly understand how that works.

1 MR. REGAN: I understand, Your Honor.

2 Without it being tested at least to see that it's safe,  
3 then I guess, you know, unintentional or otherwise, when it  
4 happens, you've got to take responsibility for it.

5 And that's my only -- you know, that would be my only  
6 statement, Your Honor, and that obviously both -- probably both  
7 of these Cansema -- the same Cansema product that the lady  
8 applied, even though she applied the stuff she got from Mr. Caton  
9 first and had a problem, both for whatever reason -- the quantity  
10 of whatever chemical was in there may not have been the standard  
11 of what it should have been or obviously she falls into a  
12 category of people that basically reacted the wrong way.

13 But, I mean, there's no doubt if you look at the  
14 pictures, you know, harm was occasioned to her, great harm, but,  
15 once again, I'm not going to stand here, Your Honor, and try to  
16 argue that Mr. Caton specifically intended to harm anybody.

17 THE COURT: All right. Well, thank you, sir.

18 Mr. Unglesby, something else you want to say as to  
19 either one of those objections before I make a ruling?

20 MR. UNGLESBY: The argument of the government is  
21 well-taken. That's why Mr. Caton pled guilty and is going to  
22 prison. Our argument is only about the extra two points, the  
23 enhancement part. Of course, what he did was illegal. That's  
24 why we're before you.

25 THE COURT: All right. Well, let me ask -- is there

1 any other -- anything else the government wants to say in  
2 response to that, Mr. Regan?

3 MR. REGAN: No, Your Honor, not at all.

4 THE COURT: All right. Well, the Court is going to go  
5 ahead and sustain the first objection because I find the  
6 requisite intention, or the acts of the defendant to do  
7 otherwise, is not before the Court in the record based on the  
8 record that I've reviewed.

9 As to the second objection, I'm going to find  
10 specifically that there is -- has not been established by a  
11 preponderance of the evidence that the victim, alleged victim in  
12 this case, has sustained any damage, and that the Court feels  
13 comfortable in making that ruling based on what I perceive to be  
14 the record of this proceeding as well as what the attorneys have  
15 said here today about the civil action pending, and that if the  
16 Court were to take the number that was set forth in the  
17 presentence report of -- Mr. Helo, that's \$103,000 I think?

18 THE PROBATION OFFICER: Your Honor, it's \$101,184.76.

19 THE COURT: \$101,184, and how many cents? Seventy-six  
20 cents.

21 THE PROBATION OFFICER: Seventy-six cents.

22 THE COURT: Okay. That it's likely, using the same  
23 standard, that if it is established that there was a cause and  
24 effect for this alleged victim in this case, plaintiff in the  
25 civil case, damage, that it will be satisfied through insurance

1 or otherwise.

2 Now, could another judge, reasonable that he or she  
3 might be, look at this differently than I did? I think that's  
4 absolutely true, but it seems appropriate to me under the  
5 procedural posture of this and the related civil case. That's  
6 the Court's ruling.

7 Are there any other corrections or additions that  
8 either of you would like to make to the presentence report,  
9 Mr. Regan?

10 MR. REGAN: No, Your Honor.

11 THE COURT: Mr. Unglesby?

12 MR. UNGLESBY: No, sir.

13 THE COURT: All right. To those factual statements  
14 contained in the presentence report as to which there was no  
15 objection, the Court adopts those statements as its findings of  
16 fact. As to the controverted factual statements in the  
17 presentence report, the Court has resolved them as previously  
18 stated.

19 Now, Mr. Unglesby, if you and your client will come on  
20 up here to the lectern.

21 Is there anything that you would like to say or offer  
22 in mitigation of punishment before sentence is imposed?

23 MR. UNGLESBY: Nothing in addition to what we've always  
24 asked, Your Honor.

25 And I'm sure the Court has recognized, as Mr. Helo has,

1 Mr. Caton's conduct while he's been out on bond. And we  
2 appreciate the additional opportunity he was given to complete  
3 his job tasks while he was in that situation.

4 THE COURT: All right. Mr. Caton, anything you'd like  
5 to say?

6 THE DEFENDANT: Nothing other than a reiteration of  
7 what I indicated on the day of the pleading, which was I never  
8 had any intent to harm anyone and I acted in good conscience.  
9 That's all I really have to say.

10 THE COURT: You got most of your business straight  
11 since you've been out, since I let you out?

12 THE DEFENDANT: Yes, sir, to the best of my ability.

13 THE COURT: All right. Did you have any problems while  
14 you were out?

15 THE DEFENDANT: None, Your Honor.

16 THE COURT: All right. The Court finds that the  
17 applicable offense level is 20. The applicable criminal history  
18 is Category 1. The applicable guideline ranges are as follows:  
19 On Count 1, 33 to 41 months; Count 2, 33 to 41, with a maximum of  
20 36 months because of the statute.

21 As to supervised release on Count 1, two to three  
22 years. On Count 2, one year. A fine of \$7,500 to \$75,000. And  
23 a special assessment fee of \$100 per count for a total of \$200.

24 The reasons for these guideline determinations are set  
25 forth in the presentence report which this Court finds reasonably

1 addresses the criminal conduct in question.

2 Pursuant to the Sentencing Reform Act of 1984, it is  
3 the judgment of the Court that as to Count 1, the defendant,  
4 Gregory James Caton, is hereby committed to the custody of the  
5 Bureau of Prisons for a term of 33 months. As to Count 2, the  
6 defendant, Gregory James Caton, is hereby committed to the  
7 custody of the Bureau of Prisons to be imprisoned for a term of  
8 33 months. The sentences as to Count 1 and Count 2 are to run  
9 concurrently.

10 Upon release from imprisonment, the defendant shall be  
11 placed on supervised release for a term of three years as to  
12 Count 1 and one year as to Count 2. The terms of supervised  
13 release are to run concurrently.

14 Within 72 hours of release from the custody of the  
15 Bureau of Prisons, the defendant shall report in person to the  
16 probation office in the district to which the defendant is  
17 released.

18 Following supervised release, the defendant shall not  
19 commit another federal, state, or local crime, shall comply with  
20 the standard conditions that have been adopted by this court, and  
21 shall comply with the following additional conditions.

22 Because the presentence investigation report indicates  
23 a low risk of substance abuse by the defendant, the provisions of  
24 the 1994 Crime Bill requiring drug testing is suspended.

25 The defendant shall refrain from involvement in the



1 manufacture and/or sale of any product not approved by the United  
2 States Food and Drug Administration.

3 No fine is ordered due to the defendant's apparent lack  
4 of assets. However, the hundred dollar per count mandatory  
5 special assessment fee is imposed pursuant to 18, United States  
6 Code, Section 3013. The mandatory special assessment, if not  
7 already paid, is due immediately.

8 The defendant is to report to the facility designated  
9 by the Federal Bureau of Prisons no later than 2:00 p.m. on --  
10 now, Mr. Caton, I'm not going to give you -- my intention  
11 wouldn't be to give you more than 30 days unless you convince me  
12 there's a good reason why you need more than that before you  
13 report. Any good reason?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Okay. And, Ms. Jordan, not having my  
16 calendar here, the 30 days, Monday, at least 30 days out would be  
17 --

18 THE CLERK: September 24<sup>th</sup>.

19 THE COURT: September 24<sup>th</sup> at 2:00 p.m.

20 Naturally the defendant gets full credit for the time  
21 that he was previously incarcerated.

22 And, you know, Mr. Unglesby, do you know -- or,  
23 Mr. Caton, can you tell me about how long you were previously  
24 incarcerated before I let you out?

25 MR. UNGLESBY: We believe it to be somewhere between

1 eight and a half and nine months, Your Honor.

2 THE COURT: Okay. All right. Mr. Caton, at this time  
3 I wish to advise you that you have the right to appeal your  
4 sentence. If you're unable to afford the service of an attorney  
5 to handle your appeal, a lawyer will be appointed to represent  
6 you, and if you cannot afford it, a transcript of the record in  
7 this case will be prepared for appeal at the government's  
8 expense.

9 Do you understand that, sir?

10 THE DEFENDANT: Yes.

11 THE COURT: You understand that you have ten days from  
12 this date to file your notice of appeal?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. The Court orders the  
15 presentence report that was prepared in this matter to be placed  
16 in the record under seal along with all of the copies of the  
17 letters -- original copy of the letters that this Court received  
18 either on behalf of the defendant or as opposed to the defendant.

19 Is there anything else that the Court need to consider  
20 in this matter from the government -- or Mr. Helo first.

21 THE PROBATION OFFICER: Your Honor, you wish us to  
22 revise the presentence report to reflect the ruling as to  
23 Objection Number 1?

24 THE COURT: Absolutely. Thank you for that.

25 All right. So you would revise the presentence report

1 to reflect the ruling of the Court.

2 Mr. Regan, anything else?

3 MR. REGAN: No, Your Honor.

4 THE COURT: Mr. Unglesby.

5 MR. UNGLESBY: We're going to be told where to  
6 self-surrender before September 24<sup>th</sup>?

7 THE COURT: Well, I'm not sure exactly how that works,  
8 but the Bureau of Prisons or marshal or somebody is going to give  
9 you information.

10 Is that right, Mr. Helo?

11 THE PROBATION OFFICER: It should go through the United  
12 States Marshal Service, but I believe the Bureau of Prisons will  
13 notify y'all.

14 THE MARSHAL: Yes. They will notify him.

15 THE COURT: All right. You'll let the lawyer know,  
16 Mr. Caton's lawyer, Mr. Unglesby, know, right?

17 THE MARSHAL: Right.

18 THE COURT: All right. Mr. Caton, good luck to you. I  
19 hope there will be a time that will be many years after you're  
20 released from the Federal Bureau of Prisons, wherever that's  
21 going to be, where it will just be an ancient memory and you  
22 won't ever see the inside of another courtroom or another judge  
23 in your life. Good luck, sir.

24 - - -

25

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF LOUISIANA  
3 LAFAYETTE-OPELOUSAS DIVISION  
4


5 UNITED STATES OF AMERICA :  
6 vs. : DOCKET NUMBER 04-20075  
7 GREGORY JAMES CATON :  
8

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10 I, LaRae E. Bourque, Official Court Reporter for the  
11 United States District Court, Western District of Louisiana,  
12 do hereby certify that the foregoing 27 pages are a true and  
13 accurate transcript of the proceedings had in this matter,  
14 as hereabove set forth, and that I have no interest of any  
15 nature whatsoever regarding the ultimate disposition of this  
16 litigation.

17 I further certify that the transcript fees and format  
18 comply with those prescribed by the Court and the Judicial  
19 Conference of the United States.  
20

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**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA**

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**Case Style:** 04-20075, United States of America v Gregory James Caton

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