



Yisroel Schulman, Esq.  
President & Attorney-In-Charge

**Via Federal Express**

April 25, 2010

The Honorable Linda Reade, Chief Judge  
United States District Court for Northern District of Iowa  
Eastern /Dubuque Division  
4200 C Street, SW  
Cedar Rapids, IA 52401

Dear Judge Reade:

By way of background, I am the President and Attorney-In-Charge of the New York Legal Assistance Group ([www.nylag.org](http://www.nylag.org)). In 2009, NYLAG handled over 23,000 legal matters assisting individuals who could not afford private legal assistance. Tens of thousands of others were assisted by way of a dozen class-action law suits filed by NYLAG.

I have devoted my entire professional career to protecting the rights of vulnerable, at-risk populations, including low-income immigrants, both documented and undocumented. My organization has helped literally tens of thousands of immigrants, victims of consumer fraud, victims of housing discrimination, the chronically ill, children with special needs, the disabled and the elderly, amongst others.

Though I do not condone breaking the law, I am compelled to express my deeply felt concern that the sentence requested in the case of Sholom Mordechai Rubashkin will result in "cruel and unusual" punishment, in violation of the Eighth Amendment to the Constitution of the United States.

After reviewing the Government's *Sentencing Memorandum* dated April 9, 2010<sup>1</sup> ("Government's Sentencing Memorandum"), and the Government's *Memorandum in Resistance to Defendant's Rule 9(A) Appeal of Detention*, filed December 30, 2009<sup>2</sup> ("Government's Detention Memorandum"), I have some serious concerns about what is taking place in this case.

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<sup>1</sup> *Sentencing Memorandum*, filed April 9, 2010, United States of American v. Sholom Rubashkin, No. CR 08-1324.

<sup>2</sup> *Memorandum in Resistance to Defendant's Rule 9(A) Appeal of Detention*, filed December 30, 2009, United States of American v. Sholom Rubashkin, No. CR 09-3939.

I call to your attention that the government is requesting an enhancement of 22 levels due to a financial loss of \$20,000,000 to the victim(s) of a financial fraud<sup>3</sup>. I am concerned that the government asks for an enhancement of 22 levels based upon a loss to the victims of \$20,000,000 when there is no clear indication from the jury that Mr. Rubashkin's actions and inactions caused those losses. This loss amount is based upon loans to Agriprocessors, which resulted in a loss to the lenders due to Agriprocessors' bankruptcy. However, the defendant was not on trial for going into bankruptcy in this case, and the jury did not convict him of causing Agriprocessors' bankruptcy. The sentencing guideline enhancement of 22 levels is there for situations in which the loss is a direct result of the crimes for which the jury convicted. The prosecution has gone beyond the limits of its appropriate role by asking the court to add 22 levels to the sentence based upon allegations for which no jury has convicted Mr. Rubashkin.

In the Government's Sentencing Memorandum, the United States Attorney and Assistant United States Attorney state that Mr. Rubashkin's fraudulent acts caused Agriprocessors to slide into bankruptcy which then resulted in massive losses to its lenders for which the 22 level enhancement is requested.

Prior to this, in the Government's Detention Memorandum, at page 11, the United States Attorney and Assistant United States Attorney state:

Defendant's actions led to the financial collapse of Agriprocessors and the company filed for Chapter 11 bankruptcy on November 4, 2008. A trustee was appointed to run the business on November 20, 2008. The trustee's managers soon discovered that, at the time of the bankruptcy, Agriprocessors' accounts receivable collateral was overstated by approximately \$10 million.

The following is an excerpt from the Government's Detention Memorandum, at pages 12 – 13, where the government summarizes the jury's convictions and interrogatories:

On November 12, 2009, a jury returned guilty verdicts on 86 of 91 financial fraud and related counts against defendant Sholom Rubashkin. Defendant was convicted on:

14 counts of bank fraud (18 U.S.C. § 1344);  
24 counts of making false statements to a bank (18 U.S.C. § 1014);  
14 counts of wire fraud (18 U.S.C. § 1343);  
9 counts of mail fraud (18 U.S.C. § 1341);  
10 counts of money laundering (18 U.S.C. §§ 1956(a)(1)(A)(I), 1956(a)(1)(B)(I)); and  
15 counts of violating an order of the Secretary of Agriculture to timely pay suppliers of livestock (7 U.S.C. § 195).

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<sup>3</sup> *Supra* at 1; page 62. ("B. Pursuant to USSG §2B1.1(b)(1)(L), an enhancement of 22 levels should apply based upon a loss of more than \$20,000,000.").

(Verdict Form, Document #736, renumbered Counts 1-71, 73-80, 84-89, and 91).

On several of the counts of fraud and making false statements to a bank, the jury answered interrogatories that identified multiple bases for finding defendant had defrauded or made false statements to the bank.

With regard to several of the counts, the jury found defendant committed his offenses “by creating false accounts receivable collateral supporting the [revolving loan with FBBC].” (Verdict Form, Document #736).

With regard to several of the counts, the jury found defendant committed his offenses “by diverting collections from accounts receivable collateral for the [revolving loan with FBBC].” (Verdict Form, Document #736).

With regard to several of the counts, the jury found the offenses were committed by means of a “false statement or statements about whether accounts receivable reported in collateral certificates submitted by Agriprocessors, Inc. were genuine.” (Verdict Form, Document #736).

With regard to several of the counts, the jury found defendant committed his offenses “by falsely stating Agriprocessors was in compliance with all laws when Agriprocessors and its employees were failing to comply with the Packers and Stockyards Act.” (Verdict Form, Document #736).

With regard to 18 of those counts, the jury found defendant committed his offenses “by falsely stating Agriprocessors was in compliance with all laws when Agriprocessors and its employees were harboring or conspiring to harbor undocumented aliens.” (Verdict Form, Document #736, renumbered Counts 1-9 and 39-47).

From the above summary of verdicts and interrogatories, it is apparent that there is no conviction by the jury of Mr. Rubashkin for “causing the bankruptcy” of Agriprocessors or causing a loss of over \$20,000,000 to the lenders. The government believes Mr. Rubashkin is responsible for the company’s bankruptcy and the resulting losses and proceeds to request that your Honor add 22 levels to her sentence based upon this assertion. This is an unparalleled usurpation of the role of the jury in a criminal case and is thoroughly at odds with all notions of justice we hold dear. There is no \$20,000,000 or more loss resulting from the crimes for which Mr. Rubashkin was found guilty.

The United States Supreme Court held in Coker v. Georgia, 433 U.S. 584 (1977), and in Eberheart v. Georgia, 433 U.S. 917 (1977), that a punishment is cruel and unusual if it is “grossly disproportionate to the offense.” I am of the opinion that the financial crimes the jury determined were committed by Mr. Rubashkin should have just consequences; in a case where personal gain was neither the cause nor the result of the crimes at issue, any

lengthy sentence, as requested by the government, for a first time conviction involving white collar crime is unwarranted<sup>4</sup>.

As an advocate for the interests of justice to all, and a lawyer who works extremely hard to help those who cannot fend for themselves, I respectfully enter this request that Mr. Rubashkin be given a sentence that is not overly harsh or punitive.

I respectfully opine that sentencing Mr. Rubashkin to a long prison term in prison would be a travesty of our justice system; it would hardly serve the interests of our system of justice, nor any other legitimate purpose.

Respectfully yours,



Yisroel Schulman, Esq.

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<sup>4</sup> I note that former U.S. Attorney Brett Tolman and former Iowa federal judge Paul Cassell also opine, as stated in a letter to your Honor, that the sentencing guidelines as applied by the prosecution in this case would call for a harsher sentence than if Mr. Rubashkin had been convicted of first degree murder. I also note that the Simon Wiesenthal Institute, with whose legal staff I have worked in the past and respect, stated in a letter to the Department of Justice on April 14, 2010, that the sentencing recommendations are “a grotesque and inordinate life sentence” and requested a fair and equitable sentence.