

**David A. Domina Argument for a Physician
at Sentencing Hearing. Tax Criminal Practice.
1.27.12**

Your Honor, I have listened with interest to an exchange between the Court and the government's counsel.

I suppose the only time in my life that I've ever had, or will ever have, the opportunity to say that I represent the United States was while I was a soldier. So I don't know what it feels like to say that I argue for a different sentence on behalf of the United States. And of course, I'll never know what it feels like to hear those arguments from your perspective.

But today, I know this; today I know that I have been given an opportunity to say something to you that I didn't expect I'd ever have. That is the opportunity to speak for the people of an American territory in a part of the world where I've never been, never will be. I speak for American citizens from an island that's 12 ½ miles long and 5 ½ miles wide, that's occupied by a people who are 90% under the national poverty level, 86% of whom speak languages, called Chamorro or Carolinian, in their homes, not English. A place where the hospital, one hospital, for all of the Northern Marianas, which calls itself a Commonwealth, has so much trouble recruiting doctors that, without Dr. Koning, they can't perform the surgeries they need to perform and the best estimate we have is that it will take two years to find his replacement, and that estimate is based on how long it took to get the last anesthesiologist who came, and didn't stay.

I know that 70% of that 12 ½ by 5 ½ miles is uninhabitable land. I know that the principal industry is tourism because there isn't any other industry, except maybe a few small sweat shops where people make t-shirts. There isn't enough agriculture to feed the people. The people who come as tourists don't come from the United States, they come from Korea and maybe Japan. When they get there, they don't speak English. But they're engaged in tourism, an adventure I suspect, a one-time adventure to a destination shared by not very many people unless they happen to have left there, and gone to Korea or to Japan.

I know that almost no one from the mainland United States goes there to visit or work. To suggest that working there under the conditions and circumstances that Dr. Koning works there is somehow his choice for a job is a remarkably naïve expression. I have tried gently to suggest in the submissions to the Court, the volume for which I apologize, as unnecessary if unnecessary, to suggest that the reason Dr. Koning is there is because he and his naïve lawyer decided in 2007, when we met, that this day would come. On that first day, he and his lawyer wanted to be able to look you in the eye and say to you,

“I have self-sentenced.” He wanted to say, “ I have imposed upon myself a burden. I have become a missionary. I have gone to a place I didn’t want to go to do the kind of work I love to do, but not there, with tools and equipment that do not get modernized; without colleagues to assist or a break; to serve people who I’ve learned to love because they need me; but who are as foreign to me as they could have been.”

Dr. Koning is not an islander. He chose to live his life in North Dakota, then Nebraska, then Montana. If he were sentenced to Yankton and he were given a pick-up to drive across the bridge and go over to the Wynot recreation area to work during the day, which I happen to know occurred with at least one lawyer who was here and sentenced by the Court years ago, his travel distance would exceed 12 ½ miles by 5 miles every day. What he would see would vary more than it would vary where Dr. Koning now works, everyday.

His contacts with people would be more diverse than the contacts he has where he works now, everyday. His opportunities upon departure would be greater. As for the \$200,000 a year that he makes, that’s a lot of money, it’s about one-fourth of what Dr. Koning would earn here.

His income’s continuity is also highly questionable. Implicit, in what the Court read, is that fact that the hospital is broke. The Commonwealth of the Northern Mariannas is broke. The United States isn’t sending it money anymore, and it’s a part of us, it’s not foreign aid. This is the case because we are broke. When Dr. Koning left CNMI to come here for this somber occasions, he left knowing that the payroll for the physicians at the hospital might not be met next time.

It makes no difference to him. He wants to go back. He wants to go back in part because Saipan helped him find himself. Lowell Baisden helped him lose himself. Lowell Baisden deserves some blame. Here, at this hearing, and every other sentencing hearing growing out of what he did, that you will conduct today. And that is not to acquit Dr. Koning, who luxuriated in taxes, or lack of them, that he should have known better about. But for the people of North Platte, about whom Mr. Russell was concerned, and for the people of the United States, and particularly the medical community, by whom I’m sure the Court is concerned about this sentence, I hope that the privilege I had today of speaking up for those people from the Commonwealth of the Northern Marianas who want this doctor back because they need him, because in your hands he’s an asset not to be wasted, but to be used is an intelligent sentence, and any other sentence would be unintelligent, out of whatever money he makes.

Whether the Northern Mariannas can make the payroll or do not make it, whether the amount of the fine is \$60,000 or \$100,000, the Defendant here will face the burden of reconciling himself with his state tax liabilities, which are six figures, and with a 75% fraud penalty, which he cannot escape because of his guilty plea. And unless the Court’s order provides that the restitution is credited for what he pays to the IRS, which is what I

think the Court intends, he will face a restitution order which does not count when paid as a credit against the penalties to the IRS. Dr. Koning is going someplace, did go someplace, and will return to someplace under the Court's sentence as described to counsel for both parties for consideration, and which I hope will be pronounced, that is a penalty. We fought the Civil War to stop slavery and peonage. Dr. Koning faces the prospect of peonage.

The Court insists on five years of his life. If you take a year and a day from him, and he's finished in 10 months, he'll have no license to practice medicine. Under this sentence, he's sentenced to work, it's work that he loves, it's not the kind of place and circumstances where he'd love to do it.

I want to close with just one small thought about him. There is a part of me that thinks I should give voice for the persons in the courtroom, or otherwise listening, other than you, to some of these remarkable letters, but I have submitted enough and taken enough of your time.

There is one letter I must mention. It is not from the medical community, however, Your Honor. It's from a Nebraskan, an accountant, Fred Lockwood from Scottsbluff. Mr. Lockwood got to know Dr. Koning because of me. He got to know Dr. Koning through me because Dr. Koning needed an accountant. The first half dozen I contacted in Omaha and Lincoln were afraid to work on his case, didn't want to be associated with this problem. I've known Mr. Lockwood a long time. I think the Court may know him. He's had my respect a long time and he said sure, I'll help.

Mr. Lockwood's letter about this man, his dependence on, his cooperation with, his assistance to and his insistence upon compliance through an accountant, makes it clear that there is no need for specific deterrence. He [Dr. Koning] gets it. As for general deterrence to prevent crime, Dr. Koning imposed it on himself; he wants to continue his worth. The Court will require this with its sentence.

As to deployment of an asset instead of wasting one, this is not a time when the United States can afford to waste an asset. Our Congress cannot send CNMI money, but our federal judiciary seated in this courtroom can send the people there a doctor. That's what I'm asking it to do.

Judge: Thank you, Mr. Domina.