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March 5, 2018

Honorable Jed S. Rakoff
United States Courthouse
500 Pearl Street
New York, New York 10007

RE: United States v. Earl Simmons
Docket No. 17 CR 172-001(JSR)
REDACTED SUBMISSION FOR ECF

Your Honor:

This letter is well in anticipation of our sentencing submission, but should be incorporated with our paper on Mr. Simmons behalf.¹ We also ask that both I, and Mr. Richman, be permitted to speak at sentencing. The Government has no objection to this approach.

We wish to highlight/suggest the import in this matter of a very creative approach to not only address the transgression, but to make the Government whole and provide support to Mr. Simmons himself in attempting to achieve and maintain sobriety. Our approach is an answer for now and the future.

Mr. Simmons is a person who is a voice of pain and rising, inspirational to many who come from a similar depth of abuse and challenge.

So that the Government and the Court does not perceive that Mr. Simmons has not been responsive or cooperative with providing financial information or filing his taxes, please note Mr. Richman has not received a call [REDACTED]

[REDACTED]
As for Mr. Simmons he is without insight into where his funds are or are going. This has been a pattern for his career. This will be more fully detailed in our ultimate sentencing memorandum.

One suggestion to anticipate as a creative feature to correct the losses to the Government is to insure that all of Mr. Simmons' future contracts contain a provision that all fees are deposited to an escrow with Government or trustee supervision. In effect some type of trusteeship should be part of the sentence. This will provide security for the Government, insure that an apportionment is

¹ We thank the Court for permission to file this letter per the directive of the Individual Rules.

safeguarded for Mr. Simmons to live on and to support his children and would serve to insure that he is paid by unscrupulous people as what has emerged is a definitive pattern of at best mismanagement and at worst larceny.

Trustees are used in bankruptcy proceedings and guardianships. Our concern is that the aspect of the trustee administration should not be a drain on the anticipated income.

Please note that in no way does Mr. Simmons shirk his acceptance of responsibility for his failure to file tax returns. We do however wish to make clear that this was not hubris.

This is an important year for Mr. Simmons as an artist as it is the twentieth anniversary of the release of his first album, which was wildly successful. The current trend it appears, is the revival and resurgence of figures in music upon these anniversaries so this is a period where Mr. Simmons has opportunity to significantly earn and in earning he can significantly pay his restitution.

The other aspect is his sobriety for he would be eminently more bankable if he could be more reliable in his work persona as well. He is one of those few people that have that *je ne sais quoi*, an indefinable quality that makes him distinctive as he translates to others, in verse, in presence before masses and in film; yet in person he is between lost and found even unto himself. His history as a child was tragic as will be detailed; even what seems to be irresponsible prolific fatherhood is actually rooted in a desire for love, warmth, family and safety.

Contacts By Substance Abuse Programs

We have been contacted by many people offering to assist him in substance abuse programs. One such person, Jayson Williams, is a former NBA All Star who himself fell from his career due to addiction. On his path to sobriety he experienced aspects of programming that were helpful and some not productive. He vetted many professionals in the field to insure that he had the correct team to achieve his vision of a center that would "truly get people better." As a result, after achieving sobriety in December 2015, he has founded and operates the Rebound Institute [REDACTED]. Mr. Williams defines himself still as, in recovery, and he has spent the last two years volunteering at multiple facilities to learn about the clinical and business aspects of treatment. Mr. Williams in his words has found his calling in helping others achieve and maintain sobriety.

The program is small and only takes sixteen people at a time. This permits the staff to be dedicated to the individuals who are not called clients, but teammates. The entire staff is familiar with the teammates in the program so that all may support recovery. The facility is tight knit and the participants have a safe environment that address present addiction and seeks to provide tools to prepare

them for life after treatment. The facility does not permit smoking, vaping or any tobacco or nicotine. Mr. Williams defines the program as high energy with a program to help break down barriers and find triggers, called Outdoor Adventure Therapy within the context of a regimented day, which begins at 5:30 a.m. The use of physical challenges is to get people out of their comfort zone in conjunction with therapists. Structured drills, exercises and days to help the participants make the connections from what they learned in a clinic to correlate experience. The program is a minimum of forty five days with drug testing three days per week. Each day concludes six days per week with a teammate may go to a meeting of their choice whether it is Narcotics Anonymous, Alcoholics Anonymous, 12 Step or Bible study. The program is faith based and thus on Sundays the group attends church at NBA Champion and Pastor Billy Thompson's church.

Mr. Williams notes that Mr. Simmons has the passion to be a pastor himself. Others of notoriety participate including NFL Hall of Fame Running back [REDACTED] who teaches bible study every Tuesday morning; NBA All Star [REDACTED] is another contributor to the program. There is a strong alumni and aftercare program where participants are held accountable and as they have learned through their experiences fame, fawning and addiction that they lack structure. Thus the emphasis is on structure in one's life.

Mr. Williams offers that Mr. Simmons would be a great fit at Rebound and that they will be able to offer him a solid ground during his participation and in aftercare. All are familiar with Mr. Simmons' setbacks, but Mr. Williams believes he can assist Mr. Simmons with a comeback that will last a lifetime. He asks the Court to believe in him and his team at Rebound Institute. The website notes programs in addiction treatment, [REDACTED].

Notably The [REDACTED] Center where he was last in recovery would welcome him back; they however feel that more stability is necessary. The [REDACTED] [REDACTED]. This feature was important as the Court is now aware of Mr. Simmons' financial constraints.

We have received letters and contacts from people suggesting their sobriety counselors. I have as well been in contact with Nancy [REDACTED], PsyD who worked with Mr. Simmons during another attempt at sobriety. Ms. Irwin emphasized that his personal trauma drives his addiction. She noted that his trauma [REDACTED] [REDACTED] that his drug use is meant to drown out the raging battle in his mind.

I spoke with John Griffin who was a sober counselor that was to travel with Mr. Simmons. He wishes to address the Court and is concerned to relate in person what he cannot convey in the written word. His credentials were approved by Probation. He related from experience what he perceived necessary and worked with Mr. Simmons with no cost. He was not afraid to call Earl on [REDACTED].

In working with someone of the fame and persona of Mr. Simmons we must be on guard for the proverbial star fornicators who are sycophants and associate with people because of fame. These persons are dangers to Mr. Simmons as it is not his recovery and reparations that they seek to support but a mining of Mr. Simmons for their own service and advantage. [REDACTED]

Even in sobriety counseling setting we must be careful that the counselors see Earl Simmons and not DMX. It is the man at issue here.

[REDACTED]

We received a letter from [REDACTED]

[REDACTED]

“He has a long history of substance abuse so it can be difficult [REDACTED]

[REDACTED] g and fuel his substance abuse.

While in treatment at The [REDACTED] Center he [REDACTED]

[REDACTED] (Letter attached).

[REDACTED]

[REDACTED]

Again this is another facet of Earl Simmons the man, not DMX the artist.

Childhood Trauma

The detail of Ms. Simmons life as a child is so painful and will be detailed in our ultimate sentencing package however a highlight is the sheer abuse as noted in the Pre Sentence Investigation Report at paragraphs 94-101.

Earl Simmons loves his mother. He does so because he chooses love over frustration and despair despite the fact that his pain does not dissipate. One aptly captured episode from the life of young Earl can be found at paragraph 95 of the PSR. Random violence reigned down upon him by his mother.

He remembers at six or seven waking up finding his mother was not at home sat down at the table. "While sitting at the table, he noticed his mother left a notebook opened and he corrected a spelling mistake she had made in the book. Just as he was making the correction, his mother walked into the house and instead of asking him why he was up at that time, she snatched the book from his hand and immediately began beating him. He recalls this specific beating because she knocked two teeth out of his mouth and sent him to his room. The defendant immediately appeared to become emotional when discussing the abuse he suffered and allowed himself a moment of clarity as he stated, 'I didn't deserve it, but that's the way I was raised.'" Id.

She had beaten him with a broom handle. He describes the look in her eyes as not the usual assault but as if she would kill him. He pardons her however as her childhood was also horrible [REDACTED]

Earl was the only boy in the home, he has three maternal siblings [REDACTED]

[REDACTED] He then recalled "grown ups using strange words" about age six, Ms. Ella passed- then he realizes this woman had the same name as his paternal grandmother. In this part of

Yonkers at the time, people were waked in their homes. He remembers being brought and seeing Ms. Ella and speaking to her in the casket. The other adults were amazed he was just talking to her. He paused, and reflected and repeated many times, "Aunt Ella, sweet lady, sweet lady.....best hugs."

At the age of ten, the defendant stated his mother took him to "Andrus Children's Home," where she left him. As per the PSR, "[a]ccording to an internet search, Andrus is a private non-profit organization that specializes in working with children who struggle to communicate and process the emotional impacts of their experiences. Andrus provides a variety of services including but not limited to residential programs and mental health services. ...a representative [contacted by U.S. Probation Officer Riley in preparing the PSR] further explained in the late 1970's to early 1980's , the program was considered 'more of an orphanage' where it wasn't uncommon for parents, who had 'problematic' children to drop them off at the orphanage and attempt to cut all ties." PSR at paragraph 98.

More detail will follow in our final submission.

Dogs

The dog is a presence in the mind, body music and symbolism of Earl Simmons.

What is the dog to this man? It is an outgrowth of his experiences as a child. Earl told me of his first dog.

He saw a dog in his neighborhood, it was a pit bull and he was a young teen. He spent hours making friends with the dog from one side of a fence. At some point he felt he had established enough of a bond to jump the fence to sit with the dog. He sat with the dog for hours. He perceived their bond grew to the point where he could carry the dog over the fence. As it was a pit bull, if this was not a mutual exchange, things would not go well for you. He took the dog and using his belt as a leash proudly brought the dog home. His mother returned and began screaming at him; get rid of that animal. Dejected he grabbed a frozen hot dog and went to the roof of his project building. There he and the dog shared the frozen hot dog. The night carried on and he fell asleep. The dog was snuggled to him.

Earl was awakened in the morning by someone kicking his shoe. It was a maintenance guy. He said something along the lines, of "kid, wake up....your dog won't let me pass. I need to get to this stairwell to do my job." It was at this moment he realized that the dog stood guard over him and protected him. It was a revelation in his perception of this animal doing more for him than his mother, in keeping him safe, being loyal and standing guard. He returned the dog as he understood he could not care for the dog; however thus began his devotion and reliance in a relationship that he saw as pure. Tattooed on his body are odes to some dogs even I have known, Boomer for instance, whose entire family Earl and his then wife Tashera had.

There was a puppy Earl had adopted and when he was put in jail the first time, his mother told him she threw it in the incinerator of the building. This pain still haunts him.

He seeks the dog in people but he has been constantly disappointed. His very relatives have taken advantage of him. He thought to show his care by sharing only to see his efforts not appreciated and what he shared destroyed. He trusted in people to care for his income, they took for themselves often. He literally has no idea what he is actually earning or where that money is.

There are further sections, which will be detailed, his many children and his perception of love not a lack of responsibility. The loss of one child, so poignant he cannot speak of Earl, Junior without crying, yet he was there for every one of the baby's seven days of life.² His fears for his youngest son Exodus will be demonstrated with documentation [REDACTED]

Earl is dichotomic; a devotion to scripture and God with the persona of an entertainer. He is an incongruous fellow: the rapper seeking rapture. His devotion to Christ and crack congruously seeking revelation. His ability to reveal, through word and rap the pain of the people the hallowed halls of institutions that are not prisons do not see but on the news and in reports of prisons as: "The they."

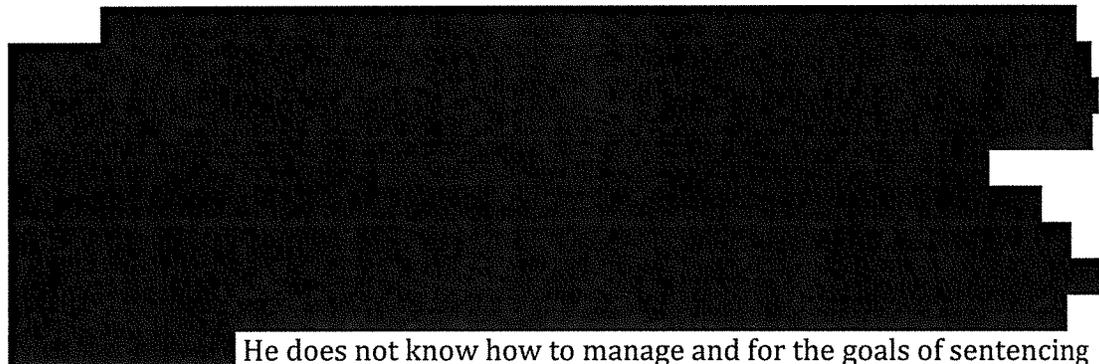
His album titles and songs are a journey – he named each and they are representative of raw experience. It's Dark and Hell Is Hot and Flesh of My Flesh his debut albums. Each album contains a prayer and a conversation with God. The conversation with the devil is there as well. He can recite his writings in the same vein as the manner that the minstrel would recite tales of knights but these nights are the nights and days of the experience of the ghetto and the abyss of childhood lost, hunger, pain of identity, abuse and the search for being and redemption.

He notes to me that his music was meant to be inspirational. One line he focuses on "No matter how dark or grim things are, the fact you can see, there is light."

I have been with this man on many a court appearance. I have seen people fall to the ground crying thanking him for his words and his inspiration to them.

² Tashera and Earl's child born in 1998 was his junior. Earl Simmons Junior was born with his heart on the wrong side of his chest and no esophagus. Tashera had gone into early labor and each day he would sit with the child as it lay in the incubator. Earl cried as he related Earl, Jr. having wrapped his fingers around his father's finger. Tashera could not bear to see him at first. The day she could bear it was the day the child died. Earl blamed God; yet he was present and sought to support Earl, Jr. and Tashera.

Yet he is battling within himself; and cannot get to a place of equilibrium. His pain, his desire to trust and be taken care of and seeking those to in effect care for him is inverted by the realities of his coming to adulthood, his talent which permitted him to escape his place of physical poverty but not the mental poverty of his experience. We discussed his perception of taxes and he said I grew up on welfare. In my neighborhood on the first of the month the mailman was robbed (because that was when the checks came in). What do I know about taxes? He understands his current predicament; he just does not know where it is or what to do about it. People have tried to help him but his mania was fear of loss and poverty; like the person with nothing who grows up to hoard; yet he did not even have the money others administered it. Now the potential loss has reached another dimension.



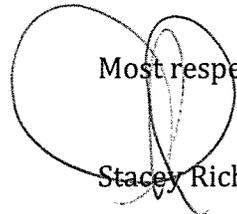
He does not know how to manage and for the goals of sentencing to be achieved we must, as the revolution since Booker directs us, address each for individuality in sentencing. This Court is astute and creative. Here there is a precipice and either Earl Simmons will be able to bridge to the other side or he will fall to the abyss.

This is a complicated matter and a complicated man. For all of his history there is an ability to reach people and communicate an aspect of society that another aspect of society does not want to acknowledge and refers to, again, as a them. There perhaps is the aspect of example-all citizens must pay their taxes. But isn't it a bit like shooting fish in a barrel for those that cannot manage their lives yet have achieved fame and wealth and who have lost it to lack of competent management skills, ineptitude, theft, being taken advantage of and addiction?

Uniquely however this man can earn to repay his debt, but his shelf life is limited. We all have our bounds; but in the field of fame it is fleeting. His words and his presence endure for others. Time and addiction are his enemies. If we fashion a method he can perform (literally) to repay his taxes and achieve a sense of financial security. None of this can be achieved without breaking the addiction. He is an enigma but as each album contains a conversation with God he earnestly seeks salvation. Perhaps oddly the Government needs to be a dog to him and find a way to assist this man in regaining his path.

This was meant to be a brief precursor to our sentencing memo. There are facets here, this diamond is rough but he should not be buried.

In our final letter there is much to comment upon with regard to the PSR and other facets of Earl's life. There are letters of recommendation. There is the understanding of his criminal history, which on the face is offensive but in close review petty; and provides a dangerous guideline calculation perception. There is so much here to inform the Court of, to inform it of how to fashion a sentence that is sufficient but not greater than necessary would provide a path for treatment and a return to capacity; a financial stewardship which will both serve the debt owed to the Government and to his children; and return a meaningful voice to a core that finds solace and hope in his words.

Most respectfully,

Stacey Richman

cc:
AUSA Richard Cooper (via email)
U.S. Probation Officer Larren Riley (via email)