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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA .
VERSUS . Criminal Action
 . No. H-03-CR-362
 .
CHARLES LEONARD LITTLE aka CHARLIE . Houston, Texas
LITTLE, . January 23, 2004
 . 2:28 p.m.
 .
 . Defendant .

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SIM LAKE
REARRAIGNMENT

APPEARANCES:

FOR THE UNITED STATES OF AMERICA:

Mr. Edward Gallagher
Ms. Belinda Beek
Assistant United States Attorneys
UNITED STATES ATTORNEY'S OFFICE
910 Travis, Suite 1500
Houston, Texas 77002
(713) 567-9300

FOR THE DEFENDANT:

Mr. David Gerger
DAVID GERGER & ASSOCIATES
700 Louisiana Street, Suite 4200
Houston, Texas 77002
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PROCEEDINGS RECORDED BY STENOGRAPHIC MEANS,
TRANSCRIPT PRODUCED FROM COMPUTER-AIDED TRANSCRIPTION

1 ALSO HEARD:

2 United States of America versus Donald Lee Husk
3 Criminal Number 03-CR-141

4 COUNSEL FOR THE UNITED STATES OF AMERICA:

5 Mr. Albert Balboni
6 Assistant United States Attorney
7 UNITED STATES ATTORNEY'S OFFICE
8 910 Travis, Suite 1500
9 Houston, Texas 77002
10 (713) 567-9300

11 COUNSEL FOR DONALD LEE HUSK:

12 Mr. Tim Johnson
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15 (713) 652-9999

16 Mr. David C. Allie
17 1155 Dairy Ashford, Suite 800
18 Houston, Texas 77079
19 (281) 556-3100

20

21

22

23 COURT REPORTER:

24 GAYLE L. DYE, CSR, RDR, CRR
25 515 Rusk, Room 8016
Houston, Texas 77002
(713) 250-5582

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1 PROCEEDINGS

2 January 23, 2004

3 THE COURT: We have two Defendants to be
4 rearraigned. I propose to rearraign them jointly on the
5 common elements required by Rule 11.

6 The first case is United States versus Donald
7 Lee Husk, Criminal Number H-03-141.

8 Will counsel please identify themselves and
9 their clients

10 MR. BALBONI: Al Balboni representing the United
11 States.

12 MR. JOHNSON: Your Honor, Tim Johnson and David
13 Allie for Mr. Husk.

14 THE COURT: All right. Why don't you stand over on
15 this side of the room.

16 MR. JOHNSON: Thank you, Judge.

17 THE COURT: And the second case is United States
18 versus Charles Leonard Little, Criminal Number H-03-362.

19 MR. GALLAGHER: Ed Gallagher and Belinda Beek on
20 behalf of the United States, your Honor.

21 MR. GERGER: Good morning, your Honor. David Gerger
22 with Mr. Little.

23 THE COURT: How do you do?

24 All right. Are you Donald Husk?

25 DEFENDANT DONALD HUSK: I am, your Honor.

1 THE COURT: And are you Charles Leonard Little?

2 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

3 THE COURT: Would both of you gentlemen please raise
4 your right hands and be sworn.

5 (The Defendants were sworn.)

6 THE COURT: Mr. Husk, I understand that you wish to
7 plead guilty to Count 1 of the criminal indictment which
8 charges you with engaging in a corrupt endeavor to obstruct or
9 impede the due administration of the Internal Revenue laws, in
10 violation of 26, United States Code, Section 7212(a). Is that
11 correct?

12 DEFENDANT DONALD HUSK: Yes, sir.

13 THE COURT: All right. And Mr. Little, I understand
14 that you wish to plead guilty to Count 2 of the indictment in
15 your case which charges you with violating the Racketeer
16 Influenced and Corrupt Organization Act, in violation of 18,
17 United States Code, Section 1962(d). Is that correct?

18 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

19 THE COURT: All right. Before I can accept your
20 pleas, I'm going to ask you a number of questions. It is very
21 important that each of you listen carefully to all of my
22 questions and that each of you answer truthfully and
23 completely all of my questions for several reasons.

24 First, since each of you is now under oath, if
25 you gave an untrue answer to any question, you could be

1 charged with the separate federal crime of perjury. Do each
2 of you understand that?

3 DEFENDANT DONALD HUSK: Yes, sir.

4 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

5 THE COURT: Also, before I can accept your guilty
6 pleas, I must make a number of findings. My findings are
7 based primarily on your answers to my questions. In order for
8 my findings to be correct, it is, therefore, necessary that
9 all of your answers be truthful and complete. Do each of you
10 understand that?

11 DEFENDANT DONALD HUSK: Yes, sir.

12 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

13 THE COURT: Mr. Husk, if at any time you do not
14 understand anything that I say, will you please ask me to
15 repeat or explain whatever you do not understand?

16 DEFENDANT DONALD HUSK: Yes, I will.

17 THE COURT: And likewise, Mr. Little, if you do not
18 understand anything that I say, will you please ask me to
19 repeat or explain whatever you do not understand?

20 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

21 THE COURT: Also, each of you may stop and confer
22 with your own very fine attorneys who are standing next to you
23 if you have any questions. You do not need anyone's
24 permission to talk to your attorneys.

25 Mr. Husk, how old are you?

1 DEFENDANT DONALD HUSK: 47.

2 THE COURT: And what is the extent of your formal
3 education?

4 DEFENDANT DONALD HUSK: Five years of miscellaneous
5 through college.

6 THE COURT: You graduated from high school?

7 DEFENDANT DONALD HUSK: Yes, I did.

8 THE COURT: And you attended college?

9 DEFENDANT DONALD HUSK: Yes.

10 THE COURT: What colleges did you attend?

11 DEFENDANT DONALD HUSK: It was a community college
12 in Glendale, Arizona.

13 THE COURT: Did you graduate?

14 DEFENDANT DONALD HUSK: No, sir.

15 THE COURT: Are you currently employed?

16 DEFENDANT DONALD HUSK: Yes, sir.

17 THE COURT: What do you do for a living?

18 DEFENDANT DONALD HUSK: I am currently in marketing
19 and sales and estimating for a fire and water restoration
20 company.

21 THE COURT: Have you ever been diagnosed or treated
22 for any type of mental problem?

23 DEFENDANT DONALD HUSK: No, sir.

24 THE COURT: Have you ever been diagnosed or treated
25 for addiction to drugs or alcohol?

1 DEFENDANT DONALD HUSK: No, sir.

2 THE COURT: Has anyone ever suggested to you that
3 you needed treatment for any type of mental problem or for any
4 type of addiction?

5 DEFENDANT DONALD HUSK: No, sir.

6 THE COURT: Have you consumed any alcoholic
7 beverages within the last 24 hours?

8 DEFENDANT DONALD HUSK: No, sir.

9 THE COURT: Have you taken any type of drug or
10 medicine within the last 24 hours?

11 DEFENDANT DONALD HUSK: Yes, sir.

12 THE COURT: What?

13 DEFENDANT DONALD HUSK: I take high blood pressure
14 medicine.

15 THE COURT: Does that medication interfere with your
16 ability to understand or communicate?

17 DEFENDANT DONALD HUSK: Not at all.

18 THE COURT: All right.

19 Now, Mr. Little, how old are you?

20 DEFENDANT CHARLES LEONARD LITTLE: 67, your Honor.

21 THE COURT: And what is the extent of your
22 education?

23 DEFENDANT CHARLES LEONARD LITTLE: 11th grade, high
24 school.

25 THE COURT: All right. Do you have any formal

1 education or training after that?

2 DEFENDANT CHARLES LEONARD LITTLE: Took a couple of
3 courses at the University of Houston in industrial labor
4 relations.

5 THE COURT: Are you currently employed?

6 DEFENDANT CHARLES LEONARD LITTLE: No, sir. I'm
7 retired.

8 THE COURT: What is the last job you held?

9 DEFENDANT CHARLES LEONARD LITTLE: President of the
10 United Transportation Union.

11 THE COURT: All right. Have you ever been diagnosed
12 or treated for any type of mental problem?

13 DEFENDANT CHARLES LEONARD LITTLE: No, sir.

14 THE COURT: Have you ever been diagnosed or treated
15 for addiction to drugs or alcohol?

16 DEFENDANT CHARLES LEONARD LITTLE: No, your Honor.

17 THE COURT: Has anyone ever suggested to you that
18 you needed treatment for any type of mental problem or for any
19 type of addiction?

20 DEFENDANT CHARLES LEONARD LITTLE: No, your Honor.

21 THE COURT: Have you consumed any alcoholic
22 beverages within the last 24 hours?

23 DEFENDANT CHARLES LEONARD LITTLE: Yes, sir. Yes,
24 your Honor.

25 THE COURT: What?

1 DEFENDANT CHARLES LEONARD LITTLE: I had one beer
2 with Mexican food last night.

3 THE COURT: All right. Have you taken any drug or
4 medicine within the last 24 hours?

5 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

6 THE COURT: What?

7 DEFENDANT CHARLES LEONARD LITTLE: Avandia for
8 diabetes. I took that this morning. And I took a high blood
9 pressure medication and a baby aspirin.

10 THE COURT: Do any of those medications interfere
11 with your ability to understand or communicate?

12 DEFENDANT CHARLES LEONARD LITTLE: No, your Honor.

13 THE COURT: How many times have you spoken with your
14 attorney, Mr. Gerger, about this case?

15 DEFENDANT CHARLES LEONARD LITTLE: About this case?

16 THE COURT: Yes.

17 DEFENDANT CHARLES LEONARD LITTLE: Probably a dozen
18 times or more.

19 THE COURT: All right. Has he explained the charges
20 against you?

21 DEFENDANT CHARLES LEONARD LITTLE: Yes, sir, he has.

22 THE COURT: Has he discussed with you the evidence
23 against you that the Government has?

24 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

25 THE COURT: Has he answered all of your questions?

1 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

2 THE COURT: Has Mr. Gerger done everything that you
3 have asked him to do?

4 DEFENDANT CHARLES LEONARD LITTLE: Has he -- I --

5 THE COURT: Has he done everything that you asked
6 him to do?

7 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor,
8 he has.

9 THE COURT: Are you fully satisfied with the advice
10 and counsel that he has provided to you?

11 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

12 THE COURT: Mr. Husk, how many times have you spoken
13 with Mr. Johnson or Mr. Allie?

14 DEFENDANT DONALD HUSK: Dozens of times.

15 THE COURT: Can you give me an approximate number?

16 DEFENDANT DONALD HUSK: 50, 60 times.

17 THE COURT: All right. Have they explained the
18 charges against you?

19 DEFENDANT DONALD HUSK: Yes, sir, they have.

20 THE COURT: Have they explained to you the evidence
21 that the Government has?

22 DEFENDANT DONALD HUSK: Yes, sir.

23 THE COURT: Have they answered all of your
24 questions?

25 DEFENDANT DONALD HUSK: Yes, they have.

1 THE COURT: Are you fully satisfied with the advice
2 and counsel that they have provided to you?

3 DEFENDANT DONALD HUSK: Yes, I am.

4 THE COURT: Neither of you gentlemen has to plead
5 guilty. Each of you has a right to have your case tried. If
6 you went to trial, you would have the right to the assistance
7 of counsel, you would have the right to see and hear the
8 Government's witnesses and have your lawyer cross examine
9 those witnesses, you would have the right to call witnesses of
10 your own.

11 You would not be required to testify unless you
12 voluntarily chose to do so in your own defense, and you could
13 not be convicted unless a jury unanimously found beyond a
14 reasonable doubt that you were guilty.

15 If you plead guilty today, however, there will
16 not be a trial and you will give up your right to a trial and
17 all the protections that are associated with a trial.

18 Do you each understand that?

19 DEFENDANT DONALD HUSK: Yes, I do.

20 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor

21 THE COURT: Mr. Husk, the maximum sentence you face
22 is three years in prison and a fine of \$250,000 and one year
23 of supervised release and a special assessment of \$100 and
24 restitution in the amount of \$283,276.39. But that may be
25 adjusted depending upon the future tax returns that you file.

1 Mr. Little, you face a maximum sentence of 20
2 years in prison and a fine of \$250,000 and three years of
3 supervised release and a \$100 special assessment and
4 forfeiture of benefits illegally received and restitution.

5 Do you understand that?

6 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

7 THE COURT: Now, I want both of you to listen as I
8 explain how the sentencing process works. No determination
9 has been made as to what either of your sentences will be. If
10 I accept your guilty pleas, a probation officer will interview
11 you, investigate the facts of the case, and prepare a
12 presentence report.

13 You and your attorneys will have a chance to
14 read the reports and file objections to them if you wish. At
15 the time of your sentencing, I will rule on any objections
16 that you may have to the presentence report and then I will
17 determine your total offense levels, your criminal history
18 categories, and your guideline range.

19 Normally, I'm required to sentence you within
20 the guideline range. In certain situations, however, I can
21 depart downward from that range or upward above that range as
22 long as I state a valid reason for any departure.

23 What each of you needs to understand and
24 appreciate today is the process of determining your sentences
25 has not yet begun. That means no one knows what the probation

1 officers will recommend in your presentence reports or what
2 sentences I will ultimately impose.

3 Mr. Little, do you understand that?

4 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

5 THE COURT: And Mr. Husk, do you?

6 DEFENDANT DONALD HUSK: Yes, I do.

7 THE COURT: If the sentences that I should
8 ultimately impose are greater than what either of you now
9 expect or what someone may have predicted you will receive,
10 you will be bound by my sentence. You will not be allowed to
11 change your guilty plea merely because you are dissatisfied
12 with your sentence.

13 Do each of you understand that?

14 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

15 DEFENDANT DONALD HUSK: Yes, sir.

16 THE COURT: There is no parole in federal court.
17 So, if you were sentenced to prison, you would actually have
18 to serve that period of time in prison. If you were sentenced
19 to probation, there would be conditions of probation. Were
20 you to violate the conditions of probation, I could revoke
21 your probation and send you to prison to serve your sentence.

22 Following any period of imprisonment, there
23 will be a term of supervised release. That supervised release
24 will also be subject to conditions. If you violate the
25 conditions of your supervised release, I could revoke your

1 supervision and send you back to prison. Were that to occur,
2 you would not receive any credit for the time that you had
3 already successfully served on supervised release.

4 Do each of you understand that?

5 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

6 DEFENDANT DONALD HUSK: Yes, I do.

7 THE COURT: The Government has provided me copies of
8 plea agreements.

9 Mr. Husk, have you had a chance to read this
10 agreement?

11 DEFENDANT DONALD HUSK: Yes, sir, I have.

12 THE COURT: Have you had a chance to discuss it with
13 your attorney before today?

14 DEFENDANT DONALD HUSK: Yes, sir.

15 THE COURT: Do you have a copy there before you?

16 MR. JOHNSON: I've got one, your Honor. Not exactly
17 in final form. It's 99.9 percent. There's just one closer to
18 it.

19 THE COURT: All right. I want to go over the
20 essential elements of the agreement just to be sure that you
21 understand what you're agreeing to. In paragraph one, you
22 agree to plead guilty to Count 1 which I have just described.

23 In paragraph two, you agree to pay restitution
24 in the amount of \$261,494.14.

25 Then in paragraph three, you agree to pay

1 additional amounts of restitution in the sums of \$8,239 and
2 \$13,543.25.

3 In paragraph four, you agree to file accurate
4 federal income tax returns both as an individual and as the
5 shareholder, officer, and partner of Greenwood Restoration
6 USA, Inc.; GRI Disaster Technologies, Inc.; and the Husk
7 Family Limited Partnership for the years 1995 through present.

8 In paragraph five, you agree to file accurate
9 employer's quarterly federal tax returns, Form 941, and to pay
10 the Internal Revenue Service the trust fund taxes due for each
11 quarter of the years 1995 through 2003 as applicable for
12 Greenwood Restoration USA, Inc., and GRI Disaster
13 Technologies, Inc.

14 Now, let me ask the parties: Is there any
15 understanding about when the returns contemplated by
16 paragraphs four and five will be filed?

17 MR. BALBONI: There is no agreement to that with
18 respect to a date, your Honor

19 THE COURT: Pardon me?

20 MR. BALBONI: There is no agreement with respect to
21 a date.

22 THE COURT: Is that your understanding?

23 MR. JOHNSON: It is, your Honor.

24 THE COURT: All right.

25 MR. JOHNSON: And I would for the Court just tell

1 that we have counseled Mr. Husk to try to get as much of this
2 together as he possibly can before he begins whatever sentence
3 the Court imposes in this case full well knowing that it
4 probably won't be able to get done in its entirety just due
5 to, I think, the state of the documents that they're presently
6 in, as I've discussed with Mr. Balboni, and trying to assemble
7 all the documents necessary to make sure that he's filing
8 accurate returns.

9 THE COURT: All right. Mr. Balboni, would you mind
10 standing over here so I can maintain eye contact easier with
11 this set of actors.

12 MR. BALBONI: Yes, your Honor.

13 THE COURT: In paragraph six, you agree to make all
14 books, records, and other information in your possession or
15 subject to your control available to the IRS and to cooperate
16 fully with the IRS in determining the correct tax liabilities
17 and any applicable penalties for the years 1995 through
18 present.

19 In paragraph eight, the United States agrees
20 that the total tax harm attributable to you as relevant
21 conduct under the guidelines is \$283,276. However, you and
22 the United States both understand that the probation officer
23 is free to make its own calculation of the tax harm.

24 In paragraph 8(b), the United States agrees
25 that the two-level upward adjustment for sophisticated means

1 is not applicable. Again, the probation officer and I may
2 differ in that understanding, and our decision will control
3 regardless of what the Government may recommend.

4 Do you understand that?

5 DEFENDANT DONALD HUSK: Yes, sir.

6 THE COURT: In paragraph 8(c), the United States
7 agrees not to oppose a two-level downward adjustment for
8 acceptance of responsibility pursuant to Guideline Section
9 3E1.1; however, the United States will oppose any requests by
10 you for an additional one-level departure based on the
11 timeliness of your plea.

12 In paragraph 8(d), the United States agrees not
13 to further prosecute you in this district for any offenses
14 arising from the conduct described in the indictment as well
15 as for failing to file personal, corporate, and partnership
16 returns for the years 1995 through 2002. This agreement does
17 not apply to any returns filed by you pursuant to this
18 agreement which are later determined to be false.

19 In paragraph 16, you acknowledge that normally
20 you have a right to appeal the sentence imposed or the manner
21 in which it was determined, and normally you have the right to
22 challenge your conviction by means of a collateral attack
23 filed under 28, United States Code, Section 2255.

24 In this agreement, however, you give up your
25 right to file any collateral attack to your sentence and you

1 give up the right ever to appeal the sentence except in two
2 very narrow situations. You can appeal a sentence above the
3 statutory maximum or a sentence based on an upward departure.

4 Except in those two very rare instances, do you
5 understand that you will be giving up your right to any appeal
6 and you will give up all rights to file a Section 2255 action?

7 DEFENDANT DONALD HUSK: Yes, sir, I do.

8 THE COURT: Now, have I described your agreement
9 with the Government as you understand it?

10 DEFENDANT DONALD HUSK: Yes, sir.

11 THE COURT: Do you think you have any additional
12 agreements with the Government?

13 DEFENDANT DONALD HUSK: No, I do not.

14 THE COURT: Has the Government made any promises to
15 you other than those contained in this written agreement?

16 DEFENDANT DONALD HUSK: No.

17 THE COURT: Has anyone promised you what sentence
18 you will receive?

19 DEFENDANT DONALD HUSK: No, sir.

20 THE COURT: Has anyone threatened or forced you to
21 plead guilty?

22 DEFENDANT DONALD HUSK: No, sir.

23 THE COURT: In order for the Government to prove
24 your guilt at trial, the Government would have to show that
25 you engaged in an endeavor, that you acted corruptly, that is,

1 with the intent to secure an unlawful advantage or benefit for
2 yourself or to another and that you engaged in that endeavor
3 for the purpose of obstructing or impeding the due
4 administration of the Internal Revenue Service laws.

5 At page eight, nine, and the top half of page
6 ten, there is a lengthy factual basis supporting your plea.

7 Have you carefully read that factual basis?

8 DEFENDANT DONALD HUSK: Yes, sir, I have.

9 THE COURT: Paragraph 20 begins by saying "If this
10 case were to proceed to trial, the United States could prove
11 all of the following facts beyond a reasonable doubt."

12 Do you agree with that?

13 DEFENDANT DONALD HUSK: Yes, sir.

14 THE COURT: In other words, are you guilty of all
15 the facts set out on those three pages?

16 DEFENDANT DONALD HUSK: Yes, sir, I am.

17 THE COURT: How do you plead to the offense charged
18 in Count 1, guilty or not guilty?

19 DEFENDANT DONALD HUSK: Guilty.

20 THE COURT: I forgot to inform you -- both of you of
21 one other thing: Each of the offenses that you are pleading
22 guilty to are felony offenses. That means if I accept your
23 plea, each of you will be guilty of a felony. That means you
24 will lose the right to vote, to hold public office, to serve
25 on a jury, and to possess a firearm.

1 Mr. Johnson, do you think any other advice of
2 rights is required by Rule 11 before I accept your client's
3 plea?

4 MR. JOHNSON: I don't, your Honor.

5 THE COURT: I accept your plea. I find that the
6 plea is supported by an independent basis in fact establishing
7 each of the essential elements and that Mr. Husk is fully
8 competent and capable of entering an informed plea. I,
9 therefore, now adjudge you guilty of Count 1.

10 Counsel may now execute the plea agreement and
11 hand it to the clerk if they have not already done so.

12 MR. BALBONI: For the record, your Honor, we are
13 tendering a fully executed plea agreement.

14 THE COURT: I have set your sentencing for April 9th
15 at 3:00 p.m.

16 Are either counsel aware of any reason why the
17 Defendant should not be sentenced at that time?

18 MR. JOHNSON: No, your Honor.

19 MR. BALBONI: No, your Honor.

20 THE COURT: The Government needs to turn its file
21 over to the probation department early next week because this
22 may be more complicated than some other presentence reports.

23 MR. BALBONI: Yes, your Honor.

24 THE COURT: And I'll expect you to abide by those
25 dates.

1 Does either counsel wish to say anything?

2 MR. BALBONI: No, your Honor.

3 THE COURT: Is there any objection to the Defendant
4 remaining on the same bond pending sentencing?

5 MR. JOHNSON: Certainly not from Mr. Husk.

6 MR. BALBONI: No objection, your Honor.

7 THE COURT: Mr. Husk, you will appear on April 9th.
8 You will remain on bond subject to the same conditions.

9 Counsel are excused.

10 MR. JOHNSON: Thank you, your Honor.

11 MR. BALBONI: Thank you, your Honor.

12 THE COURT: Mr. Little, the Government has furnished
13 me a lengthy plea agreement in connection with your case.
14 Have you had a chance to read the agreement and discuss it
15 with Mr. Gerger before this hearing?

16 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

17 THE COURT: All right. Do you have a copy there
18 before you?

19 DEFENDANT CHARLES LEONARD LITTLE: Yes, sir.

20 THE COURT: I'm going to go over the essential
21 elements with you. In paragraph one, you agree to plead
22 guilty to Count 2 of the indictment which charges you with
23 conspiring with others to violate the Racketeer Influenced and
24 Corrupt Organizations Act through the commission of two or
25 more predicate acts, namely, honest services mail and wire

1 fraud, interstate transportation in aid of racketeering, state
2 commercial bribery, and embezzlement from a labor
3 organization, in violation of Title 18, United States Code,
4 Section 1962(d).

5 In paragraph two, you agree that you will make
6 full and complete disclosure of all assets over which you
7 exercise direct or indirect control or in which you have a
8 financial interest and you agree to forfeit and -- to identify
9 and forfeit whatever interest you may have in all property
10 subject to forfeiture under Section 1963(a).

11 In addition, you agree to a criminal monetary
12 judgment in the amount of \$100,000 as representing proceeds
13 from a racketeering conspiracy.

14 You understand that your obligation under the
15 money judgment is yours alone and is not a joint and several
16 money judgment with co-Defendants in this case.

17 And I assume that that obligation is
18 memorialized in a separate preliminary order of criminal
19 forfeiture that I was provided?

20 MR. GALLAGHER: Correct, Judge.

21 MR. GERGER: Yes. I think there might be one
22 typographical change to that as well. But yes, that's the
23 order.

24 THE COURT: All right, we'll come to that in a
25 second.

1 In paragraph three, you agree to fully
2 cooperate with the United States. Cooperation includes
3 providing all information relating to any criminal activity
4 known to you, including but not limited to the offenses
5 charged in the indictment.

6 Cooperation will include testifying truthfully
7 before any trial or grand jury, meeting and truthfully
8 debriefing with law enforcement officers, producing all
9 documents in your possession or subject to your control, and
10 that all of your testimony will be truthful and complete.

11 You acknowledge in paragraph 3(f) that
12 conviction of the crime described in the agreement
13 disqualifies you from -- by operation of law from serving in
14 the capacities described in 29, USC, Sections 504 and 1111,
15 including employment with labor organizations or employee
16 benefit plans or service as a labor relations consultant to a
17 labor organization, employer, or employer organization for a
18 period which extends 13 years from the date of your sentence
19 to the end of any imprisonment resulting from conviction of
20 the crime described in this agreement, whichever is later.

21 In paragraph 3(g), you agree that you will not
22 contest such employment disabilities and that you will not
23 seek relief from the disabilities imposed by Sections 504 and
24 1111, including but not limited to reduction of the length of
25 disability or exemption from the disability with respect to

1 employment in a particular prohibited capacity.

2 In paragraph 3(h), you agree to file amended
3 income tax returns and to declare as income all cash proceeds
4 you personally kept for yourself during and in relation to the
5 commercial bribery and honest services fraud scheme.

6 In paragraph four, the Government agrees that
7 if you persist with your plea of Count 2 through sentencing,
8 the Government will move to dismiss any remaining counts of
9 the indictment at the time of sentencing, that at the
10 sentencing the Government agrees to recommend that you receive
11 a two-level downward adjustment for your offense for early
12 acceptance of responsibility.

13 In paragraph 4(c), the Government agrees to
14 recommend that you receive an adjustment for one additional
15 level for early acceptance of responsibility; however, that
16 agreement will not mean anything unless you file a formal
17 motion to receive the third point.

18 MR. GALLAGHER: I understand the restrictions by the
19 Protect Act. We'll make sure we comply with that, your Honor.

20 THE COURT: Is that implicit in this, that you will
21 file that motion?

22 MR. GALLAGHER: It is implicit; although, we believe
23 that notice is provided and -- by the plea agreement itself
24 unless the Court thinks the Government should file a
25 separate --

1 THE COURT: The Protect Act says the Government will
2 formally file a separate motion.

3 MR. GALLAGHER: Then the Government will do so.

4 THE COURT: In paragraph 4(d), the Government will
5 agree that the total loss under the guidelines pursuant to
6 Section 2B1.1 as it relates to cash payments solicited and
7 received by the Defendant is no greater than \$400,000.

8 But again, let me explain to you. The
9 probation officer is not bound by that recommendation nor am
10 I, and the probation officer might find that the loss which
11 forms your guideline calculation is greater than what the
12 Government has agreed to.

13 Do you understand that?

14 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

15 THE COURT: In paragraph 4(e), the United States
16 Attorney's Office for the Southern District of Texas states
17 that it has obtained an agreement from the United States
18 Attorney's Office for the Northern District of Ohio that it
19 will not charge you with criminal offenses relating to this
20 indictment.

21 In paragraph 4(g), the Southern District of
22 Texas and the Northern District of Ohio agree not to charge
23 you with any further offenses arising from your employment at
24 the UTU and your conduct prior to the date of execution of
25 this plea agreement relating to the investigation of the UTU.

1 In paragraph 4(f), the United States says that
2 it may in its sole discretion file a motion for downward
3 departure pursuant to guideline Section 5K1.1 and 18, United
4 States Code, Section 3553 if the United States determines that
5 you have provided substantial assistance.

6 What you need to understand about paragraph 4F
7 is should the Government decide not to file a motion for
8 downward departure, there is nothing that you can do about it.

9 Do you understand that?

10 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

11 THE COURT: The decision whether to file such a
12 motion rests solely with the discretion of the United States.

13 Do you understand that?

14 DEFENDANT CHARLES LEONARD LITTLE: I understand,
15 sir.

16 THE COURT: In paragraph 11 and 12, you acknowledge
17 that normally you would have a right to appeal and normally
18 you would have a right to collaterally attack your sentence
19 under Title 28, United States Code, Section 2255.

20 In this agreement, however, you are giving up
21 the right ever to file a collateral attack and you're giving
22 up the right to appeal your sentence except in two very narrow
23 situations. You can appeal a sentence that is above the
24 statutory maximum or a sentence based on an upward departure.

25 Except in those two very limited situations, do

1 you understand that you will have no right of appeal?

2 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

3 THE COURT: Have you discussed this with your
4 attorney?

5 DEFENDANT CHARLES LEONARD LITTLE: Several times,
6 yes, sir.

7 THE COURT: And is it your wish to give up your
8 right to appeal and your right to collaterally attack your
9 sentence?

10 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

11 THE COURT: In order for the Government to prove
12 your guilt at trial, the Government would have to show, first,
13 that you were employed by or associated with the enterprise
14 charged and that the enterprise existed as alleged in the
15 indictment and that you either directly or indirectly
16 conspired with one or more persons to conduct or participate
17 in the conduct of the enterprise through a pattern of
18 racketeering.

19 You must have agreed that one of the
20 conspirators charged in the indictment would commit the
21 racketeering acts described below and that the acts of
22 racketeering are related to each other and that the acts are
23 or amount to the threat of continued criminal activity and
24 that the enterprise was engaged in interstate commerce or that
25 its activities affected interstate commerce.

1 As to the predicate acts, honest mail services
2 -- excuse me, honest services mail fraud requires proof that
3 you knowingly created a scheme to defraud and to deprive the
4 membership of the UTU of their right to honest services, that
5 you acted with a specific intent to defraud, that you mailed
6 something or caused another person to mail something through
7 the United States Postal Service for the purpose of carrying
8 out the scheme, and that the scheme to defraud employed false
9 material representations.

10 For the predicate acts of interstate
11 transportation in aid of racketeering, the Government would
12 have to show that you traveled in interstate commerce or used
13 the mail or any facility in interstate commerce with the
14 intent to distribute the proceeds of unlawful activity, that
15 is, state commercial bribery, or to promote, manage,
16 establish, carry on, facilitate -- or facilitate the
17 promotion, management, establishment, or carrying on of any
18 unlawful activity, that is, state commercial bribery, and
19 thereafter that you performed or attempted to perform an act
20 of state commercial bribery.

21 At pages 11, 12, and 13 of your plea agreement,
22 there is a lengthy factual basis for your guilty plea.

23 Paragraph 15 states that if this case were to
24 proceed to trial, the United States could prove all of the
25 following facts beyond a reasonable doubt.

1 Have you carefully read the factual basis at
2 pages 11, 12, and 13?

3 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

4 THE COURT: Are all of those facts true?

5 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

6 THE COURT: Did you do what the Government says you
7 did in those three pages?

8 DEFENDANT CHARLES LEONARD LITTLE: Yes, your Honor.

9 THE COURT: How do you plead to the offense charged
10 in Count 2, guilty or not guilty?

11 DEFENDANT CHARLES LEONARD LITTLE: Guilty, your
12 Honor.

13 THE COURT: Mr. Gerger, do you think any other
14 advice of rights is required by Rule 11 before I can accept
15 your client's plea?

16 MR. GERGER: I can't think of any.

17 THE COURT: All right. You may now sign the plea
18 agreement.

19 It is the finding of the Court that the
20 Defendant is fully competent and capable of entering an
21 informed plea, that the Defendant is aware of the nature of
22 the charges and the consequences of his plea, and that the
23 plea is supported by an independent basis in fact establishing
24 each of the essential elements of the offense.

25 I, therefore, accept your plea and now adjudge

1 you guilty of Count 2.

2 MR. GALLAGHER: We tender to the Court an executed
3 plea agreement, your Honor.

4 THE COURT: Now, what about this order for
5 forfeiture? I understand there were some changes to that.

6 MR. GALLAGHER: Yes, there are, your Honor; and they
7 are minor. In substance the requirement of \$100,000 in
8 forfeiture remains the same. It's simply a payment plan
9 allows the Defendant to pay in three installments.

10 THE COURT: Well, the copy I was provided has three
11 installments.

12 MR. GALLAGHER: Oh. Then the only thing would be
13 then the first paragraph simply stating that "the proceeds of
14 the racketeering enterprise scheme" as opposed to saying
15 "personally-benefited proceeds."

16 THE COURT: All right.

17 MR. GERGER: That's correct, your Honor.

18 THE COURT: Have you executed that agreement?

19 MR. GALLAGHER: Yes, that's correct. We are
20 tendering that to the Court for the Court's signature.

21 THE COURT: Mr. Gerger, your schedule has freed up
22 considerably for the spring.

23 MR. GERGER: It's terrible, your Honor.

24 THE COURT: Well, maybe I can find some appointed --
25 some people on the CJA panel who need good representation.

1 MR. GERGER: I'll be hibernating for awhile.

2 THE COURT: All right, I've signed the order.

3 I have set your sentencing for April 9th. I
4 realize that date may not actually be the actual date of
5 sentencing, but that's nevertheless the date I've set. And
6 I've denied motions for continuance by the other Defendants so
7 we are going to trial on the date I scheduled back in -- it
8 must have been December.

9 Any likelihood that one or more of the
10 remaining Defendants will plead?

11 MR. GALLAGHER: I think that likelihood has
12 increased, your Honor, but I have not been in direct contact
13 with counsel. Based on the situation today, that may. We'll
14 notify the Court as soon as anything develops on that end;
15 otherwise, we're prepared to proceed the 22nd of March.

16 THE COURT: Heather, here's the file.

17 Is there any objection to Mr. Little remaining
18 on the same bond pending sentencing?

19 MR. GALLAGHER: No, sir.

20 THE COURT: All right. Does either counsel wish to
21 say anything?

22 MR. GALLAGHER: No, sir.

23 MR. GERGER: No, your Honor.

24 THE COURT: All right.

25 You will remain on bond pending sentencing.

1 Counsel are excused.
2 (Proceedings concluded at 3:04 p.m.)
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11 C E R T I F I C A T E
12

13 I certify that the foregoing is a correct transcript
14 from the record of proceedings in the above-entitled matter,
15 to the best of my ability.
16

17 _____ _____
18 Gayle L. Dye, CSR, RDR, CRR Date
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