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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA . CR. NO. H-03-362 SS
VS. . HOUSTON, TEXAS
CHARLES LEONARD LITTLE . JULY 9, 2004
a/k/a CHARLIE LITTLE . 2:00 P.M.

TRANSCRIPT of SENTENCING
BEFORE THE HONORABLE SIM LAKE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: MR. EDWARD GALLAGHER
MR. RICHARD MAGNESS
Assistant U.S. Attorneys
P.O. Box 61129
Houston, Texas 77208

FOR THE DEFENDANT: MR. DAVID GERGER
Attorney at Law
700 Louisiana
Suite 4200
Houston, Texas 77002

OFFICIAL COURT REPORTER: MS. KATHY L. METZGER
U.S. Courthouse
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Room 8016
Houston, Texas 77002
713-250-5208

Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

2 THE COURT: Good afternoon, ladies and gentlemen.

3 Please be seated.

4 We have four defendants for sentencing this
5 afternoon. When I call each case, will the defendant and his
6 attorney and counsel for the United States please come forward.

7 The first case is United States versus Charles
8 Little, Criminal No. H-03-362.

9 MR. GALLAGHER: Ed Gallagher and Richard Magness on
10 behalf of the United States, Your Honor.

11 MR. GERGER: Good afternoon, Judge. David Gerger with
12 Mr. Little.

13 THE COURT: Good afternoon, Mr. Little.

14 THE DEFENDANT: Good afternoon, sir.

15 THE COURT: Have you read the presentence report
16 before today?

17 THE DEFENDANT: Yes, sir, I have.

18 THE COURT: Have you discussed it with Mr. Gerger?

19 THE DEFENDANT: Yes, sir, I have.

20 THE COURT: Contained within your sentencing memoranda
21 are certain objections. The objection dealing with abuse of
22 trust is denied. The objection dealing with the four level
23 increase for leadership role is denied.

24 Do you have any other objections of your own that
25 you wish to make?

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1 THE DEFENDANT: No, sir, not that I know of.

2 THE COURT: All right. I adopt the presentence report
3 and the addenda.

4 I find that your total offense level is 23, your
5 criminal history category is I. Your guideline range is 46 to

6 57 months.

7 The government has filed a motion for downward
8 departure pursuant to Guideline Section 5K1.1. That motion is
9 granted.

10 I have read your sentencing memorandum and your
11 supplemental memoranda. To the extent that you are seeking a
12 motion for downward departure under Section 5K2.0 for health
13 and disability, that motion is denied.

14 You may now make a statement and present any
15 information in mitigation of your sentence and Mr. Gerger may
16 make any argument on your behalf and Mr. Magness may respond.

17 MR. GERGER: May we switch the order, Your Honor?

18 THE COURT: Mr. Gerger, you and I have this conference
19 all the time. The law requires that I state to your client
20 directly his right to allocute.

21 MR. GERGER: Well, I just meant if I could speak
22 before him, Your Honor, and he does want to speak.

23 THE COURT: Then all right, go ahead.

24 MR. GERGER: Sure. You know, Judge, I know you've
25 denied the leadership role, but I think it's still the three

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1 points rather than four. And so I want to speak to the other
2 reasons for downward departure, the disparity, I know you
3 talked about health, and the cooperation. And I know that just
4 because we're all being sentenced all four together, that you
5 take Mr. Little individually and you don't think, well, because
6 he was the president, he has to get more time than someone
7 under him. And because there are individual circumstances here
8 that would support less than 24 months, that I suggest would
9 support either home detention or at most 12 months with a

10 recommendation like we used to do for the community
11 confinement.

12 And my observations and the reason I wanted to
13 speak first is because they're almost completely different from
14 Mr. Little's thoughts, because he doesn't make any excuses for
15 what he did. And, you know, I'm trying to approach it I hope
16 from what would be meaningful to you looking at this beyond
17 just Mr. Little's personal state of mind.

18 The first is, as you know from the letters that
19 we submitted, Mr. Little had 40 years of good works in the
20 railroad and the Union. He was, as you know from reading the
21 letters, a leader in drug and alcohol treatment for railroad
22 workers and he didn't sweep it under the rug. He knew it was
23 unsafe and he instituted a model program for treating it. He
24 was a national leader for safety in the Union. He was a
25 national leader for bringing women and even his qualified

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1 opponents into the Union.

2 THE COURT: I have read that and I've read all the
3 letters.

4 MR. GERGER: I know you have, and I know you won't
5 forget that good that he has done. And I mention it because
6 cooperation for him is a little different than cooperation for
7 some defendants, because it has meant a national, public,
8 personal stigma and humiliation. It's in the Union
9 newsletters. His friends are Union. And this is not someone
10 who could cooperate and accept responsibility quietly. This
11 was done on the front page of the newsletter of every Union.

12 And I mention that as well because -- and this is
13 my point, not Mr. Little's -- as you know, this is a crime that

14 was widespread and may still be widespread and all of the heat
15 for that has fallen on these defendants. And I prefaced my
16 remarks by saying these are my remarks, not Mr. Little's
17 remarks. But I can't help being moved by that, that whether
18 you call it disparity or whether you call it the effect of his
19 cooperation as bringing all of the heat of this multiyear
20 problem onto his own head, that's what's happened by of virtue
21 of his cooperation, and he accepts that. And he accepts it
22 even if the people who profited financially the most, some DLC,
23 were never prosecuted, never will be prosecuted, never will
24 have their Bar card attacked and will suffer no consequence
25 whatsoever and still some of them are DLC today at the Union.

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1 Cooperation has -- there's something else about
2 cooperation in this case that I think is unique, and that is,
3 that it was important -- I don't want to take away from
4 Mr. Rookard or Mr. Boyd, but I think we all know that it's
5 Mr. Little's cooperation that allowed the resolution of those
6 cases. And Mr. Little, as I said in the memo, though his body
7 is failing and his hearing is failing, his memory proved to be
8 very helpful. And the one example I mentioned was the
9 so-called Hubble letter. This is a piece of evidence that
10 lawyers who had been given immunity had forgotten about or
11 omitted to mention in the grand jury, as I understand it. And
12 Mr. Little, through his memory and his honest cooperation,
13 mentioned it to the United States, which led the United States
14 doggedly to go get it and perhaps confront the lawyers who had
15 forgotten about it.

16 And most importantly, his cooperation has tried
17 to improve the Union today. I don't know if that will happen,

18 given who's still at the Union, but he's done everything he can
19 do, beyond meeting with the United States Attorney's Office,
20 meeting with other agencies, meeting with outside lawyers for
21 Union for that matter and traveling to Chicago to meet with
22 another government agency, and this sort of thing. And he's
23 certainly willing to continue that if it's ever called for.

24 So, my plea to you is that he's 68 years old.
25 His wife Mary Ann -- would you stand up Mary Ann. They've been

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1 married 42 years. I credit her with the success of the right
2 knee replacement, to go back to the health, you know, to bug
3 Mr. Little to do that daily rehabilitation. And we included
4 the medical records of how important it is that he have his
5 surgery outside of prison, if he needs another knee surgery.

6 And he has had a lifetime of achievement. He
7 erred, but he has tried to make it up in a system that he
8 didn't start and he didn't even initiate the solicitations for.
9 It was a DLC who came to him from the beginning and said, You
10 don't have the money to run for president, but here's \$10,000.
11 And from there Mr. Little solicited other DLC, as so many other
12 Union people have done.

13 So, I would ask you to sentence him to home
14 confinement where he can have his treatment, medical treatment.
15 He has cooperated to an extraordinary degree, and I know he has
16 some comments for you as well.

17 THE COURT: Thank you. Mr. Little, you may now make a
18 statement and present any information in mitigation of your
19 sentence.

20 THE DEFENDANT: Thank you, Your Honor. Your Honor,
21 I'm ashamed of myself. I spent almost half of my years

22 representing rail employees and their families, and I earned
23 their trust. I have violated that trust. And I've also
24 disappointed my friends and family, and I'm very sorry for
25 that. I have done everything that I possibly can to make the

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1 thing right. I've cooperated with Mr. Gallagher fully and
2 other agencies of the government and will continue to do so.
3 And I apologize for what I did wrong and I'm very sorry for it.

4 THE COURT: Mr. Gallagher.

5 MR. GALLAGHER: Your Honor, the government has gotten
6 to know the human side of this and, indeed, its downward
7 departure motion is quite generous and deserved and that is why
8 the government in this case is seeking a departure of six
9 levels and is taking what otherwise could have been almost five
10 years in prison and asking the Court to impose two years in
11 prison. And the government takes no great pleasure in seeing
12 these gentlemen go to prison, but certainly there was a
13 different perspective after four years of investigation and
14 seeing how egregious this conduct was, but then to embrace the
15 cooperation that was so thorough and so detailed that it
16 continues to assist and we hope will continue to assist even
17 after the sentencing in bringing reform to a system that was
18 littered with corruption that we hope in the future as a result
19 of these sentencings today and as a result of this prosecution
20 people will think twice before they hand cash over to Union
21 officers.

22 And I will refute Mr. Gerger's statement, that
23 the issue regarding the DLC is not over. And, indeed, their
24 status as licensed attorneys is not something that is safe in
25 the future and is going to be pursued by the government.

1 THE COURT: Thank you.

2 Mr. Little, I sentence you to 24 months in
3 prison. I will allow voluntary surrender after your knee
4 replacement surgery has been completed. That will be followed
5 by three years of supervised release.

6 In addition to the standard conditions of
7 supervision, you will not possess a firearm or dangerous
8 weapon. You will provide financial access as requested by the
9 probation officer. You will not incur any new credit charges
10 unless approved by the probation officer. The mandatory
11 urinalysis condition is waived.

12 You will pay a fine of \$10,000 now. You will pay
13 a \$100 special assessment now.

14 Does the United States have a motion to dismiss
15 the remaining counts?

16 MR. GALLAGHER: It does, Your Honor. And I proffer to
17 the Court -- the United States also has an order of criminal
18 forfeiture pursuant to the agreement. Your Honor, I would
19 mention that the order with respect to dismissal goes to three
20 of the four defendants since it all deals with the same
21 indictment.

22 THE COURT: Mr. Gerger, has the government complied
23 with the plea agreement?

24 MR. GERGER: I think so, Your Honor, but I do have
25 another point.

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1 THE COURT: Go ahead.

2 MR. GERGER: Which is that, as you know, Mr. Little
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3 has no new source of income now or in the foreseeable future,
4 other than his retirement income and what will be left of his
5 savings after he finishes paying his forfeiture. I think you
6 received earlier this week some new financial information. If
7 not, I have a copy of that for you.

8 THE COURT: I recall new medical information. I don't
9 recall receiving new financial.

10 MR. GERGER: Well, maybe it's in the old one about
11 how -- sort of taking into the forfeiture, which has to be
12 taken out of his retirement account. So that the presentence
13 report really overstates his wealth.

14 THE COURT: How much is the amount of forfeiture,
15 Mr. Gallagher?

16 MR. GALLAGHER: \$100,000, Your Honor.

17 MR. GERGER: And our agreement, Your Honor, is that we
18 will pay that \$35,000 today -- I have a cashier's check -- a
19 third in six months, and then I think a third six months after
20 that, all of which has to be taken out of the retirement
21 account, and so the effect of it is to reduce the net worth by
22 a hundred thousand dollars, plus the tax on the hundred
23 thousand dollars. I think you will see from this --

24 THE COURT: According to this, his retirement account
25 is \$318,000.

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1 MR. GERGER: Right. And so in our -- let me hand to
2 you, Judge, this -- the correct amount that we would ask you to
3 value that as. Can I pass this -- my copy up to you, this top
4 paragraph, Your Honor.

5 THE COURT: But he can certainly pay a fine of
6 \$10,000.

7 MR. GERGER: Well, you know, I think that the problem
8 is given that he is the sole -- this money is the source of
9 support for him and his wife and they also help to support
10 their children and grandchildren, we're asking you not to
11 impose a fine in this case.

12 THE COURT: I'm going to continue to impose the fine.

13 You will be notified by the Bureau of Prisons
14 when and where you are supposed to report. It's very important
15 that you report when and where designated because that will
16 show the Bureau of Prisons that you are in a lower security
17 classification. Good luck to you, sir.

18 THE DEFENDANT: Yes, sir.

19 MR. GERGER: But shall we -- we will certainly
20 communicate with the probation office about the knee operation?

21 THE COURT: Well, yes. You also need to communicate
22 with the Bureau of Prisons because they will give me in a
23 couple of weeks a proposed order to surrender. So, you need to
24 let me know his situation.

25 MR. GERGER: I will.

12

1 THE COURT: I would suggest the surgery be performed
2 sooner rather than later.

3 MR. GERGER: We'll get to work on that, Judge.

4 THE COURT: Thank you. You're excused, Mr. Gerger.

5 The defendant will remain on bond waiting
6 notification from the Bureau of Prisons.

7 (Concluded at 2:20 p.m.)

8 * * *

9 I certify that the foregoing is a correct transcript from the
10 record of proceedings in the above-entitled cause, to the best
Page 10

11 of my ability.

12

13 Kathy L. Metzger
14 Official Court Reporter

Date

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