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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
JOHN RUSSELL ROOKARD . JULY 9, 2004
. 3:00 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
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FOR THE DEFENDANT: MR. CARY M. FELDMAN
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Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

2 THE COURT: United States versus John Rookard.

3 Counsel please identify themselves.

4 MR. FELDMAN: Yes, Your Honor. Good afternoon. It's
5 Cary Feldman on behalf of Mr. Rookard.

6 THE COURT: Mr. Rookard, have you read the presentence
7 report before today?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Your attorney has filed under Docket Entry
10 179 objections. The objection to the loss is denied. The
11 objection to the role in the offense is also denied. There are
12 certain factual discrepancies which were corrected in the
13 June 28th revised presentence report.

14 Do you have any additional objections you wish to
15 make?

16 THE DEFENDANT: No. No, Your Honor.

17 THE COURT: I adopt the presentence report and the
18 addendum.

19 I find that your total offense level is 14. Your
20 criminal history category is I. Your guideline range is 15 to
21 21 months.

22 The government has filed a motion for downward
23 departure pursuant to Section 5K1.1. That motion is granted.
24 I have read the very thorough sentencing memorandum submitted
25 on your behalf.

□

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1 You may now make a statement and present any
2 information in mitigation of your sentence, and then
3 Mr. Feldman may make any argument on your behalf.

4 THE DEFENDANT: I'm very sorry this happened. I'm
5 deeply sorry. I apologize to my wife and my family and my

6 friends. My attorney will say the rest.

7 MR. FELDMAN: Your Honor, one lesson that I've
8 relearned in this courtroom is the value of being succinct or
9 trying to be succinct. It runs against what lawyers are, I
10 suppose. So, if the papers were a little heavy, I apologize.
11 I don't know what the others did and I'll try not to be too
12 repetitive, just to emphasize a couple of points.

13 THE COURT: I would say it was about 6 to 10 ounces
14 per submission.

15 MR. FELDMAN: Well, it's the letters of support
16 sometimes and we try to help out by giving something that
17 you've seen before.

18 THE COURT: No, I've read them all. I didn't mean to
19 be facetious. It's very helpful.

20 MR. FELDMAN: Your Honor, the value, of course, of all
21 those papers is that, you know, the Court didn't really know
22 Mr. Rookard, didn't have to preside over a trial, didn't see
23 him testify, but with the benefit of the presentence
24 investigation and the plea agreement, our submission, the 5K1,
25 you know, we're comfortable and confident that the Court knows

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1 everything really there is to know in order to impose the
2 sentence.

3 The one key thing I think is the -- or one of the
4 key things is the letters of support that we gathered that come
5 from the family -- and by the way, Mrs. Rookard is here. She's
6 sitting in the light blue top in the first row. She came down
7 from the state of Washington with Mr. Rookard. We had to
8 virtually tie up one of his daughters to keep her from leaving
9 her little children and going to the expense. But the benefit

10 is that the Court gets to see how Mr. Rookard is not just with
11 his family but with his coworkers, with how he interacts with
12 the people on the job. And also I think some of those letter
13 writers give the Court some insight into how a good man like
14 Mr. Rookard could do -- get involved in a bad enterprise like
15 what was charged here in this case.

16 So, we're asking the Court, with the benefit of
17 the 5K1, that the Court consider imposing a period of probation
18 because of Mr. Rookard's -- all of the circumstances, his
19 cooperation and his being identified as the least culpable of
20 the four defendants. And as much as -- and I'm not rearguing
21 this issue of whether he should get a two level or a three
22 level adjustment. But in terms of his culpability, as much as
23 Mr. Rookard knows that he's supposed to look at his own
24 actions, his own conduct, and his own cooperation, it's been
25 hard for him not to keep looking across the way at Mr. Dennis,

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1 because they were close friends at one point. They were
2 roommates actually during part of this transaction. Mr. Dennis
3 was his immediate supervisor. It was Mr. Dennis who knew him
4 and put him into the position of special representative, which
5 is the position from where all these activities occurred.
6 That's not to say that most of his activities and the others
7 weren't Union and UTUIA related.

8 But Mr. Rookard just knows in his heart and
9 having lived through all this, that he is the least responsible
10 person, least culpable. He's not saying he didn't do anything
11 wrong. He's obviously coming to the Court and admitted what
12 he's done wrong and tried to make his amends. But if you talk
13 to people in the UTU, just by knowing the personalities of

14 these gentlemen, knowing their positions in terms of hierarchy
15 within the Union and the enterprise, everybody is aware of the
16 fact -- and, of course, just looking at the conduct, and that's
17 laid out in that memorandum regarding the role of the offense,
18 that Mr. Rookard, rather than some of the other defendants have
19 been involved in obstruction, as the Court pointed out earlier,
20 actually Mr. Rookard was on the receiving end of one of those
21 visits, suggesting that he try to just tow the line, keep his
22 nose to the grindstone and not respond to any inquiries that
23 come from the government.

24 So, I'm not saying to the Court -- and I've
25 actually -- I know the probation office has recognized this.

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1 In the addendum they acknowledge that Mr. Rookard is the least
2 culpable. And I've had conversations at least with the special
3 agent, FBI Agent Cindy Rosenthal. I think the prosecutors
4 probably say that too. I can't remember if we've specifically
5 discussed that. But the point is that somewhere Mr. Rookard is
6 saying to me there should be some factoring into the sentence,
7 that he understands that he didn't cooperate as early -- and I
8 don't know all the details of the cooperation, but somewhere
9 there should be factored into the sentence that he was -- that
10 his level of culpability as compared to somebody else who's got
11 the same 14 point score, although obviously was involved in
12 different kinds of conduct.

13 As far as the cooperation aspect, which of course
14 is important, Your Honor, his assistance -- you know, I've
15 learned in the last couple of days and finally today, that
16 different defendants have been recommended by the government
17 for different levels of departure. And I don't know the

18 details of everybody else's cooperation, so I can't speak to
19 that. But we're asking the Court to just depart a little bit
20 further than the government has suggested, which the Court is
21 obviously empowered to do, and that's basically because of the
22 kind of cooperation that he gave. It was described by the
23 prosecutors as substantial, accurate, and complete; the
24 significant and substantial by the Railroad Retirement Board;
25 cooperated fully, according to the UTU.

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1 The only one I want to really emphasize, because
2 I know it's in the papers already, is the Railroad Retirement
3 Board. Your Honor, that really came purely on the initiative
4 of Mr. Rookard. Mr. Gallagher, Mr. Magness, and Cindy
5 Rosenthal, the agent, said to us at the end of a debriefing
6 session subsequent to the plea, if there's anything else that
7 you can think of that you think may be of value, let us know.
8 Within a week Mr. Rookard jotted down some thoughts, sent them
9 to me. I called the FBI agent. She said, You know, I'm just
10 going to refer this directly to the Office of Inspector General
11 for the Railroad Retirement Board. And they subsequently
12 called me. And then they set up a meeting. And they brought
13 four agents from all over the country, plus an assistant U.S.
14 attorney from Minnesota to that meeting. And then having found
15 out that, you know, this was going to be a fruitful-type
16 approach, they actually followed up and had meetings with the
17 other three defendants in this case. But all of that came
18 based on Mr. Rookard's initiative in response to the request
19 from the government.

20 So, and eventually the letter that came, I think
21 is attached to the government's papers, I didn't see it until I

22 saw the papers yesterday, described it as significant and
23 substantial cooperation. And the AUSA, we've quoted his
24 language, he was very pleased with what Mr. Rookard had done.
25 But the point is that he actually got that whole operation

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1 rolling. I think half in jest, but really partially serious.
2 The FBI agent and I were chuckling and said, This is the
3 biggest thing that's happened to the Railroad Retirement Board
4 Office of Inspector General in some time, and it really all
5 began because they asked and Mr. Rookard responded after giving
6 it some thought.

7 THE COURT: What information is he providing? What's
8 the Railroad Retirement Board looking into?

9 MR. FELDMAN: Your Honor, my understanding -- I was
10 not at the debriefing, but I can fill you in on what I know.
11 It turns out that there are a number of retired railroad
12 workers, most of them on disability. There's a limit that they
13 can only be making \$400 -- a week or month?

14 MR. GALLAGHER: A month.

15 MR. FELDMAN: -- a month in their other jobs while
16 they're collecting that disability. And there are things like
17 people who are doing the work but have their wives on the
18 payroll, people who are doing work and getting their money paid
19 to a consulting company, you know, Cary Feldman Consultants,
20 instead of directly to the individual. And there's like
21 patterns of how this is going and the names of potential
22 people, all of which the Railroad Retirement Board was very --
23 I think they described it, you know, the intelligence aspect of
24 it and the background, to get like a sense of what's really
25 going on out there in the field, I just think they were very

1 embracing of the information I know that Mr. Rookard supplied,
2 and I suspect -- I don't know what the others knew, but it was
3 an opportunity to kind of get a glimpse into what was going on
4 that they apparently did not have before.

5 Some of his information was specific about
6 specific DLCs and specific people who were working for them,
7 but there was also a lot of this background and intelligence.
8 So that was the nature of the information. And Mr. Gallagher
9 and Mr. Magness can correct me if I'm wrong about that.

10 THE COURT: Thank you.

11 MR. GALLAGHER: The only issue is the law firms. The
12 law firms are the ones seeking access to the employer -- or to
13 the Union members particularly when there's an accident. And
14 having a retired member who knows that work site and knows the
15 people there can get access quickly before the employer
16 interferes with the investigative efforts and can get that
17 person to, in fact, hire that lawyer.

18 THE COURT: So, you've got retirees acting as runners
19 and being paid?

20 MR. GALLAGHER: Correct. And being paid more than
21 \$400 a month that they're entitled to receive. So, they
22 collect -- they're double-dipping. They get disability.

23 THE COURT: All right. What do you have to say in
24 response to Mr. Feldman's argument?

25 MR. GALLAGHER: Well, Your Honor, of course, the RRB

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1 issue was the main reason for the 5K. In a limited sense,
2 perhaps Mr. Rookard's plea helped a little bit and nudged

3 Mr. Boyd. It was close to trial, and that's the main reason.
4 They have a disparity between Mr. Dennis and Mr. Rookard.
5 But Mr. Rookard of all four possessed the least amount of
6 information. And that's not his fault. He was not in a
7 position to know a lot of information as were the two
8 international presidents and the director of insurance. And,
9 in fact, on paper he was a field representative for a period,
10 working for Mr. Dennis, but the bagman responsibility was equal
11 in that regard at least as having access to the international
12 president and carrying out the corrupt scheme.

13 So, that is the reason why the government is not
14 saying sentence Mr. Rookard to probation, the same sentence as
15 Mr. Dennis. Because of the amount of time, his loyalty to
16 Mr. Boyd and unwillingness to come forward, and the fact that
17 his cooperation was not near the amount of cooperation that the
18 government received from Mr. Dennis, that is the reason the
19 government's number of levels falls into the split sentence
20 category and that is the reason for the government's
21 recommendation that there be some jail time imposed.

22 MR. FELDMAN: Your Honor -- I'm sorry.

23 THE COURT: Did you have something else to say?

24 MR. FELDMAN: Well, I was going to say a few more
25 words when he moved into the cooperation issue. I just wanted

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1 to say that -- I'll just say now, that we had requested
2 probation in our papers, as you know. If it's going to be a
3 split sentence, we would pray that the split sentence be home
4 detention plus probation. And in terms of the fine and
5 imprisonment, as we set forth in the papers and the Court can
6 see from the probation officer's calculation, the financial

7 impact on Mr. Rookard has been very significant. They're
8 operating at a negative cash flow. There's not a lot of assets
9 there. He's got to pay \$45,000 also. And I raised this at the
10 time of the plea. And Mr. Gallagher and Mr. Magness indicated,
11 well, there's still one year. And he said, well, I don't know
12 that I can pay it within a year given my current income, which
13 is nonexistent. And so we just indicated that, well, you've
14 got a year and then you've got to take it up with the people,
15 you know, can work out something further at the time. So,
16 his --

17 MR. GALLAGHER: Well, no, at the conclusion of the
18 year, there is an enforcement issue. And if he doesn't have
19 it, he doesn't have it.

20 MR. FELDMAN: Well, we would have to negotiate with
21 the -- whoever the enforcers are, if he doesn't have it, and
22 try to work some kind of reasonable situation out. But he's
23 got his mother-in-law and his wife, he's been the supporter all
24 along. None of them are working now. And so given their
25 current situation, imprisonment and fine is just -- would be

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1 a -- one more blow to who otherwise is a good man who did a bad
2 thing.

3 THE COURT: Mr. Rookard, I sentence you to three years
4 probation. As a special condition you will serve six months
5 home confinement with electronic monitoring. Based on your
6 ability to pay as determined by the probation officer, you will
7 pay for the monitoring.

8 You will not possess a firearm or other dangerous
9 weapon.

10 The mandatory condition for urinalysis testing is
Page 10

11 waived.

12 Because you do not have an ability to pay a fine
13 in addition to the forfeiture, no fine will be imposed. You
14 will pay now the mandatory \$100 special assessment.

15 I think the government has dismissed the other
16 counts against Mr. Rookard?

17 MR. MAGNESS: Yes, Your Honor.

18 MR. GALLAGHER: And there is the forfeiture judgment.

19 THE COURT: Mr. Feldman, has the government complied
20 with the plea agreement?

21 MR. FELDMAN: They have, Your Honor.

22 THE COURT: As I read the agreement, Mr. Rookard, you
23 have no right of appeal.

24 Does either counsel wish to say anything else?

25 MR. GALLAGHER: No, sir.

13

1 MR. FELDMAN: No, sir.

2 THE COURT: You should stop and talk to the probation
3 officer on your way out.

4 MR. FELDMAN: We will, Your Honor.

5 THE COURT: Counsel are excused.

6 We'll take a ten-minute recess before the next
7 sentencing.

8 MR. FELDMAN: Thank you.

9 MR. MAGNESS: Thank you, Your Honor.

10 (Concluded at 4:13 p.m.)

11 * * *

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

15

Kathy L. Metzger
Official Court Reporter

Date

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