

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

THE HON. CORMAC J. CARNEY, JUDGE PRESIDING

UNITED STATES OF AMERICA,)
)
) PLAINTIFF,)
)
) VS.) NO. SACR 08-00139-CJC
)
 WILLIAM J. RUEHLE,)
) DEFENDANT.)
)
 _____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SANTA ANA, CALIFORNIA

TUESDAY, DECEMBER 15, 2009

9:00

MARIA BEESLEY-DELLANEVE, CSR 9132
OFFICIAL FEDERAL REPORTER
RONALD REAGAN FEDERAL BUILDING
411 W. 4TH STREET, ROOM 1-053
SANTA ANA, CA 92701
(714) 564-9259

1 **APPEARANCES:**

2 **FOR THE PLAINTIFF:** GEORGE S. CARDONA
 UNITED STATES ATTORNEY
3 BY: ANDREW STOLPER
 AND ROBB ADKINS,
4 GREG STAPLES,
 ASSISTANT UNITED STATES ATTORNEY
5 411 W. 4TH STREET, 8TH FLOOR
 SANTA ANA, CALIFORNIA 92701

6
7
8
9
10 **FOR THE DEFENDANT RUEHLE:** SKADDEN ARPS SLATE MEAGHER
 BY: RICHARD MARMARO, ESQ.
11 AND JACK DICANIO, ESQ.
 MATTHEW UMHOFER, ESQ.
12 300 SOUTH GRAND AVENUE
 LOS ANGELES, CALIFORNIA 90071
13 (213)687-5535

14 **FOR HENRY SAMUELI:** MCDERMOTT WILL & EMERY
 BY: GORDON GREENBERG, ESQ.
15 2049 CENTURY PARK EAST, SUITE 3800
 LOS ANGELES, CALIFORNIA 90067-3218
16 (310) 551-9398

17 **FOR HENRY NICHOLAS:** WILLIAMS & CONNOLLY LLP
18 BY: BRENDAN SULLIVAN, ESQ.
 725 TWELFTH STREET N.W.
19 WASHINGTON D.C. 20005
 (202) 434-5460

20
21 **FOR DAVID DULL:** QUINN EMANUEL URQUHART OLVER & HEDGES
 BY: JAMES ASPERGER, ESQ.
22 AND SETH ARONSON, ESQ.
 865 S. FIGUEROA ST 10TH FL
23 LOS ANGELES, CALIFORNIA 90017

24
25

1 SANTA ANA, CALIFORNIA; TUESDAY, DECEMBER 15, 2009

2 -000-

3 **THE CLERK:** ITEM NUMBER ONE, SACR 08-139-CJC. UNITED
4 STATES VERSUS WILLIAM J. RUEHLE.

5 COUNSEL, PLEASE STATE YOUR APPEARANCES FOR THE RECORD.

6 **MR. ADKINS:** GOOD MORNING, YOUR HONOR. ROBB ADKINS,
7 GEORGE CARDONA, ANDREW STOLPER, AND GREG STAPLES ON BEHALF OF THE
8 UNITED STATES.

9 **THE COURT:** GOOD MORNING, GENTLEMEN.

10 **MR. MARMARO:** GOOD MORNING, YOUR HONOR. RICHARD MARMARO
11 AND JACK DICANIO FOR MR. RUEHLE, WHO IS PRESENT.

12 **THE COURT:** GOOD MORNING.

13 AND I THINK WE HAVE SOME OTHER LAWYERS; RIGHT? AND
14 PARTIES?

15 MR. SULLIVAN, I SEE YOU THERE, SIR.

16 **MR. SULLIVAN:** BRENDAN SULLIVAN OF WILLIAMS AND CONNOLLY
17 FOR DR. HENRY NICHOLAS.

18 **MR. ASPERGER:** GOOD MORNING, YOUR HONOR. JIM ASPERGER
19 AND SETH ARONSON FOR MR. DULL.

20 **MR. GREENBERG:** GORDON GREENBERG ON BEHALF OF DR. HENRY
21 SAMUELI, WHO IS PRESENT BEFORE THE COURT.

22 **THE COURT:** GOOD MORNING TO ALL OF YOU.

23 WHAT I THOUGHT I WOULD DO IS READ INTO THE RECORD MY
24 DECISION, AND THEN I'LL GIVE EVERYONE A NOTICE AND OPPORTUNITY TO
25 SAY WHATEVER THEY WANT TO SAY ON THE RECORD.

1 I HEARD ALL THE EVIDENCE PRESENT AT MR. RUEHLE'S TRIAL
2 AND AT THE EVIDENTIARY HEARINGS. I NOW KNOW THE ENTIRE STORY OF
3 WHAT HAPPENED. THIS DECISION SUPERSEDES ANY PRIOR FINDINGS,
4 RULINGS OR CREDIBILITY DETERMINATION THAT I HAD MADE ON A PARTIAL
5 RECORD WITHOUT THE BENEFIT OF ALL THE FACTS.

6 BASED ON THE COMPLETE RECORD NOW BEFORE ME, I FIND THAT
7 THE GOVERNMENT HAS INTIMIDATED AND IMPROPERLY INFLUENCED THE THREE
8 WITNESSES CRITICAL TO MR. RUEHLE'S DEFENSE. THE CUMULATIVE EFFECT
9 OF THAT MISCONDUCT HAS DISTORTED THE TRUTH-FINDING PROCESS AND
10 COMPROMISED THE INTEGRITY OF THE TRIAL.

11 TO SUBMIT THIS CASE TO THE JURY WOULD MAKE A MOCKERY OF
12 MR. RUEHLE'S CONSTITUTIONAL RIGHT TO COMPULSORY PROCESS AND A FAIR
13 TRIAL. THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION
14 GUARANTEES THE ACCUSED THE RIGHT TO COMPULSORY PROCESS FOR
15 WITNESSES IN ITS DEFENSE. FOR THIS CONSTITUTIONAL RIGHT TO HAVE
16 TRUE MEANING, THE GOVERNMENT MUST NOT DO ANYTHING TO INTIMIDATE OR
17 IMPROPERLY INFLUENCE WITNESSES. SADLY, GOVERNMENT DID SO IN THIS
18 CASE.

19 MR. RUEHLE'S PRIMARY DEFENSE HERE HAS BEEN THAT HE HAD
20 NO CRIMINAL INTENT TO VIOLATE THE SECURITIES LAWS. TO SUCCEED, IT
21 WAS IMPERATIVE FOR MR. RUEHLE TO CALL THE THREE AVAILABLE
22 WITNESSES WHO HAD KNOWLEDGE OF BROADCOM'S STOCK-OPTION GRANTING
23 PRACTICES. THOSE THREE WITNESSES WERE NANCY TULLOS, THE VICE
24 PRESIDENT OF HUMAN RESOURCES; DAVID DULL, THE GENERAL COUNSEL; AND
25 DR. HENRY SAMUELI, COFOUNDER AND CHIEF TECHNICAL OFFICER. FOR

1 WHATEVER REASON, THE GOVERNMENT INTIMIDATED AND IMPROPERLY
2 INFLUENCED EACH OF THEM.

3 LET ME FIRST FOCUS ON MS. TULLOS. AFTER MS. TULLOS
4 DECLINED TO COOPERATE WITH THE GOVERNMENT, THE LEAD PROSECUTOR
5 CALLED THE GENERAL COUNSEL OF MS. TULLOS' NEW EMPLOYER AND MADE
6 INAPPROPRIATE STATEMENTS TO HIM THAT CAUSED MS. TULLOS TO LOSE HER
7 JOB.

8 AFTER THOSE EVENTS AND A REVERSE PROFFER SESSION THAT
9 LEFT HER UNDERSTANDABLY SCARED, MS. TULLOS ENTERED INTO AN UNUSUAL
10 COOPERATION PLEA AGREEMENT CONTAINING A QUESTIONABLE FACTUAL
11 BASIS, THAT SEVEN YEARS BEFORE ANY GOVERNMENT INVESTIGATION
12 COMMENCED INTO BROADCOM, MS. TULLOS OBSTRUCTED JUSTICE BY ASKING
13 AN EMPLOYEE TO DELETE AN E-MAIL THAT MS. TULLOS HERSELF NEVER
14 DELETED AND, IN FACT, COPIED TO ANOTHER PERSON.

15 THE GOVERNMENT ALSO TOLD MS. TULLOS THAT SHE WOULD HAVE
16 TO PLEAD TO A FELONY BECAUSE IT LOOKED MORE CONVINCING TO A JURY.
17 AND, MOST TROUBLING, THE GOVERNMENT MET WITH MS. TULLOS ON 26
18 SEPARATE OCCASIONS AND SUBJECTED HER TO GRUELING INTERROGATION
19 DURING WHICH THE GOVERNMENT INTERJECTED ITS VIEWS OF THE EVIDENCE
20 AND, AT LEAST ON ONE OCCASION, TOLD HER THAT SHE WOULD NOT RECEIVE
21 THE BENEFITS OF COOPERATION UNLESS SHE TESTIFIED DIFFERENTLY THAN
22 SHE HAD INITIALLY IN AN EARLIER SESSION.

23 NOT SURPRISINGLY, MS. TULLOS' TESTIMONY AT TRIAL CAME
24 OFF SCRIPTED AND NOT CONSISTENT WITH THE EXTENSIVE E-MAIL TRAIL
25 BROUGHT OUT DURING CROSS-EXAMINATION.

1 I HAVE ABSOLUTELY NO CONFIDENCE THAT ANY PORTION OF MS.
2 TULLOS'S TESTIMONY WAS BASED ON HER OWN INDEPENDENT RECOLLECTION
3 OF EVENTS AS OPPOSED TO WHAT THE GOVERNMENT THOUGHT HER
4 RECOLLECTION SHOULD BE ON THOSE EVENTS.

5 LET ME NEXT FOCUS ON MR. DULL. THE GOVERNMENT BELIEVED
6 THAT MR. DULL WAS A COCONSPIRATOR YET IT DECIDED NOT TO SEEK
7 CHARGES AGAINST HIM FOR SECURITIES FRAUD. IN EFFECT, THE
8 GOVERNMENT LEFT MR. DULL HANGING IN THE WIND AND UNCERTAIN OF HIS
9 FATE FOR ALMOST TWO YEARS. DURING TRIAL, I GRANTED MR. DULL
10 IMMUNITY SO HE COULD TESTIFY FOR THE DEFENSE.

11 AFTER I HAD DONE SO, THE LEAD PROSECUTOR CONTACTED
12 COUNSEL FOR MR. DULL AND THREATENED TO PROSECUTE MR. DULL IF HE
13 TESTIFIED CONSISTENTLY WITH HIS PRIOR TESTIMONY BEFORE THE SEC.
14 COMPOUNDING HIS MISCONDUCT, THE LEAD PROSECUTOR ATTEMPTED TO
15 NEGOTIATE THE TESTIMONY OF MR. DULL BY, AMONG OTHER THINGS,
16 PROMISING A SOFT CROSS IF MR. DULL INCRIMINATED OR DISPARAGED MR.
17 RUEHLE. THE LEAD PROSECUTOR SOMEHOW FORGOT THAT TRUTH IS NEVER
18 NEGOTIABLE.

19 FINALLY, LET ME FOCUS ON DR. SAMUELI. THE
20 UNCONTROVERTED EVIDENCE AT TRIAL ESTABLISHED THAT DR. SAMUELI WAS
21 A BRILLIANT ENGINEER AND A MAN OF INCREDIBLE INTEGRITY. THERE WAS
22 NO EVIDENCE AT TRIAL TO SUGGEST THAT DR. SAMUELI DID ANYTHING
23 WRONG, LET ALONE CRIMINAL. YET, THE GOVERNMENT EMBARKED ON A
24 CAMPAIGN OF INTIMIDATION AND OTHER MISCONDUCT TO EMBARRASS HIM AND
25 BRING HIM DOWN.

1 AMONG OTHER WRONGFUL ACTS THE GOVERNMENT, ONE,
2 UNREASONABLY DEMANDED THAT DR. SAMUELI SUBMIT TO AS MANY AS 30
3 GRUELING INTERROGATIONS BY THE LEAD PROSECUTOR.

4 TWO, FALSELY STATED AND IMPROPERLY LEAKED TO THE MEDIA
5 THAT DR. SAMUELI WAS NOT COOPERATING IN THE GOVERNMENT'S
6 INVESTIGATION.

7 THREE, IMPROPERLY PRESSURED BROADCOM TO TERMINATE DR.
8 SAMUELI'S EMPLOYMENT AND REMOVE HIM FROM THE BOARD.

9 FOUR, MISLED DR. SAMUELI INTO BELIEVING THAT THE LEAD
10 PROSECUTOR WOULD BE REPLACED BECAUSE OF MISCONDUCT.

11 FIVE, OBTAINED AN INFLAMMATORY INDICTMENT THAT REFERRED
12 TO DR. SAMUELI 72 TIMES AND ACCUSED HIM OF BEING AN UNINDICTED
13 COCONSPIRATOR WHEN THE GOVERNMENT NEW, OR SHOULD HAVE KNOWN, THAT
14 HE DID NOTHING WRONG.

15 AND SEVEN, CRAFTED AN UNCONSCIONABLE PLEA AGREEMENT
16 PURSUANT TO WHICH DR. SAMUELI WOULD PLEAD GUILTY TO A CRIME HE DID
17 NOT COMMIT AND PAY A RIDICULOUS SUM OF \$12 MILLION TO THE UNITED
18 STATES TREASURY.

19 ONE MUST CONCLUDE THAT THE GOVERNMENT ENGAGED IN THIS
20 MISCONDUCT TO PRESSURE DR. SAMUELI TO FALSELY ADMIT GUILT AND
21 INCRIMINATE MR. RUEHLE OR, IF HE WAS UNWILLING TO MAKE SUCH A
22 FALSE ADMISSION AND INCRIMINATION, TO DESTROY DR. SAMUELI'S
23 CREDIBILITY AS A WITNESS FOR MR. RUEHLE.

24 NEEDLESS TO SAY, THE GOVERNMENT'S TREATMENT OF DR.
25 SAMUELI WAS SHAMEFUL AND CONTRARY TO AMERICAN VALUES OF DECENCY

1 AND JUSTICE.

2 IN LIGHT OF MY FINDING OF GOVERNMENT MISCONDUCT AND
3 DENIAL OF MR. RUEHLE'S CONSTITUTIONAL RIGHT TO COMPULSORY PROCESS,
4 I MUST NOW EXERCISE MY SUPERVISORY AUTHORITY AND ISSUE THE
5 **FOLLOWING ORDER:**

6 NUMBER ONE, I'M GOING TO DISMISS, WITH PREJUDICE, THE
7 STOCK-OPTION BACKDATING INDICTMENT AGAINST MR. RUEHLE AND ENTER A
8 JUDGMENT OF ACQUITTAL. THIS DISMISSAL AND JUDGMENT ARE BASED ON
9 TWO SEPARATE, BUT RELATED GROUNDS.

10 FIRST, AS I PREVIOUSLY STATED, THE GOVERNMENT MISCONDUCT
11 HAS DEPRIVED MR. RUEHLE OF THE RIGHT TO COMPULSORY PROCESS AND A
12 FAIR TRIAL. AND SECOND, THERE IS INSUFFICIENT EVIDENCE TO SUSTAIN
13 A CONVICTION AGAINST MR. RUEHLE. BECAUSE THE GOVERNMENT
14 IMPROPERLY INFLUENCED MS. TULLOS, HER TRIAL TESTIMONY IS
15 UNRELIABLE AND MUST BE STRICKEN.

16 WITHOUT MS. TULLOS' TAINTED TESTIMONY THERE IS
17 INSUFFICIENT EVIDENCE THAT MR. RUEHLE HAD THE CRIMINAL INTENT
18 NECESSARY TO VIOLATE ANY OF THE LAWS ALLEGED IN THE INDICTMENT.

19 I SHOULD NOTE THAT THIS LATTER GROUND PROHIBITS THE
20 GOVERNMENT FROM PROSECUTING MR. RUEHLE AGAIN FOR ANY CRIME RELATED
21 TO THE STOCK OPTION PRACTICES AT BROADCOM. TO DO SO WOULD VIOLATE
22 THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT.

23 NUMBER TWO, I'M GOING TO DISMISS, WITH PREJUDICE, THE
24 STOCK-OPTION BACKDATING INDICTMENT AGAINST DR. NICHOLAS. THE
25 THREE WITNESSES THAT MR. RUEHLE NEEDED TO PROVE HIS INNOCENCE ARE

1 THE SAME THREE WITNESSES THAT DR. NICHOLAS NEEDS TO PROVE HIS
2 INNOCENCE. CONSEQUENTLY, DR. NICHOLAS IS DENIED HIS RIGHT TO
3 COMPULSORY PROCESS AND HE CANNOT RECEIVE A FAIR TRIAL.

4 NUMBER THREE, I'M GOING TO ORDER GOVERNMENT TO SHOW
5 CAUSE, ON FEBRUARY 2, 2010, AT 9:00 A.M. WHY THE DRUG DIRECTION
6 INDICTMENT AGAINST DR. NICHOLAS SHOULD NOT BE DISMISSED. THE
7 THREE MATERIAL WITNESSES IN THE STOCK-OPTION BACKDATING CASE WILL
8 UNDOUBTEDLY BE WITNESSES IN THE DRUG DISTRIBUTION CASE, BUT I'M
9 NOT SURE WHETHER THE DIFFERENT NATURE OF THE DRUG CHARGES REDUCES
10 THE PREJUDICE TO DR. NICHOLAS SO HE CAN STILL EXERCISE HIS RIGHT
11 TO COMPULSORY PROCESS AND RECEIVE A FAIR TRIAL.

12 I DO ASK THAT THE GOVERNMENT KEEP IN MIND TWO ISSUES IN
13 ITS DECISION WHETHER TO GO FORWARD WITH THE DRUG DISTRIBUTION CASE
14 AGAINST DR. NICHOLAS. FIRST, THERE WILL BE OTHER EVIDENCE OF
15 GOVERNMENT MISCONDUCT INTRODUCED AT THAT TRIAL, SUCH AS THE
16 GOVERNMENT'S THREAT TO ISSUE A GRAND JURY SUBPOENA TO DR.
17 NICHOLAS' 13-YEAR-OLD-SON AND FORCE THE BOY TO TESTIFY AGAINST HIS
18 FATHER.

19 AND SECOND, DR. NICHOLAS'S E-MAIL TO HIS FORMER WIFE
20 ENTITLED "BRETT'S HOME RUN" WILL NOT BE ADMITTED AT TRIAL UNDER
21 ANY CIRCUMSTANCE. THE E-MAIL IS VERY PRIVATE AND PERSONAL AND
22 WILL NOT BE PUBLICLY AIRED IN THIS COURT AGAIN.

23 FOUR, I'M GOING TO LIFT THE STAY IMPOSED IN THE SEC
24 CIVIL STOCK-OPTION BACKDATING CASE AND DISMISS THAT COMPLAINT
25 WITHOUT PREJUDICE. THE SEC HAS 30 DAYS TO FILE AN AMENDED

1 COMPLAINT. I DO, HOWEVER, DISCOURAGE THE SEC FROM PROCEEDING
2 FURTHER WITH THE CASE.

3 THE GOVERNMENT'S MISCONDUCT HAS COMPROMISED THE
4 INTEGRITY AND LEGITIMACY OF THE CASE AND THE EVIDENCE AT MR.
5 RUEHLE'S TRIAL ESTABLISHED THE SEC WILL HAVE GREAT DIFFICULTY
6 PROVING THAT THE DEFENDANTS ACTED WITH THE REQUISITE SCIENTER.

7 THE ACCOUNTING STANDARDS AND GUIDELINES WERE NOT CLEAR,
8 AND THERE WAS CONSIDERABLE DEBATE IN THE HIGH-TECH INDUSTRY AS TO
9 THE PROPER ACCOUNTING TREATMENT FOR STOCK OPTION GRANTS. INDEED,
10 APPLE AND MICROSOFT WERE ENGAGING IN THE EXACT SAME PRACTICES AS
11 THOSE OF BROADCOM.

12 NOW, I'M SURE THERE ARE GOING TO BE MANY PEOPLE WHO ARE
13 GOING TO BE CRITICAL OF MY DECISION IN THIS CASE AND ARGUE THAT
14 I'M BEING TOO HARD ON THE GOVERNMENT. I STRONGLY DISAGREE. I
15 HAVE A SOLEMN OBLIGATION TO HOLD THE GOVERNMENT TO THE
16 CONSTITUTION. I'M DOING NOTHING MORE AND NOTHING LESS. AND I ASK
17 MY CRITICS TO PUT THEMSELVES IN THE SHOES OF THE ACCUSED.

18 YOU ARE CHARGED WITH SERIOUS CRIMES AND, IF CONVICTED ON
19 THEM, YOU WILL SPEND THE REST OF YOUR LIFE IN PRISON. YOU ONLY
20 HAVE THREE WITNESSES TO PROVE YOUR INNOCENCE AND GOVERNMENT HAS
21 INTIMIDATED AND IMPROPERLY INFLUENCED EACH ONE OF THEM. IS THAT
22 FAIR? IS THAT JUSTICE? I SAY ABSOLUTELY NOT.

23 I'D LIKE TO CONCLUDE WITH THE POWERFUL AND INSIGHTFUL
24 PASSAGE FROM THE U.S. SUPREME COURT IN THE CASE OF BERGER V.
25 UNITED STATES.

1 "THE UNITED STATES ATTORNEY IS THE REPRESENTATIVE, NOT
2 OF AN ORDINARY PARTY TO A CONTROVERSY, BUT OF A SOVEREIGNTY WHOSE
3 OBLIGATION TO GOVERN IMPARTIALLY IS AS COMPELLING AS ITS
4 OBLIGATION TO GOVERN AT ALL, AND WHOSE INTEREST, THEREFORE, IN A
5 CRIMINAL PROSECUTION IS NOT THAT IT SHALL WIN A CASE, BUT THAT
6 JUSTICE SHALL BE DONE. AS SUCH, HE IS IN A PECULIAR AND A VERY
7 DEFINITE SENSE THE SERVANT OF THE LAW, THE TWOFOLD AIM OF WHICH IS
8 THAT GUILT SHALL NOT ESCAPE OR INNOCENT SUFFER.

9 HE MAY PROSECUTE WITH EARNESTNESS AND VIGOR. INDEED, HE
10 SHOULD DO SO. BUT WHILE HE MAY STRIKE HARD BLOWS, HE IS NOT AT
11 LIBERTY TO STRIKE FOUL ONES. IT IS MUCH HIS DUTY TO REFRAIN FROM
12 IMPROPER METHODS CALCULATED TO PRODUCE A WRONGFUL CONVICTION AS IT
13 IS TO USE EVERY LEGITIMATE MEANS TO BRING ABOUT A JUST ONE."

14 I SINCERELY REGRET THAT THE GOVERNMENT DID NOT HEED THE
15 RIGHTEOUS WORDS OF THE SUPREME COURT.

16 MR. MARMARO, I'LL HEAR FROM YOU FIRST, SIR, IF THERE IS
17 ANYTHING YOU OR MR. RUEHLE WOULD LIKE TO STATE ON THE RECORD.

18 **MR. MARMARO:** YOUR HONOR, IT'S VERY DIFFICULTY
19 OBVIOUSLY, HAVING HEARD THE COURT'S COMMENTS, TO GIVE A COMPOSED
20 RESPONSE OR A STATEMENT, BUT I JUST WANT TO SAY ONE THING, YOUR
21 HONOR. YOU HAVE SAID ALL ALONG THAT YOU WANTED TO HEAR THE WHOLE
22 STORY. BUT IF IT WEREN'T FOR WHAT YOU DID, WE WOULD NOT HAVE
23 HEARD THE WHOLE STORY. IF IT WEREN'T FOR YOUR DECISION TO GRANT
24 DEFENSE WITNESSES IMMUNITY, WE WOULD NOT HAVE HEARD FROM DR.
25 SAMUELI AND MR. DULL. AND YOU WOULD HAVE BEEN STUCK WITH ONLY

1 PART OF THE STORY.

2 SO IN A VERY LARGE SENSE, YOUR HONOR, WHAT HAPPENED,
3 WHAT YOU ANNOUNCED TODAY IS THE DIRECT RESULT OF WHAT YOU DID.

4 AND I HAVE TO TELL YOU, YOUR HONOR, 34 YEARS AGO TODAY,
5 TO THE DAY, DECEMBER 15, 1975, I PASSED THE BAR. WHAT HAPPENED IN
6 THIS COURT WAS VERY DIFFICULT TO WATCH, BUT WHAT HAPPENED TODAY
7 RESTORES MY FAITH AND I CAN HONESTLY SAY I HAVE NEVER BEEN MORE
8 PROUD TO BE A LAWYER.

9 **THE COURT:** MR. SULLIVAN, I KNOW I'M PROBABLY CATCHING
10 YOU A LITTLE OFF GUARD, BUT GIVEN THE MANY ORDERS THAT I HAVE
11 ISSUED, I DON'T KNOW IF THERE IS ANYTHING YOU WOULD LIKE TO SAY ON
12 THE RECORD, SIR.

13 **MR. SULLIVAN:** OF COURSE, MR. MARMARO IS A YOUNG LAWYER.
14 I HAVE BEEN DOING THIS 42 YEARS, BUT I ADOPT HIS MOVING WORDS.

15 I GUESS THAT WHEN I WAS A YOUNG LAWYER, I WAS NAIVE AND
16 I THOUGHT THAT FAIRNESS WAS ASSURED IN OUR COURTROOMS BECAUSE OUR
17 FOUNDING FATHERS HAD DEVISED THIS MAGICAL CONSTITUTION AND THIS
18 MAGICAL BILL OF RIGHTS, AND SOMEHOW IF THE GOVERNMENT LIVED BY
19 THAT, THAT WE WOULD ALWAYS BE JUST FINE. BUT I WAS NAIVE. I
20 LEARNED IN SHORT ORDER THAT THE ONLY THING THAT ASSURES FAIRNESS
21 IN THE COURTROOM ARE JUDGES WITH COURAGE TO KEEP THEIR EYES OPEN,
22 WATCH WHAT IS HAPPENING, KEEP AN OPEN MIND AND MAKE FAIR
23 DECISIONS, FAIR TO BOTH SIDES.

24 AND, YOUR HONOR, I STAND IN AWE OF WHAT YOU HAVE DONE
25 HERE TODAY BASED UPON THE MANY DAYS OF TEDIOUS TRIAL THAT WE HAVE

1 SEEN.

2 I'LL ADD ONLY ONE THING TO YOUR SUPREME COURT ARGUMENT.
3 AND WE ALL KNOW, WITHOUT SAYING, THAT THERE ARE MANY, MANY FINE
4 MEN AND WOMEN IN GOVERNMENT SERVICE, IN PROSECUTOR'S OFFICES AND
5 ALSO IN THE FBI. AND WE APPLAUD THEM. AND SOMETIMES WE DO SEE
6 THE KIND OF MISCONDUCT ON THE PART OF AN INDIVIDUAL OR SEVERAL
7 INDIVIDUALS.

8 BUT I'M REMINDED WHEN I HEARD YOUR SUPREME COURT QUOTE,
9 HOW SIMILAR IT WAS TO THE QUOTE I HEARD EIGHT MONTHS AGO, APRIL 8,
10 2008, FROM THE ATTORNEY GENERAL HIMSELF, A MESSAGE THAT WAS
11 DELIVERED TO ALL STATE DEPARTMENT U.S. ATTORNEYS. AND I QUOTE
12 HIM.

13 "YOUR JOB AS U.S. ATTORNEYS IS NOT TO CONVICT PEOPLE,
14 YOUR JOB IS NOT TO WIN CASES. YOUR JOB IS TO DO JUSTICE. YOUR
15 JOB IS IN EVERY CASE, EVERY DECISION THAT YOU MAKE, TO DO THE
16 RIGHT THING. ANYBODY WHO ASKS YOU TO DO SOMETHING OTHER THAN THAT
17 IS TO BE IGNORED. ANY POLICY THAT IS AT TENSION WITH THAT IS TO
18 BE QUESTIONED AND BROUGHT TO MY ATTENTION."

19 THE MESSAGE DELIVERED BY THIS COURT TODAY HAD BEEN HEARD
20 THROUGHOUT THE COUNTRY BY ALL WHO ENFORCE THE LAW, AND WE ARE ALL
21 BETTER OFF AND THE SYSTEM OF JUSTICE WILL BE BETTER OFF FOR THE
22 COURAGE DEMONSTRATED IN THIS COURT ON THIS DATE. THANK YOU.

23 **THE COURT:** MR. GREENBERG, IS THERE ANYTHING YOU WOULD
24 LIKE TO SAY ON BEHALF OF DR. SAMUELI?

25 **MR. GREENBERG:** THANK YOU, YOUR HONOR.

1 I'M IN A DANGEROUS POSITION, A LAWYER WHO IS BREATHLESS.
2 I REALLY -- MY BREATH IS TAKEN AWAY BECAUSE, ECHOING THE
3 SENTIMENTS OF MY COLLEAGUES HERE, THIS TRULY IS A TURNING POINT, I
4 BELIEVE, THAT WILL BE HEARD THROUGHOUT THE COUNTRY.

5 I SAT AT THAT TABLE AS A PROSECUTOR AND ENJOYED IT. IT
6 WAS THE GREATEST JOB I HAD IN MY LIFE. THE MOST ENJOYABLE BECAUSE
7 THE PRESUMPTION OF CREDIBILITY, YOU ARE CLOAKED WITH IT FROM THE
8 MOMENT THAT YOU WALK INTO THE COURTROOM. USUALLY, FROM THE
9 JUDGE'S PERSPECTIVE, FRANKLY FROM THE CLERK'S PERSPECTIVE, IT'S
10 YOUR CREDIBILITY TO LOSE.

11 AND IT'S A TREMENDOUS BURDEN DOING IT ON THE OTHER SIDE
12 OF THE EQUATION, YOUR HONOR, TO PIERCE THAT. AND TODAY THE
13 COURT'S ACKNOWLEDGMENT, ESPECIALLY IN LIGHT OF WHERE WE STARTED IN
14 THIS CASE, YOUR HONOR, WHICH I CAN ONLY SAY TO YOUR HONOR, THAT
15 IT'S REMARKABLE BECAUSE IN A PUBLIC SETTING, YOUR HONOR HAS SET
16 THE RECORD STRAIGHT AND INDICATED INITIALLY THAT IT WANTED TO HEAR
17 THE FACTS OF THIS AND REJECTED OUR PLEA, AND I COULD ONLY BE
18 THANKFUL FOR THAT.

19 I SAY THAT TO YOU SINCERELY BECAUSE IT TAKES NOT ONLY A
20 TREMENDOUS JUDGE, BUT A TREMENDOUS HUMAN BEING TO RECOGNIZE THAT
21 THAT WAS, FRANKLY, THE WRONG DECISION, IF I MAY SAY SO, YOUR
22 HONOR, AT THE TIME IN TERMS OF HOW IT WAS POSTURED AT THAT TIME.

23 AND I THANK YOUR HONOR FOR LISTENING CAREFULLY AND
24 KEEPING AN OPEN MIND, AND TRULY LOOKING AT THE EVIDENCE, AND
25 UNDERSTANDING AND GETTING TO THE POINT OF EXACTLY WHAT HAPPENED

1 HERE.

2 AND I THINK THAT OUR JUSTICE SYSTEM WILL EMBRACE THIS.
3 THERE HAVE BEEN MANY CIRCUMSTANCES AROUND THE COUNTRY MOST
4 RECENTLY WHERE A NUMBER OF CASES HAVE BEEN TOSSED BECAUSE OF
5 PROSECUTORS PLACING THEIR THUMB ON THE SCALES OF JUSTICE. AND
6 SADLY, THE OFFICE THAT I LOVED SO MUCH, HERE, WHICH IS A
7 TREMENDOUS OFFICE, THE U.S. ATTORNEY'S OFFICE, DID SO IN THIS
8 CASE.

9 AND I THANK YOUR HONOR FOR THE COURAGE TO GO FORWARD AND
10 SET THE RECORD STRAIGHT. I HAVE REPRESENTED A HUMAN BEING HERE
11 THAT I HAVE NEVER HAD MORE RESPECT FOR, OF ANYONE I HAVE
12 REPRESENTED. AND NO DISRESPECT TO ANYONE ELSE. HE TRULY IS A
13 WONDERFUL HUMAN BEING. AND I HAVE WATCHED THE FAMILY GO THROUGH
14 THIS PROCESS FOR THREE AND A HALF YEARS. AND IT'S BEEN UGLY. AND
15 IT JUST GOT UGLIER AND UGLIER UNTIL TODAY IN WHICH WE CAN ALL GO
16 HOME AND CELEBRATE.

17 THANK YOU, YOUR HONOR.

18 **THE COURT:** MR. ASPERGER?

19 **MR. SLOAN:** THANK YOU, YOUR HONOR.

20 AS THE COURT KNOWS, MR. ARONSON AND I AND MR. DULL HAVE,
21 IN MANY WAYS, BEEN BYSTANDERS TO THESE CRIMINAL PROCEEDINGS, BUT
22 THIS HAS NONETHELESS BEEN EXTREMELY CHALLENGING AS I'M SURE THE
23 COURT IS WELL AWARE, FOR MR. DULL AND HIS FAMILY. AND WE APPLAUD
24 THE COURT. WE ECHO WHAT OUR COLLEAGUES HAVE SAID AND APPLAUD THE
25 COURT FOR THE GREAT COURAGE THAT THE COURT HAS SHOWN IN ITS RULING

1 TODAY.

2 ONE OF THE THINGS THAT STRUCK ME IN THE LAST TWO WEEKS
3 WAS WHEN THE COURT SAID THAT YOU'RE HERE TO DO JUSTICE, TO DO THE
4 RIGHT THING, AND THAT'S WHY YOU TOOK THE BENCH. THAT'S WHY I WAS
5 A FEDERAL PROSECUTOR FOR 10 YEARS, YOUR HONOR, AND WAS PROUD TO BE
6 ABLE TO SAY I REPRESENT THE UNITED STATES OF AMERICA. IT'S WHY,
7 IN REPRESENTING MR. DULL AND TRYING TO SUPPORT HIM AND HIS FAMILY,
8 WE'RE VERY PROUD TO BE REPRESENTING A MAN OF SUCH INTEGRITY WHO
9 WAS ALWAYS THERE TO DO THE RIGHT THING.

10 AND THIS WILL BE A GREAT RELIEF OF THE BURDENS AND
11 TRYING CIRCUMSTANCES THAT HE HAS HAD TO GO THROUGH.

12 AND I WILL ECHO WHAT, AGAIN, MR. MARMARO AND
13 MR. SULLIVAN AND MR. GREENBERG HAD SAID. IT'S JUDGES LIKE YOU WHO
14 HAVE SHOWN THE COURAGE TO MAKE THE RULING THAT YOU HAVE MADE; TO
15 DO THE RIGHT THING; TO LOOK AT THE FACTS WITH AN OPEN MIND; AND TO
16 BE OPEN TO CHANGING YOUR VIEW OF THE FACTS AND COMING UP WITH
17 DOING THE RIGHT THING AND DOING FAIRNESS THAT RESTORES OUR FAITH
18 IN THE SYSTEM OF JUSTICE.

19 AGAIN, IT STRUCK ME THAT THE BIGGEST DISAPPOINTMENT FOR
20 MR. DULL, WHEN THE EVENTS THAT HAPPENED OCCURRED IN THIS CASE, WAS
21 HIS PROFOUND DISAPPOINTMENT IN OUR JUSTICE SYSTEM. I'M SURE I
22 SPEAK FOR HIM AS FOR ALL OF US THAT YOUR RULING TODAY DOES RESTORE
23 THAT FAITH, AND WE'RE VERY GRATEFUL FOR IT, YOUR HONOR.

24 AS THE COURT IS WELL AWARE, WE HAVE A PROPOSED ORDER
25 THAT WHENEVER YOU FEEL IT APPROPRIATE TO TAKE UP, WE CAN, BUT I

1 REALIZE TODAY IS NOT THE TIME.

2 THANK YOU, YOUR HONOR.

3 **THE COURT:** VERY WELL.

4 I SINCERELY APPRECIATE ALL THE COMPLIMENTS THAT COUNSEL
5 HAVE GIVEN, ESPECIALLY THEY'RE FROM THE TITANS IN THE LEGAL
6 PROFESSION. SO THEY MEAN A LOT TO ME. BUT IT'S REALLY IMPORTANT
7 I THINK, TO ME, THAT YOU AND MR. RUEHLE, DR. NICHOLAS, MR. DULL,
8 AND DR. SAMUELI REALIZE, I DON'T NEED TO BE COMPLIMENTED. THE
9 WISDOM, THE BRILLIANCE WAS IN THE FRAMERS OF OUR CONSTITUTION.
10 I'M JUST DOING MY JOB.

11 MR. ADKINS, IS THERE ANYTHING THE GOVERNMENT WOULD LIKE
12 TO SAY? MR. CARDONA?

13 **MR. CARDONA:** YOUR HONOR, VERY BRIEFLY. FIRST, AS YOU
14 KNOW, THIS IS THE FIRST TIME I HAVE BEEN DOWN HERE IN THIS CASE.
15 I APOLOGIZE FOR NOT HAVING BEEN OVER HERE THE LAST TWO WEEKS WHEN
16 THESE EVENTS WERE GOING DOWN. I WOULD HAVE HOPED I COULD HAVE
17 SAID SOMETHING THAT MIGHT HAVE CONVINCED THE COURT TO RULE
18 DIFFERENTLY THAN IT DID TODAY.

19 I DON'T KNOW IF YOU WERE TOLD, BUT I WAS OUT OF, FIRST
20 THE STATE AND OUT OF THE COUNTRY SO COULD NOT BE HERE.

21 **THE COURT:** I WAS.

22 **MR. ADKINS:** WITH THAT, YOUR HONOR, OBVIOUSLY WE HAVE
23 HEARD YOUR DECISION. RESPECTFULLY, WE DISAGREE WITH IT. I DON'T
24 THINK THAT WILL COME AS A SURPRISE TO YOU. WE HAVE SUBMITTED OUR
25 PAPERS. WE BELIEVE WE HAVE SET FORTH OUR POSITION IN OUR PAPERS

1 AND THE OTHER PLEADINGS. AND I DON'T BELIEVE THERE IS ANY POINT
2 IN SAYING ANYTHING FURTHER HERE. YOU UNDERSTAND OUR POSITIONS. I
3 UNDERSTAND YOU DISAGREE WITH THEM. I HOPE YOU UNDERSTAND WE
4 DISAGREE WITH YOUR RULING AND WE WILL NEED TO DECIDE WHAT WE DO
5 NEXT. THANK YOU.

6 **THE COURT:** AND I APPRECIATE THAT, SIR.

7 ALL RIGHT. I DON'T THINK ANYTHING NEEDS TO BE SAID
8 FURTHER OTHER THAN, MR. RUEHLE, YOU ARE A FREE MAN.

9 **THE DEFENDANT:** THANK YOU, YOUR HONOR.

10 (WHEREUPON THE PROCEEDINGS WERE ADJOURNED AT 9:33.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

-000-

CERTIFICATE

I HEREBY CERTIFY THAT PURSUANT TO SECTION 753, TITLE 28,
UNITED STATES CODE, THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT
OF THE STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE
ABOVE-ENTITLED MATTER.

DATE: DECEMBER 15, 2009

MARIA DELLANEVE, U.S. COURT REPORTER
CSR NO. 9132

