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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	NO. CR 03-345 PHX-ROS
)	
CAROL RIZZO,)	Phoenix, Arizona
JOHN RIZZO,)	February 12, 2004
)	1:45 p.m.
Defendants.)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
(Plea Hearing)
BEFORE THE HONORABLE ROSLYN O. SILVER

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A P P E A R A N C E S

For the Plaintiff: Edward Groves, Esq.
Larry Wszalek, Esq.
Mark T. Odulio, Esq.
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For the Defendants: Alan P. Caplan, Esq.
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I N D E X

WITNESS:

DIRECT CROSS REDIRECT RECROSS

(None.)

P R O C E E D I N G S

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THE CLERK: This is CR 03-345, United States of America versus John Rizzo and Carol Rizzo. Time for plea hearing.

01:45:12P

Counsel, please announce.

MR. GROVES: On behalf of United States, Edward Groves, along with Mark Odulio and Larry Wszalek.

THE COURT: Thank you.

MR. CAPLAN: Good afternoon, your Honor. Alan Caplan on behalf of Carol Rizzo and John Rizzo, who are present in court and in custody, your Honor.

01:45:20P

THE COURT: All right. Thank you.

These plea agreements call for cooperation. Is there any reason why this matter should be under seal?

01:45:37P

MR. GROVES: No, there is not, your Honor. In fact, in order to perform the cooperation, it needs to be unsealed and in a public manner. We believe there is no threat in terms of safety to the individuals. This is a matter that involves not crimes of violence, but crimes of a financial nature that do not warrant sealing of the court or the plea agreements.

01:45:51P

THE COURT: Counsel.

MR. CAPLAN: Yes, your Honor. I have discussed this with my clients, and both of them understand that, and

01:46:02

1 Mr. -- depending on, of course, the Court's ruling on Carol
2 Rizzo and whether or not she's going to be released,
3 Mr. John Rizzo is prepared and understands that even down
4 at CCA, if this does become public and folks are aware, if
5 he perceives any kind of threat he will let folks know and
6 let the government know, and I would do likewise, your
7 Honor. He would prefer not to be put in protective custody
8 at this point in time.

01:46:24P

9 THE COURT: Yes, I would imagine that. I just
10 note that --

01:46:38P

11 You may be seated.

12 MR. CAPLAN: Thank you.

13 THE COURT: -- that one of the requirements for
14 my consideration of substantial cooperation is number four,
15 injury suffered or any danger or risk of injury to the
16 defendant or his family resulting from his assistance. The
17 centerpiece of this entire plea is the cooperation, and,
18 you know, I don't want to mislead anybody by allowing a
19 plea, where I find that there will be some issues that I
20 will raise on whether or not there has been substantial
21 cooperation.

01:46:51P

01:47:09P

22 First of all, I am going to ask counsel,
23 Mr. Groves and Mr. Caplan, if your clients had been
24 convicted of what is set forth in the Indictment, has the
25 relevant conduct been considered in the plea agreement?

01:47:35P

1 MR. GROVES: Yes, it has, your Honor.

2 THE COURT: Okay.

3 MR. CAPLAN: If I may, your Honor, yes, we
4 discussed that, and realized that there were two ways of
5 going. One, we could try and outline and agree upon the
6 relevant conduct, and then we felt that given the
7 complexity of this as a financial case, and in particular,
8 the tax loss being the driving force in sentencing, that we
9 would leave it open to both sides to present evidence for
10 the Court's consideration on all of those, rather than
11 foreclosing it.

01:47:47P

01:48:08P

12 THE COURT: Well, there is a statutory cap, if I
13 understand, of seven years; correct?

14 MR. GROVES: That is actually six years with
15 respect to Carol Rizzo, and 14 years as to --

01:48:23P

16 THE COURT: All right. I must have -- let me
17 look at this again.

18 MR GROVES: Mr. Rizzo would be pleading to two
19 five-year felonies, one one-year misdemeanor, and one
20 three-year felony.

01:48:49P

21 THE COURT: Okay.

22 MR. GROVES: And Mrs. Rizzo is pleading to one
23 five-year felony conspiracy count and one one-year
24 misdemeanor count, all contained in the Indictment.

25 THE COURT: Okay. And all of those statutory

01:49:02P

1 maximums will allow for the relevant conduct which was
2 caused in this case; correct?

3 MR. GROVES: That's correct, your Honor.

4 THE COURT: And can you, Mr. Groves, then, today
5 estimate as closely as you can what the relevant conduct
6 would be for Mr. Rizzo?

01:49:14M

7 MR. GROVES: Under the guidelines, your Honor, we
8 believe that the representation of tax loss would arrive at
9 a sentence in the range of four to six years of

10 incarceration, which is well within the statutory cap. The

01:49:30F

11 driving force is the unreported income which is contained

12 in the factual basis, which is over \$4,000,000 that's

13 attributable in the factual basis. We are open to

14 litigating it at sentencing with respect to what the actual

15 tax loss, absent deductions and that sort of thing, would

01:49:52F

16 be.

17 THE COURT: And so your experts here, in

18 conjunction with you, have determined that that amount is

19 what you could prove by a preponderance of the evidence at

20 the time of sentencing?

01:50:03F

21 MR. GROVES: That's correct, your Honor.

22 THE COURT: Thank you.

23 Mr. Caplan.

24 MR. CAPLAN: Your Honor, yes. In terms of gross

25 income, we would say that that's substantially the case,

01:50:10

1 and we are quite confident that there is substantial
2 deductions that would come from that which would bring it
3 down from the maximum that Mr. Groves just spoke of.

4 THE COURT: Okay. And also part of the
5 Indictment included perjury before the Federal Grand Jury,
6 obstruction of justice. Each of those would bring
7 additional potential guideline range months or years, would
8 it not?

01:50:30P

9 MR. GROVES: That's correct, your Honor. That's
10 why we were trying to come up with our best guess under the
11 guidelines as to what everything, including enhancements
12 would be as a guess. Obviously that is something that may
13 vary, depending on what the ultimate presentence report
14 recommends.

01:50:49P

15 THE COURT: Well, I understand that, too, but to
16 me, it's not really -- it doesn't require a rocket surgeon
17 to figure out how many enhancements there would be for
18 perjury before a Grand Jury. There certainly is going to
19 be a guideline range on obstruction of justice; right?

01:51:06P

20 MR. GROVES: That's correct, your Honor.

01:51:28P

21 THE COURT: All right. So in order to properly
22 ascertain what the guideline range would be, taking those
23 two into account, what adjustment upward did you determine
24 was necessary?

25 MR. GROVES: In terms of Mr. Caplan and our

01:51:43

1 discussions with respect to enhancements or upward
2 adjustments, you know, we're looking at --

3 MR. CAPLAN: Well, if I may, Mr. Groves.

4 MR. GROVES: -- ultimately several levels, your
5 Honor, but the actual level has not yet been determined.

01:52:01P

6 THE COURT: Well, when you say "several levels,"
7 is that still within the six-year max?

8 MR. GROVES: It is our understanding that that is
9 the case. We've both done analyses under the guidelines,
10 and I believe we're not off on that.

01:52:22P

11 THE COURT: Well, it's very important, because I
12 don't want either of you, and in particular the Rizzos, to
13 get a misimpression, even though you've been acting in good
14 faith, as to what the guideline levels are, because that
15 will certainly affect the sentence that they receive. We
16 will go through that, but the estimate should be high, as
17 opposed to low, so that there is no misunderstanding today,
18 because a couple of things could happen:

01:52:45P

19 First of all, no matter how much they cooperated,
20 I may not accept the plea agreement because it doesn't
21 include the relevant conduct, and I may not also find that
22 their conduct is substantial -- or their cooperation. You
23 have outlined it, I suppose, as much as you can, and there
24 are a lot of conditions and a lot of bases for potential
25 breach and the consequences of that, but I'm really not --

01:53:06P

01:53:30

1 we'll get to that in a moment, but Mr. and Mrs. Rizzo need
2 to know today that it's tentative.

3 MR. GROVES: That's correct, your Honor.
4 Originally we had looked at it from a term of -- with
5 Mr. Rizzo of approximately eight years, but when we've gone 01:53:47P
6 through this, Mr. Caplan believes it's lower than that.

7 THE COURT: Well, have you discussed it with one
8 of the probation officers? That's what I would suggest you
9 do.

10 This is what we'll do: I'll take the plea today, 01:54:03P
11 but then I'm going to order both of you to meet with the
12 probation office to come up with a -- what they would
13 suggest to me would be the relevant conduct. Now that
14 doesn't mean I will accept it, but they are the experts and
15 the arm of the Court. Then, when that's presented to me, I 01:54:24P
16 can tell both of you and the Rizzos whether or not I find
17 that within the realm of my acceptance. Of course I will
18 not early accept, but I can tell you at least that it's not
19 something that I would not accept.

20 We now need to talk about the nature of the 01:54:49P
21 substantial cooperation.

22 MR. CAPLAN: Your Honor, may I address the Court
23 with respect to the previous point for a moment?

24 THE COURT: Yes.

25 MR. CAPLAN: And of course, if the Court wishes 01:54:59P

1 to, I'll be happy to sit down with probation and work that
2 out.

3 What I did in going over this and explaining it
4 to the Rizzos was I prepared what I felt to be a worst-case
5 scenario sentencing situation, if you went to trial and 01:55:15P
6 lost on every single count, and I came out with 11 years
7 for Mr. Rizzo, and 7 years for Mrs. Rizzo, based upon
8 conviction on all counts, enhancements for role in the
9 offense and enhancements for obstruction of justice, and I
10 carefully parsed out all of the obstruction and perjury 01:55:42P
11 charges, to make sure all of the possible enhancements were
12 there.

13 In terms of the plea itself, the only
14 enhancement -- I don't see any enhancements for Mrs. Rizzo
15 being applicable, and possibly -- and on my research, there 01:55:57P
16 would be no enhancement of Mr. Rizzo for role in the
17 offense, on a careful parsing of the guidelines. As far as
18 obstruction, there is at least an argument that I would
19 present to the Court that since the conduct involving
20 obstruction is the identical conduct to the perjury charge, 01:56:16P
21 that it would not constitute an additional enhancement for
22 obstruction of justice. Therefore, I feel for those
23 reasons, your Honor, and felt comfortable in coming before
24 the Court and saying that this would be a plea that would
25 be, you know -- that all of the -- that the maximum 01:56:32P

1 sentence would certainly accommodate what they were
2 pleading to.

3 THE COURT: Well, and that's exactly what I
4 wanted to hear, that you gave them the worst-case scenario;
5 that would be that Mr. Rizzo -- that I sentence him to 11
6 years, based upon the most significant, or I'd say the most
7 serious view by this Court of his conduct.

01:56:47F

8 MR. CAPLAN: For example --

9 THE COURT: It could be 11 years, which would be
10 the guideline range, although the statutory range is 16
11 years.

01:57:06F

12 Okay.

13 MR. CAPLAN: In addition, your Honor, in that
14 calculation, for example, I took no deductions and things
15 of that nature. I took a maximum four levels for role in
16 the offense. I tried to really paint a worst-case
17 scenario.

01:57:22F

18 THE COURT: Okay. That's what I like to hear
19 from defense counsel, because it is your obligation,
20 although secondarily, and the government's obligation to
21 make sure that the defendants understand the worst-case
22 scenario.

01:57:33F

23 MR. CAPLAN: Thank you, your Honor, yes.

24 THE COURT: Okay. So we can go ahead, then,
25 having heard that.

01:57:44

1 MR. GROVES: Thank you, your Honor.

2 THE COURT: I will tell you that in my view, that
3 would be the guideline or the maximum that I would impose
4 on Mr. Rizzo, understanding it could be 16 years. There
5 might be an upward departure for some reason or another.

01:58:04P

6 Mrs. Rizzo is a little different, because as
7 you've said, the maximum she could serve now is --

8 MR. GROVES: Six years.

9 THE COURT: -- six years, and your calculation is
10 that it could be more than that if she had the worst-case
11 scenario.

01:58:25P

12 MR. CAPLAN: That is correct.

13 THE COURT: And the "more than that" would be
14 seven years?

15 MR. CAPLAN: That's correct, your Honor.

01:58:33P

16 THE COURT: Is that what I heard you --

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

18 THE COURT: All right. Then I will go ahead and
19 take the pleas based upon those representations made to the
20 Rizzos today, so that there is no misunderstanding at the
21 time of sentencing what they could have received, and that
22 they understand there have been no promises by counsel or
23 the Court as to what their sentence will be.

01:58:44P

24 MR. CAPLAN: That is also correct, and I also
25 told them that during the Court's plea inquiry, I would

01:59:05P

1 assume that the Court would advise them and I told them to
2 expect that the Court would advise that the Court is not
3 bound by our recommendations.

4 THE COURT: Oh, yes, I have a lengthy colloquy
5 with counsel -- or with the defendants. 01:59:17F

6 Now let's talk about the cooperation. What is
7 the nature of the cooperation?

8 MR. GROVES: The nature in this case, your
9 Honor --

10 MR. CAPLAN: May I now express a concern? Do we 01:59:29F
11 want to put this part of the hearing on a transcript that
12 anybody can access? I have no problem in discussing it
13 with your Honor, but I didn't know if this was too much
14 detail. That's all.

15 THE COURT: Well, that's the question I asked, 01:59:43F
16 whether or not it should be under seal. Ordinarily they
17 are for the reason I stated, which is one of the criteria
18 within 5K1.1. Not only will the transcript and these
19 proceedings be sealed, but if there is anyone in the
20 courtroom who should not be here, because it creates a 02:00:06F
21 risk, then I will ask politely that they remove themselves
22 from the courtroom.

23 MR. GROVES: Well, we would obviously
24 respectfully object, your Honor, with respect to that. The
25 plea is conditioned on it not being under seal and it being 02:00:24F

1 an open proceeding, because in order for them to cooperate
2 fully, it needs to be known that in fact the plea is being
3 entered. Now the exact precise cooperation is something
4 that can be addressed --

5 THE COURT: Let me see. Hold on for a second. 02:00:40P
6 Why does it need to be known that the plea is -- who needs
7 to know that?

8 MR. GROVES: In order for the defendants -- in
9 order for deterrence across the United States. These
10 defendants have been involved with other individuals in a 02:00:54P
11 long, nationwide tax protester movement, for lack of a
12 better word, your Honor. For their cooperation, not only
13 does it involve potentially testifying in other upcoming
14 trials of other individuals across the United States, but
15 it also involves being known that in fact the pleas are 02:01:14P
16 being entered, and they are acknowledging that they are --
17 that they have an obligation, like every other citizen, to
18 file tax returns and to not disregard the law, in contrast
19 to the presentation which the Court had seen --

20 THE COURT: Well, let me stop you for a second. 02:01:34P

21 If that is, and I understand it to be the partial
22 impetus for the government to enter into the plea
23 agreements, and that the government, and I thought
24 Mr. Caplan, were persuaded that there was no harm that
25 could occur to their clients or family, then it will not be 02:01:51P

1 under seal.

2 MR. CAPLAN: That is correct. I am not concerned
3 about harm, I just didn't know how deeply Mr. Groves wanted
4 to go into, you know, who specifically they were
5 cooperating against and that sort of thing.

02:02:08PM

6 THE COURT: I do, and I will tell you why,
7 because again, I do not want any misunderstanding.

8 I'm very familiar with motions for downward
9 departure based upon cooperation, and some are acceptable
10 and some are not. It requires substantial cooperation.
11 Usually the most substantial cooperation, where there is
12 very little question about whether or not the individual
13 received that departure, is where they act as an informant
14 and they are at risk, where they agree to testify, which
15 places them at risk, and those I have no problem with.

02:02:26PM

16 Here we have the two people in this Indictment
17 that were considered the most culpable in this scheme, and
18 so I'm very anxious to know what you expect they are going
19 to give the United States Government as recompense for a
20 possible substantially less egregious sentence.

02:02:51PM

02:03:18

21 MR. CAPLAN: If I may, your Honor, something that
22 you just said triggered something in my mind: On that
23 basis, of course, I have no objection to Mr. Groves going
24 forward. The one thing I would like to clarify to your
25 Honor is that while I say that Mr. Rizzo is not under any

02:03:33

1 risk in terms of -- he believes at the institution, or
2 Mrs. Rizzo, if the Court should release her at his parents'
3 home, but that is not to suggest that there is no risk,
4 given whom he expects to be testifying against of
5 retaliation in some form. Indeed there may definitely be 02:03:59P
6 that. I can go into it at another time, but the point is I
7 didn't want to concede or suggest to your Honor that there
8 is no physical risk, in addition to the fact that they are
9 prepared and expect to testify in front of grand juries and
10 at trials. 02:04:19P

11 THE COURT: Well, the one thing that we can do is
12 that this plea will be made public, however, the terms of
13 the cooperation will not.

14 MR. CAPLAN: Fair enough.

15 MR. GROVES: That's fine, your Honor. 02:04:28P

16 MR. CAPLAN: That would be great, your Honor.

17 THE COURT: But you both understand I need to
18 pursue what that will be.

19 Now is there anyone in the courtroom who should
20 not be present for this presentation? 02:04:37P

21 MR. CAPLAN: No, I don't think -- just

22 Mr. Rizzo's parents are in here, and he has no problem with
23 that, your Honor. I don't know any of the folks on that
24 side of the courtroom.

25 MR. GROVES: These are all representatives of the 02:04:51P

1 government, your Honor, that are in the court.

2 THE COURT: And they are representatives of the
3 government in this case?

4 MR. GROVES: That's correct, your Honor.

5 THE COURT: Okay. Then this portion of the plea
6 hearing will remain under seal until further order of the
7 Court.

8 MR. GROVES: That's fine, your Honor.

9 (Interim proceedings transcribed and filed under
10 seal.)

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02:05:02P

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Pages 19-24 are sealed, as agreed by all parties.

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THE COURT: That is absolutely perfect.

All right. For everybody in the courtroom, and David, this portion of the hearing is not under seal.

02:14:34P

Please, Mr. Caplan, bring your client forward.

MR. CAPLAN: Do you want John or Carol first, please?

THE COURT: John.

02:15:16P

MR. CAPLAN: John, please.

THE COURT: Please set forth your full name for the record.

DEFENDANT JOHN RIZZO: John Joseph Rizzo.

THE COURT: I'm going to ask Ms. Fredlund to place you under oath.

02:15:32P

THE CLERK: Raise your right hand.

Do you swear or affirm that the testimony you're about to give the Court in the matter now pending before it shall be the truth, the whole truth, and nothing but the

1 truth?

2 DEFENDANT JOHN RIZZO: Yes, ma'am.

3 THE CLERK: Thank you.

4 THE COURT: You understand now that you're under
5 oath?

02:15:43F

6 DEFENDANT JOHN RIZZO: Yes, ma'am.

7 THE COURT: And if you make any false statements,
8 those statements could be used against you in a separate
9 criminal proceeding for making false statements or for
10 perjury. Do you understand?

02:15:52F

11 DEFENDANT JOHN RIZZO: Yes, ma'am, I do.

12 THE COURT: How old are you?

13 DEFENDANT JOHN RIZZO: I am 52 years old.

14 THE COURT: How far did you go in school?

15 DEFENDANT JOHN RIZZO: Actually I completed high
16 school with a GED, and then went to the National Judicial
17 College in Reno, Nevada.

02:16:05F

18 THE COURT: What's the National Judicial College?

19 DEFENDANT JOHN RIZZO: That's where all people go
20 who are judges in the State of Arizona to get judicial
21 education when they hold judicial post.

02:16:17F

22 THE COURT: And your judicial post was what?

23 DEFENDANT JOHN RIZZO: I was a hearing officer in
24 the Tolleson Justice Court and an Assistant City Magistrate
25 for the City of Tolleson.

02:16:28F

1 THE COURT: All right. Have you recently been or
2 are you now under the care of a doctor or psychiatrist?

3 DEFENDANT JOHN RIZZO: I am under the care of a
4 doctor right now, yes.

5 THE COURT: And for what?

02:16:39P

6 DEFENDANT JOHN RIZZO: I have some heart
7 problems. While I was at CCA, they had some x-rays that
8 show a spot on my lung, which they're not going to
9 investigate any further. I am taking -- I'm not taking
10 today, but I'm under treatment for anxiety and depression,
11 and I've taken no medications today, so that I could be
12 totally alert and would have no problems with this plea
13 whatsoever. I made sure of that, and I spoke with the
14 doctor -- excuse me, for one second --

02:16:52P

15 Was it yesterday that I saw Dr. Miller?

02:17:09P

16 DEFENDANT CAROL RIZZO: Yesterday.

17 DEFENDANT JOHN RIZZO: Yesterday. I want to be
18 accurate.

19 THE COURT: So have you in the last 24 hours
20 taken any medicine, pills, drugs, any kind of mood-altering
21 medication?

02:17:18P

22 DEFENDANT JOHN RIZZO: No, ma'am, nothing.

23 THE COURT: All right. And your mind is clear
24 today?

25 DEFENDANT JOHN RIZZO: Yes, it is.

02:17:29P

1 THE COURT: Now have you been hospitalized for
2 any kind of psychiatric problem or emotional problem, or
3 any type of addiction?

4 DEFENDANT JOHN RIZZO: Nothing with regard to
5 addiction, your Honor. No hospitalization. With regard to
6 psychiatric problems, I did have two emergency room visits
7 for anxiety, which was kind of chest pain things.

8 THE COURT: And was that recent?

9 DEFENDANT JOHN RIZZO: No, that was within the
10 last -- I've been at CCA 10 months, so I'm going to say
11 within the last three years. That certainly is an
12 estimate, though.

13 THE COURT: Oh, okay. So three years ago you
14 were hospitalized for anxiety?

15 DEFENDANT JOHN RIZZO: Well, it was just an
16 emergency room visit.

17 THE COURT: That's what I'm asking you.

18 DEFENDANT JOHN RIZZO: And released, yes.

19 THE COURT: Okay. Fine.

20 DEFENDANT JOHN RIZZO: I was getting chest pains.

21 THE COURT: All right. Fine.

22 Let me ask counsel, do either of you have any
23 reason to believe that Mr. Rizzo is not competent to enter
24 an informed plea today?

25 MR. CAPLAN: None whatsoever, your Honor.

1 MR. GROVES: None whatsoever, your Honor.

2 THE COURT: All right. I've been told, and I
3 have the plea agreement in front of me, that you wish to
4 plead guilty, pursuant to this plea agreement.

5 DEFENDANT JOHN RIZZO: Yes, ma'am, that's
6 correct.

02:18:39P

7 THE COURT: Is that correct?

8 Now have you had a full opportunity to talk with
9 your attorney concerning what is contained in the
10 agreement, and particularly what the consequences are of
11 pleading guilty, and pleading to this plea agreement?

02:18:46P

12 DEFENDANT JOHN RIZZO: Yes, ma'am. We spent a
13 great part of yesterday with both myself and my wife at CCA
14 going through this.

15 THE COURT: All right.

02:18:58P

16 MR. CAPLAN: In addition, your Honor, if I may,
17 this plea agreement went through numerous drafts, and there
18 were numerous communications and other meetings with both
19 Mr. and Mrs. Rizzo in regard to the plea agreement, the
20 terms of the plea agreement, and very careful word-by-word
21 analysis of both plea agreements with both defendants.

02:19:13P

22 DEFENDANT JOHN RIZZO: And your Honor, if I may
23 add, they were both not only read to us over the telephone,
24 but we also had possession of the plea agreements before
25 Mr. Caplan arrived yesterday to discuss them with us, so we

02:19:27P

1 did have an opportunity to read them before he came to talk
2 to us.

3 THE COURT: All right. I am satisfied --

4 DEFENDANT JOHN RIZZO: So we are well aware --

5 THE COURT: -- based upon Mr. Rizzo's answers,
6 and based upon the thorough analysis that Mr. Caplan
7 conducted, that you are fully informed and fully competent
8 to enter a plea today.

02:19:35F

9 Now before I accept the plea, I have to ask you
10 quite a bit about what you did. This is intended for me to
11 ascertain whether or not you can plead guilty, and whether
12 you can plead guilty pursuant to this plea agreement,
13 understanding, of course, that you must know the
14 consequences. I will be asking you those questions, and if
15 you have any question of me, please let me know or talk
16 with Mr. Caplan. Will you do that?

02:19:53F

02:20:14F

17 DEFENDANT JOHN RIZZO: Yes, ma'am.

18 THE COURT: All right. Now I presume that you
19 believe that there is some benefit to you in pleading
20 guilty, and pleading guilty pursuant to this plea
21 agreement?

02:20:27F

22 DEFENDANT JOHN RIZZO: Yes, ma'am, I do believe
23 there is some benefit to me in the long run, yes.

24 THE COURT: All right. Whatever benefit you
25 believe exists is not the reason to plead guilty.

02:20:36F

1 DEFENDANT JOHN RIZZO: That is correct.

2 THE COURT: You must plead guilty only if you are
3 guilty and for no other reason. Do you understand?

4 DEFENDANT JOHN RIZZO: Yes, ma'am.

5 THE COURT: So we set the benefits aside.

02:20:45F

6 All right. You have certain rights, and I'm sure
7 Mr. Caplan has told you about them, under the Constitution
8 and the statutes of the United States Government. I'm
9 going to go over them with you, each time asking you if you
10 understand.

02:21:01F

11 First of all, you're entitled to a speedy, public
12 trial on the charges which are contained in the Superseding
13 Indictment, and that is to occur in this district.
14 Throughout that trial you are presumed innocent. That
15 means that it's the government's obligation to prove you
16 guilty beyond a reasonable doubt. You do not have to prove
17 your innocence. Do you understand?

02:21:18F

18 DEFENDANT JOHN RIZZO: Yes, ma'am, I do.

19 THE COURT: Now you would be, at trial, in front
20 of a jury composed of 12 persons, and they would have to
21 agree unanimously that you were guilty beyond a reasonable
22 doubt. Do you understand?

02:21:33F

23 DEFENDANT JOHN RIZZO: Yes, ma'am, I do.

24 THE COURT: And if there was a trial, your
25 attorney could cross-examine the witnesses, and you could

02:21:45F

1 present evidence on your own behalf, if you chose to. Do
2 you understand?

3 DEFENDANT JOHN RIZZO: Yes, ma'am.

4 THE COURT: And of course you would be entitled
5 to be represented by counsel of your choice, but if you
6 could not afford counsel, counsel would be afforded and
7 paid for by the United States Government. Do you
8 understand?

9 DEFENDANT JOHN RIZZO: Yes, ma'am, I do.

10 THE COURT: All right. You would have the right
11 to confront the witnesses that the government presents. Do
12 you understand?

13 DEFENDANT JOHN RIZZO: Yes, ma'am.

14 THE COURT: You would have the right to testify,
15 but only if you chose to. If you decided not to, your
16 silence could not be used against you. Do you understand?

17 DEFENDANT JOHN RIZZO: Yes, ma'am, I do.

18 THE COURT: All right. Did you understand all of
19 those constitutional and statutory rights as I have set
20 them forth for you?

21 DEFENDANT JOHN RIZZO: Yes, ma'am, I did
22 understand everything that you explained to me and I'm
23 familiar with it.

24 THE COURT: Okay. Now as I stated earlier,
25 because I need to determine what you did, and whether or

1 not what you did, that is your activities and conduct,
2 constitutes the crimes to which you are pleading guilty,
3 I'm going to have to ask you questions and you will have to
4 answer those questions fully and completely, even if those
5 questions incriminate you. Do you understand?

02:23:07F

6 DEFENDANT JOHN RIZZO: Yes, ma'am.

7 THE COURT: And even if they tend to incriminate
8 you. Do you understand?

9 DEFENDANT JOHN RIZZO: Yes, ma'am.

10 THE COURT: So are you willing, then, in entering
11 into this plea and your plea agreement, to waive your right
12 not to incriminate yourself?

02:23:17F

13 DEFENDANT JOHN RIZZO: Yes, ma'am, I am.

14 THE COURT: Okay. Now as you know, you were
15 charged in the Indictment with a number of offenses, but
16 according to this Indictment -- or to this plea agreement,
17 you are pleading to a violation of Title 18, United States
18 Code, Section 317 -- 371, Conspiracy to Defraud the United
19 States. It is punishable by a fine of \$250,000; a maximum
20 term in prison of five years, or both; and a three-year
21 term of supervised release. Do you understand that?

02:23:30F

22 DEFENDANT JOHN RIZZO: Yes, ma'am, I do.

23 THE COURT: You are also pleading to a violation
24 of Title 18, United States Code, Section 1623, False
25 Declarations Before a Grand Jury of the United States,

02:23:57F

02:24:15F

1 punishable by a fine of \$250,000; a maximum term of
2 imprisonment of five years, or both; and three years of
3 supervised release. Do you understand?

4 DEFENDANT JOHN RIZZO: Yes, ma'am, I do.

5 THE COURT: And you are pleading to a violation
6 of Title 26, United States Code, Section 7203, Willful
7 Failure to File a Federal Income Tax Return. That is a
8 misdemeanor offense and is punishable by a fine of
9 \$250,000; a term of imprisonment not to exceed one year, or
10 both; and a term of supervised release of one year. Do you
11 understand?

12 DEFENDANT JOHN RIZZO: Yes, ma'am.

13 Can I ask my attorney a question very quickly?

14 THE COURT: Yes.

15 (Defendant John Rizzo confers with Mr. Caplan.)

16 MR. CAPLAN: Just to clarify, your Honor,
17 Mr. Rizzo wanted to know that while this is for the 2000
18 return, I explained to him that relevant conduct will
19 include all of the years in the Indictment. It will not
20 be -- I mean in the conspiracy, and not be limited to the
21 single year in which he would be pleading.

22 THE COURT: Thank you, Mr. Caplan.

23 You understand what Mr. Caplan has said is that
24 although this involves one particular return, the total
25 amount that you could have defrauded the government for

34

1 that return may be much less than all of the fraud in which
2 you engaged and the cost to the government, and I must
3 consider all, the total amount of fraud in which you
4 engaged. Do you understand?

5 DEFENDANT JOHN RIZZO: Yes, ma'am, I do. I just 02:26:08F
6 wanted to be sure that I was clear in my mind that the
7 failure to file was limited to the 2000 tax year, as you
8 were explaining it to me, without taking into consideration
9 the relevant conduct. I understood what Mr. Caplan told me
10 and it's clear now. 02:26:23F

11 THE COURT: Okay. You understand what relevant
12 conduct is?

13 DEFENDANT JOHN RIZZO: Yes, I do.

14 THE COURT: I'm not sure why you asked that
15 question, because if you understood the relevant conduct, I 02:26:30F
16 want to make sure you don't misunderstand that relevant
17 conduct is often much broader than the particular offense
18 to which you're pleading. Do you understand?

19 DEFENDANT JOHN RIZZO: I understand.

20 THE COURT: The important thing is, for my 02:26:51F
21 purposes in sentencing, I can find the relevant conduct
22 based upon what I determine on my own to believe, with the
23 assistance of the probation office, and I could sentence
24 you to the maximum consecutive for all of these crimes,
25 which is 16 years. Do you understand? 02:27:04F

1 DEFENDANT JOHN RIZZO: I understand.

2 THE COURT: Okay. And this particular
3 misdemeanor also includes, as some statutes do, that you
4 would have to pay the costs of the prosecution. Do you
5 understand?

02:27:20P

6 DEFENDANT JOHN RIZZO: Yes, ma'am, I do.

7 THE COURT: And that's been explained to you?

8 DEFENDANT JOHN RIZZO: Yes.

9 THE COURT: Now you are also charged with a
10 violation of Title 26, United States Code, Section 7206(2),
11 Aiding and Assisting in the Preparation and Presentation of
12 a False and Fraudulent Income Tax Return, a felony offense,
13 and that is punishable by \$250,000; a term of imprisonment
14 of three years, or both; and a three-year term of
15 supervised release. Do you understand?

02:27:31P

02:27:54P

16 DEFENDANT JOHN RIZZO: Yes, ma'am, I do.

17 THE COURT: Now the Court can sentence you
18 concurrently, or it can sentence you consecutively, which
19 means one after the other. The total amount of time that
20 you could receive if I sentenced you consecutively, and if
21 I sentenced you to the maximum term, is 16 years. Do you
22 understand?

02:28:13P

23 DEFENDANT JOHN RIZZO: Yes, ma'am, I do.

24 THE COURT: You are also required to make
25 restitution according to the law, and that's determined by

02:28:23P

1 the probation office. While you are on supervised release,
2 that will have to be paid. Do you understand?

3 DEFENDANT JOHN RIZZO: Yes, ma'am, I do.

4 THE COURT: And also the fine. I must order you
5 to pay the fine, the costs of prosecution, if it's
6 permitted, the costs of supervised release, unless I
7 determine you don't have the ability to pay. Do you
8 understand?

02:28:36P

9 DEFENDANT JOHN RIZZO: Yes, ma'am.

10 THE COURT: Now the supervised release here for
11 each crime either constitutes a couple of years, or one
12 year, or three years. All of your supervised release would
13 be concurrent, so for all of the crimes it would be three
14 years total. Do you understand?

02:28:52P

15 DEFENDANT JOHN RIZZO: Yes, ma'am.

02:29:07P

16 THE COURT: And you understand that supervised
17 release is somewhat like parole, but parole has been
18 abolished by the federal government. It means, however,
19 that there will be restrictions on your release, and if you
20 violate any of those restrictions, then you could be
21 re-incarcerated, and the amount of time you could spend in
22 re-incarceration is two years. Do you understand?

02:29:24P

23 DEFENDANT JOHN RIZZO: Yes, ma'am.

24 THE COURT: Now I am, as you know, required to
25 follow the sentencing guidelines, and I know you've talked

02:29:38P

1 about that with Mr. Caplan, because both of you have
2 mentioned that; is that correct?

3 DEFENDANT JOHN RIZZO: Yes, ma'am, it is.

4 THE COURT: The first office that engages in the
5 final determination of what the sentencing guidelines are
6 is the probation office, and they seek information from you
7 and from Mr. Groves, and any other relevant information,
8 and they will establish what the guideline range is from
9 their perspective. You will have an opportunity to
10 challenge that guideline range, and the government will,
11 too, before I make a decision. Do you understand?

12 DEFENDANT JOHN RIZZO: Yes, ma'am, I do.

13 THE COURT: All right. Despite what that
14 guideline range is, you understand that I have the right to
15 impose a sentence above the guidelines --

16 DEFENDANT JOHN RIZZO: Yes, ma'am, I understand.

17 THE COURT: -- up to 16 years.

18 I could also, as is contemplated in the plea
19 agreement, reduce your sentence or guideline sentence. Do
20 you understand?

21 DEFENDANT JOHN RIZZO: Yes, ma'am.

22 THE COURT: And I'm the one who will make that
23 decision. Do you understand?

24 DEFENDANT JOHN RIZZO: Yes, ma'am.

25 THE COURT: All right. So you understand that

1 whatever estimate you have heard as to what your sentence
2 will be is only an estimate, and whoever gave you that
3 estimate could be wrong. Do you understand?

4 DEFENDANT JOHN RIZZO: Yes, ma'am, I do.

5 THE COURT: So no one can give you an assurance 02:31:15P
6 today, or any time before sentencing, as to what your
7 guideline range will be or what your sentence will be. Do
8 you understand?

9 DEFENDANT JOHN RIZZO: Yes, I do.

10 THE COURT: I'm going to now ask Mr. Caplan once 02:31:32P
11 again to tell the Court and tell you whether or not he
12 estimated what your guideline range would be.

13 Did you?

14 MR. CAPLAN: Yes, I did, your Honor.

15 THE COURT: And when you did, did you tell 02:31:41P
16 Mr. Rizzo that it was only an estimate?

17 MR. CAPLAN: Yes, I certainly did.

18 THE COURT: And you agree?

19 DEFENDANT JOHN RIZZO: Yes, ma'am, I do.

20 THE COURT: All right. So you understand, if 02:31:51P
21 your sentence is different from what you have expected,
22 based upon what you have been told or what you know
23 independently, you could be wrong?

24 DEFENDANT JOHN RIZZO: Absolutely.

25 THE COURT: And if the sentence that I impose is 02:32:08P

39

1 different from what you expect today, or what you think
2 you're going to agree to, you will have no right to
3 withdraw from the plea and the plea agreement, unless my
4 sentence is not allowed by law. Do you understand?

5 DEFENDANT JOHN RIZZO: Yes, ma'am, I do. 02:32:17P

6 THE COURT: Okay. Now you have the original
7 agreement in front of you?

8 MR. CAPLAN: Yes, your Honor.

9 THE COURT: And I have a copy of it. I know you
10 signed the agreement; correct? 02:32:31P

11 DEFENDANT JOHN RIZZO: Yes, I did.

12 THE COURT: And did you read it before you signed
13 it?

14 DEFENDANT JOHN RIZZO: Yes, ma'am, I did.

15 THE COURT: Did you discuss it with your attorney
16 before you signed it? 02:32:37P

17 DEFENDANT JOHN RIZZO: Yes, ma'am.

18 THE COURT: And does it comprise your full
19 understanding of your agreement with the United States
20 Government? 02:32:45P

21 DEFENDANT JOHN RIZZO: Yes, ma'am, it does.

22 THE COURT: All right. Now has anyone offered
23 you any type of inducements or threatened you or forced you
24 to, first of all, plead guilty?

25 DEFENDANT JOHN RIZZO: No, ma'am, no one has. 02:33:03P

1 THE COURT: And with respect to entering into
2 this plea agreement, has anyone forced you to enter into
3 this plea agreement?

4 DEFENDANT JOHN RIZZO: No, ma'am.

5 THE COURT: And you understand, too, that you
6 will waive your right to appeal within this plea agreement?

02:33:13P

7 MR. CAPLAN: No, your Honor, we have not waived
8 our right to appeal. Very specifically in the plea
9 agreement is a provision, your Honor, if we contest the
10 issues of relevant conduct, of role in the offense, or
11 enhancements for obstruction, that would not in itself be
12 lack of acceptance of responsibility and we would have a
13 right to appeal those limited things.

02:33:29F

14 I'm sorry, I'll find that particular --

15 THE COURT: No, I'm looking at it now.

02:33:51F

16 MR. CAPLAN: I'm sorry.

17 THE COURT: That's fine.

18 MR. GROVES: Page 8.

19 THE COURT: The first sentence seems inconsistent
20 with the second. The first sentence says:

02:34:15F

21 "The defendant is waiving his right to raise on
22 appeal or collaterally attack any matter
23 pertaining to this prosecution and sentence if
24 the sentence imposed is consistent with the terms
25 of this agreement."

02:34:28F

1 MR. CAPLAN: And that would be true, your Honor.
2 The second sentence is a limitation on that general waiver
3 for the particular items that are specifically identified
4 in the second sentence.

5 THE COURT: Well, I guess if I were to have 02:34:50P
6 written it, I would say "any matter, except what is set
7 forth in this section," but everybody understands what that
8 means; okay?

9 MR. CAPLAN: I think your Honor may be correct in
10 terms of wording, but I think -- 02:35:02P

11 THE COURT: Just plain old syntax. I was caught
12 by the first sentence, and I didn't read the rest.

13 Okay. Now you have retained your right to
14 challenge and to appeal the guideline computations as to
15 the amount of tax loss. Do you understand that? 02:35:18P

16 DEFENDANT JOHN RIZZO: Yes, ma'am.

17 THE COURT: The grouping of offenses. Do you
18 understand that?

19 DEFENDANT JOHN RIZZO: Yes, ma'am.

20 THE COURT: Your role in the offense. Do you 02:35:25P
21 understand that?

22 DEFENDANT JOHN RIZZO: Yes, ma'am.

23 THE COURT: That will not constitute a breach of
24 the plea agreement, and you can do that. Do you understand
25 that? 02:35:34P

1 DEFENDANT JOHN RIZZO: Yes, ma'am.

2 THE COURT: You need to understand now, and I'm
3 sure Mr. Caplan may have told you this, but let me tell you
4 that we could have a hearing on that. I will make the
5 determination of what the tax loss is, what the grouping of
6 the offenses is and what the role in the offenses is, and
7 it will be my final determination. Do you understand that?

02:35:54P

8 DEFENDANT JOHN RIZZO: Yes, ma'am.

9 THE COURT: You can present evidence, and that
10 determination is made by the standard of preponderance of
11 the evidence, not proof beyond a reasonable doubt. Do you
12 understand?

02:36:06P

13 DEFENDANT JOHN RIZZO: Yes, ma'am.

14 THE COURT: Sometimes clear and convincing
15 evidence applies, which is in between preponderance and
16 proof beyond a reasonable doubt, but we'll leave that for
17 later.

02:36:16P

18 MR. CAPLAN: I have also, your Honor, advised
19 both Mr. and Mrs. Rizzo that even with respect to appeal,
20 generally the Court's findings of fact are accepted on
21 appeal, unless clearly erroneous, and that's a rare
22 occurrence by an appellate court. They generally restrict
23 themselves to whether the guidelines were properly applied.

02:36:31P

24 THE COURT: And I appreciate that, thank you.
25 That is absolutely, unequivocally the law. There will be

02:36:46P

1 findings of fact, but if I made a mistake on the law, then
2 the Ninth Circuit can review it de novo, which means all
3 over again. Is that clear?

4 DEFENDANT JOHN RIZZO: Yes.

5 THE COURT: Okay. The government has a right to
6 appeal on any issue, and you're waiving the right for an
7 award of attorney's fees or other litigation expenses that
8 may be available pursuant to public law, and that is
9 federal law; is that correct?

02:37:13P

10 DEFENDANT JOHN RIZZO: Yes, ma'am.

02:37:36P

11 THE COURT: Okay. Now we have talked about this
12 quite a bit, but let me make it clear: If I reject this
13 agreement for any reason, other than I am rejecting the
14 agreement between you and the United States Government, and
15 that rejection is legal, you will not have an opportunity
16 to withdraw. Do you understand?

02:38:04P

17 DEFENDANT JOHN RIZZO: I'm not --

18 THE COURT: I'll explain it.

19 DEFENDANT JOHN RIZZO: Okay. Please.

20 THE COURT: The agreement has provisions in it,
21 and they are stipulated between you and Mr. Groves.

02:38:13P

22 DEFENDANT JOHN RIZZO: Yes.

23 THE COURT: If I do not accept the agreement,
24 because I do not agree to your stipulations, then you will
25 have a right to withdraw --

02:38:25P

1 DEFENDANT JOHN RIZZO: I understand.

2 THE COURT: -- and go to trial, or renegotiate,
3 whatever you wish. If I do not accept this agreement, and
4 that has nothing to do with your stipulations with the
5 government, you do not have a right to withdraw. Do you
6 understand now? 02:38:43P

7 DEFENDANT JOHN RIZZO: Yes, ma'am, I do.

8 THE COURT: I am not sure. I have yet to have
9 that occur.

10 Actually on one occasion it did occur, and it 02:38:50P
11 was -- there is no use in my telling you what it was, but
12 there was an odd circumstance that occurred after the plea
13 was taken, and I knew I had to not accept the agreement.
14 It was not -- it had nothing to do with a stipulation
15 between the defendant and counsel. That's what I mean. 02:39:16P

16 MR. CAPLAN: I guess I'm a little confused, your
17 Honor. If the Court were to not accept the agreement
18 because of one of these provisions that, at a later point
19 in time -- I'm --

20 THE COURT: No, no, one of the provisions -- it 02:39:29P
21 may be independent of the provisions that I feel, as a
22 matter of law, I can't accept the agreement, which has
23 nothing to do with your stipulations concerning what your
24 client is going to do and what the potential sentence will
25 be, based upon your agreements which have been tailored for 02:39:51P

1 this case. Do you understand?

2 MR. CAPLAN: Okay.

3 THE COURT: Do you understand?

4 MR. CAPLAN: Yes, your Honor.

5 THE COURT: All right. Now the government's
6 going to make a recommendation as to what your sentence
7 will be, and you will make a recommendation in consultation
8 with your lawyer, but you understand, once again, that I
9 have complete power and authority to disregard the
10 government's recommendation for a downward departure, the
11 government's recommendation for what your sentence should
12 be, and your recommendation and your attorney's
13 recommendation for what your sentence will be. Do you
14 understand?

02:39:57P

02:40:23P

15 DEFENDANT JOHN RIZZO: Yes, ma'am, I do.

02:40:38P

16 THE COURT: If that is all, if those
17 recommendations are all within the parameters of this
18 agreement, you will not have an opportunity to withdraw
19 your plea or the plea agreement. Do you understand?

20 DEFENDANT JOHN RIZZO: I understand.

02:40:50P

21 THE COURT: Mr. Caplan, do you know of any valid
22 defense that would apply, or any other reason why your
23 client should not plea and plead pursuant to this plea
24 agreement?

25 MR. CAPLAN: Your Honor, I don't know of any

02:41:14P

1 reason why my client should not plead to this plea
2 agreement.

3 THE COURT: That's all you have to say.

4 MR. CAPLAN: Thank you.

5 THE COURT: Okay. Now you need to tell me what
6 you did that constitutes the charges in the plea agreement.
7 Let's start with the elements.

02:41:22P

8 First of all, let me ask the government to set
9 forth what the elements are for each of the offenses.

10 MR. GROVES: Yes, your Honor. As contained in
11 the plea agreement, beginning on page 10, the first
12 count --

02:42:07P

13 THE COURT: Mr. Rizzo and Mr. Caplan, you may
14 follow along.

15 MR. CAPLAN: Certainly.

02:42:19P

16 MR. GROVES: Under Count 1, Conspiracy to Defraud
17 the United States Government:

18 First, the government must prove that there
19 existed a conspiracy, agreement or understanding to defraud
20 the United States by dishonest and deceitful means for the
21 purpose of impeding, impairing, obstructing and defeating
22 the lawful governmental functions of the United States
23 Department of Treasury, Internal Revenue Service, in the
24 ascertainment, computation and collection of income taxes
25 as described in the Indictment, was formed, reached or

02:42:30P

02:42:47P

1 entered into by two or more persons;

2 Second, at some point during the existence or
3 life of the conspiracy, agreement, or understanding, one of
4 its members knowingly performed one of the overt acts
5 charged in the Indictment, in order to further or advance
6 the purpose of the agreement; and,

02:43:02P

7 Third, at some point during the existence of the
8 agreement or understanding, the defendant knew the purpose
9 of the agreement and then deliberately joined in the
10 conspiracy, agreement, or understanding.

02:43:16P

11 That's as to Count 1. Does the Court wish me to
12 go on?

13 THE COURT: Yes.

14 MR. GROVES: As to Count 2 of the Superseding
15 Indictment, False Declarations Before a Grand Jury of the
16 United States:

02:43:28F

17 First, the government must prove that the
18 defendant testified under oath before a Grand Jury, federal
19 Grand Jury;

20 Second, the testimony was false; and,

02:43:39F

21 Third, the defendant knew the testimony was
22 false, and material to a matter before the Grand Jury.

23 Willful Failure to File an Income Tax Return:

24 First, the tax code or some regulation thereunder
25 required the defendant to make a tax return reporting gross

02:43:53F

1 income, and any deductions and credits for the calendar
2 year, in this case, ending December 31st, 2000;

3 Second, defendant failed to make and file the tax
4 return to the Internal Revenue Service on or before April
5 15th, 2001; and,

02:44:10P

6 Third, the defendant's failure to file the income
7 tax return was willful.

8 The fourth count the defendant is pleading guilty
9 to, which is Count 18 of the Superseding Indictment, is
10 Aiding and Assisting in the Filing of a False Income Tax
11 Return:

02:44:23P

12 First, the government must prove that the
13 defendant aided and assisted in the preparation of a tax
14 return, affidavit, claim or other document;

15 Second, the return, affidavit, claim or other
16 document contained a materially false statement; and

02:44:33F

17 Third, the defendant's actions were willful.

18 THE COURT: You understand that those are the
19 elements the government would have to prove at the time of
20 trial?

02:44:49F

21 DEFENDANT JOHN RIZZO: Yes, ma'am.

22 THE COURT: All right. There is a recitation of
23 a variety of different facts set forth, starting on page
24 11, 12, 13, and part of 14, which I believe is meant to set
25 forth all of your activities that constitute the offenses

02:45:16F

1 in this case; is that correct?

2 DEFENDANT JOHN RIZZO: Yes, ma'am.

3 MR. CAPLAN: Your Honor, just, again, for
4 clarification, they don't necessarily set forth all of the
5 activities, because that might have, you know, been very
6 lengthy, but they set forth activities which are sufficient
7 to constitute guilt to each of the offenses. I'm thinking
8 particularly of the conspiracy to defraud.

02:45:29P

9 THE COURT: Okay. And counsel?

10 MR. GROVES: That's correct, your Honor.

02:45:44P

11 THE COURT: And you have read and essentially
12 sworn under oath that these facts are accurate?

13 DEFENDANT JOHN RIZZO: Yes, ma'am.

14 THE COURT: All right.

15 MR. CAPLAN: There is one fact and only one fact
16 where I think I should put something on the record, and
17 this is the level to which we have been parsing this out,
18 your Honor.

02:45:55P

19 If your Honor will look at page 12, lines 20
20 through 23 --

02:46:12P

21 THE COURT: Okay.

22 MR. CAPLAN: -- with regard to the offshore bank
23 accounts, I think that this is accurate, however, we did
24 want to clarify that with regard to the Ansbacher Bank in
25 Nassau, which is one of the offshore accounts, the Rizzos

02:46:30P

1 intended to open an account there. However, the person
2 that was supposed to be opening that account apparently
3 never did and stole some money from them, but they did have
4 an intent to open that bank account. I just wanted to
5 clarify that it may never have actually been opened on the
6 books of the Ansbacher Bank, but forms were filled out,
7 purportedly, to do that.

02:46:52P

8 THE COURT: All right. Thank you.

9 Is that correct, Mr. Rizzo?

10 DEFENDANT JOHN RIZZO: Yes, ma'am, it is.

02:47:09P

11 THE COURT: All right. With respect to -- well,
12 let me ask you this: Having now read the recitation of
13 what the factual basis is, did you, when you committed
14 those acts and engaged in those activities that may well be
15 fulsome later, did you know what you were doing was wrong
16 and illegal?

02:47:26P

17 DEFENDANT JOHN RIZZO: The answer is yes.

18 THE COURT: All right. To the first count, which
19 is a violation of 18, United States Code, Section 317,
20 Conspiracy to --

02:47:49P

21 MR. CAPLAN: 371, your Honor, I'm sorry.

22 THE COURT: 371 again. I'm going to be saying
23 that for the rest of my career now.

24 MR. GROVES: My apologies, your Honor.

25 MR. CAPLAN: Mine as well, your Honor. I should

02:48:03P

1 have caught that also.

2 THE COURT: That's all right.

3 -- Conspiracy to Defraud the United States
4 Government, guilty or not guilty?

5 DEFENDANT JOHN RIZZO: Guilty, your Honor.

02:48:10P

6 THE COURT: Okay. And for the violation of 18,
7 United States Code, Section 1623, Making False Declarations
8 Before a Grand Jury of the United States, do you plead
9 guilty or not guilty?

10 DEFENDANT JOHN RIZZO: Guilty, your Honor.

02:48:20P

11 THE COURT: For the violation of Title 26, United
12 States Code, Section 7203, Willful Failure to File a
13 Federal Income Tax Return, do you plead guilty or not
14 guilty?

15 DEFENDANT JOHN RIZZO: Guilty, your Honor.

02:48:38P

16 THE COURT: For a violation of Title 26, United
17 States Code, Section 7206(2), Aiding and Abetting in the
18 Preparation and Presentation of a False Or Fraudulent
19 Income Tax Return, do you plead guilty or not guilty?

20 DEFENDANT JOHN RIZZO: Guilty, your Honor.

02:48:55P

21 THE COURT: Now are you pleading guilty of your
22 own free will?

23 DEFENDANT JOHN RIZZO: Yes, ma'am.

24 THE COURT: And are you pleading guilty because
25 you are guilty?

02:49:02P

1 DEFENDANT JOHN RIZZO: Yes, ma'am.

2 THE COURT: And is this a voluntary plea?

3 DEFENDANT JOHN RIZZO: Yes, ma'am.

4 THE COURT: All right. Because you have now

5 acknowledged that you are guilty to all the charges set

02:49:10F

6 forth in the Superseding Indictment --

7 MR. CAPLAN: Not all of the charges, these

8 charges.

9 THE COURT: All the charges set forth in the plea

10 agreement --

02:49:21F

11 MR. CAPLAN: Thank you, your Honor.

12 THE COURT: -- represented by the Superseding

13 Indictment, and you know your rights and you have waived

14 them here today voluntarily, and that the counts to which

15 you are pleading have an adequate factual basis, I'm going

02:49:34F

16 to accept your plea today, and you understand, for the

17 reasons previously stated, I could decide not to accept

18 your plea agreement. If I don't accept your plea agreement

19 based upon a disagreement with your stipulations with the

20 government, you will have an opportunity to withdraw. Do

02:49:55F

21 you understand?

22 DEFENDANT JOHN RIZZO: I believe I do, yes.

23 THE COURT: Well, if you have any question --

24 DEFENDANT JOHN RIZZO: Can I ask the Court very

25 quickly?

02:50:04F

1 THE COURT: Sure.

2 DEFENDANT JOHN RIZZO: You're saying that you're
3 accepting my agreement today --

4 THE COURT: No, I'm accepting only the plea
5 today.

02:50:11F

6 DEFENDANT JOHN RIZZO: Plea, okay.

7 THE COURT: I am taking the plea agreement under
8 advisement.

9 DEFENDANT JOHN RIZZO: Okay. Thank you.

10 THE COURT: That plea agreement will be resolved
11 at the time of sentencing.

02:50:16F

12 DEFENDANT JOHN RIZZO: Okay.

13 THE COURT: Now I went through some detail in
14 discussing the requirements under this plea agreement and
15 the factors with could affect your sentence, such as
16 relevant conduct --

02:50:29F

17 DEFENDANT JOHN RIZZO: Yes.

18 THE COURT: -- in order to ascertain where you
19 were and where the government was, so there was no

20 misunderstanding that you are, to some extent, taking a
21 risk by going forward and cooperating. It's going to be

02:50:41F

22 the government's hope that you do everything that they ask
23 you to do, so that they can come before the Court and move

24 for a downward departure, and sometimes request a certain

25 type of sentence, but I need to let you know that I may not

02:51:08F

1 agree, and that would be a reason for me to not accept the
2 plea agreement. Do you understand?

3 DEFENDANT JOHN RIZZO: I understand now, thank
4 you.

5 THE COURT: Okay. Also I need to hear from the 02:51:18P
6 probation office before I sentence you, as do you and the
7 United States Government. Do you understand?

8 DEFENDANT JOHN RIZZO: Yes, ma'am.

9 THE COURT: All right. We have this set for
10 trial? 02:51:33P

11 THE CLERK: Yes.

12 THE COURT: Okay. The trial date is vacated, and
13 your sentencing will be set six months from today.

14 THE CLERK: Monday, September 27th at 1:00
15 o'clock. 02:51:44P

16 THE COURT: In the meantime, the probation office
17 will prepare that report, and I strongly urge you to
18 participate with them, and participate honestly and fully,
19 because your participation will certainly affect what
20 sentence I give you. Do you understand? 02:52:00P

21 DEFENDANT JOHN RIZZO: Yes, ma'am.

22 THE COURT: Okay.

23 DEFENDANT JOHN RIZZO: Once again, can I ask the
24 Court a question?

25 THE COURT: Yes. 02:52:10P

1 DEFENDANT JOHN RIZZO: Can you tell me when the
2 probation department will do that?

3 MR. CAPLAN: We'll work that out.

4 THE COURT: You can work that out, and frankly,
5 the probation office is not going to be interested in
6 working on this while you are cooperating.

02:52:16P

7 DEFENDANT JOHN RIZZO: That was my question.

8 THE COURT: Okay.

9 DEFENDANT JOHN RIZZO: Thank you.

10 THE COURT: I think I didn't listen well, Sandi;
11 six months?

02:52:24P

12 THE CLERK: I gave it September 27th.

13 THE COURT: September 27th.

14 All right. You are continued to be remanded to
15 the custody of the United States Marshal until sentencing.

02:52:33P

16 DEFENDANT JOHN RIZZO: Yes, ma'am.

17 THE COURT: Now you understand I didn't go
18 through the terms of the plea agreement because I'm very
19 satisfied by the answers and colloquy I've had with your
20 counsel that you fully understand what the nature of your
21 cooperation is in terms of what your activities and conduct
22 will be?

02:52:46P

23 DEFENDANT JOHN RIZZO: Yes, ma'am.

24 THE COURT: All right. Then we are finished with
25 this one?

02:53:08P

1 MR. GROVES: Yes, we are, your Honor.

2 MR. CAPLAN: Yes, your Honor. May I approach the
3 Court with the original?

4 THE COURT: Yes, thank you, and it will be filed,
5 filed under seal. 02:53:18P

6 MR. GROVES: No, your Honor, we would ask that it
7 not be filed under seal.

8 THE COURT: You're right, this should not be
9 filed under seal, and the cooperation does not need to be
10 redacted? 02:53:28P

11 MR. GROVES: That's correct, your Honor.

12 THE COURT: All right. Then we are still in open
13 court, unsealed.

14 Mrs. Rizzo.

15 All right. Please set forth your full name for
16 the record. 02:54:03P

17 DEFENDANT CAROL RIZZO: Carol Ann Rizzo.

18 THE COURT: Ms. Fredlund, would you please place
19 her under oath.

20 THE CLERK: Raise your right hand. 02:54:12P

21 Do you swear or affirm that the testimony you're
22 about to give the Court in the matter now pending before it
23 shall be the truth, the whole truth, and nothing but the
24 truth?

25 DEFENDANT CAROL RIZZO: Yes. 02:54:23P

1 THE CLERK: Thank you.

2 THE COURT: Now you are under oath. Do you
3 understand that if you make any false statements, that your
4 false statements could be used against you in a separate
5 proceeding for making false statements or for perjury?

02:54:29F

6 DEFENDANT CAROL RIZZO: Yes.

7 THE COURT: All right. Now how old are you?

8 DEFENDANT CAROL RIZZO: Fifty-eight

9 THE COURT: And how far did you go in school?

10 DEFENDANT CAROL RIZZO: I graduated high school.

02:54:36F

11 THE COURT: And have you ever been employed, and
12 if so, when was the most recent employment, other than
13 anything that relates to the criminal charges?

14 DEFENDANT CAROL RIZZO: I worked for the La Bello
15 & La Bello law firm as a secretary, and that was
16 approximately five years ago.

02:54:55F

17 THE COURT: Okay. Have you recently been under
18 the care or are you now under the care of a doctor or
19 psychiatrist?

20 DEFENDANT CAROL RIZZO: No, I'm not.

02:55:09F

21 THE COURT: And have you ever been treated or
22 hospitalized for any kind of mental or emotional disorder,
23 or for an addiction?

24 DEFENDANT CAROL RIZZO: No, ma'am.

25 THE COURT: Have you had any medicine, pills or

02:55:19F

1 alcohol in the last 24 hours?

2 DEFENDANT CAROL RIZZO: Two Tylenol Extra
3 Strength.

4 THE COURT: Okay. And those do not affect your
5 cognitive ability?

02:55:33P

6 DEFENDANT CAROL RIZZO: No, ma'am.

7 THE COURT: All right. Do either of the
8 defendants -- or either counsel have any reason to believe
9 that Mrs. Rizzo is not competent to enter an informed plea?

10 MR. CAPLAN: No reason whatsoever, your Honor.

02:55:45P

11 MR. GROVES: No reason whatsoever, your Honor.

12 THE COURT: Okay. And you do wish to plead
13 guilty pursuant to the plea agreement; correct?

14 DEFENDANT CAROL RIZZO: Yes.

15 THE COURT: Have you had an a full opportunity to
16 talk with Mr. Caplan about the consequences of entering
17 into this plea agreement?

02:55:54P

18 DEFENDANT CAROL RIZZO: Yes, I have.

19 THE COURT: And are you satisfied with his
20 representation of you?

02:56:02P

21 DEFENDANT CAROL RIZZO: Yes, ma'am.

22 THE COURT: He's done a good job for you?

23 DEFENDANT CAROL RIZZO: Yes, ma'am.

24 THE COURT: All right. Now I find, based upon
25 your answers and the certifications from counsel, that you

02:56:10P

1 are fully informed to enter a plea.

2 Now again, you've heard me tell your husband
3 this, and that is that I need to ask you a variety of
4 questions, in order to assure myself that you understand
5 what you're doing when you plead guilty, and you understand 02:56:24P
6 the terms of this plea agreement. I will need to advise
7 you of the various rights you are going to have to give up
8 in pleading guilty. If you have any questions as I
9 proceed, please let me know or talk with Mr. Caplan. Will
10 you do that? 02:56:43P

11 DEFENDANT CAROL RIZZO: Yes, ma'am.

12 THE COURT: Now I expect that you believe that
13 there is some benefit for your pleading guilty, pursuant to
14 this agreement?

15 DEFENDANT CAROL RIZZO: Yes, ma'am. 02:56:53P

16 THE COURT: But you understand that you cannot
17 plead guilty based upon a benefit. You can only plead
18 guilty if you are guilty. Do you understand?

19 DEFENDANT CAROL RIZZO: Yes, ma'am.

20 THE COURT: So you have to set aside any benefit 02:57:02P
21 that you seek.

22 There are certain constitutional and statutory
23 rights that you have. I'm going to tell you them one at a
24 time. If you have any questions, please ask me.

25 You are entitled to a speedy trial before a jury, 02:57:14P

1 a jury chosen from this district. Do you understand?

2 DEFENDANT CAROL RIZZO: Yes, ma'am.

3 THE COURT: You would be presumed innocent, and
4 that means that you would not have to prove your innocence.
5 It would be the government's complete obligation to prove
6 you innocent beyond a reasonable doubt. Do you understand?

02:57:29F

7 MR. CAPLAN: Guilty.

8 THE COURT: Prove you guilty. You would hope
9 that they would prove you innocent.

10 MR. CAPLAN: I would, too, your Honor.

02:57:40F

11 THE COURT: All right. So we can just stop there
12 and -- that was probably a surprise that you enjoyed. I'm
13 sorry I have to change that.

14 MR. CAPLAN: I apologize.

15 THE COURT: That's okay. The government would
16 have to prove you guilty beyond a reasonable doubt. Do you
17 understand?

02:57:52F

18 DEFENDANT CAROL RIZZO: Yes, ma'am.

19 THE COURT: And the jury would have to agree
20 unanimously that you were guilty beyond a reasonable doubt.
21 Do you understand?

02:58:02F

22 DEFENDANT CAROL RIZZO: Yes, ma'am.

23 THE COURT: At that trial you would be entitled
24 to have an attorney represent you, and if you couldn't
25 afford an attorney, one would be appointed for you free of

02:58:15F

1 cost. Do you understand?

2 DEFENDANT CAROL RIZZO: Yes, ma'am.

3 THE COURT: And at the trial you would be able to
4 confront the witnesses, and your attorney could cross-
5 examine them, and you could call your own witnesses on your 02:58:27P
6 behalf, but there would be no obligation for you to do so
7 because you would not have to prove yourself innocent. Do
8 you understand?

9 DEFENDANT CAROL RIZZO: Yes, ma'am.

10 THE COURT: Now you could testify at the trial, 02:58:41P
11 but that's only if you chose to. No one could force you to
12 testify. Do you understand?

13 DEFENDANT CAROL RIZZO: Yes, ma'am.

14 THE COURT: Now did you understand all of those
15 rights? 02:58:52P

16 DEFENDANT CAROL RIZZO: Yes, I did.

17 THE COURT: Do you have any questions of me?

18 DEFENDANT CAROL RIZZO: No, I don't.

19 THE COURT: Now because I'll have to ask you what
20 you did, in order to determine whether or not you are 02:58:56P
21 guilty of the offenses to which you wish to plead, you will
22 have to incriminate yourself, and that means you will have
23 to waive your right to incriminate yourself -- not
24 incriminate yourself. Are you willing to waive your right
25 not to incriminate yourself? 02:59:14P

1 DEFENDANT CAROL RIZZO: Yes, ma'am.

2 THE COURT: All right. Now there are many
3 charges in the Indictment, but you are pleading to the
4 following charges:

5 First of all, a violation of Title 18, United
6 States Code, Section 371, Conspiracy to Defraud the United
7 States, which carries a maximum prison -- imprisonment term
8 of five years; a \$250,000 fine, or both; and a three-year
9 period of supervised release. Do you understand?

02:59:26P

10 DEFENDANT CAROL RIZZO: Yes.

02:59:52P

11 THE COURT: You are also pleading to a violation
12 of Title 26, United States Code, Section 7203, Willful
13 Failure to File a Federal Income Tax Return, a misdemeanor
14 offense. Do you understand?

15 DEFENDANT CAROL RIZZO: Yes.

03:00:09P

16 THE COURT: That's punishable by a maximum fine
17 of \$250,000 and an imprisonment term of not to exceed one
18 year. Do you understand?

19 DEFENDANT CAROL RIZZO: Yes, your Honor.

20 THE COURT: And you understand that those maximum
21 terms are terms that I can impose consecutively, which
22 means one after the other. Do you understand?

03:00:22P

23 DEFENDANT CAROL RIZZO: Yes, ma'am.

24 THE COURT: So the maximum amount of your
25 sentence could be six years.

03:00:37P

1 MR. CAPLAN: Your Honor, may I get some water for
2 Mrs. Rizzo for a moment?

3 THE COURT: Oh, sure.

4 MR. CAPLAN: Thank you.

5 Thank you, your Honor.

03:00:58F

6 THE COURT: There is also a requirement that I
7 impose a special assessment, and that special assessment is
8 in the amount of \$125.

9 DEFENDANT CAROL RIZZO: Yes, your Honor.

10 THE COURT: I'm not sure that I said that to
11 Mr. Rizzo.

03:01:09F

12 MR. GROVES: I don't recall it, your Honor.

13 MR. CAPLAN: I don't either, but I did explain
14 that to Mr. Rizzo; that there was a special assessment that
15 would have to be paid before sentencing.

03:01:21F

16 THE COURT: Okay. He is still here, and
17 Mr. Rizzo, just to make sure you understand, you have -- I
18 have an obligation at the time of sentencing to, without
19 any discretion, impose a special assessment for each of the
20 crimes to which you are pleading guilty. Do you
21 understand?

03:01:37F

22 DEFENDANT JOHN RIZZO: Yes, ma'am, I do.

23 THE COURT: And that total amount would be,
24 Mr. Groves?

25 MR. GROVES: Three hundred twenty-five dollars,

03:01:46F

1 your Honor.

2 MR. CAPLAN: How much?

3 THE COURT: Three hundred twenty-five dollars.

4 Do you understand?

5 MR. CAPLAN: One hundred twenty-five each? 03:01:51P

6 MR. GROVES: No, your Honor.

7 THE COURT: Total.

8 MR. GROVES: It's 325 total --

9 THE COURT: Total.

10 MR. GROVES: -- because he's pleading to three 03:01:55P

11 felonies and one misdemeanor.

12 MR. CAPLAN: Okay. Right.

13 THE COURT: Right. It's \$325 total, and it can't

14 be less than that. That would be the amount. Do you

15 understand? 03:02:06P

16 DEFENDANT JOHN RIZZO: Yes, ma'am.

17 THE COURT: Okay. You understand, then, or

18 having understood that, will that in any way change your

19 decision to plead guilty as you have?

20 DEFENDANT JOHN RIZZO: Oh, no. 03:02:15P

21 THE COURT: Okay.

22 MR. CAPLAN: Thank you, your Honor.

23 THE COURT: All right. I'm going to ask the

24 government to set forth the elements of the offenses to

25 which Mrs. Rizzo is going to plead guilty. 03:02:27P

1 MR. GROVES: As contained on page 10 of the plea
2 agreement, if this were to proceed to trial, the United
3 States would have to prove beyond a reasonable doubt:

4 First, under Conspiracy to Defraud the United
5 States, that there existed a conspiracy, agreement or
6 understanding to defraud the United States by dishonest
7 or deceitful -- and deceitful means, for the purpose of
8 impeding, impairing, obstructing and defeating the lawful
9 governmental functions of the United States Department of
10 Treasury, Internal Revenue Service, in the ascertainment,
11 computation and collection of income taxes as described in
12 the Indictment, was formed, reached or entered into by two
13 or more persons;

14 Second, at some point during the existence or
15 life of the conspiracy, agreement, or understanding, one of
16 its members --

17 THE REPORTER: Mr. Groves, can you start with
18 "second," please.

19 MR. GROVES: Yes.

20 Second, at some point during the existence or
21 life of the conspiracy, agreement or understanding, one of
22 its members knowingly performed one of the overt acts
23 charged in the Indictment, in order to further advance the
24 purpose of the agreement; and,

25 Third, at some time during the existence of the

1 agreement or understanding, the defendant knew the purpose
2 of the agreement and then deliberately joined in the
3 conspiracy, agreement or understanding.

4 The second charge, Count 12 of the Superseding
5 Indictment, the United States would have to prove, under
6 Willful Failure to File an Income Tax Return:

7 First, that the tax code or some regulation
8 thereunder required the defendant to make a tax return
9 reporting gross income, and any deductions and credits, in
10 this case for the calendar year ending December 31st, 2000;

11 Second, the defendant failed to make and file the
12 tax return to the Internal Revenue Service on or before
13 April 15th, 2001; and,

14 Third, the defendant's failure to file the income
15 tax return was willful.

16 THE COURT: All right. Mrs. Rizzo, did you
17 understand all the elements that have been set forth by
18 Mr. Groves?

19 DEFENDANT CAROL RIZZO: Yes, your Honor.

20 THE COURT: You understand it would be the
21 obligation of the government to prove all of those elements
22 beyond a reasonable doubt at trial?

23 DEFENDANT CAROL RIZZO: Yes, your Honor.

24 THE COURT: All right. And I presume you
25 discussed those elements with Mr. Caplan?

1 DEFENDANT CAROL RIZZO: Yes, your Honor.

2 THE COURT: Now let me tell you something about
3 supervised release:

4 Supervised release is always concurrent, and it's
5 up to three years of supervised release. During that time
6 you would be on restriction, and if you violated the
7 restrictions, then you would be back in court for a
8 violation of your supervised release, and I could sentence
9 you up to two years in prison. Do you understand?

03:04:53P

10 DEFENDANT CAROL RIZZO: Yes, your Honor.

03:05:09P

11 THE COURT: And you understand that I have to
12 order you to pay a fine, the cost of probation or
13 supervision and incarceration and restitution, unless I
14 find that you do not have the ability to pay. Do you
15 understand?

03:05:26P

16 DEFENDANT CAROL RIZZO: Yes, your Honor.

17 THE COURT: Okay. Now I must follow the
18 sentencing guidelines. You understand that?

19 DEFENDANT CAROL RIZZO: Yes, your Honor.

20 THE COURT: And you've talked to Mr. Caplan about
21 those guidelines?

03:05:34P

22 DEFENDANT CAROL RIZZO: Yes, your Honor.

23 THE COURT: And we have talked here today about
24 what is potentially the maximum sentence, what is
25 potentially the maximum guidelines. You understand that

03:05:45P

1 the probation office first assesses and recommends what
2 they believe the guidelines are. Do you understand that?

3 DEFENDANT CAROL RIZZO: Yes, your Honor.

4 THE COURT: You and Mr. Caplan and Mr. Groves
5 will have an opportunity to review that report, object to
6 it, and offer your belief on what your guidelines should
7 be.

8 DEFENDANT CAROL RIZZO: Yes, your Honor.

9 THE COURT: All right. Now you understand also
10 that if the guidelines are still within the six years, that
11 I can depart above those guidelines, if I find a basis to
12 do so under the law? 03:06:15F

13 DEFENDANT CAROL RIZZO: Yes, your Honor.

14 THE COURT: I can also depart below those
15 guidelines if I find a basis to do so under the law. 03:06:34F

16 DEFENDANT CAROL RIZZO: Yes, your Honor.

17 THE COURT: But any estimate -- and Mr. Caplan
18 will now set forth for me whether or not he has made an
19 estimate as to what your sentence or guideline range will
20 be. 03:06:47F

21 MR. CAPLAN: Yes, your Honor. I told Mrs. Rizzo
22 that while the maximum would be the six years, that I
23 expected, under the guidelines, her sentencing range,
24 without a motion for substantial assistance downward
25 departure, would be in the neighborhood of about three 03:07:02F

1 years, your Honor.

2 THE COURT: And you understand that was an
3 estimate?

4 DEFENDANT CAROL RIZZO: Yes, your Honor.

5 THE COURT: You still could receive a sentence of 03:07:11P
6 up to six years.

7 DEFENDANT CAROL RIZZO: Yes, your Honor.

8 THE COURT: All right. Now I have a copy of the
9 plea agreement. Do you have the original in front of you?

10 MR. CAPLAN: Yes, your Honor, I do. 03:07:16P

11 THE COURT: And Mrs. Rizzo, did you sign the
12 agreement?

13 DEFENDANT CAROL RIZZO: Yes, I did, your Honor.

14 THE COURT: Now did you read it before you signed
15 it? 03:07:26P

16 DEFENDANT CAROL RIZZO: Yes, I did.

17 THE COURT: And did you discuss it with your
18 attorney before you signed it?

19 DEFENDANT CAROL RIZZO: Yes, your Honor.

20 THE COURT: Do you fully understand this plea
21 agreement? 03:07:33P

22 DEFENDANT CAROL RIZZO: Yes, your Honor.

23 THE COURT: Do you understand it to be your
24 complete agreement with the United States Government?

25 DEFENDANT CAROL RIZZO: Yes, your Honor. 03:07:41P

1 THE COURT: All right. You can --

2 MR. CAPLAN: May I also say, your Honor, that
3 Mrs. Rizzo participated equally with Mr. Rizzo in terms of
4 the negotiation of this plea agreement and the line-by-line
5 addressing of it all, so she is totally familiar.

03:07:52F

6 THE COURT: Okay. Is that correct, Mrs. Rizzo?

7 DEFENDANT CAROL RIZZO: Yes, it is, your Honor.

8 THE COURT: All right. Now on page 8 there are
9 special provisions about what rights you have to raise
10 issues on appeal. Essentially it says you have no rights
11 in the first paragraph, but that is conditioned upon what
12 is contained in the -- when I say "first paragraph," I mean
13 the first sentence of the first paragraph, and that's
14 conditioned upon what is contained in the remainder of this
15 section. It says you have the right to challenge and
16 appeal the guideline computations as to the tax loss,
17 grouping of offenses, role in the offenses, and such
18 challenge and appeal are not a breach of the agreement. Do
19 you understand?

03:08:08F

03:08:25F

20 DEFENDANT CAROL RIZZO: Yes, I do, your Honor.

03:08:47F

21 THE COURT: The United States Government can
22 appeal any portion of the agreement -- or of the sentencing
23 or this agreement, if there is a basis to do so. Do you
24 understand?

25 DEFENDANT CAROL RIZZO: Yes, your Honor.

03:09:06F

1 THE COURT: And you have waived here the right to
2 an award of attorney's fees, pursuant to the public law,
3 which is set forth in this agreement; is that correct?

4 DEFENDANT CAROL RIZZO: Yes, your Honor.

5 THE COURT: All right. So you know that if I
6 accept the terms of this agreement, as you have worked them
7 out for the United States Government or with the
8 government, you will have no right to withdraw from the
9 plea or the plea agreement. Do you understand?

10 DEFENDANT CAROL RIZZO: Yes, your Honor.

11 THE COURT: But if I do not accept the portions
12 of the agreement that you have entered into with the United
13 States Government, you will have a right to appeal.

14 DEFENDANT CAROL RIZZO: Yes, your Honor.

15 THE COURT: Excuse me, to withdraw.

16 There are narrow circumstances upon which I can
17 determine not to accept the plea, not to accept the plea
18 agreement, which have nothing to do with the stipulations.
19 Do you understand?

20 DEFENDANT CAROL RIZZO: Yes, your Honor.

21 THE COURT: All right. Mr. Caplan, do you know
22 of any valid defense that would apply in this case, or any
23 reason why your client should not plead guilty?

24 MR. CAPLAN: I certainly don't know of any reason
25 why she should not plead guilty. Again, if we had to go to

1 trial, we could produce colorable defenses, but...

2 THE COURT: Okay. Thank you.

3 Now I'm going to ask you what you did, as I said
4 before, and here you are waiving expressly your right not
5 to incriminate yourself.

03:10:48P

6 Now on page 10, 11, and 12 there are a variety of
7 facts which are set forth which constitute the two
8 violations to which you are pleading; is that correct?

9 DEFENDANT CAROL RIZZO: Yes, your Honor.

10 MR. CAPLAN: Again, your Honor, if I may, I
11 apologize for interrupting, but it's with the same caveat
12 as to that bank in the Bahamas, the Ansbacher Bank, which
13 is at the top of page 12, line 3. I would make the same
14 representation there; that is, that they intended to open
15 an account there, but it never got opened.

03:11:09P

03:11:37P

16 THE COURT: Okay. Thank you.

17 Is that correct?

18 DEFENDANT CAROL RIZZO: Yes, it is, your Honor.

19 THE COURT: All right. Now when you committed
20 these acts and engaged in this conduct, did you know what
21 you were doing was wrong and illegal?

03:11:49P

22 DEFENDANT CAROL RIZZO: Yes, your Honor.

23 THE COURT: How do you plead to Conspiracy to
24 Defraud the United States, as set forth in the Superseding
25 Indictment?

03:12:02P

1 DEFENDANT CAROL RIZZO: Guilty.

2 THE COURT: How do you plead to Willful Failure
3 to File an Income Tax Return, as set forth in the
4 Superseding Indictment?

5 DEFENDANT CAROL RIZZO: Guilty, your Honor.

03:12:11P

6 THE COURT: Do you need some more water?

7 DEFENDANT CAROL RIZZO: Yeah, I have a dry spot
8 in my throat.

9 MR. CAPLAN: I'll get you some more.

10 THE COURT: Now are you pleading guilty because
11 you are guilty?

03:12:31P

12 DEFENDANT CAROL RIZZO: Yes, your Honor.

13 THE COURT: And are you doing so voluntarily?

14 DEFENDANT CAROL RIZZO: Yes, your Honor.

15 THE COURT: Of your own free will?

03:12:37P

16 DEFENDANT CAROL RIZZO: Yes, your Honor.

17 THE COURT: Now because you have acknowledged
18 that you are guilty as charged in these counts, and you
19 have expressed that you know your rights and you have
20 voluntarily waived those rights, and that there is an
21 essential factual basis for each of the charges, I'm going
22 to accept your plea, the plea agreement, and whether or not
23 I will accept that plea agreement is deferred for six
24 months, when your sentencing will occur. At that time I
25 will have ascertained, based upon all the information

03:12:51P

03:13:12P

1 presented to me by you, Mr. Caplan, Mr. Groves and the
2 probation office, whether or not I should accept the plea
3 agreement. Do you understand?

4 DEFENDANT CAROL RIZZO: Yes, your Honor.

5 THE COURT: And you will not have a right to
6 withdraw if I accept the plea agreement based upon the
7 terms you have reached with the United States Government.
8 Do you understand?

9 DEFENDANT CAROL RIZZO: Yes, your Honor.

10 THE COURT: All right. The date for the trial is
11 vacated, and the probation office is going to prepare the
12 presentence report. It will likely not be prepared until
13 there is a date certain set for trial. We are going to --
14 excuse me, for the sentencing. We are going to defer that
15 sentencing, pursuant to the plea agreement, for six months,
16 and the sentencing will occur on what date?

17 THE CLERK: September 27th at 1:00 o'clock.

18 THE COURT: September 27th at 1:00 o'clock.

19 All right. Now we will need to -- yes?

20 MR. CAPLAN: I was just going to approach the
21 bench with the plea.

22 THE COURT: Yes, you can.

23 We will undertake the question of whether or not
24 Mrs. Rizzo should be released.

25 MR. GROVES: If the Court might, there is just

1 one other issue I wanted to put on the record, so there
2 isn't a later issue.

3 On January 14th, when we were before Magistrate
4 Sitver at the arraignment on the Superseding, there was a
5 hearing and a full inquiry of both defendants as to the
6 joint representation by Mr. Caplan. I just wanted that to
7 be clear.

03:14:34P

8 THE COURT: I was thinking about raising that,
9 and I'm glad that you told me that. From the beginning of
10 this case, knowing what's contained in the Indictment, I
11 did not believe that there was any problem, particularly
12 because both of them have agreed to cooperate.

03:14:55P

13 Let me ask Mr. Rizzo and Mrs. Rizzo, do you
14 recall the colloquy you had with Judge Sitver --

15 MR. CAPLAN: Do you remember the --

03:15:14P

16 THE COURT: -- about whether or not --

17 MR. CAPLAN: -- conflict of interest?

18 DEFENDANT CAROL RIZZO: Oh, yes, your Honor.

19 THE COURT: Okay. If there was a conflict, or a
20 potential conflict, that you voluntarily waived it and have
21 no problem or issue with Mr. Rizzo -- with Mr. Caplan
22 representing you?

03:15:24P

23 DEFENDANT CAROL RIZZO: No, there is no problem,
24 your Honor.

25 THE COURT: And Mr. Rizzo, the same?

03:15:38P

1 DEFENDANT JOHN RIZZO: No problem.

2 THE COURT: All right. Now we will undertake the
3 issue of whether or not Mrs. Rizzo should be released.

4 I have received the motion for release and also
5 the evaluation made by pretrial services, and that is
6 Mr. Mel Hernandez. Have you both received that recent
7 report?

03:15:57P

8 MR. CAPLAN: Yes, your Honor, and we've reviewed
9 it.

10 MR. GROVES: Yes, we have, your Honor.

03:16:15P

11 THE COURT: All right. I have some concerns. I
12 am inclined to allow Mrs. Rizzo to be released on her own
13 recognizance, but with substantial limitations, and that is
14 that she must be in home confinement with electronic
15 monitoring, to be determined by the probation office, and
16 that you are to report to the pretrial services office as
17 directed. They will tell you, and it is always your
18 obligation to make sure that you have reported, even if
19 somebody is not there. Do you understand?

03:16:40P

20 DEFENDANT CAROL RIZZO: Yes, I do, your Honor.

03:17:04P

21 THE COURT: And you are going to be released to
22 the third party custody of John Ross Rizzo and Marion
23 Rizzo, who I believe are your mother and father-in-law, who
24 are in the courtroom?

25 MR. CAPLAN: Yes, your Honor.

03:17:19P

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THE COURT: (Statement Under Seal.)

Let me ask them, and they can merely nod their heads, but do you agree to this third-party custody, which means that essentially you have some obligations to insure that she is in compliance with the law, and in particular, that she will appear at all necessary proceedings?

MR. JOHN ROSS RIZZO: We do.

THE COURT: And you do?

MRS. MARION RIZZO: Yes.

THE COURT: All right. You are not to travel outside of Arizona unless the Court gives you permission. Do you understand?

DEFENDANT CAROL RIZZO: Yes, I do.

THE COURT: And you are not to -- you shall refrain from the possession of a firearm, destructive device, or any other dangerous weapon or ammunition. Do you understand?

DEFENDANT CAROL RIZZO: Yes, your Honor.

THE COURT: And you are to seek and maintain employment, and you are to do so immediately.

Now obviously you can't be employed when you're on house arrest and you are electronically monitored, but the probation office will work that out for you. Do you understand?

03:17:38P
03:17:55P
03:18:06P
03:18:18P
03:18:41P

1 DEFENDANT CAROL RIZZO: Yes, your Honor.

2 THE COURT: And you --

3 MR. CAPLAN: Your Honor --

4 THE COURT: And you --

5 MR. CAPLAN: I'm sorry, may I just interrupt?

03:18:43F

6 Mr. Rizzo wanted to ask me a question for just a moment?

7 THE COURT: Sure.

8 MR. CAPLAN: Thank you.

9 MR. GROVES: There is one caveat to that, your

10 Honor. We would obviously ask that the employment not have

03:18:53F

11 anything to do with the nature of what was contained in the

12 Indictment, which is Millennium Publishing, which is the

13 entity in which they earned --

14 THE COURT: Which publishing?

15 MR. GROVES: Millennium Publishing, which is the

03:19:07F

16 entity that they were involved in during that time.

17 MR. CAPLAN: I'm sorry, could you --

18 THE COURT: Is that an ongoing business?

19 MR. GROVES: At this point no, your Honor. Since

20 the defendants have been incarcerated, not to our

03:19:19F

21 knowledge. However, if the release is being made, then

22 clearly that may happen, and we're trying to prevent that.

23 THE COURT: All right. That will be made clear

24 to the probation office; that you are not to have any type

25 of employment or any type of activities in connection with

03:19:31F

1 Millennium --

2 MR. GROVES: Publishing.

3 THE COURT: -- Publishing Company.

4 MR. GROVES: We would also ask that she have no
5 employment or involvement with any anti-tax or tax
6 protester type of organization, or that that would not be
7 the nature of the employment.

03:19:44P

8 MR. CAPLAN: We certainly have no problem with
9 that, your Honor.

10 DEFENDANT CAROL RIZZO: No problem.

03:19:52P

11 THE COURT: Okay. And you are to surrender your
12 passport. Do you have a passport?

13 DEFENDANT CAROL RIZZO: No, your Honor.

14 THE COURT: Okay. And you are not to obtain
15 another one during the pendency of these proceedings. Do
16 you understand?

03:20:03P

17 DEFENDANT CAROL RIZZO: I understand.

18 THE COURT: Now there are some standard
19 requirements that you must abide by, and those are set
20 forth in General Order 99-9 in a document. You will need
21 to read all of those requirements, the standard
22 requirements, and then sign the document that you agree to
23 be -- to comply with them. If you have any question,
24 Mr. Caplan will answer that question, or the probation
25 officer will answer that question. Do you understand?

03:20:14P

03:20:37P

1 DEFENDANT CAROL RIZZO: Yes, I do, your Honor.

2 THE COURT: Okay. We do not have a probation
3 officer here today, and so release will not occur today.
4 It will occur only after the probation officer has had an
5 opportunity to discuss with you the terms of the -- of your 03:20:53P
6 release, and also that you sign the release.

7 Now if this can be accomplished before the end of
8 the day, that's fine with me. If it cannot, then you will
9 have to be here tomorrow, and we will take care of it at
10 that time. 03:21:17P

11 MR. CAPLAN: Your Honor, if I may, I believe --
12 and we've spoken with Mr. Hernandez -- that he has
13 everything ready to go, including the electronic monitoring
14 bracelet to be affixed today, with the Court's permission.

15 THE COURT: Okay. I have no problem, if it can 03:21:31P
16 be done today, but in talking to Mr. Hernandez --

17 MR. CAPLAN: Oh, I'm sorry. Maybe I didn't
18 understand --

19 THE COURT: -- he's not here today, and that's
20 the problem. I understand he is attending to other 03:21:43P
21 matters. You can call him, and I have no disagreement with
22 or objection to having it accomplished today, but I have
23 every objection to Mrs. Rizzo being released without that
24 process occurring, so there is no misunderstanding about
25 the obligations she has. 03:22:07P

1 MR. CAPLAN: All right. There is one other --
2 two other matters just briefly, if I may, your Honor.

3 First is could we strike from the record the
4 specific address where Mrs. Rizzo is residing, so that
5 wouldn't be in the public record?

03:22:22P

6 THE COURT: Yes, yes, we will. We will strike it
7 from the record. That will be under seal. It will not be
8 stricken from the pretrial services report.

9 MR. CAPLAN: No, I understand that, of course.

10 THE COURT: Those are confidential anyway.

03:22:35P

11 All right. Are there any other conditions that
12 the United States Government believes should be complied
13 with?

14 MR. GROVES: None that we're aware of, your
15 Honor.

03:22:47P

16 THE COURT: Okay.

17 MR. CAPLAN: I just had two questions, your
18 Honor, if I may.

19 THE COURT: Yes.

20 MR. CAPLAN: First of all, to clarify, while it
21 is house arrest, may she leave the residence with the prior
22 permission of the pretrial services officer?

03:22:51P

23 THE COURT: Probation, yes, and the other thing
24 is this: There is another condition, which I'm sure the
25 government believes is necessary, and that is that as a

03:23:09P

1 part of your agreement, you are to cooperate. Do you
2 understand?

3 DEFENDANT CAROL RIZZO: Yes, your Honor.

4 THE COURT: There will have to be some
5 interfacing with the United States Government, in order for 03:23:21F
6 you to conduct your cooperation and engage in the
7 activities that they need you to engage in, in order to
8 fulfill that portion of the agreement. Do you understand
9 that?

10 DEFENDANT CAROL RIZZO: Yes, I do, your Honor. 03:23:34F

11 THE COURT: Now in that sense, Mr. Groves,
12 pretrial services, if you wish her to do something that is
13 really contrary to the agreement she has, then you take the
14 a risk with your agents in insuring that she is within the
15 parameters of the law and is not engaging in anything 03:23:57F
16 illegal.

17 MR. GROVES: If I may inquire, your Honor, with
18 respect to potential travel outside of the district, would
19 the Court wish us to come to the Court to get specific
20 permission? 03:24:14F

21 THE COURT: Every time that there is going to be
22 some superseding by the government of the pretrial services
23 monitoring of her while she's on release, you will have to
24 come to the Court, you will have to bring your agents that
25 will explain and persuade the Court that they will monitor 03:24:39F

1 her, to insure that there are no violations, to insure that
2 she will be here for all proceedings and that there is no
3 possibility of escape. In that way the responsibilities
4 are shifted to the United States Government, as opposed to
5 being maintained with pretrial services.

03:25:04P

6 MR. GROVES: Thank you, your Honor.

7 THE COURT: One other thing, before I forget:
8 Mrs. Rizzo, you understand and have read what your
9 cooperation obligations are?

10 DEFENDANT CAROL RIZZO: Yes, I have, your Honor.

03:25:20P

11 THE COURT: Do you have any question about them?

12 DEFENDANT CAROL RIZZO: No, your Honor.

13 THE COURT: You understand then, too, if you
14 breach them, what the consequences are?

15 DEFENDANT CAROL RIZZO: Yes, your Honor.

03:25:27P

16 MR. CAPLAN: Your Honor, the other thing is, and
17 I don't know whether it's within the provisions that the
18 pretrial services officer may give or not, but I don't
19 believe that the government has any objection to Mrs. Rizzo
20 visiting Mr. Rizzo at the CCA facility, obviously with the
21 prior permission of pretrial services. Would that be all
22 right with the Court?

03:25:41P

23 THE COURT: I have no problem, unless pretrial
24 services does. Sometimes it's difficult to accomplish
25 that, and that's the problem. There is also security

03:25:02

1 issues, but I have no objection to that.

2 MR. CAPLAN: Thank you, your Honor.

3 MR. GROVES: And we have no objection either, but
4 it will, once again, require travel outside of Maricopa
5 County, I believe, to Pinal County.

03:26:15P

6 THE COURT: I said she merely needed to stay in
7 the state, but any travel at all is travel that needs to be
8 approved by the probation office. If they have some
9 question about it, they bring it to my attention. I'm not
10 anticipating any problems today.

03:26:28P

11 MR. CAPLAN: Do I -- I'm sorry, do I need to be
12 present with Mrs. Rizzo tomorrow, or can she be released,
13 if that's when it is, directly from the courthouse?

14 THE COURT: She can be released. You do not need
15 to be here, because we're not sending her to a halfway
16 house. She is released to her third-party custodians, and
17 we call it bag and baggage. She comes here with all of her
18 possessions and she is released, and I don't even have to
19 be here. It can be done on the second floor with the
20 marshals.

03:26:43P

21 MR. CAPLAN: And I'm sorry again, your Honor, to
22 bother you with these details, but just so I would know, if
23 she's not going to be released today, which it looks like
24 she's not going to be, she's going to be brought in
25 tomorrow, the Court's having her returned tomorrow, and

03:27:04P

03:27:16P

1 then I should speak with Mr. Hernandez to facilitate the
2 release?

3 THE COURT: Well, what happens is this: There is
4 no reason why she needs to be released in open court,
5 unless the marshals say otherwise. Mr. Hernandez, however,
6 needs to be fully satisfied that she understands all the
7 conditions, and you've probably seen the form. It's a
8 standard form.

03:27:26P

9 MR. CAPLAN: Yes, sure.

10 THE COURT: She has to sign it, and then once he
11 gives permission, based upon my delegating to him that
12 responsibility, she can be released, because I have already
13 ordered, as of today, that she could be released if
14 Mr. Hernandez was here.

03:27:42P

15 MR. GROVES: If I might, your Honor, I think the
16 concern is that Mr. Caplan is from San Francisco. His
17 concern, I think, is also to make sure that if it doesn't
18 happen today, that she is actually produced back here to
19 the courthouse.

03:28:01P

20 THE COURT: Yes, we will. We'll bring her back;
21 okay?

03:28:12P

22 Mr. Hernandez will be advised of what has
23 happened here today. You may be able to reach him, too; he
24 just told me that he had a variety of different things that
25 he had that were emergencies, but he still might be

03:28:29P

1 available so that this can be accomplished today, and we
2 will not have to bring back Mrs. Rizzo tomorrow. I can't
3 insure that.

4 MR. CAPLAN: Okay.

5 THE COURT: All right. Anything else?

03:28:43P

6 MR. CAPLAN: No. Thank you very much, your
7 Honor.

8 MR. GROVES: Nothing further, your Honor.

9 THE COURT: This matter is adjourned.

10 MR. GROVES: Thank you, your Honor.

03:28:47P

11 THE CLERK: All rise.

12 MR. CAPLAN: Your Honor.

13 THE COURT: Yes.

14 MR. CAPLAN: This doesn't have to be on the
15 record.

16 THE COURT: Oh, I just want to make the important
17 statement that I have found, based upon the evidence that
18 has been presented to me, that as of this time Mrs. Rizzo
19 is not a danger to the community, nor is she a flight risk.

20 All right. This matter is adjourned.

03:29:16P

21 (The proceedings adjourned at 3:29 p.m.)

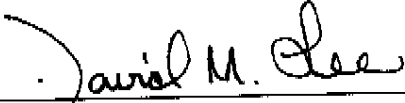
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CERTIFICATE

I, David M. Lee, CSR 9543, RMR, CRR, Official Court Reporter, hereby certify that pursuant to Section 733, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically recorded proceedings in the above matter.

Signed this 27th day of February, 2004.



David M. Lee, CSR 9543, RMR, CRR
Official Court Reporter