

1 APPEARANCES (Continued):

2 For Defendant, Rachel
3 Ondrik:

THOMAS ABBENANTE, ESQ.
1919 Pennsylvania Ave., NW, #200
Washington, DC 20006

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

1 P R O C E E D I N G S

2 THE COURTROOM DEPUTY: We are here for the purpose of
3 a sentencing hearing.

4 Will counsel please identify themselves for the
5 record?

6 MR. AKE: Good afternoon, your Honor. Adam Ake and
7 Robert Hur for the United States.

8 THE COURT: Thank you. Welcome.

9 MR. ABBENANTE: Good afternoon, your Honor. Thomas
10 Abbenante on behalf of Ms. Ondrik and she is here --

11 THE COURT: Good afternoon. Welcome.

12 MR. ABBENANTE: -- as is her husband.

13 THE COURT: Thank you.

14 Feel free to be seated.

15 Give me just a moment, please.

16 (Pause)

17 THE COURT: Okay.

18 Any modifications or corrections to the pre-sentence
19 report?

20 MR. ABBENANTE: Just a couple, your Honor.

21 THE COURT: Okay.

22 MR. ABBENANTE: They, they're not material, I would
23 argue, but I think they need to be corrected.

24 If your Honor takes a look at Page 11 of the pre-
25 sentence report and under the Assets, 2008 Nissan Quest -- and

1 I discussed this with Mr. Mebane after I had read the report,
2 but he said it had already been sent in to the Court -- they
3 owe \$10,000 on that loan for that car.

4 So they're in the --- it's a negative as far as the
5 car, which I guess would change, ultimately, what the net cash
6 flow, the monthly cash flow would be, but I just wanted to
7 point that out to the Court.

8 Also, there's a reference here with regard to the
9 traffic records, Paragraph No. 40 on Page 7 of the report, and
10 I know that your Honor handles a lot of traffic-related
11 offenses in this case. You probably already know this, but in
12 Virginia if you have a plus on your, on your record that means
13 that that's good driving. It's not like for any violation and
14 Mr. Mebane didn't know that and I pointed that out to him.

15 THE COURT: The only question I had about that
16 paragraph was I thought that she didn't have a license in
17 Virginia. So it was some question as to how she could get
18 positive points, which --

19 MR. ABBENANTE: Well, she -- previously she did --

20 THE COURT: She did there.

21 MR. ABBENANTE: -- years ago.

22 THE COURT: Okay. That explains it.

23 MR. ABBENANTE: Okay. And so that's why that's
24 reflected in that, in that way.

25 THE COURT: Very well.

1 MR. ABBENANTE: And as a preliminary matter, your
2 Honor, I just want, I'd like to just ask the Court a question.

3 For some reason, I was, when I entered my appearance
4 in this case as counsel, for some reason I wasn't getting the
5 ECF notifications. And Mr. Mebane had forwarded to me the pre-
6 sentence report. But more importantly, I understand that the
7 Government had filed a motion in this case with regard to the
8 matters that were placed, that were filed under seal and that,
9 eventually, your Honor granted that motion.

10 I would just ask the Court whether or not your Honor
11 reviewed those materials.

12 THE COURT: I did.

13 MR. ABBENANTE: All right.

14 THE COURT: But I have deliberately divorced my
15 knowledge of that as best I can.

16 MR. ABBENANTE: Well, your Honor --

17 THE COURT: That is, I am not using anything in those
18 reports for the Government's purposes, whatever that purpose
19 may be. I just view it as a misfiled, shouldn't have been
20 filed, or for whatever reason the Government elected not to
21 file or to pursue whatever is set forth therein.

22 So that is not fair game for the Government to rely
23 upon, or this court to rely upon.

24 MR. ABBENANTE: Well, I understand that the, that the
25 Court, I mean, that the Government has not attempted to rely on

1 because, first thing, they contained information that wasn't
2 part of the agreement. Much, most of that information is
3 disputed and it came from a source which, you know, we, we
4 have --

5 In any event, when your Honor says that your Honor has
6 done the best you can to divorce yourself from that, are you
7 saying to me that -- are you --

8 THE COURT: I feel very comfortable.

9 MR. ABBENANTE: -- comfortable?

10 THE COURT: I am not using that for any purpose.

11 MR. ABBENANTE: All right. Very well, your Honor.

12 The way I had planned to preface my remarks, I wasn't
13 going to assume that the Court was going to go along with our
14 agreement because you made that very clear when you accepted
15 these pleas and I know full well after doing this for a long
16 time that the Court is free to do what they think is
17 appropriate under the circumstances and obviously, the sentence
18 that you imposed on Mr. Yamatani is, in fact, within the
19 guidelines that are set forth in the pre-sentence report, which
20 we agreed to. However, with all due respect to the Court, with
21 respect to Mr. Yamatani's sentence -- and I know that the Court
22 takes every case separately and in separate consideration and I
23 don't know all of the factors that were presented in the pre-
24 sentence report with regard to Mr. Yamatani and I don't know
25 all of the family issues that were presented in the report with

1 regard to Mr., Mr. Yamatani -- but in terms of trying to
2 distinguish what the difference might be in, in regard to the
3 case, Ms. Ondrik has never shied away from the fact that she
4 committed this -- this -- these acts in, in this case, okay?
5 She admitted full responsibility for it. And when your Honor
6 asked Mr. Yamatani why he did it, you know, my first --

7 THE COURT: Let me slow you down. Don't go too fast
8 for me.

9 MR. ABBENANTE: Okay.

10 THE COURT: I'm trying to keep --

11 I got the impression that Ms. Ondrik also is viewed to
12 have been obstructing justice and if what you're telling me is
13 that she, when confronted or when this thing first came to
14 light, she said --

15 MR. ABBENANTE: No. No, I didn't mean that.

16 THE COURT: Okay.

17 MR. ABBENANTE: I mean when -- when she -- she's fully
18 accepted reasonability.

19 THE COURT: Yes.

20 MR. ABBENANTE: What -- how this whole thing started,
21 I mean, the genesis of whether, you know -- we're not arguing
22 that it's -- it was -- it was -- there's, this is an excuse or
23 anything -- but, you know, they, they picked up, they moved to
24 the Washington, D.C. area. There's some argument to be made,
25 at least initially on Ms. Ondrik's part, that, you know, she

1 was going to be entitled to certain monies. That came to
2 not -- that came not to pass and then they tried to submit
3 vouchers in order to get the money that they thought that they
4 were entitled to. At some -- at a point during this process
5 they, they recognized that that, that wasn't right and then it,
6 they continued to do so and continued to pursue --

7 THE COURT: Let me catch up with you there only
8 because I thought that the predicate offense was grounded on
9 the notion that she came here house hunting, but never house
10 hunted. She came here charging the Government for expenses,
11 but expenses that were not incurred in relationship to that.

12 MR. ABBENANTE: Part of it was.

13 THE COURT: I get the point about maybe "I'm entitled
14 to some things that are legitimate expenses and the Government
15 may disagree." That very well may not be criminal. We all
16 have issues like that.

17 MR. ABBENANTE: Right.

18 THE COURT: But I got -- I thought that the plea was,
19 "I never even did the house hunting. I never even did the
20 travel that the Government alleged." So --

21 MR. ABBENANTE: You're right.

22 THE COURT: Okay.

23 MR. ABBENANTE: I mean, I was -- I'm, I'm not
24 trying -- I'm saying there's, there's parts of this. I'm
25 trying to --

1 THE COURT: Okay.

2 MR. ABBENANTE: -- put it all in perspective, okay?

3 And as far as the punishment in this case is
4 concerned, we, Ms., Ms. Ondrik, as part of the plea, obviously,
5 agreed to pay the restitution, also agreed to a fine in this
6 case, which is in excess of the fine recommended under the
7 guidelines. It was \$28,000 and that was agreed to. And that,
8 again, I think, is punishment.

9 But with respect to Ms. Ondrik's particular situation,
10 unlike -- what I believe to be the situation with Ms. Ondrik,
11 she is the primary caretaker for two children. Both -- I think
12 one was 5 and one is 7. They don't have any family in this
13 area and her husband, who's also in law enforcement, is working
14 double shifts to try to keep the family afloat. There will be
15 nobody able to care for her two children under these, if your
16 Honor incarcerates her. There's no family around here to do it
17 and they can't afford daycare and unlike the situation with
18 Mr. Yamatani, I mean, obviously, his wife is available. I
19 don't know what financial arrangements they can make to limit
20 her work, but the mother will be there for the children. If
21 your Honor incarcerates Ms. Ondrik, there's nobody there for
22 her children. There's nobody there to care for them and her
23 husband is just either going to have to quit his job to take
24 care of them fulltime. Because I don't see any other
25 alternative at this point.

1 And so that circumstance, I think, is very different
2 from most individuals that would appear under -- in the --
3 before the Court under these circumstances.

4 And essentially, I don't know what else to say about
5 it other than that. Because there -- this is Ms. Ondrik's
6 fault. She did it. She did it knowingly. She's lost her
7 career. She's done all those -- she suffered all the same
8 consequences that Mr. Levin brought to your attention with
9 regard to Mr. Yamatani, but the difference here is the factors
10 that I think the Court needs to consider in, in imposing a
11 sentence of incarceration in this case and those are the
12 family, the family situation as it exists before the Court and
13 which is, basically, undisputed, that she is the sole caretaker
14 of these two children. She has been doing so while she's been
15 unemployed. Before she was unemployed there were other
16 arrangements 'cause they could afford that. They can't afford
17 that now. Her husband cannot afford that and pay all the bills
18 that are required to keep his children going and keep his
19 family intact.

20 And with all due respect to the Court, an eight month
21 -- if your Honor was to consider the same sentence for
22 Ms. Ondrik, that would be absolutely devastating to this
23 family, I don't know how they'll survive that, and I would urge
24 the Court to consider an alternative, the alternative that was
25 recommended by Probation and recommended by the United States

1 in this case under these circumstances.

2 THE COURT: Thank you.

3 I'll hear from the Government.

4 MR. AKE: Your Honor, I can tell that the Court is
5 fully apprised of the, the 3553 factors in terms of the nature
6 and seriousness of the offense. So I won't dwell on that.

7 The Government is making the recommendation it agreed
8 to make and, that the defendant be sentenced to a sentence of
9 probation of two years, again with the caveat that so long as
10 the Court is making the financial aspects of the judgment
11 payable immediately, are recommending that six months home
12 detention be the first portion of that probation sentence, and
13 that the Court order restitution in the amount of \$14,000, a
14 fine of \$28,000, and a special assessment of \$25.

15 Again, the Court -- I explained to the Court in
16 Mr. Yamatani's case why the Government feels this is sufficient
17 but not greater than necessary to address the conduct involved
18 as well as to deter others that might be similarly situated.
19 The Government does maintain that this is a serious offense due
20 to the fact of the defendant's position as a special agent and
21 responsibility for investigating and prosecuting, or attempting
22 or bringing to prosecution the types of crimes that she engaged
23 in during 2009 and 2010 and, and what followed in terms of the
24 conduct.

25 But, but the Government does feel that the, the

1 probation with a period of home, a six-month period of home
2 detention is sufficient and not greater than necessary to
3 address that.

4 Thank you, your Honor.

5 THE COURT: Thank you.

6 Ms. Ondrik, before I impose the disposition, you have
7 the right to say anything you wish to say, but before doing so
8 I'm going to ask you to stand and raise your right hand. We'll
9 place you under oath.

10 (Defendant Ondrik sworn)

11 THE COURTROOM DEPUTY: Will you please state your full
12 name for the record?

13 DEFENDANT ONDRIK: Rachel Ondrik, Rachel Garrison
14 Ondrik.

15 THE COURTROOM DEPUTY: Thank you, ma'am.

16 THE COURT: And you have to keep your voice up.

17 Feel free to be seated and just slide the microphone
18 over toward you.

19 What, if anything, would you like to say?

20 DEFENDANT ONDRIK: Your Honor, I've, I've made a
21 horribly grave error in, in judgment and would like to
22 apologize to the, to the Court, to the Federal Government, and,
23 and to my family. I've learned a very, very hard lesson and
24 I've made many mistakes and I will never place myself or my
25 loved ones in this position again.

1 THE COURT: Let me ask you this. Slide the microphone
2 closer.

3 DEFENDANT ONDRIK: I'm sorry.

4 THE COURT: That's fine.

5 DEFENDANT ONDRIK: I'm sorry.

6 As a result of my actions, I've lost my job, my
7 federal retirement, caused a great deal of embarrassment and
8 emotional turmoil and financial hardship for myself and my
9 family. I've done untold damage to my future and my career and
10 my prospects for future work and placed myself in a position
11 where I no longer have any hope of working in the field of law
12 enforcement ever again. I can't believe I made such a stupid
13 decision that will so greatly affect me and my loved ones for
14 the rest of our lives.

15 In addition, as a result of my actions and subsequent
16 job loss, my husband has been forced to work a great deal of
17 overtime to meet our financial responsibilities. In addition
18 to regularly working the night shift, he has been picking up
19 every overtime shift he can in addition to his work on the
20 night shift on the SWAT team and as a firearms instructor.
21 This is an exhausting and unfair burden to him and has placed
22 my children in a situation where they have little quality time
23 with their father.

24 I'm sorry for the effect that my actions have had on
25 my husband and my children and I apologize to the Court and the

1 Federal Government. My actions have greatly affected my
2 children. They can feel the stress in our home, already. They
3 miss their father greatly. I'm deeply ashamed of myself and
4 I'm sorry I chose a path that led to such disastrous results.

5 THE COURT: Thank you.

6 Counsel, does the husband wish to be heard?

7 Welcome, sir. Why don't you come to the podium here.

8 (Mr. Ondrik complies)

9 THE COURT: Why don't you give us your name for the
10 record.

11 MR. ONDRIK: My name is Brian Ondrik.

12 Excuse me, your Honor. I'm just a little emotional
13 right now.

14 This whole situation has placed an undue, a great
15 amount of stress on our relationship and our family and it
16 would just -- it would just -- I don't know what, what the
17 profound effect it would have if you would incarcerate my wife
18 today on me or our children. It's just -- my whole situation
19 is just -- sorry, your Honor.

20 THE COURT: Take your time. It's not a problem.

21 MR. ONDRIK: I mean, she realizes the mistakes she has
22 made. I feel she is sorry for them and she wants nothing
23 better than to make, make it right, put this behind us, and
24 just, you know, start putting our lives back together.

25 Again, it'll just -- incarceration on this would be

1 just unfound. I mean, in my eyes, I've -- I just -- I just
2 need my wife at home, sir, your Honor.

3 That's all I have to say.

4 THE COURT: Thank you, sir.

5 (Pause)

6 THE COURT: To say that I've read and reread the
7 materials that have been provided in this case more than once
8 is an understatement. This is tragic, one of the most tragic
9 things that we often see. I've listened carefully to your
10 statement, your prepared remarks, as well as those of
11 Mr. Yamatani's. I think they're genuine. I do.

12 And if there's a person in the courtroom who cannot
13 feel the pain that your husband feels at this hour, that person
14 doesn't have a heart. You've spoken about the difficulties
15 he's facing and quite frankly, the toughest job in the
16 courtroom over the last 15, 20 minutes has been that of your
17 counsel. 'Cause like the man who sat in that seat before him,
18 he's dealing with the unexpected. Done a good job and I don't
19 mean that just to be nice.

20 One of the responsibilities of the court is to make
21 sure that a sentence that is imposed is individually crafted
22 and certainly, the cloud in this room has been the eight months
23 that has just been handed out. That's the, the 600-pound
24 gorilla. That is the boulder being pushed uphill and I have to
25 look at each case differently. Even though the crime may be

1 the same, the people involved may be different. And while I --
2 what I'm applauding your counsel on is his abilities and
3 attempts to distinguish your circumstance from Mr. Yamatani's.
4 Same crime, same nearly \$40,000 in play that was attempted to
5 be obtained from the Government. I assume that the Government
6 only put \$14,000 to your account as actually obtained or
7 something because that's the amount of restitution that's been
8 agreed upon. It's not for me to look behind that, either.

9 And the hat that counsel rightfully hangs on the wall,
10 or the peg that he rightfully tries to hang his hat on is the
11 impact upon your family. Mr. Yamatani had an impact with his
12 family. Your husband's working double shifts. He, too, is
13 involved in law enforcement. Both families are facing
14 unimaginable changes where incarceration is involved. For
15 anyone who sits up here in a black dress who claims to know it
16 all, that's a bad statement. It's wrong, in error. Small
17 children involved.

18 The court is required to be no respecter of persons,
19 whether rich, poor, old, or young, white collar, blue collar,
20 with children, without children. Fair to argue that the court
21 should be concerned about some of the collateral consequences
22 impact upon and effect on a family affair and while I heard you
23 indicate that you were embarrassed or disappointed in yourself
24 because you made this one decision that was so horrible, I
25 would be remiss in not saying that this was not one mistake.

1 This was not one decision. This was a decision and another
2 decision and another decision reduced to writing. I don't
3 know, but probably under an oath if I know the Federal
4 Government enough, compounded by insistence, persistence in
5 that belief even when faced with the knowledge that others know
6 the truth.

7 You are right to have differences of opinion as to
8 what the right outcome here is. That's, that's what we do.
9 And I guess I could sum it up by saying if your offense
10 justified four strikes at the law (hits hand on bench four
11 times), that would be judgment. If somebody decided not to
12 give you four, but (hits hand on bench three times), you might
13 call that mercy. And still another one may decide to give you
14 less than that and nothing at all. That would be grace.

15 Grace is not in play here. Justice is very much in
16 play and we can disagree as to what is the most appropriate
17 remedy. We've got some help with that in terms of the
18 sentencing guidelines. Everyone has rightfully made arguments
19 about it and as my judicial colleagues have whined about for
20 years, we hate guidelines, at least in their old form because
21 it required, it required the court to do something of a certain
22 degree. The Supreme Court eventually made it far more advisory
23 and, therefore, I think that the right balance has been struck,
24 that is, we need some kind of a national standard as to what an
25 appropriate sentence should be, but give the Judges discretion

1 to look at each case individually and to mete out punishment,
2 restitution, whatever.

3 I have sent many an elderly person to jail, 90 and
4 older, and I've sent many a single parent to jail knowing full
5 well that children may be going to live with grandparents or
6 going to live with someone in protective, or Child, Child
7 Services, or something, but on this record I do not find a
8 material difference between your conduct and your circumstances
9 compared to Mr. Yamatani's.

10 So your sentence is eight months, Bureau of Prisons.
11 Restitution is required of \$14,000, a fine is imposed of
12 \$28,000, \$25 special assessment, and one year of supervised
13 release.

14 My condolences to your husband and I know you'll get
15 out and y'all will make a go of it. This is not meant to be a
16 sentence upon him or your children, but you're in the custody
17 of the U. S. Marshal.

18 MR. ABBENANTE: Your Honor, may I just address the
19 Court with regard to -- again, I, I think that the
20 circumstances here with regard to even voluntary surrender are
21 different with regard to Ms. Ondrik.

22 First, as your Honor knows, she is a law enforcement
23 officer and I don't know where --

24 THE COURT: Was.

25 MR. ABBENANTE: Was a law enforcement officer -- and I

1 don't know where she will be placed within the, the local
2 detention centers -- but I would urge the Court to allow the
3 Bureau of Prisons to designate a federal facility for her where
4 at least we can arrange that there be some sort of protective
5 custody for her, No. 1.

6 But, No. 2, if your Honor will at least allow a brief
7 period for her to self-surrender. If your, if your Honor is
8 not willing to let her self-surrender until the Bureau of
9 Prisons designates, at least a brief period of time so that she
10 can, her and her husband can try to make some arrangements for
11 her children. Because like tomorrow, her husband has to be at
12 work and everything is still in place, but he, there's no one
13 to take care of the children and I would just urge the Court to
14 at least allow her a week, if your Honor is not willing to
15 allow her to voluntarily surrender when the Bureau of Prisons
16 designates, at least allow her a week so that she can try to
17 make some arrangements either with her brother or her father or
18 somebody to come in here and pitch in. Because there is no one
19 here to help her husband and we can't get anybody here
20 overnight to do it.

21 THE COURT: Your request is reasonable, but your
22 request is likewise denied.

23 I will sign any order, if you like, with respect to
24 her being in protective custody until the U. S. Marshals
25 Service can do better and I will make that oral request to them

1 now through the Court Security Officers that are here.

2 Thank you.

3 MR. ABBENANTE: Very well, your Honor.

4 THE COURT: Thank you.

5 Mr. Levin?

6 MR. LEVIN: Could you -- your Honor, if I may?

7 THE COURT: Sure.

8 MR. LEVIN: Could you make the same oral request --

9 THE COURT: Yes.

10 MR. LEVIN: -- on behalf of Mr. Yamatani?

11 THE COURT: Yes. I am specifically requesting -- and
12 I see we've got a Marshal here as well -- that these defendants
13 be in protective custody until the U. S. Marshals Service and
14 the Bureau of Prisons makes an official determination of the
15 proper placement.

16 MR. ABBENANTE: Well, your Honor, can you also direct
17 orally or on the record that the Bureau of Prisons try to
18 expedite the designation?

19 THE COURT: I will do that.

20 MR. ABBENANTE: And recommend Cumberland or any
21 facility close to this jurisdiction.

22 THE COURT: I will make that recommendation. I will
23 tell you, however, that the Bureau of Prisons for some reason
24 oftentimes does things their own way.

25 MR. ABBENANTE: I understand.

1 THE COURT: Fair enough.

2 Thank you.

3 Yes, sir?

4 MR. AKE: Your Honor, I just ask the Court -- and I'm
5 not sure if this makes any, creates any problem for
6 Mr. Yamatani -- but if you could advise the defendant of her
7 appellate rights.

8 THE COURT: I'm sorry?

9 MR. AKE: If you could advise the defendant --

10 THE COURT: Yes.

11 MR. AKE: -- of her rights.

12 THE COURT: They both have the right to an appeal
13 within 14 days and it must be filed in the clerk's office here.

14 Thank you.

15 We'll be in recess.

16 THE COURTROOM DEPUTY: All rise.

17 (Proceedings concluded at 3:48 p.m.)

18

19

20

21

22

23

24

25

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

CERTIFICATE

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ Janice Russell

June 25, 2013

Janice Russell, Transcriber

Date