

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

* * * * *

UNITED STATES OF AMERICA	*	CRIMINAL NO. 08-795
	*	
Versus	*	Houston, Texas
	*	3:30 p.m.
MISAO HIOKI	*	December 10, 2008

* * * * *

REARRAIGNMENT/SENTENCING HEARING

BEFORE THE HONORABLE SIM LAKE
UNITED STATES DISTRICT JUDGE

* * * * *

Proceedings recorded by computer stenography
Produced by computer-aided transcription

1 **APPEARANCES :**

2 For the United States of America:

3 **MR. MARK C. GRUNDVIG**
4 United States Department of Justice
5 Antitrust Division
6 450 5th Street N.W., Suite 11300
7 Washington, DC 20530

8 **MR. BRIGHAM Q. CANNON**
9 United States Department of Justice
10 Criminal Division, Fraud Section
11 1400 New York Avenue N.W., 3rd Floor
12 Washington, DC 20005

13 For the Defendant:

14 **MR. PHILIP H. HILDER**
15 Attorney at Law
16 819 Lovett Boulevard
17 Houston, Texas 77006

18 **MR. JAMES H. MUTCHNIK**
19 Kirkland & Ellis, LLP
20 200 East Randolph Drive
21 Chicago, Illinois 60601

22 Court Reporter:

23 **MR. EDWARD L. REED**
24 515 Rusk, Suite 8016
25 Houston, Texas 77002

1 THE COURT: We are here this afternoon for the
2 arraignment and sentencing in *United States versus*
3 *Misao Hioki*, Criminal Action H-08-795. Will counsel
4 please identify themselves and their clients for the
5 record?

6 MR. GRUNDTVIG: Your Honor, my name is Mark
7 Grundvig. I'm an attorney with the Antitrust Division,
8 Department of Justice, on behalf of the United States.
9 With me is my colleague, Brigham Cannon, from the
10 Criminal Division.

11 THE COURT: Thank you.

12 MR. HILDER: Good afternoon, Judge. Philip
13 Hilder, and I'm here on behalf of Mr. Hioki. And I also
14 have counsel who has moved *pro hac vice*, Jim Mutchnik.

15 MR. MUTCHNIK: Good afternoon, Your Honor.

16 THE COURT: Will the defendant please stand at
17 the podium.

18 Would you please state your name, sir?

19 DEFENDANT HIOKI: Yes, my name is Misao Hioki.

20 THE COURT: Mr. Hioki, I understand that
21 pursuant to a Plea Agreement, you wish to plead guilty to
22 Count One, which charges you with conspiracy to violate
23 the Sherman Antitrust Act, 15 United States Code, Section
24 1; and also to conspiracy to violate the Foreign Corrupt
25 Practices Act, in violation of Title 18 United States

1 Code, Section 371.

2 Is that correct?

3 DEFENDANT HIOKI: Yes.

4 THE COURT: Would you please raise your right
5 hand and be sworn.

6 ***[Defendant sworn by the case manager]***

7 Before I can accept your plea, I must ask
8 you a number of questions. It is very important that you
9 listen carefully to all of my questions and that you
10 answer all of my questions truthfully and completely, for
11 several reasons.

12 First, since you are now under oath, if you
13 gave an untrue answer to one of my questions, you could
14 be charged with the separate crime of perjury.

15 Do you understand that?

16 DEFENDANT HIOKI: Yes, Your Honor.

17 THE COURT: Also, before I can accept your plea,
18 I must make a number of findings. My findings are based
19 on your answers. In order for my findings to be correct,
20 it is therefore necessary that all of your answers be
21 truthful and complete.

22 Do you understand that?

23 DEFENDANT HIOKI: Yes, Your Honor.

24 THE COURT: If you do not understand anything
25 that I say this afternoon, will you please ask me to

1 repeat or explain anything that you do not understand?
2 Will you do that?

3 DEFENDANT HIOKI: Yes, Your Honor.

4 THE COURT: Also, you may stop at any time and
5 talk to your attorneys. You do not need anyone's
6 permission to talk to them.

7 DEFENDANT HIOKI: Yes, Your Honor.

8 THE COURT: How old are you?

9 DEFENDANT HIOKI: Yes, I'm 55 years old.

10 THE COURT: I've read substantial information
11 about you, but I nevertheless need to ask you questions
12 about your background.

13 Would you please summarize your education?

14 DEFENDANT HIOKI: Yes. I graduated college in
15 Tokyo, so Master's Degree I have.

16 THE COURT: You graduated what?

17 DEFENDANT HIOKI: University in Tokyo.

18 THE COURT: And what degree did you receive?

19 DEFENDANT HIOKI: Master.

20 MR. MUTCHNIK: He received a Master's from
21 undergraduate degree.

22 THE COURT: How long have you used the English
23 language?

24 DEFENDANT HIOKI: Almost 30 years I used
25 English.

1 THE COURT: I understand that you have lived and
2 worked in this country; is that true?

3 DEFENDANT HIOKI: Yes, I stayed in USA for five
4 years.

5 THE COURT: Did you use English as your primary
6 language then?

7 DEFENDANT HIOKI: Primary language. In USA I
8 used the English as primary language.

9 THE COURT: Have you ever been diagnosed or
10 treated for any type of mental problem?

11 DEFENDANT HIOKI: No, I have never -- I don't
12 have such an experience.

13 THE COURT: I don't want you to think that by
14 asking you these questions, I'm suggesting that you have
15 a problem. I merely need to establish on the record that
16 there would be no impediment for your understanding the
17 consequences of your plea.

18 Have you ever been diagnosed or treated for
19 addiction to drugs or alcohol?

20 DEFENDANT HIOKI: No, I don't.

21 THE COURT: Has anyone ever told you that you
22 should be treated for any type of mental problem or for
23 any type of addiction?

24 DEFENDANT HIOKI: No.

25 THE COURT: How many times have you spoken with

1 your attorneys about this case?

2 DEFENDANT HIOKI: So many times I already talked
3 with my attorneys.

4 THE COURT: I would estimate you probably talked
5 to them at least 20 times; is that correct?

6 DEFENDANT HIOKI: Yes, surely more than 20
7 times.

8 THE COURT: Have your attorneys discussed with
9 you the charges against you contained in the Information
10 and what the Government would have to prove to establish
11 your guilt at trial if the case were tried?

12 DEFENDANT HIOKI: Yes, I understand.

13 THE COURT: Have your attorneys discussed with
14 you the evidence that the Government has against you?

15 DEFENDANT HIOKI: Yes, I discuss.

16 THE COURT: Have your attorneys discussed how
17 the Federal Advisory Sentencing Guidelines might apply in
18 your case?

19 DEFENDANT HIOKI: Yes.

20 THE COURT: Have your attorneys reviewed with
21 you the Plea Agreement?

22 DEFENDANT HIOKI: Yes.

23 THE COURT: How long -- when did you first see
24 the Plea Agreement?

25 DEFENDANT HIOKI: Final version I read on

1 October 30.

2 THE COURT: And have you had ample time to
3 discuss with your attorneys the terms of the Plea
4 Agreement?

5 DEFENDANT HIOKI: Yes, I do.

6 THE COURT: Have your attorneys answered all of
7 your questions?

8 DEFENDANT HIOKI: Yes.

9 THE COURT: Have they done everything that you
10 have asked them to do?

11 DEFENDANT HIOKI: Yes.

12 THE COURT: Are you fully satisfied with the
13 advice and counsel that your attorneys have provided to
14 you?

15 DEFENDANT HIOKI: Yes, I am satisfied.

16 THE COURT: You do not have to plead guilty.
17 You have a right to go to trial.

18 If you went to trial, you would have the
19 right to the assistance of counsel, you would have the
20 right to see and hear the Government's witnesses and have
21 your lawyer question them. You would have the right to
22 compel other people to come into court and provide
23 evidence. You would not be required to testify unless
24 you voluntarily chose to do so. You could not be
25 convicted unless the jury unanimously found beyond a

1 reasonable doubt that you were guilty.

2 If you plead guilty today, however, there
3 will not be a trial and you will give up the right to a
4 trial and all the protections that are associated with a
5 trial.

6 Do you understand that?

7 DEFENDANT HIOKI: Yes, I understand.

8 THE COURT: Are you a United States citizen?

9 DEFENDANT HIOKI: No.

10 THE COURT: Then it is very likely that after
11 you serve your sentence, you will be deported.

12 Do you understand that?

13 DEFENDANT HIOKI: Yes, I understand.

14 THE COURT: The Plea Agreement and the
15 applicable guideline range provide for a term of
16 imprisonment. There is no parole in federal court.
17 That means if you were sentenced to prison, you would
18 actually have to serve in prison whatever sentence of
19 imprisonment I imposed.

20 Do you understand that?

21 DEFENDANT HIOKI: Yes, I understand.

22 THE COURT: The maximum sentence you face on
23 Count One is 10 years in prison and a fine of \$1 million
24 or twice the gross gain or loss resulting from the
25 offense, and supervised release of not more than three

1 years, and restitution to any victims, and a special
2 assessment of \$100.

3 As to Count Two, the maximum sentence you
4 face is five years in prison and a fine of \$250,000 or
5 twice the gross gain or loss resulting from the offense,
6 and restitution to victims, and supervised release of not
7 more than three years, and a special assessment of \$100.

8 Do you understand that?

9 DEFENDANT HIOKI: Yes, Your Honor.

10 THE COURT: Let me stop at this point and ask
11 the Government a couple of questions.

12 Are there any identifiable victims to the
13 offenses to which he is pleading guilty to?

14 MR. GRUNDTVIG: Your Honor, there are class
15 action suits that we believe are sufficiently addressing
16 the needs of the victims. We have not identified as part
17 of these proceedings any victims that are a party to the
18 suit that are not being represented --

19 THE COURT: Can you speak up? I have trouble
20 hearing you.

21 MR. GRUNDTVIG: Yes, I apologize, Your Honor.

22 There are victims, but the Government
23 believes that their concerns are being adequately
24 addressed in civil lawsuits in the availability of civil
25 damages.

1 THE COURT: What I'm getting to, obviously, is
2 the Victim Rights Act requires victims be notified of a
3 plea hearing and victims be notified of a sentencing.

4 Has the Government provided notice to any
5 victims?

6 MR. GRUNDTVIG: The Government is providing
7 notice via the publication on its website, as we
8 typically do in antitrust cases, but not via specific
9 notice through mailings, if that's what you're asking,
10 Your Honor.

11 THE COURT: Well, did you provide on your
12 website notice that this rearraignment and sentencing was
13 going to occur today?

14 MR. GRUNDTVIG: No, Your Honor, a press release
15 will be released after the sentencing.

16 THE COURT: How would the press release give
17 people an opportunity to appear and oppose either the
18 guilty plea or the sentencing?

19 MR. GRUNDTVIG: Let me back up. There are no
20 victims that are easily identifiable for purposes of this
21 hearing today that we've been able to notify.

22 THE COURT: All right. It's your risk if there
23 are victims who later oppose this.

24 Do you understand that?

25 MR. GRUNDTVIG: I understand, Your Honor.

1 THE COURT: All right, have a seat.

2 I want now to discuss with you the terms of
3 the Plea Agreement. It's very complex and I don't intend
4 to discuss each paragraph of it, but I do want to be sure
5 you understand certain parts of it. So, if your attorney
6 would please put a copy before you.

7 In Paragraph 2 you agree to plead guilty
8 to the two offenses I described earlier. You also
9 acknowledge that normally you would have a right to
10 appeal and normally you would have a right to
11 collaterally attack your conviction or your sentence.

12 In this agreement you waive or give up your
13 right to file any appeal, including an appeal of your
14 sentence, and you waive the right to collaterally attack
15 your conviction or sentence by means of any
16 post-conviction proceeding, if my sentence is consistent
17 with the recommendation in Paragraph 10.

18 Have you discussed with your lawyers the
19 rights you would normally have to appeal your sentence
20 and to appeal your conviction and your rights to
21 collaterally attack your conviction and sentence?

22 DEFENDANT HIOKI: Yes.

23 THE COURT: And in return for the promises made
24 by the Government, is it your wish to give up those
25 rights?

1 DEFENDANT HIOKI: Yes, I understand.

2 THE COURT: The agreement provides in Paragraph
3 8 a stipulated guideline calculation. I'm not going to
4 go over it in great detail. But the bottom line is that
5 the adjusted offense level for Count One is 20 and the
6 adjusted offense level for Count Two is 30, and the
7 combined offense level for both counts is 30; and that
8 after all applicable adjustments, the Total Offense Level
9 is 27, the Criminal History Category is 1, and the
10 guideline range is 70 to 87 months.

11 Do you understand that?

12 DEFENDANT HIOKI: Yes, Your Honor.

13 THE COURT: There is a sentencing agreement in
14 Paragraph 10, which provides that you will pay a fine of
15 \$80,000 in installments, one installment within 15 days
16 of \$40,000, and the other \$40,000 installment in a year,
17 and that you will serve a prison sentence of 24 months,
18 and that there will be no supervised release after your
19 imprisonment, and that the parties will not seek a
20 sentence outside the guidelines, nor any guideline
21 adjustment for reasons not set forth in the Plea
22 Agreement, and that the United States will not object to
23 the defendant's waiver of a presentence investigation.

24 Have you talked to your lawyers about what
25 those provisions involve?

1 DEFENDANT HIOKI: Yes, I have.

2 THE COURT: The United States also agrees that
3 it will file a motion pursuant to Section 5K1.1 for a
4 departure from the guideline range.

5 In Paragraph 15, you agree to cooperate
6 fully with the United States in investigating and
7 prosecuting other people for crimes. In particular, you
8 agree to produce, in the United States and at other
9 mutually agreed upon locations, documents in your
10 possession or subject to your control. You agree to make
11 yourself available for interviews, in the United States
12 and at other mutually agreed upon locations, at your own
13 expense upon the request of attorneys and agents of the
14 United States. And that you agree to provide truthful
15 and complete information both in interviews and in other
16 venues. And you agree to testify truthfully before any
17 grand jury or trial or any other judicial proceeding.

18 The United States agrees in Paragraph 16
19 that it will not bring further criminal charges against
20 you for any act or offense committed before the date of
21 this agreement that was undertaken in furtherance of
22 either an antitrust conspiracy involving the manufacture
23 or sale of marine hose, or the corrupt payments
24 conspiracy, including bribery and related offenses
25 arising out of the facts described in this agreement.

1 The Government's agreement not to prosecute
2 you does not apply to civil matters of any kind or to
3 violation of the federal tax or securities laws or to any
4 crime of violence.

5 Now, other than as to the Factual Basis,
6 which I'll come to in a minute, have I correctly
7 described your agreement with the Government as you
8 understand it?

9 DEFENDANT HIOKI: Yes.

10 THE COURT: Other than what is stated in this
11 written Plea Agreement, has any agent or attorney of the
12 United States Government made any promises to you in
13 connection with your plea?

14 DEFENDANT HIOKI: No.

15 THE COURT: Has anyone threatened or forced you
16 to plead guilty?

17 DEFENDANT HIOKI: No.

18 THE COURT: Other than what is stated in this
19 agreement, has anyone promised you what your sentence
20 will be if you plead guilty?

21 DEFENDANT HIOKI: No.

22 THE COURT: In order for the Government to prove
23 your guilt at trial as to Count One, the Government
24 would have to show that the conspiracy as charged in the
25 Information was knowingly formed and was in existence

1 from 1999 through May of 2007. The Government would
2 have to prove that you knowingly agreed to join and
3 participate in the conspiracy, specifically that you were
4 aware and agreed to suppress and eliminate competition by
5 rigging bids, fixing prices, and allocating market share
6 for the sale of marine hose in the United States and
7 elsewhere; and that you participated in the conspiracy
8 from at least as early as 2000 until as late as May 2007,
9 with the intent to further the unlawful purpose of the
10 conspiracy; and finally, that the conspiracy was in
11 unreasonable restraint of interstate and foreign trade
12 and commerce.

13 As to Count Two, the Government would have
14 to show that you and at least one other person made an
15 agreement to commit the crime of conspiracy to violate
16 the Foreign Corrupt Practices Act by making corrupt
17 payments to Government officials in Latin America and
18 elsewhere to obtain and retain benefits in the form of
19 international engineered products business for your
20 employer.

21 Second, that you knew of the unlawful
22 purpose of that agreement and joined in it willfully with
23 the intent to further the unlawful purpose;

24 And finally, that one of the conspirators,
25 during the existence of the conspiracy, knowingly

1 committed at least one of the overt acts described in the
2 Information in order to accomplish some object or purpose
3 of the conspiracy.

4 The Plea Agreement provides in Paragraph 4,
5 at Pages 3, 4, 5, 6, 7, 8, 9, a Factual Basis for the two
6 offenses. The Plea Agreement provides that in pleading
7 guilty to Counts One and Two of the Information, the
8 defendant acknowledges and admits that the facts as
9 stated in the Plea Agreement are true; that he was aware
10 of these facts during his employment; and that if the
11 case proceeded to trial, the United States would be able
12 to prove these facts beyond a reasonable doubt.

13 Now, the Factual Basis says that the
14 defendant was employed at Company-1. What is the name
15 of Company-1?

16 DEFENDANT HIOKI: Bridgestone Corporation.

17 THE COURT: Thank you.

18 Have you carefully read the Factual Basis
19 for the offenses charged?

20 DEFENDANT HIOKI: Yes, I did.

21 THE COURT: And are all of those facts true?

22 DEFENDANT HIOKI: Yes.

23 THE COURT: Did you do everything that is
24 attributed to you on those pages of the Plea Agreement?

25 MR. MUTCHNIK: Did you do what it says in the

1 Factual Basis? Did you actually do the things?

2 DEFENDANT HIOKI: Yes.

3 THE COURT: Mr. Hilder, do you think any other
4 advice of rights is required before I can accept your
5 client's plea?

6 MR. HILDER: No, Judge, I don't think so.

7 THE COURT: Mr. Hioki, how do you plead to
8 Counts One and Two? Guilty or not guilty?

9 DEFENDANT HIOKI: Yes, I pled guilty.

10 THE COURT: It is the finding of the Court that
11 the defendant is fully competent and capable of entering
12 an informed plea, and that the plea is a knowing and
13 voluntary plea, supported by an independent basis in
14 fact, establishing each of the essential elements of the
15 offense. I therefore accept your plea and now adjudge
16 you guilty.

17 I have read the defendant's sentencing
18 memorandum. The Government has just provided me a short
19 memorandum, so I'm going to stop for a second and read
20 the Government's memorandum. In the future, it would be
21 helpful if you can deliver a copy to chambers.

22 **[Pause]**

23 Mr. Hioki, you may now make a statement and
24 present any information in mitigation. Then I will let
25 the lawyer for the defendant and the lawyer for the

1 Government make any argument. I'll remind Mr. Hilder
2 that I have read the entire sentencing memorandum and all
3 of the attachments to it.

4 MR. HILDER: Thank you, Judge.

5 DEFENDANT HIOKI: Your Honor, I'm deeply sorry
6 that I was wrong, and I'm here to accept responsibility
7 and judgment of the Court.

8 This is my statement.

9 THE COURT: All right, Mr. Hilder.

10 MR. HILDER: Yes, Judge, I'm going to defer to
11 Mr. Mutchnik.

12 THE COURT: That's fine.

13 MR. MUTCHNIK: Hello, Your Honor. We're here
14 asking for the Court to impose the recommended sentence.
15 We submitted our sentencing memoranda to lay out
16 additional facts so the Court can fairly exercise its
17 independent discretion to impose an appropriate
18 sentence.

19 I've had the pleasure of representing
20 Mr. Hioki and gotten to know his wife, who's present in
21 court today. She's here. She's been at his side since
22 he was arrested in a few short weeks in May of '07.

23 We think the sentencing memo fairly lays
24 out the circumstances that Mr. Hioki has suffered
25 greatly. There is no risk of a continuing violation.

1 His career at Bridgestone and essentially as a
2 professional manager is over. He retired on Friday at
3 the company's request. There is no promise whatsoever
4 that he would return to Bridgestone or any other entity
5 for future employment.

6 He's going to be, as the Court noted,
7 leaving the United States. There is essentially no
8 likelihood he can return to the United States to commit
9 any other offense or provide for his family. So he and
10 his wife will be leaving. It's uncertain where they are
11 going to go at the end of his term of imprisonment.

12 I think the Court has a sense from the
13 materials that we submitted; but to be clear, having
14 represented many Japanese companies and Japanese
15 individuals in matters like these before, the press
16 scrutiny around this matter has been extreme in Japan.
17 It's forced Mr. Hioki and his wife to very much change
18 what their prior life has been about. It has been solely
19 the press scrutiny about Mr. Hioki. There has been no
20 other individuals identified in Japan.

21 THE COURT: Let me ask you about that. Is it
22 likely that there will be indictments of other Japanese
23 citizens?

24 MR. MUTCHNIK: We believe, well, his cooperation
25 would certainly support the Government's effort to move

1 up and down Bridgestone, both those who went before
2 Mr. Hioki and those who are below him that he tried to
3 protect, but certainly were participating. It's our
4 anticipation that additional charges would be brought
5 based on his cooperation, including charges against the
6 company.

7 THE COURT: Well, let me ask the Government, I
8 assume you are going to file a 5K motion. I haven't seen
9 it yet. It's referred to in the Plea Agreement.

10 MR. GRUNDTVIG: And I apologize if the Court
11 hasn't received it. It's my understanding that that was
12 filed on Monday. And again, I apologize for both that
13 and --

14 THE COURT: Does it say anything that's not in
15 the Plea Agreement?

16 MR. GRUNDTVIG: The 5K motion?

17 THE COURT: Yes.

18 MR. GRUNDTVIG: As far as factually, no.

19 THE COURT: All right. Is it likely that other
20 people will be charged?

21 MR. GRUNDTVIG: What I can say is there is an
22 ongoing investigation. The defendant has provided
23 substantial cooperation, which includes information
24 relating to others both at his company and at others,
25 and so we definitely anticipate that there will be

1 additional charges filed.

2 THE COURT: Well, what I'm leading up to is, if
3 he cooperates in the future, is it likely that a Rule 35
4 Motion would be filed?

5 MR. GRUNDTVIG: The Government is not
6 contemplating that, Your Honor, no.

7 THE COURT: So the 5K basically contemplates any
8 future cooperation?

9 MR. GRUNDTVIG: That's correct.

10 THE COURT: Sorry to interrupt you, but I wanted
11 that to be established.

12 MR. MUTCHNIK: That was actually my very next
13 point. We've asked the Government, in the context of
14 their 5K1, to sort of fast-forward, you know, the course
15 of their investigation. Mr. Hioki has identified a
16 number of individuals and companies and has offered, even
17 after he leaves the United States, to return -- that's
18 unusual -- and be able to cooperate both in the Fraud
19 Section investigation, as well as the Antitrust Division
20 investigation, and his expectation is that he'll be happy
21 to cooperate wherever they need it, for as long as they
22 need it.

23 I would add, Your Honor, beyond all of
24 those things, he has been here under arrest, under home
25 confinement, with an electronic monitoring device. I

1 know the Court sees far different circumstances every
2 day. But for a businessman, it's been extremely
3 difficult, embarrassing, unusual, painful.

4 We're asking the Court to remember other
5 defendants that appeared before you and take into account
6 their service and confinement when you are considering
7 what's the appropriate punishment here.

8 THE COURT: All right.

9 Does the Government wish to say anything
10 else?

11 MR. GRUNDTVIG: If the Court would like to be
12 heard on the 5K motion that it apparently didn't receive,
13 I'm happy to address that, Your Honor.

14 THE COURT: I've read the Plea Agreement. It
15 describes what the motion will say. I just want to be
16 sure the motion doesn't say anything else.

17 MR. GRUNDTVIG: No, Your Honor.

18 THE COURT: All right. I am aware of my
19 sentences in other cases. And the case in which you are
20 alluding to involved a defendant whose agreed guideline
21 range was 6 to 12 months, substantially lower, a
22 defendant who participated in only one transaction, and a
23 defendant who was not charged with violating the Foreign
24 Corrupt Practices Act. So that case serves as precedent
25 in few, if any cases, and certainly not in this one.

1 Mr. Hioki, I sentence you to 24 months in
2 custody on Count One and 24 months in custody on Count
3 Two, to be served concurrently. There will be no
4 supervised release, there will be no restitution. You
5 will pay now a \$200 special assessment. You will pay a
6 fine of \$80,000, 40,000 will be paid within 15 days and
7 the additional 40,000 will be paid in one year. There
8 will be no interest on the 40,000 that's due within one
9 year.

10 I recommend that you be confined at the
11 Federal Correctional Complex in Lompoc, California. I
12 will allow voluntary surrender. You will be on the same
13 conditions of pretrial supervision pending notification
14 of the Bureau of Prisons of the surrender date.

15 Does either counsel have any questions or
16 wish to say anything else?

17 MR. HILDER: No, Judge.

18 MR. GRUNDTVIG: No, Your Honor.

19 THE COURT: All right. You will remain on the
20 same conditions.

21 I have a question of the Government.

22 When is it going to be appropriate to
23 sentence Mr. Gillespie?

24 MR. GRUNDTVIG: Your Honor, I have not been
25 directly handling that case, but I believe any time

1 that's appropriate with the Court's schedule, we could
2 accommodate.

3 THE COURT: Heather, give me an order for
4 Presentence Report. That's 08-CR-234.

5 CASE MANAGER: Yes, sir.

6 THE COURT: All right. Mr. Hioki, I wish you
7 good luck. I sentenced you to what I believe will be a
8 fair sentence. I hope you can serve your sentence with
9 dignity and lead the rest of your life with dignity, that
10 you and your wife can look back upon this unpleasant
11 episode and lead your life productively after that.
12 Thank you.

13 DEFENDANT HIOKI: Thank you, Your Honor.

14 MR. MUTCHNIK: Your Honor, may we request that
15 the Court note that the self-surrender date, if it's
16 appropriate, be honored after January 20, 2009?
17 Ms. Hioki is having a family member join her in the
18 United States to help her get organized. Her English is
19 very poor.

20 THE COURT: Yeah, I will request that. It's
21 extremely unlikely it will be before then, anyway.

22 MR. MUTCHNIK: I understand that.

23 THE COURT: Will you communicate with the BOP
24 that, please?

25 PROBATION OFFICER: I'm sorry, what was the

1 date, Your Honor?

2 MR. MUTCHNIK: On or after January 20.

3 PROBATION OFFICER: Certainly.

4 MR. MUTCHNIK: Thank you.

5 THE COURT: Anything else from anyone?

6 MR. HILDER: No, Judge.

7 MR. GRUNDTVIG: No, Your Honor.

8 THE COURT: Counsel are excused.

9

10 REPORTER'S CERTIFICATE

11

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

15

16 /s/ Ed Reed _____
Edward L. Reed
17 Official Court Reporter

12-11-08 _____
Date

18

19

20

21

22

23

24

25