

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
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Plaintiff,	:	CRIMINAL NO. 02-475 (RWR)
	:	
	:	
RAMENDRA BASU,	:	
	:	
Defendant.	:	
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GOVERNMENT’S SENTENCING MEMORANDUM

The United States of America, by its undersigned attorney, hereby respectfully submits the following Sentencing Memorandum.

I. INTRODUCTION

On December 17, 2002, the defendant pled guilty to one count of conspiracy to violate the laws of the United States in violation of 18 U.S.C. § 371, and one count of violating the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-3. In both the stipulated Statement of Facts and during the plea colloquy, the defendant admitted that, as an officer in the World Bank’s Trust Funds Office, he conspired with a colleague at the World Bank in Washington, D.C. to steer contracts to certain consultants in exchange for cash payments. He also admitted that he facilitated a payment by a business associate to a Kenyan government official knowing the payment was meant to corruptly influence that official.

In this sentencing memorandum, the government will (1) show once again that the

defendant's statements of innocence to the Court in the Presentence Investigation Report (PSR) are false and deceptive; and (2) show that the sentencing guideline set forth in the PSR in this case is reasonable and that no departure is warranted.

## II. THE DEFENDANT'S STATEMENT IN THE PRESENTENCE INVESTIGATION REPORT

The defendant's attempt to withdraw his guilty plea was denied by this Court on January 23, 2008 (docket entry 43). Despite this rejection by the Court of the defendant's claim of innocence, he continues to deny his role in the offenses. The defendant continues to deceive the Court by submitting to the Probation Officer a statement that is wholly at odds with numerous prior statements that the defendant has given to law enforcement authorities both before and after his plea agreement. Among other things, the defendant in his statement in the PSR denies he helped arrange meetings in London between Mr. Sengupta and the Swedes but fails to mention that he himself picked up money in London to deliver to Mr. Sengupta. However, the government has previously detailed prior statements of the defendant where he admits to this very thing. See Government's Response to the Defendant's Motion to Withdraw his Guilty Plea. (Docket Entry 38, See pp. 13-20) One example from that brief is reproduced here to show the defendant's continued deception toward the Court. On April 9<sup>th</sup> and 10<sup>th</sup>, 2004, the defendant gave a taped statement to law enforcement authorities from Sweden who had traveled to the United States to take Mr. Basu's statement. Below is a verbatim excerpt from the transcript.

Male Judge  
per Interpreter:

Are you the one who is directing how the money is going to get to Mr. G?

Are you using David to hand the money over?

Mr. Basu? I have not directed anything other than receiving orders from Mr. Sengupta. Mr. Sengupta would ask for money, and my job was to tell Claus most of the time to pay him. And because this is David, I just don't remember what this was for.

Male Judge  
per Interpreter: Was it like this does Mr. Sengupta go to you and ask for money?

Mr. Basu: Uh, yes, in the beginning.

Male Judge  
per Interpreter: And you would then pass it on the Claus Fjellner?

Mr. Basu: Yes.

Male Judge  
per Interpreter: How are you supposed to know, what, how much money is involved? Is this already, had it been decided beforehand?

Mr. Basu: Gautam would tell me how much, in the beginning he would send me spreadsheets detailing exactly how much of the contract was paid, and how much is due to him. I would forward that to Claus.

Male Judge  
per Interpreter: And how would the payment then take place to Sengupta?

Mr. Basu: Various ways. Most of the money went through their meetings in London. I have made payments to him, and Mr. Gyllensvaan has probably made payments to him as well.

Male Judge  
per Interpreter: Would you tell me about the payments that you have arranged either in London, or the ones you have done yourself.

Mr. Basu: I have received, uh, I think some money in '98 in Amsterdam. I think it was \$18,000 or \$20,000 Netherlands Guilders that initially Claus said that it was for my brother-in-law who was going to visit the United States, but this money is in fact for Mr. Sengupta, and I carried it to Washington, and gave it to him. One other time, I cannot remember the date, I withdrew money from my account, my own bank account, and gave it to Mr. Sengupta. Uh, he needed to [sic] money for his brother who was suffering from cancer. I don't know whether Claus ever repaid me on this one or not.

Male Judge  
per Interpreter: The meeting was, the intention was that Claus would pay for this?

Mr. Basu: Yes.

Male Judge  
per Interpreter: The first occasion, when you received these Guilder, do you remember when in time this took place?

Mr. Basu: Um, I think it was June or July of '98.

Male Judge  
per Interpreter: How, what exactly took place when you handed to money to Sengupta?

Mr. Basu: I just came back and gave it to him in a packet.

Male Judge  
per Interpreter: At work, or at home?

Mr. Basu: Not at home.

Male Judge  
per Interpreter: Did it take place at the World Bank then?

Mr. Basu: Probably.

Male Judge: OK.

Now, the defendant makes the not-so-novel argument that he was in fact lying to the investigators when he inculpated himself but that now he is telling the truth when he tries to exonerate himself. Mr. Basu's story, as set out in the PSR, is that this was all an embellishment to please government prosecutors and it formed the basis of the government's evidence, and upon which his attorney recommended he plead guilty. See PSR, p. 8. Note, however, that Mr. Basu's statement to the Swedish authorities was given two years after Mr. Basu pled guilty. Contrary to the defendant's allegation, it was not and could not have been part of the

government's evidence in this case and could not have played any part in the defendant's decision to plead guilty in 2002.

### III. THE PLEA AGREEMENT

The plea agreement provided that should the defendant cooperate with the government, the government would consider recommending a reduced sentence. The defendant did provide assistance to the government by assisting the Swedish authorities in their foreign criminal prosecution of the defendant's coconspirators. But according to the defendant now, it was all a lie concocted to please government authorities. Furthermore, Mr. Basu twice testified in Sweden which testimony was instrumental in convicting two Swedish citizens. If Mr. Basu testified in Sweden consistently with his prior statements then we must conclude that he perpetrated a grand deception on this Court by his Motion to Withdraw his Plea and his statement to the Probation Office set forth in the PSR. If Mr. Basu testified in Sweden as he now posits with the Court, then we must conclude that he committed perjury both in this Court and in Sweden. Now that Mr. Basu has admitted to lying ("embellishing" in his words), he can simply no longer be believed. Based on the defendant's Motion to Withdraw his Guilty Plea, and the misrepresentations he is now making, the government is of the view, and the Probation Office concurs, that the defendant has not accepted responsibility. Moreover, admitted lying to the government (whether before or after the plea), is not substantial assistance and no 5K1.1 motion for a downward departure is warranted.

#### IV. DETERMINING THE PROPER GUIDELINE SENTENCE

In United States v. Booker, 543 U.S. 220 (2005), the Supreme Court held that the United States Sentencing Guidelines are now advisory rather than mandatory. Booker, 543 U.S. at 244-50. Nevertheless, the Supreme Court made clear that “the district courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing.” Id. at 264. Moreover, the D.C. Circuit has held that a guidelines sentence is presumptively reasonable. United States v. Dorcely, 454 F.3d 366, 376 (D.C. Cir. 2006)(“We agree with our sister circuits that a sentence within a properly calculated Guidelines range is entitled to a rebuttable presumption of reasonableness.”) The government agrees with the guideline calculation as set forth in the PSR.

#### V. SECTION 3553 FACTORS

In fashioning a reasonable sentence post-Booker, the Court must, after properly calculating and considering defendant’s guideline sentence, take into account the other factors listed in 18 U.S.C. § 3553(a), see United States v. Dorcely, 454F.3d 366, 374, and fashion a sentence “sufficient but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection.” 18 U.S.C. § 3553(a).

##### A. The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant

The defendant’s criminal conduct, as in most white collar cases, was the result of considerable planning and preparation. The defendant and his three coconspirators opened bank accounts, coordinated international travel, and kept track of their illegal payments on

spreadsheets. The defendant had numerous chances to end the conspiracy and/or withdraw from it. There is no reason to believe that his conduct would not be continuing today were it not for the efforts of the World Bank officials who uncovered the conspiracy.

It is true that the defendant is a well-educated man with no prior criminal record. However, virtually all high officials have clean criminal backgrounds and are individuals of high-achievement. They have, like this defendant, generally excelled in school and in work and have been rewarded for their excellence with positions of trust and power. The government rejects the suggestion that that these same virtues that qualified him for a position of public trust should also insulate him from serious punishment now that he has been convicted of corrupt conduct in violation of the trust placed in him by the World Bank. The unemployed and disadvantaged are no more deserving of jail given their relatively low station in life than the defendant because of his privileged background.

B. The Sentence Must Reflect the Seriousness of the Offense

The defendant's conduct in this case is serious. Because of his position at the World Bank, the defendant's actions were particularly damaging because they effectively undermined the trust foreign governments place in the World Bank. In the PSR of the defendant's coconspirator, Gautam Sengupta, Suzanne Rich Folsom, the then Director of the Department of Institutional Integrity at the World Bank, made this statement about this case:

The expenses of more than \$2 million in total estimated costs [were incurred] (including staff/hours, use of consultants, retention of outside counsel, extensive international travel, and administrative expenses) in the investigation of allegations of fraud amid corruption in connection with the World Bank's

Kenya Urban Transport Infrastructure Project (KUTIP).

Suspension of the \$112 million KUTIP project as a result of this investigation, which [sic] involved both World Bank and donor Trust Fund money. As a consequence, the World Bank has had to expend considerable funds reforming its Trust Funds system (with a new task manager and a new trust fund certification program). This Trust Fund impact also has a direct effect on our ability to raise financing for additional projects.

Damage to the global reputation of the World Bank [occurred], particularly among the donor community. Kenya is a borrower from the World Bank's no-interest lending and, the International Development Association (IDA). IDA, which exists for countries with per capita incomes on average of less than \$500 per year, depends on contributions from donor countries. Fraudulent and corrupt actions on the part of Bank staff such as those in the KUTIP project have a weakening effect on donor support. The reputation damage is ongoing, as press attention to this sentencing itself can have a deleterious effect on faith in the integrity of our organization: poverty reduction.

Damage [occurred] to the local reputation of the World Bank, both in Kenya and across Africa. The World Bank must be seen as above reproach as we provide technical assistance and guidance to developing countries on how to reform their governance policies to be more transparent and accountable. To have staff engage in this type of misconduct calls into question the very quality of the advice we provide - advice founded in over 60 years of work in reconstruction and development.

Corruption is an issue that faces both developing and developed countries, and those found to have engaged in fraudulent and corrupt activities must face serious consequences for there to be the proper deterrent effect.

The government is cognizant of the previous sentence of two months imprisonment given to the defendant's coconspirator Gautam Sengupta. See 1:02cr040-01. However, there are two important differences between the circumstances of Mr. Sengupta and those of Mr. Basu. First, the government made a motion under U.S. Sentencing Guideline 5K1 on Mr. Sengupta's



behalf for his truthful cooperation in his case. Mr. Sengupta consistently admitted his guilt in this case and testified in Sweden. Second, Mr. Sengupta consistently expressed deep remorse and regret for his actions, apologized to the Court, and was deeply shaken by his actions. In this case, given that Mr. Basu previously moved to withdraw his plea and has made misrepresentations to the Court and to the government, the government will not move for a sentence reduction under U.S. Sentencing Guideline 5K1. And in contrast to Mr. Sengupta, Mr. Basu refuses to express remorse for his actions other than that he was caught. On the contrary, he has tried to distance himself in every way from his actions, and continues to deceive the Court. For these reasons, the government believes that a sentence within the guidelines is appropriate.

C. The Sentence Must Afford Adequate Deterrence

In United States v. Martin, 455 F.3d 1227, 1240 (11th Cir. 2006), the Court held that because economic and fraud-based crimes are “more rational, cool, and calculated than sudden crimes of passion or opportunity, these crimes are prime candidate[s] for general deterrence.” Defendants in white collar crimes often calculate the financial gain and risk of loss, and white collar crime therefore can be affected and reduced with serious punishment. The Martin court went on to note that “As the legislative history of the adoption of § 3553 demonstrates, Congress viewed deterrence as ‘particularly important in the area of white collar crime. Congress was especially concerned that ‘[m]ajor white collar criminals often [were] sentenced to small fines and little or no imprisonment.’ Id. at 1240 (citations omitted).

The hardships defendant has suffered as a result these convictions, while undoubtedly real, hardly make defendant's situation unique. Indeed, the same hardships would likely be endured by virtually any bank official convicted of conspiracy and facilitating a bribe. If these natural and foreseeable byproducts of a defendant's criminal conduct meant that he should not have to go to prison, then few white-collar defendants would ever be incarcerated. Defendant's loss of job and reputation, and the resulting emotional toll, were an entirely foreseeable and predictable byproduct of defendant's criminal conduct. And yet, defendant chose to ignore the distinct possibility that if he broke the law he could lose these things that were so important to him. Obviously, the prospect of losing these intangible things was not adequate to deter the defendant. Nor is this prospect, alone, adequate to deter others who might be tempted to use their public office for private gain and to then lie to government officials in order to protect that unlawful conduct from being discovered.

D. Sentence Should Protect the Public from Further Crimes of the Defendant

So long as defendant is not in a position of public trust, the government does not believe defendant poses a risk to the public.

IV. CONCLUSION

The Presentence Investigation Report calculates the defendant's guideline level as 15 (18-24 months). The United States agrees with the guideline range and requests the Court to sentence the defendant within that range.

Respectfully submitted,

/s/ *David A. Bybee*

DATE: April 8, 2008

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David A. Bybee, Trial Attorney  
Fraud Section  
U.S. Department of Justice

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee of the United States Department of Justice, Fraud Section and that on the 8th day of April, 2008, a true and complete copy of the attached Sentencing Memorandum was served upon the attorney listed below by electronic mail.

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