

2 THE COURT: United States versus Byron Boyd, Criminal
3 No. H-03-362.

4 MR. SUSSMAN: Bob Sussman for Mr. Boyd, Your Honor.

5 THE COURT: Mr. Boyd, have you read the presentence
6 report before today?

7 THE DEFENDANT: I have, Your Honor.

8 THE COURT: Let me ask the marshal to sit down. I
9 need to look at him. Thank you.

10 Your attorney has filed objections to the
11 presentence report. The objection to Paragraph 69 is
12 sustained. I think your proper role was as a manager or
13 supervisor under Section 3B1.1B, and therefore that you should
14 receive a plus three instead of a plus four.

15 Did you have any other objections, Mr. Sussman?

16 MR. SUSSMAN: No, sir, that was the substantive
17 objection.

18 THE COURT: Mr. Boyd -- yeah, the factual objections
19 have all been corrected in the addendum -- do you have any
20 objections of your own to the presentence report?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: All right. I adopt the presentence
23 report.

24 I find that your total offense level is 21, your
25 criminal -- 23, excuse me, your criminal history category is I,

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1 and your guideline range is 46 to 57 months in prison.

2 The United States has filed a motion for downward
3 departure, which I will grant. The government seeks a three
4 level adjustment. So, in light of my previous ruling, that
5 would bring the government's recommendation down to 33 to 41

6 months. Are you with me so far?

7 MR. GALLAGHER: Yes, I am, Your Honor.

8 THE COURT: All right. I have read your sentencing
9 memorandum, so you don't need to repeat what's in there. You
10 may now make a statement and present any information in
11 mitigation of your sentence and then Mr. Sussman may make any
12 argument on your behalf.

13 THE DEFENDANT: Thank you, Your Honor. The first
14 thing I need to say, and I want to say publicly, is I accept
15 full responsibility for my actions. The shame and
16 responsibility falls squarely on my shoulders, no one else.

17 The other thing about the tragedy of this whole
18 event that I think is not so obvious to the world is the
19 personal and private tragedy that I've caused a number of
20 people, my family and my close friends. We all know what the
21 public outcome of it is.

22 Publicly I would like to apologize to my wife and
23 my son and daughter, grandson and some very dear friends and
24 members of the organization and other friends throughout the
25 country who expressed their support. In trying to think of the

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1 words to use to ask for forgiveness or the apology, there's
2 only two words that come to mind and those are to them I say
3 thank you for the love, kindness and support and I'm truly
4 sorry and ashamed for my actions. And I have been overwhelmed
5 by that support and particularly overwhelmed by the folks that
6 I've sat across the table from and argued against my whole
7 career and I'm truly amazed. I'm not entitled to it, but I'm
8 gratified by it.

9 The other concern that I have is -- and I wasn't

10 a victim. I was a participant in a perverse corruption and --

11 THE COURT: Let me ask you, what can be done to
12 correct this scheme? The DLC program provides an inherent
13 incentive for lawyers to be referred these very lucrative
14 cases. How can this system be corrected to destroy or reduce
15 that incentive?

16 THE DEFENDANT: My belief, Your Honor, is this,
17 that -- I think maybe to define one thing first and then I'll
18 answer your question, because I think the two go together. The
19 system has gone on for generations. The system goes on as we
20 stand here -- or I stand here today. The system will go on
21 tomorrow.

22 what needs to be done, in my opinion, is to look
23 at the very genesis of the system. It just isn't at the top
24 level of the organization, but at the bottom level of the
25 organization. I know from dealing with the politics and the

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1 inside of the organization that there's a huge amount of
2 control that's generated by these DLCs, and you have to be able
3 to counter that. And the way you have to counter that, I
4 think, is with the ability for government to get in and have
5 the knowledge and understanding and to follow the trails that
6 need to be followed and where they go to get to the core base,
7 the political base of these DLCs within the organization. And
8 I would say this, I don't think this corruption is limited to
9 UTU. I have a firm belief it goes way beyond that, into all
10 rail labor. And the genesis of it is at the very lowest level.
11 And trying to control the internal politics of the organization
12 becomes extremely difficult when you have all these forces
13 coming from below up. They're the ones that control the votes.

14 They're the ones that control a lot of the policies of the
15 organization.

16 THE COURT: So, you're saying the DLCs control the
17 local Union officials?

18 THE DEFENDANT: Absolutely, absolutely. They're more
19 pervasive there and more powerful there than they ever were at
20 the international level, because they control the absolute base
21 of the organization. And you can believe their support is
22 either generated because the individual members think they're
23 wonderful lawyers or do a good job or for other reasons. And
24 to some they're very good lawyers and do a very good job.
25 There are many other reasons that they get their support. And

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1 I think the government needs to look into that.

2 And one of the things that I was going to say,
3 and it also answers your question, is I've committed to the
4 government and Mr. Gallagher to do whatever I can, now and in
5 the future, to help clean up that corruption and try to get
6 that control away.

7 THE COURT: Yeah, I think this -- it's become apparent
8 to me reading the information in this case that this situation
9 is longstanding and systemic, and I'm not sure case-by-case
10 criminal prosecutions are the most effective way to root out
11 the inherent incentive that exists under this regime. Has the
12 government thought about some legislative solution?

13 MR. GALLAGHER: The government has, in fact, Your
14 Honor, and we're hopeful that we can address that issue, but
15 Mr. Sussman and his folks would probably have a greater
16 influence than the U.S. Attorney's Office in trying to get
17 audiences with those folks. In fact, one DLC, an honest DLC,

18 is the son of a U.S. Senator. So, certainly there are ways to
19 provide influence to change this system, but as Mr. Boyd
20 mentioned, it goes back -- it actually goes back to the turn of
21 the Nineteenth Century when the FELA came into existence in
22 1906, which created this limitless amount of money that could
23 be awarded to damages. So, it's very lucrative for lawyers to
24 get that FELA work and in competition, there's so many lawyers
25 that want it, they are willing to pad the pockets of Union

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1 officers or help their campaigns in order to get or retain that
2 designation.

3 That's the system that we found as a result of a
4 cooperating lawyer in El Paso in June of 1999. And had it been
5 reversed and had a Union officer come to us and said this
6 was going on, perhaps we'd have 35 lawyers before the Court
7 today, Your Honor, who would have been caught up in this
8 thing. But it was the other way around and we had to clean
9 out the Union. And, in fact, the lawyers did play a role in
10 this corruption, and they're not free of it, other than the
11 criminal immunity as a result of their testimony. But there's
12 no quick fix. It is an evolutionary process, which we hope
13 Mr. Boyd, in the position that he held and the influence that
14 he held, will continue to assist us in trying to bring about
15 some reform, which the current Union is, even though there are
16 some individuals up there that these people don't care much
17 for, they are bringing outsiders in to try to change the
18 system.

19 They have removed over 70 percent of the DLC as a
20 result of requiring affidavit submissions, have you paid money,
21 were you involved in this case. Swear that you have or you

22 have not. well, 70 percent elected not to send the form in,
23 because obviously they had a problem. So, they were kicked off
24 the list. They're no longer designated. That was the first
25 major step in the reform. And, yes, we are looking into the

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1 others and hopeful that the Union will use a system of
2 selection that is not exclusive to the president, that involves
3 a committee, that will vet and choose someone based on
4 qualifications.

5 THE COURT: But then I can see the need -- I've tried
6 a number of FELA cases and the lawyers who handle those cases
7 are generally excellent lawyers. I can see that Union members
8 who suffer severe injuries need to be referred to competent
9 lawyers to get the maximum recovery for them. On the other
10 hand, those cases are not the most difficult cases to win
11 because the way the law is. So, it's not the hardest case a
12 lawyer has, to win one of those cases. So, I can see the Union
13 wants to refer members to good lawyers who will competently
14 represent them and perhaps to have the lawyers help out on less
15 well-paying cases, but there's got to be a way to refer Union
16 members to competent lawyers without the quid pro quo inherent
17 in the old system.

18 MR. SUSSMAN: May I mention something, Your Honor?
19 Ever since we entered our plea several months ago, I have
20 worked with Mr. Boyd -- Mr. Boyd still cares a tremendous
21 amount about the Union and its members, but as he stated, is
22 well-aware of the potential for abuse of the systemic problem.
23 And we met with Mr. Gallagher and the Labor Department and
24 other people, not only as part of our cooperation, but
25 something that Mr. Boyd wants to do. And hopefully he will

1 continue to work with -- he's got a number of friends in
2 management in the railroad. You've seen all the letters.

3 THE COURT: One thing that's impressive is the letters
4 of support written on behalf of both Mr. Little and Mr. Boyd
5 from railroad executives who you've faced over the bargaining
6 table for years. It's apparent that both Mr. Boyd and
7 Mr. Little were excellent Union officials who were looking out
8 for their membership. I'm not criticizing them as Union
9 officers. The problem was this fraud that became systemic as a
10 part of that role as president.

11 MR. SUSSMAN: Well, the point I was making, Your
12 Honor, is we're in the process of trying to address that
13 situation, not just with the United States Attorney's Office,
14 who might not be in the right position to do legislative
15 things, but other people who may in fact be.

16 THE COURT: Okay. Did I interrupt you? I'm sorry if
17 I did.

18 THE DEFENDANT: No, sir, Your Honor. In fact, that's
19 what I wanted to say, and I thank you for making it clear, to
20 present it that way. The problem needs to be cleaned up and
21 the corruption is pervasive and until you get to the core, not
22 a lot will change. And we need to figure out how to do that.
23 And I've committed to the government and to you and to anyone
24 else, that I will continue to put all of my efforts in that
25 direction.

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1 Lastly, I've learned a very valuable and a very
2 expensive lesson through this process and this tragedy has

3 taught me one thing, and that's the deeper appreciation of life
4 and what one can do with one's life. And I will commit to you
5 and willingly accept whatever your decision may be, but I will
6 commit to you that I will dedicate the remaining days of my
7 life to helping society, helping the underprivileged and less
8 fortunate people. And I would ask and pray that you give me
9 the ability to do that as an active member of the community,
10 that with whatever tools and talents I've got given to me, I
11 can utilize for a better purpose. That's all.

12 THE COURT: Thank you. Mr. Sussman.

13 MR. SUSSMAN: Your Honor, I've been doing this a long
14 time now.

15 THE COURT: And you're getting better as you do it.

16 MR. SUSSMAN: I don't know about that, Judge. But
17 Byron Boyd is one of the most worthwhile people I think I've
18 ever represented. The Court has the authority because of the
19 5K1 motion to do what it thinks is appropriate in this case,
20 even with --

21 THE COURT: Why don't we just cut to the chase and
22 tell you what my concern is.

23 MR. SUSSMAN: Yes, sir.

24 THE COURT: Obviously Mr. Boyd benefited less from the
25 scheme than Mr. Little.

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1 MR. SUSSMAN: Yes, sir.

2 THE COURT: It's the obstruction enhancement that
3 brings him on a par with Mr. Little in my mind.

4 MR. SUSSMAN: Yes, sir.

5 THE COURT: And I'm basically thinking about
6 sentencing him to the same sentence I gave Mr. Little, because

7 I can't really distinguish them. Weighing it all, I think
8 that, although we're not supposed to consider sentencing
9 parity, it's not something we overlook.

10 MR. SUSSMAN: I understand, Your Honor.

11 THE COURT: So, I just want to -- I'll ask
12 Mr. Gallagher to respond. That's less than what he requested,
13 but since he has filed a motion, you're right.

14 MR. SUSSMAN: Well, maybe I should listen to
15 Mr. Gallagher before I spend a lot of time with the Court, Your
16 Honor.

17 THE COURT: No, I want to hear what you have to say.

18 MR. SUSSMAN: I think, Your Honor, you know, if I
19 was -- if I had my druthers, I'd suggest a split sentence, Your
20 Honor. I understand the Court's concern. I did want to --

21 THE COURT: The problem is people in their position,
22 in Union leadership, it sends a wrong message, to give a
23 sentence that doesn't involve confinement. I'm just -- it just
24 sends the wrong message to Union members and to citizens of
25 this country.

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1 MR. SUSSMAN: I understand.

2 THE COURT: I hear your argument.

3 MR. SUSSMAN: I understand, Your Honor. Then I won't
4 address the vis-a-vis Mr. Little and I won't address some of
5 the other things that I was going to talk about. But I do
6 want the Court to know that, and relevant to what you were
7 saying, Your Honor, here today with Mr. Boyd is John Marchand,
8 the V.P. of Union Pacific -- can you stand up here -- as
9 support for Mr. Boyd, as well as Steve Revelli, a Union member.
10 The Union sort of suggested that members shouldn't come to this

11 thing. But Mr. Revelli has come here on his own from Seattle
12 to join Mrs. Boyd and their son Byron, to show support for Mr.
13 Boyd.

14 You know, in talking to everybody, Your Honor,
15 not to go back over old stuff that we've already talked about,
16 even Mr. Gallagher in conversations, you know, everybody that
17 we talk to says that Byron Boyd is just a natural leader. He
18 has changed the Union. He is the only person that has obtained
19 two nationwide contract rank-and-file agreements. It's unheard
20 of in the Union. And one of the agreements was obtained while
21 he was under indictment. He's just a natural leader.

22 He's worked with -- he's created a whole
23 different atmosphere with the railroad that weren't there
24 before. He's averted two national strikes by just sitting down
25 and working with people. This is an unusual case, Your Honor.

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1 In comparing people, I understand where the
2 Court's coming from on the obstruction issue. I would suggest
3 that all the changes that Byron Boyd has effected since he
4 became president -- and I understand the problems that he has.
5 I understand that he's got this tragic flaw that he got into
6 the system and participated in this corrupt system -- suggest
7 that he might -- if the Court is considering incarcerating
8 Mr. Boyd, that it consider something less than 24 months, but
9 that's just me doing about five minutes of begging, Your Honor.
10 That's why, Your Honor, and we'd appreciate any indulgence of
11 the Court.

12 THE COURT: Mr. Gallagher.

13 MR. GALLAGHER: Well, Your Honor, certainly any
14 sentence imposed on this gentleman should be on par with

15 Mr. Little. Of course, the issue that the government considers
16 is Mr. Little's coming forward in December of 2003 --

17 THE COURT: I understand.

18 MR. GALLAGHER: -- and the two and a half months of
19 work leading up to the --

20 THE COURT: I understand that and that's -- in the
21 normal scheme of things, Mr. Little would -- because he pled
22 earlier, he was the second person to plead, his testimony
23 certainly enhanced the decision of the last two defendants,
24 Mr. Boyd and Mr. Rookard to plead. But sometimes it takes the
25 tutelage of a good lawyer and thoughtful consideration to get

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1 to that stage. And you got paid by the month. Didn't your
2 green check still cash during that period of time?

3 MR. GALLAGHER: It stays the same, Your Honor.

4 THE COURT: All right. So, I understand the
5 frustration, but anyway, let's get to the merits. What do you
6 think?

7 MR. GALLAGHER: Certainly, Your Honor, a 5K gives the
8 Court the door to go as far as it wants. And in this case, it
9 is justice we seek, and Mr. Boyd serves 24 months, the same as
10 Mr. Little, indeed, the government sees that Mr. Little's
11 conduct was much more pervasive. The obstruction issue was the
12 most disturbing thing for Mr. Boyd. But we embrace his
13 continued cooperation. He is an individual with great
14 intellect and great influence. And using that influence and
15 others through his attorney to make the changes we need, we
16 look forward to in the future.

17 THE COURT: Mr. Boyd, I sentence you to 24 months in
18 prison.

19 I will allow voluntary surrender. That will be
20 followed by three years of supervised release.

21 In addition to standard conditions, you will not
22 possess a firearm or dangerous weapon. You will provide the
23 probation officer access to all requested financial information
24 and will not incur any new credit charges. The mandatory
25 condition for urinalysis testing is waived.

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1 You will pay now a \$10,000 fine. You will pay
2 now the mandatory \$100 special assessment.

3 I've already granted the motion to dismiss the
4 other counts.

5 MR. GALLAGHER: There is an order of criminal
6 forfeiture that we hand to the Court. There's also an
7 understanding of a 12-month period by which to pay that money
8 back to the government. It's not due all at the same time.

9 THE COURT: Mr. Sussman, has the government complied
10 fully with the plea agreement?

11 MR. SUSSMAN: Yes, Your Honor.

12 THE COURT: All right. Then you have no right of
13 appeal.

14 Finally, I want to ask Byron Boyd, III, to stand.
15 Thank you for the letter you sent me. And for the letter your
16 father wrote you. That was one of the most moving things I've
17 ever read in a presentence report. I hope you'll continue to
18 respect your father as you did when that letter was written.

19 MR. BOYD, III: Thank you, Your Honor.

20 MR. SUSSMAN: Your Honor, one other thing, if it's at
21 all possible, there is a federal prison camp in Sheridan,
22 Oregon, which is near -- the closest thing to Mr. Boyd's --

23 THE COURT: I will recommend that he be confined to
24 that facility.

25 MR. SUSSMAN: Thank you, Your Honor. You're

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1 remanded -- you're excused under the same conditions. Thank
2 you.

3 (Concluded at 2:40 p.m.)

4 * * *

5 I certify that the foregoing is a correct transcript from the
6 record of proceedings in the above-entitled cause, to the best
7 of my ability.

8 Kathy L. Metzger Date
9 Official Court Reporter

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