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TRANSCRIPTS: United States v. Cianci

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Transcripts

**United States District Court,
District of Rhode Island.**

UNITED STATES of America v. Vincent A. CIANCI

**No. 00-83T
Argued and Decided June 16, 2005
Resentencing**

16 JANUARY 2005 – 10:30 A.M.

THE CLERK: The matter before the Court is Criminal Action 00-83T, United States of America versus Vincent Cianci.

THE COURT: All right, as everyone knows, this case has been remanded for resentencing because since Mr. Cianci was originally sentenced in September of 2002, the United States Supreme Court decided the *Booker* case in which it basically said that the guidelines are no longer mandatory and that, therefore, in cases that were pending on appeal when *Booker* was decided, which includes this case, the – well, the First Circuit said in cases that were pending on appeal when *Booker* was decided, that the sentence should be subject to reconsideration by the trial judge if there was any reasonable possibility that the sentence under

1. Resentencing Hearing Transcript, United States v. Cianci, No. 00-83T (D.R.I. 2005) (Chief District Judge Ernest C. Torres, presiding).

nonmandatory guidelines would be different than the sentence imposed, so that's why we're here.

So I'll hear argument from counsel as to why you think the sentence that was imposed is unreasonable or what you think a reasonable sentence would be. You both had an opportunity to submit memoranda. I've read your memoranda carefully, but I want to give you an opportunity to argue first.

MR. EGBERT: . . . Your Honor, first, I think what I would like to do is to try to recast on the Court's question, because I think it's limiting and it need not be. I don't think the question before you today is was the sentence imposed reasonable, the 64-month sentence, because quite frankly, based upon the Court's findings with regard to role in the offense and abuse of trust and the guidelines, since it was within the guideline range found by the court and it is presumptively reasonable, and so that's – I don't think you'll get an argument from me on that, that it is a reasonable sentence. I think the question is different, however. I think the question is now is it – what is a reasonable sentence, which is sufficient to satisfy the issues described in 3553(2), but which is not greater than what is necessary to satisfy those goals, and is, in essence, the least necessary to satisfy those goals as required by the statute. And so I don't suggest to you that under the findings which were made by the Court previously that I can argue to you it was unreasonable, but I think what I argue to you is that under the factors described in 3553 and the dictates of 3553, that it is not the only reasonable sentence and that you should, and I urge you to exercise your discretion for a reasonable sentence which is lesser than that which was required by the guidelines or the guideline range which you found.

So, Your Honor, I think where we begin is now that the guidelines aren't mandatory and 3553 become factors which kind of get cycled in with the guidelines giving this Court some discretion to fashion a reasonable sentence based upon the circumstances of 3553, having in mind the guidelines and their advice to the Court and the teachings that have gone behind them and the way I think it impacts this sentence the most is in this particular case with the offense of conviction being what it was, and that is a conspiracy to violate RICO with not a singular

substantive violation, which not a single predicate act violation found by the jury, and having in mind that the two enhancements that the Court found, abuse of trust and role in the offense, managed and served to send the guidelines by a 100 percent increase, which is an anomaly not usually found. So what we have is a guidelines range calculated after the enhancements of some 57 to 71 months, where the original guidelines range without enhancements for this act, for this violation of RICO conspiracy was 30 to 37 months.

As a beginning point it seems to me that that should make one pause as to the ability of desire to call that range under the sentencing scheme as we now have it, as one which is the most reasonable or the one that is reasonable and serves to achieve the purposes of 3553. It is my contention to the Court that there are sentences lesser which can consider these events and put them in perspective.

In the first instance we have a disparity here that is one that I have at least not seen in the past, and that is you have a person, without regard to the role findings, but you have a person who is convicted of only agreeing, that's the offense of conviction, only agreeing in a conspiratorial fashion, being sentenced at all times greater than the persons actually are charged with and the jury have found to have committed substantive crimes, and I can't recall in my history where that type of disparity has taken place, and that is, it seems to me, a function of the play of the guidelines and caused by the guidelines.

In addition, if your Honor please, it is the rarity, I think you'll agree, at least in my practice, that a case such as this would get tried and the defendant found guilty of the conspiracy but not a single substantive act, thus rejecting his direct participation in any crime other than the conspiratorial agreement. He was not convicted of, certainly he was charged, he was not convicted of extortion, a bribery, taking a gratuity, aiding and abetting either of those offenses. So what you have before you is kind of a different, it seems to me, type of situation than the norm.

The extraordinary impact of the enhancements brought this case up to a level that I've described, and you chose at sentencing last time the mid-range of the guidelines, but there are some things that you didn't consider, I suggest, couldn't consider, in fact, weren't around at the time, that ought, in my opinion, to

impact that decision of the Court. I've talked to you in the past and I won't restate what I've said in the past concerning his extraordinary benefits which he gave to the City and your response that that, in part, how that weighed with his abuse of position of trust finding. I've spoken to you in the past of his charitable works which continue through today through the use of his scholarship funds, which even after he has remained in prison and certainly after he has no ability to run for office or gain political life, continues to provide scholarships to disadvantaged youths in Providence area and has done so on a regular basis since his incarceration.

You couldn't know, Judge – that for some reason that I can't get my arms around – the former Mayor of the City of Providence convicted of one count of racketeering conspiracy finds himself in a low to medium institution instead of a camp with limitation of movement, regular counts, strip searches upon visits, strip searches in and strip searches out and the like, you couldn't, I don't think, because I couldn't have imagined that he would be placed in a position to do his time in an institution which provided virtually no ability for him to better himself, although what it has provided him is the ability to better others, and I think you have been provided with his institutional reports by probation, which indicate by the institution itself that all tasks that he has endeavored on he has been outstanding, but there is simply nothing there for him, for a person of his educational level to participate in in a manner which would better him.

So what has he done? He has certainly – certainly we don't put people like Vincent Cianci in jail to take picture-framing classes, but that is what he is relegating to doing. But what he has done with his time is tutoring others, teaching adult education classes, organizing those type of events which are described in his progress reports. He hasn't done camp time. This hasn't been an easy time for him. And every day he does is a day of boredom and unrest.

The time, when fashioning a sentence of what satisfies the goals of 3553, deterrence. Personally, is he deterred. He has certainly suffered and continues to suffer. Would others be deterred? All they need to do is take a look at some 30 months that he has served in an institution like Fort Dix to get an understanding that he has had no picnic and this has been an

ordeal for him. But I might add, Your Honor, and I continue, although an ordeal, and ordeal suffered as a man without whine, without discontent, and without blame of others. And so to that regard is part of the same rehabilitation that I've seen and that exists here. How has it been rehabilitation for him? Well, humiliation breeds humility, and I think 30 months of incarceration of this fashion—

So I think when one looks to this deterrence and rehabilitation and the like, all the rehabilitation that has been done, has been done. All the deterrence necessary has been accomplished, it seems to me. And it struck me when I was talking to Mr. MacFadyen the other day about this case that we have, and it's something that we've all fallen into because of the system we were in of being counted in a way under the guidelines of talking about numbers of months in a manner that's disconnected from reality, and we're not talking about 64 months, we're talking about thousands and thousands of hours of a person wasting away at Fort Dix unable and with a full inability to contribute so much that he is able to contribute to society, to sit around bored with nothing to do. Imagine the punishment for someone of Mr. Cianci's intellect and vigor to be placed in a situation that is truly filled with boredom and inability to contribute other than the minor areas in which he has been able to participate. That's hard time, Judge. That's real hard time for a person like him. And I suggest that when you start thinking about those thousands of hours and tens of thousands of hours and dates that one gets a sense of what form of sentence is necessary to effectuate the goals of 3553.

With regard to Mr. Cianci, the Government and I have filed papers indicating some of the collateral consequences. The Government things we're somehow misleading the Court. I assure you are we are not. He has not applied for his pension, because he is not going to get it and is not going to waste his time and he's not going to waste anybody else's time, particularly lawyers and the like. Had he thought he could get his pension, one might assume that he would have applied for it and happily pocketed the \$80,000 a year or thereabouts that it would provide him as we speak . He has not done so, and the reason he has not done so is because it's clear under the statute that it is gone and he has no

intention of it.

The loss of his house, he lost his house. When this investigation first started and when he first started and had to gather up his ability to defend himself and fight this case, he sold his house, it's not a coincidence. The press chased him around and made some statements, it had nothing to do with Plunder Dome, so what. You can see from the timing of the events that the house that he enjoyed so much and the place that he took his family on weekends and holidays was given up just at the time when he had to start to prepare a substantial defense to these charges. The impact on him, he'll never run for office again or never hold public trust again, but particularly for a man like Buddy Cianci what a punishment that is. It is appropriate, yes, but is it a substantial one, yes. Never practiced law, spent all the years obtaining a law license and using it to the advantage of the State as an Assistant Attorney General at a time, and that's gone, that was suspended at the time and will never be returned upon a felony conviction such as this.

He has a good deal to contribute to society, and I think the Court could consider and fashion a sentence that is reasonable and sensible, which makes him a contributor before his time runs out.

And I heard you say yesterday, and I was glad to hear it as I hit 58, that 65 and 66 isn't particularly old, and I agree with you, but we all have so much vigor time to contribute to society, and he has a lot to contribute. He's done so. And whatever he was convicted of, and I don't demean it and I certainly don't demean it in this courtroom nor does he, but he has much to give. And I think that a sentence that is fashioned along the lines of the way – almost the way we think of a thoroughbred, that have to break him to saddle him and do enough to get a saddle and a rider on him, but you don't want to break their spirit and you don't want to break their ability to contribute and produce and he can produce and he can contribute.

It does seem to me, your Honor, that under the very different kinds of circumstances that exist here today and the kind of

person that you have before you and with his unique abilities, that 30 months is an enormous sentence, 64 months is a huge sentence, and that you have the ability, the discretion, and I would hope the desire to give a sentence of less than that, which does satisfy the four prongs of 3553 and is the lowest sentence necessary to achieve those results.

In closing, your Honor, I think that you have the unique ability to look at this case, you heard it, I'm not going to tell you anything you don't know, and I'm not going to tell you anything that you probably hadn't thought of. You made a number of comments when Mr. Cianci was sentenced, both good and bad, which I found, at least ones that were based on understanding of events and reflection ad to the man, so I leave it to the Court and whatever Mr. Cianci has to say to the Court to consider a sentence that is less than 64 months which satisfies the requirements that we've discussed, and unless the Court has any questions of me, I have nothing further to add.

MR. ROSE: Your Honor, it is perhaps – not perhaps – it is fitting that this is the last of the Plunder Dome defendants to be sentenced, the Government is asking the Court to sentence the defendant to the highest end of the applicable guideline range of 71 months incarceration. We do so for the following reasons:

First, the defendant has refused to admit his guilt and accept direct responsibility for a nine-year reign of corruption at Providence City Hall. There was nothing isolated about any of the cases that have arisen in this investigation.

Your Honor, there is nothing isolated about any of the cases that have arisen in this investigation. They all stem from this defendant's leadership of a corrupt City Hall. Frank Corrente, Richard Autiello, David Ead, Joseph Pannone, Anthony Annarino, Rosemary Glancy, Angela Mosca and John Scungio did not operate in a vacuum, they operated in an environment of the defendant's making. By refusing to admit his guilt, the defendant dishonors his former constituents. He fuels cynicism and leaves a void of his own making.

Your Honor, yesterday your Honor showed mercy to Frank Corrente. I was present when the defendant was leaving the courtroom. He was asked by a reporter whether he was grateful. He said, "I am grateful for anything that I get." The Government observed genuine remorse, contrition and humility in that simple response. The Court's generosity was not undeserving in that case. This defendant, however, has not shown that type of humility or remorse. Even in his papers filed in advance of this sentencing, he continues to attempt to minimize his role. He was not convicted of being the Mayor of Providence. He was convicted of being the leader of a criminal enterprise. He fostered the environment. It is justice that the last defendant to be sentenced and who was the leader should also receive the longest sentence.

And for all those reasons, your Honor, and for the reasons stated in the Government's motion for an upward departure, a reasonable sentence in this case is 71 months incarceration, a fine of \$100,000, a special assessment of \$100, and a forfeiture of all of his – all of his right, title, and interest in Friends of Cianci.

THE DEFENDANT: . . . My last appearance before you was on September 6, 2002, almost three years ago. It was the darkest day of my life. I remember the words that you spoke to me that day and reflect upon them often. Today I appear before you differently, I appear as a prisoner. Certainly a changed status and a changed person. I've changed physically, emotionally, and spiritually, and I'm confident, your Honor, for the better. Having now lived in a prison for over two-and-a-half years in a confining atmosphere, I have learned even more that a life in prison requires respect for others, it is paramount, and that integrity and human dignity must be as much a part of prison life as it must be in my life in the future. I don't think I have to elaborate to the Court of the strains of prison life. I hope you will recognize the profound impact prison has had on me. I've been deeply moved by this experience. I'm also a heart-broken man, your Honor. I'm heart-broken for the citizens of Providence and the City I was part of for so long. I'm sorry for the embarrassment and the scars I brought to them, and I sincerely apologize. I am heart-broken for my entire family. I'm especially heart-broken, for my daughter and grandchildren. My daughter is a single parent of two beautiful young children. She tries hard but has her own challenges. I'm no longer there to

provide the needed guidance, love, and emotional support as they struggle during a very trying time and for that I sincerely apologize to them. Every day I reflect on my shortcomings and my failures as well as on lessons learned and what I need to do and can do to improve myself and contribute to society.

In my sixty-fifth year of life, I realize that the sentence imposed today could affect my freedom for most of the rest of my life, it is a very sobering thought. I also realize that no matter what the future holds, the stigma of this conviction will be my burden for the rest of my life.

I take some solace, however, that some day, hopefully, I will have the opportunity to contribute in a positive way to our community and I can return to my family to support and nourish and love them in person. In the meantime, I know that the key to peace in life is – in the meantime I know that the key to peace in life is freedom and the key to freedom is courage. I hope God grants me the courage to endure, I hope some day I can have the freedom in service. I'm trying, your Honor, thank you.

THE COURT: The question is whether or what sentence ought to be imposed as reasonable in light of both the guidelines and any factors enumerated in the statute that are not adequately reflected in the guideline calculation.

The Government here has requested a sentence that is greater than the sentence that the Court previously imposed, and to the extent that that request is based on or is the same as the argument that was made in connection with the Government's request for an upward departure at the time of the original sentencing, the Court rejects the argument for the same reasons that it rejected the argument when it was framed as a request for an upward departure.

To the extent that the Government's request is based on failure, the defendant's failure to acknowledge his guilt or express sufficient remorse, first of all, the failure to acknowledge guilt has already been taken into account, he didn't get any credit for acceptance of responsibility which would have reduced his offence level under the guidelines, and has expressed remorse, although still has not acknowledged his guilt, which he doesn't have to

do. . .

The second argument the defendant has made is that the sentence greatly overstates the seriousness of the offense which the defendant's memo describes as way down the spectrum of venality, and there are two reasons offered in support of that. First, as Mr. Egbert has again noted this morning, the defendant was acquitted of all 17 substantive charges that were leveled against him, he was convicted only of the RICO conspiracy count, and the other argument made only in the memorandum was that none of the offenses for which the other conspirators were convicted significantly impacted City services, and the Court did recognize that at the time of original sentencing in rejecting the Government's request for an upward adjustment.

The third argument advanced is that the guidelines did not permit adequate consideration to be given to a variety of mitigating factors, including the defendant's age, family responsibilities, mainly the needs of his daughter, his civic and charitable contributions and one recently mentioned, the fact that he has been incarcerated in a medium security facility rather than a camp environment.

Now, that brings me to the question of the sentence that ought to be imposed here, and in addressing that question, the Court has to begin with the recognition that however much the defendant may disagree, if he does, and I'm not clear whether he does or to what extent he disagrees, the jury found him guilty of a rather far-reaching RICO conspiracy that extended over a protracted period of time and touched a wide variety of activities by City officials, and the statutory maximum for that offense, I believe, was 20 years, something in that vicinity.

Now, the guidelines, which is the starting point, of course, in sentencing post-*Booker* is to determine what the guidelines say, the Court has already made that determination during the prior sentencing, so now we get into a question of what would be a reasonable sentence taking into account the guidelines in the statute. The guidelines take what I believe to be a reasonable approach in establishing this sentencing range that applies or is appropriate to this offense, bearing in mind the factors

enumerated in 3553. The guidelines as already determined by the Court, establish a range of 57 to 71 months, and if you break it down, the guidelines establish a base offense level for the unadorned offense of RICO conspiracy of 30 to 37 months, that's the starting point under the guidelines analysis. The guidelines provide for increase in the range if the offenses that were the object of the conspiracy or that were committed pursuant to the conspiracy are especially serious. So under the guidelines approach, which I think is a reasonable approach, the base level is increased if the offense is something like murder as opposed to something like bribery. The base level could also be increased if the type of bribery involved, depending on the circumstances of the type of bribery involved, two bribes is more serious than one bribe and bribes involving more than \$5,000 are more serious than bribes involving lesser amounts, and in this case it's irrelevant because the guidelines didn't call for any such adjustments here.

The guidelines also provide for further adjustments to reflect the circumstances under which the offense was committed. For example, and this example is particularly appropriate here, if there was an abuse of trust involved, the guidelines provide for a two-level increase, and the Court here did not apply that increase, although I think it indicated at the time the original sentence was imposed that, if anything, I thought that that was an understatement of an adjustment – of the kind of adjustment that ought to be made under these circumstances.

The guidelines also provide for adjustments to reflect the defendant's role in conspiracy, which, again, I think is appropriate and again applicable here because the Court found that Mr. Cianci was an organizer or leader of the conspiracy. I know that was disputed. Mr. Egbert very appropriately pointed out there was no direct evidence of the respective roles, but the Court noted that there was rather compelling circumstantial evidence that he must have been the leader, and I explained the reasons for that conclusion, there's no need to repeat them. So after making those adjustments, the guideline range was 57 to 71 months. The Court sentenced Mr. Cianci in the middle of that range, taking into account for thing, his age. The Court also considered the good

deeds that he had done and balanced those factors as best it could and came up with a sentence in the middle of that range.

I find that not only is the approach taken by the guidelines a reasonable approach, but I also find that the result that they reach in this case is a reasonable result considering the factors enumerated in 3553, and I'll discuss some of those factors.

Another factor referred to in the statute is the seriousness of the offense. At the time of sentencing I described this offense as involving, and I think this is a quote, "An egregious breach of public trust," and I further stated that in my judgment a two-level adjustment for abuse of trust did not come close to accurately reflecting the magnitude of that breach and that it might have been the basis for upward departure, which the Court chose not to impose. An offense of this nature not only is a breach of trust but it undermines public confidence in Government in general and it casts a cloud of suspicion over what I think are the vast majority of public officials who are dedicated, honest, hard-working individuals. It causes the public to view them with some skepticism and to assume the worst in cases where it just isn't warranted. So I think the seriousness of the offense ranks pretty far up the scale.

The characteristics of the defendant is another factor that the statute refers to, and, again, this was covered, I think in some detail at the time of the original sentencing. The Court recognized the fact that as Mayor, Mr. Cianci did many good, even outstanding things. He was one of the most vigorous and eloquent spokesmen for the City of Providence, he certainly played a role in what I think at the time I said was fairly described as a renaissance of the City. He has done many things, he started that charity for scholarship with the proceeds of the marinara sauce, and he has done many good, selfless things for individuals, but he has also done some very bad things, and the Court discussed those at the time of the original sentencing, I don't think that there's much that's changed or that needs to be further elaborated on. I will say that one thing that probably wasn't really focused on at that time, which I think is a factor that should be considered and I will consider in imposing sentence here, and that is the hardship that the place of the Mayor's present incarceration places on his

daughter who, I gather, regularly visits him and to whom her father's counsel and support are very important.

I also think another factor worth mentioning here, and these things are all things, obviously, that weigh in the defendant's favor, Mr. Egbert has very appropriately pointed out, one thing that has impressed my throughout this is Mr. Cianci has accepted his fate with grace, he took it like a man, he hasn't whined or blamed other people, and I think he deserves a lot of credit for that.

As far as the punishment objective is concerned, the Court agrees that the defendant has suffered some serious collateral consequences as a result of the sentence. He's been, as a result of his conviction, he has been permanently barred from holding office, something that I know is a very important thing in his life. He has been disbarred from the practice of law, and may lose his pension. Representations were made this morning that he doesn't even intend to apply. I don't know, one can't really say one way or the other, but certainly there is a significant risk that he wouldn't get it even if he applied.

Another consequence here is, at least that has been argued as a consequence, is the fact that he has been incarcerated at a medium security facility rather than a camp. And I must say I did wonder about that myself. I'm not exactly a proponent of camps necessarily. I think they're perfectly appropriate in some kinds of cases, not others. I suppose you could debate the kinds of cases in which they are appropriate or not, but the fact of the matter is that, at least in my experience, individuals who are accused of public corruption, so to speak, that involves bribery and money-taking, if they have no previous record, are assigned to camps. I remember that was the case with Mayor Sarault in Pawtucket, that was my case a few years ago, and in this case the defendant was not. The chief probation officer checked into this and confirms what Mr. Rose's suspicion was expressed a few moments ago, and that is the Bureau of Prisons felt that because of the Mayor's other convictions involving the incident with, I think his name is Mr. DeLeo, that the Bureau of Prisons determined that he ought not be assigned to a camp.

I'm also told by Mr. Weiner, our Chief Probation Officer, that the Bureau of Prisons has expressed an openness to transferring Mr. Cianci to a place like Devens, which would accomplish two things. It would put him in a camp environment and would also put him much closer to his daughter so that she could visit him on a regular basis without a lesser degree of hardship.

As far as deterrence is concerned, that's a very difficult one to assess. It is troubling and puzzling to me what it takes to deter this kind of conduct by public officials. There have been two recent instances, in my memory, anyway, that are somewhat analogous to this situation. One was the Sarault case, which I referred to a few moments ago, in which the Mayor of Pawtucket was sentenced, I think it was to about five-and-a-half years, and he served all of the time, minus the good time that he was credited with. We had a case in State Court involving a Governor who, pursuant to a plea bargain, served much less time. But we seem to continue to have these cases. Those sentences which were widely varying certainly didn't deter the kind of conduct that seemed to occur in this case, although much of the conduct, I guess occurred before at least one of those cases was decided. So it's very difficult to assess what the deterrent effect is other than to say that the penalty has to be a severe penalty, apparently, in order to have a significant deterrent effect.

The bottom line here is that in my judgment considering both the sentence produced by the guidelines and the factors enumerated in the statute, it's my conclusion that a sentence of 64 months is a reasonable sentence.
