

United States District Court
Southern District of Texas
FILED

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Michael N. Milby, Clerk

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA . H-04-025-SS
vs. . HOUSTON, TEXAS
RICHARD A. CAUSEY . NOVEMBER 15, 2006, 1:30 P.M.
.

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE SIM LAKE
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE GOVERNMENT:

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FOR THE DEFENDANT:

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P R O C E E D I N G S

13:30 1 THE COURT: Good afternoon. Please be seated. We are
2 here this afternoon for sentencing in criminal action H-04-25,
3 United States versus Richard A. Causey.
4

13:30 5 Will counsel and the defendant please identify
6 themselves for the record?

7 MS. RUEMLER: Good afternoon, Your Honor. Kathy
8 Ruemmler on behalf of the United States.

9 MR. WEINGARTEN: Good afternoon, Your Honor. Reid
10 Weingarten and David Fragale here with Mr. Causey, the
11 defendant.

12 THE COURT: Would you please come forward, Mr. Causey?
13 Have you had a chance to read the presentence
14 report before today?

13:31 15 THE DEFENDANT: I have, Your Honor.

16 THE COURT: Have you discussed it with your attorney
17 before today?

18 THE DEFENDANT: I have.

19 THE COURT: You may come forward too. Your attorney
13:31 20 has filed under Docket Entry 1163 a letter in response to the
21 presentence report. The letter is not really an objection to
22 the presentence report, but to the extent that it is an
23 objection, it is overruled.

24 Mr. Causey, do you have any objections of your
25 own to the presentence report?

13:31

1 THE DEFENDANT: No, I do not.

2 THE COURT: I adopt the presentence report and the
3 addendum. Your total offense level is 36. Your criminal
4 history category is one, and your sentencing range as
5 calculated under the advisory guidelines is 188 to 235 months;
6 however, because the statutory maximum sentence on the count of
7 conviction is 10 years, your advisory guideline sentence is
8 likewise 10 years. However, pursuant to the binding plea
9 agreement, which the Court adopted, the maximum sentence
10 provided is seven years, so the guideline range is largely
11 irrelevant in this case.

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12 You may now make a statement and present any
13 information in the way of mitigation. By the way, I have read
14 the lengthy submission you submitted and the submissions
15 submitted by friends and family members and former co-workers.

13:32

16 THE DEFENDANT: Okay. Thank you, Your Honor. First,
17 I would like to address the Enron family, former employees and
18 investors. There were improper things done at Enron, some of
19 those things were done by me, and for that I am profoundly
20 sorry. However, with God as my witness, I never did anything
21 to directly enrich myself or to intentionally hurt the company
22 or any of its shareholders or employees. The Enron tragedy has
23 caused a lot of hurt and suffering on the part of a lot -- many
24 people, and those stories break my heart.

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25 To the prosecutor, we haven't always seen things

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1 exactly the same way, but there are a lot of things we do agree
2 with. And we don't really see the Enron story completely the
3 same; however, you have always treated me with respect and
4 dignity and courtesy, and I appreciate that very much. And I
5 appreciate the opportunity to argue today for a lesser
6 sentence.

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7 To the Court, I am sorry and ashamed to be in
8 front of you today in these circumstances. However, I want to
9 assure you that whatever sentence you give me, I will serve it
10 as productively as I can serve it, as it can be served, and I
11 will then return to my family and my community as a productive
12 and loving member of society.

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13 And then lastly to my family, I thank you for
14 your support and your love through all of this. You know I
15 couldn't have gotten through it without you, and we will get
16 through whatever comes together. And you are the most
17 important thing in my life, and I love you very much.

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Thank you, Your Honor.

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13:35

20 THE COURT: Thank you. The Court notified crime
21 victims of their right to speak at this sentencing. Only one
22 victim timely responded to the notice, and that victim has
23 since advised the Court that he no longer wishes to be heard at
24 the sentencing, so none of the crime victims will be speaking
because they have all relinquished their opportunity to do so.

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The United States has filed a motion for downward

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1 departure pursuant to Section 5K1.1 of the Sentencing
2 Guidelines and Title 18 United States Code, Section 3553(e).
3 The United States recommends a downward departure of from three
4 to six months below the seven-year maximum sentence provided
5 for in the plea agreement. The plea agreement allows me to
6 depart downward to five years in my discretion. The defense
7 has provided a lengthy memorandum in support of substantial
8 assistance which seeks a lower departure.

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9 I will now allow counsel for the defense and then
10 counsel for the government to make any argument as to what the
11 appropriate sentence should be, and I'm sure you will address
12 your primary focus on the departure issue.

13 You may have a seat, Mr. Causey. Thank you.

13:36

14 MR. WEINGARTEN: Your Honor, first, I would like to
15 say it is good to be back in your court. I just wish it wasn't
16 this proceeding. Just a word -- I want to make three essential
17 points. Just a word about the defendant, Mr. Causey.

13:37

18 In any way of evaluating a person, when you try
19 to come up with adjectives that describe someone positively,
20 decency, honor, integrity, generosity, reliability, they all
21 apply to this man. You have the letters. They all attest to
22 this.

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23 THE COURT: No one seems to dispute that, but perhaps
24 you can tell me how someone armed with those traits could find
25 himself in this precarious situation.

13:37 1 MR. WEINGARTEN: I intend to, Your Honor, and I just
2 want to emphasize two points. Consistent -- the two consistent
3 themes, deeply religious man, but the one that comes through
4 with every letter is the devotion to his family. That is
13:37 5 absolutely consistent with everything I have known about him
6 from my own personal experience. He really is the guy you want
7 living across the street, coaching your kid perhaps, even
8 marrying your sister. He is that kind of a man.

9 In terms of the cooperation piece, which is, of
13:37 10 course, the big one, we were pleased the government wrote the
11 letter. We were disappointed with the modest recommendation.
12 It is completely clear between the government and us that we
13 are asking to go down to five. I don't think there is any
14 disagreement between us and the government over the actual
13:38 15 information that Mr. Causey provided when he was interviewed by
16 the government. And we will talk about that in just a second,
17 and we will talk about it generally because both parties filed
18 their papers under seal.

19 I just think that the United States's view of
13:38 20 what you should consider in connection with his 5K motion is a
21 bit cramped. I think it is entirely appropriate for you to
22 consider what Mr. Causey did in connection with the
23 investigation before we reached our formal agreement with the
24 United States, and that ties into the Powers report. We call
38 25 it the Wilmer report. And it really was the connection between

1 the opening salvo of the investigation with the prosecution.
2 It has been called by independent people the road map for the
3 prosecutors. Obviously, the prosecutors expanded beyond the
4 Powers report, but the Powers report really was extremely
5 important and set the tone and came out just, I think, weeks or
6 perhaps just a couple months after the bankruptcy. And I don't
7 think there is any dispute about this either. Mr. Causey was
8 absolutely indispensable in the production of the Powers
9 report. We have attached the memos and interviews. I think
10 there are 50 pages of single-spaced memos of interviews. I
11 have had two trials since I prepped for this one, and the Enron
12 information leaves your head very quickly. I read these memos
13 coming down here, and there is an incredible amount of
14 information in there. I mean, if, in fact, the Powers report
15 was the road map for the prosecutors, I believe these
16 interviews were, in effect, the road map for the Wilmer team
17 that produced the document, and it was not all background
18 information. It was to the heart of the matter. I was very
19 interested in reading -- just a quick point. In his third
20 interview, on page 11, he talked about the famous Raptor puts,
21 and he says directly, "There was no independent business
22 purpose for each put." Now, that is a theme that found its way
23 into the prosecution, I believe actually in the indictment
24 itself. So it is not as if this was just background
25 information of who sat where. I mean, we got to the belly of

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1 the beast in these interviews, and I think it is an important
2 thing for the Court to consider.

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3 At the same time Rick Causey was sitting with the
4 Wilmer people over and over again, the other cooperators were
5 either taking the Fifth or obstructing justice. I know the
6 Court knows the story of Kopper and Fastow dropping computers
7 in dumpsters at the time Rick Causey is not taking the Fifth
8 but cooperating with independent lawyers, knowing that the
9 information that's going to be provided --

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10 THE COURT: Why, if his cooperation was so early and
11 full, did he then delay a number of years in reaching his
12 decision to plead guilty while some of the earlier delayers had
13 been singled out much sooner?

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14 MR. WEINGARTEN: Critical question, and I think it
15 really flows into my next point. And that is that the Enron --
16 historically, I think the Enron matter has been viewed by some
17 as a big accounting scandal and by some as a disclosure and
18 securities scandal. Some marry the two. But having gone to
19 trial, it was our defense -- and this is what Rick Causey
20 believed at the time, believes it sitting here and will believe
21 it when he goes wherever he is going to go -- that in the main,
22 his accounting decisions, perhaps aggressive, perhaps
23 approaching gray areas on occasion, but from his perspective,
24 what he knew, consistent with GAAP. And the real issue for us,
25 had we gone to trial, would have been your instruction to the

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1 jury as to what that meant. The government would have taken
2 the position that you can have some clever accounting that's
3 consistent with GAAP, but if you have clever accounting
4 decisions on top of clever accounting decisions and the effect
5 is to have a K or a Q that describes the company that is not
6 exactly the company, you can have securities fraud. It turns
7 out the law is mixed on this. I know this is beside the point.
8 But it would have been an interesting question. And given that
9 that is how we viewed the world, I mean, we did believe and
10 certainly Rick Causey believed that good faith associated with
11 his belief that when he went to work in the morning and made
12 accounting decisions they were consistent with GAAP, we had a
13 clean shot at a successful verdict.

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14 Now, it was a process, and I believe the genius
15 of the government's decision to negotiate with us at the
16 end was not to get in the other trial -- that is, of course,
17 what I tell people in Washington -- it was to separate the
18 accounting case from the securities case. I think it made it a
19 far easier road for them to travel. But if I could follow that
20 up in just a second.

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21 I believe that there are really three pieces of
22 the cooperation, and I don't think the Wilmer piece should be
23 trivialized. I think the second piece is the actual
24 cooperation with the government. And the government takes some
25 issue with us about the timing and, of course, this is your

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1 point, that it was the 11th hour and 59th minute. We were a
2 week away from trial, as I recall.

3 THE COURT: I'm not taking issue with it.

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4 MR. WEINGARTEN: They do. They do. That was sort of
5 built into the agreement. The timing wasn't a mystery when
6 they said, "You can go down to five." We shouldn't -- that
7 shouldn't be a 12 because it took us that long to get there.

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8 Of course, I'm sure they believe when they sort
9 of compare if we sort of lined up the letters that they wrote
10 for people, perhaps the letter they wrote for Delaney would
11 have been more full of praise. But really what happened is --
12 and I don't think this was their fault. You know, we were on
13 the eve of trial. This was not an easy case to present. They
14 had only a million things to do to get ready. There weren't
15 extensive debriefings of Rick Causey as they got ready for
16 trial, and perhaps had there been a greater opportunity for
17 them to get together, there would have been more opportunity
18 for them to fully appreciate his potential value. I mean, that
19 also should be factored in. Having said that -- and the Court
20 has both the government's document and our document -- I think
21 the quality of the information speaks for itself. I will just
22 speak generally. There is a reason why we filed these
23 documents under seal. But if you look at the discrete
24 disclosure issue points and if you look at the discrete points
25 made by Mr. Causey relating to the end game -- and when I say

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1 "the end game," I refer to the October 2001 period going
2 forward -- at a minimum, I believe the government had hard,
3 usable points that corroborate, at a minimum corroborate, other
4 points that they have made publicly and in trial that are of
5 significance.

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6 Let me get back to this -- not get back. So I
7 think there are sort of three discrete points relating to the
8 cooperation.

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9 One is the Wilmer piece. Two is the actual
10 information provided on the eve of trial. I really actually do
11 believe the real value to Mr. Causey's cooperation and the
12 agreement we reached was to take the accounting piece out of
13 the trial. It has certainly simplified the case. On this GAAP
14 defense, I mean, we would have fought --

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15 THE COURT: Is that already factored into the
16 agreement the government reached in the concession in May?

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17 MR. WEINGARTEN: I think not when you take into
18 account how the trial played out. And if I could sort of go
19 down that path just a bit. Hypothetically -- not
20 hypothetically, had we. Had we gone to trial, we would have
21 fought the GAAP issue on the land, on the sea, in the air, I
22 think we would still be in court, still trying the case. I
23 think everybody, particularly the government, was advantaged by
24 that. And then we sort of get to the trial itself. And
25 obviously the Court tried it, so it knows in the government's

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1 case in chief, there wasn't much accounting evidence. I think
2 that was to the government's advantage. And then I think an
3 interesting thing occurred, and I don't know how it got to the
4 Court in realtime but it seemed like I was on the receiving end
5 of hundreds of calls from both sides as to whether or not Rick
6 Causey was going to be a witness for the defense or a witness
7 in the government's rebuttal case.

8 And to be sure, there was no intention of taking
9 the Fifth, and I believe the defense, based upon all the
10 obvious signs and common sense, would have liked evidence
11 before the jury that in the main, the accounting at Enron was
12 consistent with GAAP based upon what was known at the time by
13 the chief accounting officer. They didn't call him, and they
14 didn't call him because of the cooperation agreement, not
15 cooperation agreement, but the end fact cooperation and the
16 relationship we had with the United States. It's not as if I
17 violated trust. I mean, there was -- obviously, I had a
18 relationship with the defense, and I had information from him I
19 didn't share with the government. I didn't share the
20 government's information with the defendant. But he obviously
21 was lined up in a position where the accounting evidence that
22 perhaps would have been beneficial to the defendants they did
23 not use. And I believe that -- and I don't know this for sure,
24 but I have been in this game for 30 years -- that these
25 discrete points, these discrete pieces that Mr. Causey provided

13:46 1 the government, valuable pieces, were not used in their
2 rebuttal case because there was some concern that Rick Causey
3 was so essential to the trial that over a scope objection that
4 the defense would have been allowed to cross examine him on the
13:47 5 overall accounting issues and the trial would have gone on for
6 three more weeks. He shouldn't be punished for that in the
7 sense of not being called as a witness. I believe the
8 cooperation he provided that the government was armed with and
9 ready to use, if they felt appropriate, was extremely valuable,
13:47 10 and the net effect was that the cooperation relationship that
11 he had with the government kept the accounting case out of the
12 Lay/Skilling trial, which I think was of inestimable value to
13 the government. This is not a traditional listed category of
14 cooperation in the 5K manual. I understand that. But you are
13:47 15 not limited by the specific categories. And I believe a
16 combination of the three, the information that he voluntarily
17 and freely provided the government's alter ego at the outset,
18 the direct relationship he had with the prosecutor when he
19 reached this agreement and the overall effect of that
13:48 20 cooperation was significant. And I believe there is more than
21 the three to six recommendation from the government.

22 One more point, Your Honor, and that is this
23 notion of relative justice. It's an elusive topic that has
24 been much written about. And what I'm essentially talking
48 25 about is the notion in a large investigation when there are a

1 lot of defendants, that it just feels right when sentence is
2 handed out to different defendants that are proportional for
3 different people in the investigation. And it doesn't always
4 work that way, and it doesn't always work that way for reasons
5 that have nothing to do with bad faith or whatever.

6 If I was a prosecutor, I know it is hard for
7 prosecutors to manage large cases consistent with this notion
8 of relative justice. Sometimes different judges have different
9 defendants, sometimes different prosecutors with different
10 prosecutor theories have different defendants. The importance
11 of cooperation can be debated by people in good faith, and they
12 can come out with different conclusions, and the impact of the
13 guilty plea can have the same effect.

14 Having said all of that, I do have to make some
15 observations. And the first is a lot of people do say when
16 they talk about Enron, it's the largest accounting fraud in the
17 history of Anglo-American jurisprudence or some large
18 statements like that. The Court presided over the trial. The
19 Court heard testimony from Wes Colwell -- you know the name; I
20 can't remember -- Ryan Siurek testified, Rodney Faldyn. These
21 are highly placed, smart, very educated accountants at Enron
22 who made many of the controversial accounting decisions that
23 certainly Rick Causey blessed. But we know, of course, that
24 none of these people will be prosecuted. So these were his
25 compatriots. They worked with him. And to the extent we have

13:49 1 the largest accounting fraud in history, they were just a load
2 of accountants at Enron, many of them very high-placed, many of
3 them making the actual decisions of things like Raptors and
4 making the decisions on the reserves that, of course, he
13:50 5 blessed, but they are not being prosecuted. And we know, as
6 well, that there were scores of Andersen accountants in the
7 building at the time and at all times. And we know that none
8 of those people are going to be prosecuted either for
9 accounting fraud. And, you know, I don't know that there -- I
13:50 10 know Andersen has tried to position themselves as a victim of
11 this whole thing. It just strikes me almost as silly. But
12 that David Duncan, Tom Bauer, Deb Cash, they are there all the
13 time, involved in many of the most controversial accounting
14 decisions which he has sort of been vilified for, certainly not
13:50 15 in this Court, but publicly. I mean, it sort of strikes
16 against this notion of relative justice. But the big one, of
17 course, is Andy Fastow. And I understand completely that you
18 didn't sentence him, but he did get six years for all the world
19 to see. And I just wish, if I could have one wish right now,
13:50 20 it would be everybody who knows both men well could be in the
21 courtroom and we have a vote, a private ballot as to who on
22 every level is a better person, it would be 100 percent, no
23 matter how you frame the question -- the more interesting
24 question would be who was more -- who committed worse crimes?
51 25 Who was more responsible for the debacle at Enron? Who did

1 worse things? If the first vote was a landslide, the second
2 vote would be a bigger landslide. I wish I could give you my
3 Blackberry. I have gotten hundreds of e-mails from people who
4 are familiar with the Enron situation, saying, "Can it be
13:51 5 possible that Fastow is going to get less time than Rick?" And
6 it just strikes people the wrong way.

7 Of course, the government's response will be,
8 well, you know, the great equalizer is cooperation. Let me
9 suggest that briefly. I actually know something about this
13:51 10 because before trial, before agreement, you know, the defense
11 lined up the witnesses, and I was going to do a number of them,
12 including Fastow. So, you know, I had my cross-examination box
13 prepared for Fastow, and while I'm absolutely satisfied we did
14 the right thing for our client, as a lawyer, I regret missing
13:52 15 that opportunity. Then, of course, I followed his testimony at
16 trial, and I believe him to be a shrewd, cynical, manipulative
17 guy who became the caricature of a cooperator. When I woke up
18 in the morning, we were committing fraud. When I went to bed
19 at night, we were committing fraud. And he picked the spot
13:52 20 where he could impute fraudulent behavior to others.

21 Now, there is not one part of what I'm saying
22 that suggests that the government was supporting perjury or
23 putting on testimony that they knew to be false. I don't think
24 the prosecutorial DNA would allow that. But what I do believe,
52 25 that if an objective evaluator of what Causey said to Wilmer in

13:52 1 those five interviews and what he said to the government in the
2 government's 302, compared that objectively, not someone trying
3 to convict Skilling and Lay, but objectively with what Fastow
4 had to say under oath and comparing that with how Fastow got
13:53 5 there, the various iterations of Fastow's testimony, I believe
6 Rick would be viewed as the more credible person in describing
7 what happened in realtime at Enron.

8 I think back to this Fastow situation. I know
9 the Court remembers, I mean, Fastow actually lied to Rick. It
13:53 10 was a critical piece in evidence. It had to do with the swaps,
11 other things, the buyouts, and walks across the hall to Rick
12 and said, you know, the bank wants \$20 million when the bank
13 just wanted \$1 million to him in realtime. And, of course, he
14 took and split with his compatriots \$19 million. There is no
13:53 15 behavior going the other way where Rick was lying to Fastow. I
16 mean, he's a guy who would lie when it suited his purpose. In
17 that particular instance, it was to get money. I believe on
18 the witness stand, over and over again, to curry favor with the
19 government. I don't think you would have that situation at any
13:54 20 point in time under any circumstances with Rick Causey.

21 I really -- sort of bottom line on this notion of
22 relative justice, I believe -- and this is perhaps
23 melodramatic -- the goddess of justice weeps if he winds up
24 getting a sentence longer than Fastow. It will just not feel
54 25 right for anyone even remotely familiar with the Enron

13:54 1 investigation.

2 Rick Causey -- where does it all come out? Rick
3 Causey, of course, was the chief accounting officer of Enron.
4 He can't run from that. That's what he was and that's why he
13:54 5 is here. I respectfully request -- and I know you won't do
6 this -- don't sentence the job title; sentence the man. There
7 is just so much to work with that's good, if you do that, and I
8 respectfully request a sentence that allows him to get back to
9 his home, back to his family and back to his community just as
13:55 10 quickly as possible. Thank you, Judge.

11 THE COURT: Ms. Rueemler?

12 MS. RUEEMLER: Thank you, Your Honor. Well, let me
13 start by saying I don't want to debate the case, and I know the
14 Court doesn't want to hear that. I certainly don't want to
13:55 15 debate about GAAP. I don't want to debate about relative
16 justice, and I don't want to debate about whether or not
17 Mr. Causey or Mr. Fastow -- which one of them is a better
18 person. I think what the Court is interested in hearing about
19 is what did Mr. Causey do, what did his plea agreement require,
13:55 20 and given those two things, what is the appropriate sentence?

21 Let me just start by talking about Mr. Causey a
22 little bit. As a chief accounting officer, Mr. Causey bore
23 tremendous responsibility to Enron's employees and investors,
24 and he abrogated that responsibility and that abrogation caused
56 25 profound harm to thousands of employees and investors. And

1 while the accounting department at Enron should have been
2 striving towards fairness and accuracy and transparency in its
3 disclosure in financial statements, the accounting department
4 under Mr. Causey's leadership drifted towards concealment and
5 deceit.

6 At bottom, Mr. Causey, not alone, but with others
7 with whom he worked, violated the trust of people who had every
8 right to rely on the statements and representations that
9 Mr. Causey and others were making about the financial health
10 and performance of the company. And I don't think it is an
11 exaggeration to say that without Mr. Causey's implicit consent
12 and, in some instances, explicit conduct, that the fraud that
13 happened at Enron could not have occurred.

14 Now, with that said, I know that the Court has
15 seen the letters submitted on behalf of Mr. Causey, and they
16 are compelling, and Mr. Weingarten's remarks were very
17 compelling, as well. And after having spent I think it is
18 going on close to three and a half years now working on this
19 case and this investigation and working particularly with
20 respect to conduct that Mr. Causey was involved in, I can tell
21 the Court that I think the picture of Mr. Causey that emerges
22 from all of that investigation is a complicated one. I think
23 there clearly is a lot of good in Mr. Causey. This is not a
24 situation where after, you know, interviewing hundreds of
25 employees at Enron, that the picture that emerges is a man who

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1 was ruthless or who was deceitful or dishonorable. In fact, in
2 many ways, quite the opposite picture.

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3 So the question for the Court is given all of
4 those things and given the fact that Mr. Causey agreed to an
5 84-month sentence and now you have a motion from the government
6 suggesting what is admittedly a quite modest departure
7 downward, I want to speak about that a little bit.

13:58

8 First, Your Honor, as the Court knows, the
9 guidelines suggest that in a case of this complexity -- and
10 obviously you have tremendous insight into it after having sat
11 through all of the evidence, but that substantial weight should
12 be given to the government in determining what an appropriate
13 departure is.

13:58

14 Let me just say that I would have loved to stand
15 before the Court today and argue to the Court that Mr. Causey's
16 assistance was significant enough and so significant that a
17 full two-year departure was warranted. Unfortunately, after
18 evaluating the assistance that he did provide, which was some,
19 but the government is just not in a position to advocate that
20 at this point.

13:59

21 THE COURT: Do you anticipate that further cooperation
22 may be in the offing?

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23 MS. RUEMLER: At this point, Your Honor, I think that
24 I would say no, although one never knows. There are lots of
25 things, as the Court is aware that are --

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1 THE COURT: The papers allude to the possibility of
2 further investigations and perhaps prosecutions in which
3 Mr. Causey's assistance might be fruitful.

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4 MS. RUEMLER: Certainly, Your Honor, with respect the
5 to the leads that have been provided by Mr. Causey that are
6 detailed in the government's motion, that will need to be
7 pursued further, and I was also thinking with respect to other
8 cases that are pending and are in various stages of appeal or
9 have been reversed on appeal and things of that nature, it is
10 hard to know what the future will bring. But Mr. Causey's --
11 let me speak, Your Honor, for a second about the Wilmer
12 interviews because I think that is a point that Mr. Weingarten
13 spent a lot of time on.

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14:00

14 Obviously Mr. Causey did sit down and meet with
15 the Wilmer folks and the Powers committee. Some of the
16 significant things about that, however, are that Mr. Causey at
17 no time admitted that he had engaged in any wrongdoing. At no
18 time did he ever suggest that others at the company had engaged
19 in any wrongdoing. He defended the accounting conclusions.
20 The Powers committee, when they wrote the report, profoundly
21 disagreed with Mr. Causey's accounting conclusions and
22 particularly with respect to the Raptor transaction. I
23 think -- and I'm paraphrasing. It has been a long time since I
24 read it, but I believe that the way the Powers report
25 characterized that transaction without having the full -- all

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14:01 1 of the evidence that the Court heard at trial with respect to
2 Mr. Glisan's testimony and Mr. Fastow's testimony, for example,
3 but I think what the Power's report said is that that
4 transaction went well beyond the aggressive. That is not a
14:01 5 conclusion which Mr. Causey agreed with at the time.

6 As the Court knows, having a cooperating witness
7 who is reluctant to acknowledge their own responsibility is not
8 really of much use to the government at all. And that was the
9 place where Mr. Causey was at that time. After he provided all
14:01 10 of those interviews with the Wilmer folks, he had several
11 opportunities to cooperate with the government at much earlier
12 stages in the investigation, and he chose not to do that. And
13 I think that is a significant counterbalance to
14 Mr. Weingarten's compelling arguments about how much
14:02 15 information he did provide.

16 In addition, Your Honor, just with respect to the
17 comment about the accounting at Enron, just that this is
18 probably a statement of the obvious, but obviously the
19 government takes a quite different view about whether or not
14:02 20 the accounting at Enron was appropriate and whether or not it
21 complied with GAAP in all respects.

22 THE COURT: You can't dispute the fact that
23 eliminating that from the case simplified the government's
24 burden at trial.

02 25 MS. RUEMLER: There is no question about it. There

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1 is no question that the plea agreement and the 84-month plea
2 agreement that both parties agreed to was a tremendous benefit,
3 I think, to Mr. Causey as compared to the guideline range
4 calculated by the probation office and also a tremendous
14:03 5 benefit to the government for exactly that reason. There is no
6 question. But, Your Honor, I think that when you are thinking
7 about what the appropriate departure motion is, and this is
8 assuming that the Court is even entertaining the idea of
9 granting such a motion, I think, again, that the government is
10 entitled to significant deference, given that it has the
11 greater knowledge of all of the facts and circumstances and
12 pieces of evidence.

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13 THE COURT: That argument has merit, especially in
14 cases where the Court doesn't actually try the case, where you
15 have people who cooperate and plea, and the Court's knowledge
16 of the case is limited to what is contained in the presentence
17 report and to what counsel provide.

14:03

18 In this case, I think I have a better
19 understanding of the facts of this case having sat through four
20 months of trial. So I think my deference is slightly less than
21 it would have been had I been relying solely on what others
22 told me the facts of the case were.

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23 MS. RUEMLER: I think that is exactly right, Your
24 Honor. Obviously, you heard all the evidence, you listened to
25 the other testimony, and you can draw the conclusions. Just to

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1 use an example, if Mr. Causey were to suggest that the Raptor
2 transaction were in compliance with GAAP, obviously that is
3 inconsistent with the theory that the government presented at
4 trial and that the jury found, given that the jury convicted
5 Mr. Skilling of securities fraud based on the Raptor
6 transaction. So I think that there are significant differences
7 between the government's view of the evidence, and in that
8 context, the value of Mr. Causey's assistance and Mr. Causey's
9 view of the value of his assistance.

14:04

10 With that said, as we stated in the motion, he
11 did provide some assistance. His assistance is of use and of
12 value to us, particularly with respect to these on-going
13 matters. And for that reason, we think that the modest
14 departure is appropriate.

14:05

15 THE COURT: Thank you. I'm going to grant the
16 government's motion for downward departure.

17 Mr. Causey, would you please come forward?

14:05

18 It is the judgment of the Court that you be
19 committed to the custody of the Bureau of Prisons for a term of
20 66 months. The Court will allow you to voluntarily surrender
21 when notified by the Bureau of Prisons. After you are released
22 from prison, you will serve two years of supervised release.
23 In addition to the standard conditions, you will comply with
24 the following special conditions: You will not possess a
25 firearm, ammunition, destructive device or any dangerous

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1 weapon. You are prohibited from employment or acting in a
2 fiduciary role during the term of supervision. You are
3 prohibited from acting as an officer or director of any issuer
4 of securities that has a class of securities registered with
14:06 5 the Securities Exchange Commission. You will cooperate in the
6 collection of a DNA sample. You will pay a special assessment
7 of \$100 immediately. In light of the stipulated preliminary
8 order of forfeiture, which I signed today, and given the
9 complexities involved in determining your proportional
14:06 10 liability for restitution, which is discretionary in this case
11 in any event, the Court concludes that the \$1,250,000 in
12 forfeited funds is proportionate to your culpability and
13 addresses the Court's concern with respect to the need for
14 discretionary restitution. The forfeited funds will remain
14:07 15 subject to restraint, pending resolution of any ancillary
16 proceedings. Thereafter, the forfeited funds will be forwarded
17 to the distribution fund which will be overseen by Judge
18 Melinda Harmon in the In Re Enron Corporation Securities
19 Derivative and ERISA litigation, for additional disbursement to
14:07 20 the identified victims.

21 You will further pay a fine of \$25,000. I
22 anticipate that the government will agree that that money
23 should also be forwarded to the distribution fund?

24 MS. RUEMLER: Yes, Your Honor.

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25 THE COURT: All right. Does the government have a

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1 motion to dismiss the remaining counts?

2 MS. RUEMLER: Yes, Your Honor. Under the terms of
3 the plea agreement and in the interest of justice, we move to
4 dismiss the remaining counts of the indictment with prejudice.

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5 THE COURT: All right. Please follow it up in writing
6 by the close of business today. The motion to dismiss the
7 remaining counts is granted.

8 Has the government complied fully with the plea
9 agreement, Mr. Weingarten?

14:08

10 MR. WEINGARTEN: Yes, Your Honor.

11 THE COURT: Under the agreement, Mr. Causey, you have
12 no right of appeal. If you think you have a right to appeal,
13 you must file notice of appeal within 10 days.

14 Does either counsel wish to say anything else?

14:08

15 Do you want me to request a place of sentence?

16 MR. WEINGARTEN: Oh, yes, I'm sorry. Bastrop. It is
17 30 miles from where two of his children will be going to
18 school.

19 THE COURT: I will recommend FCI Bastrop.

14:08

20 MR. WEINGARTEN: Thank you, Your Honor.

21 THE COURT: Mr. Causey, you will be notified by the
22 Bureau of Prisons when and where to report, and it is in your
23 best interest to report as designated. I know you face a
24 difficult number of years ahead. I'm confident, given your
25 background and your family's support and your religious

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1 conviction, that you will endure this process and come out and
2 be a credit to your family and community. I wish you good
3 luck.

4 THE DEFENDANT: Thank you.

14:09

5 THE COURT: Court is adjourned.

6 THE CLERK: All rise.

7 *(Proceedings concluded)*

8 * * * * *

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

10 Date: November 15, 2006

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Mayra Malone

Mayra Malone, CSR, RMR, CRR
Official Court Reporter

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