

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA, :  
:   
Plaintiff, : 04-CR-87  
:   
-against- : United States Courthouse  
: Brooklyn, New York  
BYUNG KI KOO, :  
:   
Defendant. : June 13, 2006  
: 10:00 a.m.

----- X

TRANSCRIPT OF SENTENCING  
BEFORE THE HONORABLE I. LEO GLASSER  
UNITED STATES SENIOR DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: ROSLYNN R. MAUSKOPF, ESQ.  
United States Attorney  
BY: LEE FREEDMAN, ESQ.  
Assistant United States Attorney

For the Defendant: CHARLES ABERCROMBIE. ESQ.

Court Reporter: FREDERICK R. GUERINO, C.S.R.  
225 Cadman Plaza East  
Brooklyn, New York  
718-330-7687

Proceedings recorded by mechanical stenography, transcript produced by CAT.

1 THE COURT CLERK: Criminal cause for sentencing:  
2 United States v. Koo, case number 04-CR-87.

3 Counsel, state your appearances for record.

4 MR. FREEDMAN: Lee Freedman for the United States.  
5 With me is an intern, Aaron Spidak S-p-i-d-a-k, .

6 Good morning, your Honor.

7 THE COURT: Good morning.

8 MR. ABERCROMBIE: Charles Abercrombie for Mr. Koo.  
9 Good morning, your Honor.

10 THE COURT: Good morning.

11 Are you ready to proceed, Mr. Abercrombie?

12 MR. ABERCROMBIE: I am.

13 THE COURT: Have you reviewed the presentence report  
14 with your client?

15 MR. ABERCROMBIE: We have.

16 THE COURT: And you have taken no exception to  
17 anything in the report that is substantive.

18 MR. ABERCROMBIE: There was one substantive point,  
19 Judge, included in our letter to the Probation Department, and  
20 that was on the issue of family circumstance.

21 THE COURT: Okay.

22 MR. ABERCROMBIE: I consider it substantive.

23 THE COURT: Okay. I think that's reflected pretty  
24 well in the presentence report.

25 MR. ABERCROMBIE: Thank you, Judge.

1 THE COURT: Okay. You want to be heard?

2 MR. ABERCROMBIE: Yes, Judge.

3 I think in this case, Judge, aberrational conduct  
4 sums it up best. Both before and after this incident, Mr. Koo  
5 has shown himself to be a loving son, a good Dad to his two  
6 young children, a conscientious husband, and hard worker both  
7 in his studies and in his employment. In fact, both before  
8 and after this incident, he built a solid record of  
9 accomplishment and achievement. He cooperated in this case  
10 and it brought about a complete resolution in this matter.

11 Ironically, Mr. Koo stands before you in sentencing  
12 today, when another individual engaged in similar translating  
13 conduct escaped prosecution in this matter. I think that  
14 speaks to the marginal role of the complaint in this case. I  
15 think it speaks to whether incarceration is here based upon  
16 his refusal to participate in this scheme, his minimal role,  
17 cooperation that was full and complete, needs to be there for  
18 his mother, who has special needs and is present in court  
19 today, and no one else is there for her, to be there for his  
20 children and community to which he's contributed mightily, I  
21 think that answer to that question is "no," it would do no  
22 good to incarcerate this man.

23 He now has a criminal record, has thrown away an  
24 extraordinary career, and has gone through this process for  
25 the last one and a half years. So I think in this case to

1 impose supervision so that he feels the hand of the government  
2 would be appropriate, but I don't think it would be  
3 appropriate to put him away.

4 THE COURT: Mr. Freedman.

5 MR. FREEDMAN: Yes, your Honor.

6 Beyond our sentencing motion, unless the court has  
7 any questions, we don't have anything to add.

8 THE COURT: Is there anything you want to add?

9 MR. FREEDMAN: Not more than what I said in my  
10 motion, your Honor.

11 THE COURT: You mean your 5K1 motion?

12 MR. FREEDMAN: Yes, Your Honor.

13 THE COURT: Mr. Koo, is there anything you would like  
14 to say to me this morning?

15 THE DEFENDANT: Yes, Your Honor.

16 First of all, I would just like to say I'm extremely  
17 contrite about what I have done and I take full responsibility  
18 for my wrongdoing. It was bad judgment that I wish I could  
19 take back, but I have tried to make amends by helping the  
20 government and doing good work in the community, the work that  
21 I love.

22 I see that it is my family who the suffers much more  
23 than I as a result of this. At this critical juncture in my  
24 life, I implore you, your Honor, to have mercy on someone who  
25 has learned a great deal about life in general. Excuse me.

1           My wife, my two little wonderful kids, and my mother  
2 rely on me for their well-being. I especially worry about my  
3 mother who has no one else to take care of her. Please give  
4 me and my innocent family a second chance.

5           THE COURT: Mr. Koo pleaded guilty to aiding and  
6 abetting?

7           MR. FREEDMAN: Correct, your Honor.

8           THE COURT: And paragraph 41 of the presentence  
9 report in essence sums up the basis for that aiding and  
10 abetting charge?

11          MR. FREEDMAN: There are, your Honor, other  
12 discussions in the presentence report. There were actually  
13 two meetings. Essentially it went something like this:  
14 Mr. Koo --

15          THE COURT: Let me just put the question a little bit  
16 more succinctly. Mr. Koo acted as a translator?

17          MR. FREEDMAN: In the second meeting, your Honor.

18          THE COURT: At a meeting, acted as a translator.

19          MR. FREEDMAN: At the first meeting, he participated  
20 in negotiations and discussions to be one of the kidnappers,  
21 declined ultimately to do so. Then returned with two other  
22 people, one of whom was at the first meeting, and acted solely  
23 as a translator at the behest of the kidnappers at that  
24 meeting.

25          THE COURT: He was present and that was it. The

1 extent of his offense was his presence at the first meeting?

2 MR. ABERCROMBIE: No, Your Honor.

3 THE COURT: No?

4 MR. FREEDMAN: The first meeting he was summoned by  
5 Henry whatever, and young coot king you was the manager of the  
6 bar.

7 THE COURT: I know who he is.

8 MR. FREEDMAN: During that meeting, Young Koo King  
9 asked Ms. Yushuvayev and this defendant how they could go  
10 about getting rid of these two female witnesses. And they had  
11 discussed -- Mr. Koo discussed things as they could notify the  
12 Immigration authorities that these women are here illegally.  
13 And Mr. Koo gave advice, pros and cons, if the women would be  
14 in the country, if that were to take place, would also get the  
15 establishment into trouble.

16 At the end of the meeting, Mr. Koo told  
17 Mr. Yushuvayev that he would not physically kidnap a woman.

18 They then had a meeting where Mr. Yushuvayev found a  
19 replacement kidnapper and said to Mr. Koo, I can't negotiate  
20 or plan the kidnapping with the principals because I don't  
21 speak Korean. Would you return to the bar with me and  
22 translate?

23 During that meeting, yes, Mr. Koo was present. But  
24 for him - and this is no way ameliorates his cooperation,  
25 which is essential, but for the crime committed,

1 Mr. Yushuvayev would not be able to kidnap these women, but  
2 for Mr. Koo going to that bar and translating, okay. You have  
3 King saying, I would pay you \$5,000 per woman. There was  
4 negotiation about price, about if a gun would be used, how  
5 many women would be brought, the addresses of the women where  
6 to find them, et cetera, and that was Mr. Koo's role in this.

7 MR. ABERCROMBIE: Judge, if I may, I would like to  
8 point out one thing that is a critical factor. Mr. Yushuvayev  
9 and Mr. Koo were good friends and he fell prey to that loyalty  
10 which was misplaced.

11 THE COURT: The reason I'm asking, Mr. Freedman, so  
12 that you are aware of the purpose of my questioning, is  
13 paragraph 41 of the presentence report, which is essentially  
14 all that is in this presentence report with respect to what  
15 took place, the only paragraphs in which Mr. Koo is even  
16 mentioned is paragraph 41 and paragraph 42.

17 MR. FREEDMAN: And paragraph 21, your Honor,  
18 discusses it as well.

19 THE COURT: That was at the meeting and he discussed  
20 the scheme, right?

21 MR. FREEDMAN: Correct, your Honor.

22 THE COURT: Paragraph 41 makes it pretty plain, which  
23 is why I asked these questions.

24 MR. FREEDMAN: Yes, Your Honor.

25 THE COURT: I instructed I don't know how many

1 countless juries on aiding and abetting, and as I read  
2 paragraph 41, I wondered whether that would have had amounted  
3 to a violation of Section II of Title 18 of the United States  
4 Code. There was very little in this presentence report which  
5 informs me of what it is that you told me here this morning;  
6 is that correct?

7 MR. FREEDMAN: Yes, your Honor.

8 THE COURT: Do you understand why it is I ask about  
9 paragraph 41?

10 MR. FREEDMAN: Yes, Your Honor.

11 THE COURT: I'm told, Mr. Koo, that after all this  
12 happened and you clearly indicated that you were not going to  
13 participate, at least as I read paragraph 41, in the  
14 deportation scheme, a number of years went by before you came  
15 forward; is that right?

16 THE DEFENDANT: I think it was about a year, your  
17 Honor.

18 THE COURT: If you knew that something amiss was  
19 going to happen, as a federal law enforcement officer why  
20 didn't you come forward at that time?

21 THE DEFENDANT: I was advised by a previous attorney,  
22 despite my intentions to speak to Mr. Freedman after his  
23 calls, I asked my attorney to speak to Mr. Freedman for  
24 possible assistance in the investigation, and he emphatically  
25 advised me not to speak to anybody and just stay put, because

1 according to my previous attorney, this is my attorneys were  
2 saying that I'm innocent, that I will not be arrested for  
3 this, and that I have nothing to worry about.

4 MR. FREEDMAN: If I may, your Honor. So much for  
5 that answer, is exactly what transpired.

6 THE COURT: Pardon.

7 MR. FREEDMAN: I'm not sure that answers your  
8 question. If I could interject something?

9 THE COURT: Sure.

10 MR. FREEDMAN: I think you asked why Mr. Koo didn't  
11 come forward after learning that a woman was going to be  
12 kidnapped. Mr. Koo remained silent after that meeting where  
13 he acted as a translator, and the plot was hatched, and in  
14 fact the attempted kidnapping happened. Then he found out  
15 that Mr. Yushuvayev had been arrested. We found him by  
16 following a trail of evidence, and then spoke with him, and he  
17 did voluntarily speak with us. He never came forward and then  
18 he's correct, when we then approached him again and asked him  
19 he then got a lawyer after the first time we met with him,  
20 then we approached him again through his attorney and asked if  
21 he would come in and talk to us. And he is correct, at that  
22 point his attorney advised him not to speak to us anymore.

23 THE COURT: That was how long after the event?

24 MR. FREEDMAN: I think when we first located him, it  
25 had to be approximately a year after -- I have to look up the

1 dates of the various proffers.

2 THE COURT: It is not terribly important at this  
3 point.

4 MR. FREEDMAN: Yes, Your Honor.

5 MR. ABERCROMBIE: Actually it was about nine months,  
6 Judge.

7 THE COURT: Is that time sequence about right?

8 A I know in June of 2004, I had a discussion with the FBI  
9 agents. Soon afterwards I contacted my attorney through my  
10 job.

11 THE COURT: All right.

12 MR. ABERCROMBIE: Judge, if I could add one other  
13 fact that Mr. Koo and I discussed?

14 I think it is relevant to your last question and,  
15 that is, Mr. Koo tells me he came away from these sessions  
16 with a belief not only that he did not want to be involved,  
17 but that this was such a hair brain scheme, he wondered  
18 whether Mr. Yushuvayev would ever go through with it. That  
19 doesn't excuse him from not fulfilling his duty, but it shows  
20 that it was a hair brain scheme that Mr. Yushuvayev and the  
21 others hatched.

22 THE COURT: The law in this circuit requires district  
23 courts to consider the guidelines, despite the fact they are  
24 no longer mandatory. More specifically, the circuit court  
25 instructs district courts to carefully consider the factors

1 listed in Section 3553(a) of Title 18. The first of which  
2 being the nature and character of the offense, and the  
3 characteristics of the defendant. The nature and character of  
4 the offense doesn't require much elaboration.

5           What seems to me significant, insofar as the nature  
6 and character of the offense is concerned, is the extent that  
7 Mr. Koo's role with respect to that offense, which I think  
8 under any circumstances, given his clear expression that he  
9 wasn't going to participate in the deportation scheme, would  
10 be minimal.

11           The character of the defendant, he has no record.  
12 He's a college graduate. He has been gainfully employed and  
13 has lived an exemplary life until this event occurred. The  
14 need for the sentence imposed is to reflect the seriousness of  
15 the offense and provide punishment is a factor which I am  
16 considering. Adequate deterrence to protect the public, I  
17 don't think the public is going to need much protection from  
18 Mr. Koo in the future. There are a number of other  
19 significant factors in Chapter five of the sentencing  
20 guidelines which are clearly applicable here. I think this is  
21 quite plainly a case of aberrant behavior, under 5K2.20.

22           The question as to why - I think you raised it in  
23 your sentencing memorandum - as to why Mr. Koo was treated  
24 differently than Mr. Kim, I suppose if I ask the question, the  
25 answer to the question I would ask is that Mr. Koo was a

1 federal agent or law enforcement officer and Ms. Kim was not;  
2 is that essentially the reason? Ms. Kim served essentially  
3 the same function that Mr. Koo did.

4 MR. FREEDMAN: Correct, your Honor.

5 THE COURT: Why wasn't she prosecuted?

6 MR. FREEDMAN: One, she was in a position where she  
7 was beholding to Mr. King, as I understand it, who brought her  
8 in, and she was both beholding to him and she was helping him  
9 out with the scheme. But the greatest difference between the  
10 two of them certainly is that Mr. Koo had attended an academy,  
11 had been an INS officer and federal air marshal.

12 THE COURT: I said, does that excuse Ms. Kim?

13 MR. FREEDMAN: No, Your Honor.

14 THE COURT: She was beholding to Mr. King as a matter  
15 of friendship or as an employee?

16 MR. FREEDMAN: As an employee and somebody he had  
17 assisted, and when she was domiciled and had seen him treat  
18 other women who disobeyed his actions, his request --.

19 THE COURT: Well, in light of 3553(a)(6), one of the  
20 functions of the guidelines is to avoid disparity, and can you  
21 explain disparity other than the fact that there was a  
22 different occupation?

23 MR. FREEDMAN: I think -- I'm not trying to defend  
24 it, your Honor.

25 THE COURT: There was a consequence between Mr. Koo

1 and Ms. Kim.

2 MR. FREEDMAN: That, plus the fact he was involved in  
3 other criminal activity, your Honor.

4 THE COURT: Which was?

5 MR. FREEDMAN: He was involved before this incident  
6 with utilizing the services of women who were in forced  
7 servitude in brothels. He also paid Mr. Yushuvayev to get a  
8 fake immigration stamp for a relative of his mother.

9 THE COURT: Those weren't defenses for which he was  
10 being prosecuted.

11 MR. FREEDMAN: No, Your Honor, but certainly the  
12 entire character of the defendant goes into our calculation.

13 THE COURT: I didn't read any of that in the  
14 presentence report.

15 MR. FREEDMAN: I wasn't trying to make Mr. Koo worse  
16 in the Court's eyes, your Honor.

17 THE COURT: It is not a question of making anybody  
18 worse, but 3661, I think is the number of Title 18 of the  
19 United States Code, provides that the court should be given  
20 all of the information.

21 MR. FREEDMAN: Yes, Your Honor.

22 THE COURT: Which would be relevant in terms of  
23 sentencing.

24 MR. FREEDMAN: Yes, Your Honor.

25 THE COURT: It's not a question of making him worse.

1 It's a question of giving me all of the information which I  
2 should have for purposes of sentencing.

3 MR. FREEDMAN: Yes, Your Honor.

4 THE COURT: I think given the family circumstances,  
5 which are adequately described in the presentence report, the  
6 condition of Mr. Koo's mother with whom he's essentially in  
7 effect the sole caretaker and assistant, under 5H1.6 provides  
8 an additional basis for a downward departure. 5H1.11, with  
9 respect to community work, also provides this court with a  
10 sufficient basis for departing. In addition to which the  
11 entire history of the event, insofar as Mr. Koo was concerned,  
12 which brings him here, and the guideline is just monstrously  
13 disproportionate. Given all of the factors which I have  
14 recited, to consider a minimum guideline of 108 months is  
15 almost monstrous.

16 For all of the reasons which I have enumerated, I  
17 will put Mr. Koo on probation for a period of four years,  
18 granting the government's motion under 5K1.1.

19 I think there's an underlying indictment.

20 MR. FREEDMAN: Yes, Your Honor, and we move to  
21 dismiss all counts in the multiple underlying indictment.

22 THE COURT: Your motion is granted.

23 There's a \$100 special assessment.

24 MR. ABERCROMBIE: It will be paid today, your Honor.

25 THE COURT: That's mandatory.

1           Mr. Koo, you have a right to appeal this sentence.  
2 If you can't afford to pay for the cost of an appeal, you can  
3 make an application to have the costs waived. Thank you.

4           THE DEFENDANT: Thank you, your Honor.

5           MR. FREEDMAN: Thank you, your Honor.

6           MR. ABERCROMBIE: Thank you, Judge.

7           (The proceedings are concluded.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25