

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**FILED**  
IN CLERKS OFFICE  
U.S. DISTRICT OF  
AUG 10 2000  
P.M.  
TIME 7 A.M.

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3 ----- X  
4 UNITED STATES OF AMERICA, :  
5 :  
6 -against- :  
7 JENNIFER GRAZIANO, :  
8 Defendant. :  
9 ----- X

CR 00-15  
United States Courthouse  
Brooklyn, New York  
April 20, 2001  
12:15 o'clock p.m.

TRANSCRIPT OF SENTENCING  
BEFORE THE HONORABLE CHARLES P. SIFTON  
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

LORETTA E. LYNCH  
United States Attorney  
BY: RUTH NORDENBROOK  
Assistant United States Attorney  
One Pierrepont Plaza  
Brooklyn, New York

For the Defendant:

PAUL LEMOLE, ESQ.

Court Reporter:

Gene Rudolph  
225 Cadman Plaza East  
Brooklyn, New York  
(718) 260-2538

Proceedings recorded by mechanical stenography, transcript  
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*I hereby certify that this transcript is true and accurate transcription of the stenographic notes in this proceeding.*  
*Gene Rudolph*  
U.S. District Court

*#23*

1 THE CLERK: The United States versus Jennifer  
2 Graziano, criminal cause for sentencing.

3 THE COURT: All right. Who is representing the  
4 prosecution in this matter?

5 MS. NORDENBROOK: Ruth Nordenbrook for the United  
6 States, Your Honor.

7 THE COURT: And for --

8 MR. LEMOLE: Paul Lemole for the defendant.

9 Good afternoon, Judge.

10 THE COURT: Good afternoon.

11 Here again, I have a transcript of a plea before  
12 Magistrate Judge Gold back in March of last year. Is there  
13 any reason I shouldn't accept that plea, Mr. Lemole?

14 MR. LEMOLE: No, Judge.

15 THE COURT: Ms. Nordenbrook?

16 MS. NORDENBROOK: No, Your Honor.

17 THE COURT: All right. I have reviewed the  
18 transcript. There is a factual basis for the plea. The  
19 defendant was acting voluntarily, with knowledge of the  
20 consequences of pleading guilty, so I will accept the plea.

21 Now, have you and your client, Mr. Lemole, seen both  
22 the original presentence report and the addendum that was  
23 prepared by the Probation Department?

24 MR. LEMOLE: I have, Judge.

25 THE DEFENDANT: I have too.

1 THE COURT: Do you have any -- aside from the dispute  
2 concerning the defendant's role adjustment and your  
3 application for departure, do you have any other issues with  
4 regard to the report?

5 MR. LEMOLE: Judge, just what I brought up in my  
6 sentencing memorandum. That would be --

7 THE COURT: Did that summarize it? There is a  
8 dispute as to the role and also an application for departure?

9 MR. LEMOLE: Yes, it does.

10 THE COURT: Okay. Any issues you have with regard to  
11 the report, Ms. Nordenbrook?

12 MS. NORDENBROOK: No, Your Honor.

13 THE COURT: I also have from both sides -- well, I  
14 have Mr. Lemole's submissions, a sentencing memorandum and a  
15 report, a thorough report, by the -- is it a psychiatrist?  
16 Psychologist?

17 MR. LEMOLE: Two of them, Judge. Doctor Hughes, I  
18 believe, and Doctor Heffernan.

19 THE COURT: I have examined the psychologist report  
20 of Doctor Hughes and the report of Doctor Berrill. So tell  
21 me -- I have to say this, whatever I do in terms of  
22 the -- what position do you take on the role adjustment?

23 MS. NORDENBROOK: That the -- the role recommended in  
24 the PSR is an appropriate one. It is supported by the  
25 evidence in the case.

1 THE COURT: All right. I don't want your argument.  
2 I just want your position.

3 You are taking -- since I didn't see that in writing  
4 anywhere in your submissions.

5 MR. LEMOLE: Judge, in the written plea agreement, if  
6 I might?

7 THE COURT: I realize that. But I am asking what  
8 position the prosecutor is taking now. She says she is  
9 supporting the Probation Department.

10 MS. NORDENBROOK: I'm sorry. No, I stand by the --  
11 I'm sorry. The one in the plea agreement. I'm sorry, Your  
12 Honor.

13 THE COURT: Okay.

14 MS. NORDENBROOK: I'm sorry. I thought --

15 THE COURT: All right. All right. That's where you  
16 both are. I have to make an independent determination on the  
17 subject. At least I know what the parties' positions are.

18 What I started to say was, whatever impact  
19 this -- the psychological evaluations are going to have on the  
20 sentence, and given the offense level, it is hard to see  
21 that's going to have any enormously large effect on the  
22 sentence.

23 This is just a terrible -- terribly upsetting picture  
24 of the life you have been living. It is just -- I mean, to  
25 a -- to an outsider, who doesn't know you, to see what you

1 have had to put up in your -- in your relationships is just  
2 astounding.

3           It put me in mind, Ms. Nordenbrook, of years ago, you  
4 had a -- I don't think any direct involvement, but you had  
5 some involvement with a notorious case, of a woman who was  
6 abused by her -- by her husband or whatever it was, and that  
7 there have -- partly as a result of that case, there have  
8 grown up support groups and people with expertise in this area  
9 who I think could do a great deal to help out whatever the  
10 sentence is. You have been in this area for a long while,  
11 Ms. Nordenbrook. Maybe you are in a position to pass on to  
12 Ms. Graziano, whatever the disposition here is, some of these  
13 support groups who can intervene in situations like this.  
14 Not -- not only with regard to the people who commit the abuse  
15 but also with regard to the victims who have such a difficult  
16 time for reasons that are so difficult for an outsider to  
17 understand.

18           Am I right in thinking you've got information of that  
19 sort or not?

20           MS. NORDENBROOK: My involvement years ago was more  
21 with abused children, Your Honor. I am not -- I'm sure that I  
22 could --

23           THE COURT: The Probation Department probably has  
24 something. If you have any information.

25           All right. Let's get back to the matter at hand,

1 which is the sentence here.

2 Mr. Lemole, tell me anything further you want to add  
3 to your submissions.

4 MR. LEMOLE: Well, Judge, I really don't have too  
5 much to add to my submissions. I asked Your Honor for a  
6 downward departure basically for various identified bases.  
7 Namely, her extraordinary family circumstance, and not that I  
8 want to rehash what I wrote because I thought what I submitted  
9 to Your Honor was as complete as I could make it.

10 But here is a girl, Judge, notwithstanding her  
11 psychological problems, diagnosed disorders, which is even  
12 supported by the government psychologist, Judge, she stands  
13 before the Court with a one-and-three-quarter-two-year-old  
14 child, Judge, who -- who is basically, if I might, Judge,  
15 a -- a product of an interracial relationship. Her family,  
16 Judge, doesn't look kindly upon it. Her family can't take  
17 care of this child. They won't take care of it. They won't  
18 treat this child like a, quotes, white human being.

19 I put in the papers, Judge, as much as the limit  
20 would push it, to show the Court that a sentence of jail will  
21 take this child away from this mother and deprive the child of  
22 a healthy and emotionally healthy youth and he won't bond with  
23 her mother, nor will the child be able to, if you will,  
24 acknowledge its black heritage and the child will be left in  
25 the hands of her family during a period of incarceration and

1 certainly their influence will not be good.

2           Your Honor has seen in the Probation report some  
3 references to the household which she now lives and she only  
4 lives there because she is forced to live there, in a sense,  
5 that she doesn't know her future. To go out and get her own  
6 apartment would be a mistake without knowing what her sentence  
7 would be.

8           But, Judge, that is, I submit to Your Honor, an  
9 extraordinary family circumstance, particularly in light of  
10 the racial aspect of this child. Without going --

11           THE COURT: What's the prospect of release of  
12 this -- of the husband?

13           MR. LEMOLE: Nil, Judge.

14           THE COURT: No. How long -- he's going to be --

15           MR. LEMOLE: I think he's going to be prosecuted for  
16 a homicide.

17           MS. NORDENBROOK: It's -- I don't think it is clear.

18           THE COURT: For some substantial period of time?

19           All right. Go ahead.

20           MR. LEMOLE: Judge, in addition, again, not to rehash  
21 my memorandum, but we spoke about -- we addressed the Court  
22 about her diminished capacity. Although it is not a defense  
23 to the case, we wanted to make the Court aware of that. I  
24 could not bring her psychological problems basically to say it  
25 was causative of her criminal conduct but neither could the

1 government bring it to say it was not causative.

2           This woman, regardless of what those psychologists do  
3 say. Is obviously a victim and -- of a battered woman  
4 syndrome, Judge, of a man that has a relationship with her,  
5 ordered her to do something. She did it. And that's the seat  
6 of her problem, although neither psychologists of the three  
7 mention that because that apparently is a -- is a symptom as  
8 opposed to a diagnostic condition.

9           But that's -- that is her -- right from being brought  
10 up, that's what this girl is, an automaton, Judge. I ask the  
11 Court to depart for that reason.

12           During this period, Judge, this girl has gone to drug  
13 rehabilitation. She still does. She is -- she is still in  
14 drug rehabilitation program now for sixteen months or so. She  
15 continues to see a psychologist for help, with her mental  
16 problem.

17           And I ask the Court in view of all these factors,  
18 namely, the child and the particular facts, that racial  
19 situation, and the age of this baby, and the particular and  
20 peculiar needs of this child, and together with the other  
21 reasons, cumulative factors, Judge, basically I'm asking for a  
22 downward departure on all those grounds.

23           Judge, other than that, I have nothing further to  
24 say, other than I just want to make it clear, the government  
25 agreed with the defendant to the three point role, not to the



1 four point role. I put in my papers that since the government  
2 knows its case better than anybody in the world, and their  
3 agreement to the three points, I'd ask Your Honor to abide the  
4 government's three points.

5 I have nothing further to say, Judge.

6 THE COURT: All right. Ms. Nordenbrook?

7 MS. NORDENBROOK: Your Honor, with regard to the  
8 defendant's claim that she acted as an automaton as a result  
9 of posttraumatic stress disease, we note the following. First  
10 we note that in large measure any diagnosis is based on  
11 self report and -- to the psychologists who are doing the  
12 analysis.

13 Ms. Graziano has a masters degree in psychology. So  
14 we assert that the bases -- she has some knowledge about what  
15 one has to claim in order to meet the diagnoses under these  
16 various diseases.

17 Having said that, I would point out, Doctor Berrill  
18 concluded that although there was evidence of posttraumatic  
19 stress disease, quote, based on Ms. Graziano's self report and  
20 an examination of information available to this examiner,  
21 there does not seem to be a substantive connection between  
22 Ms. Graziano's symptomatology and her willingness to engage in  
23 a criminal exercise, unquote.

24 Now, in Ms. Graziano's submissions neither doctor  
25 makes a causative link between the two illnesses. In fact,

1 the abuser, the former boyfriend, and Ms. Graziano ceased  
2 their association totally over a year before she engaged in  
3 this criminal conduct.

4 THE COURT: Don't get beyond your field,  
5 Ms. Nordenbrook.

6 MS. NORDENBROOK: I am just -- all right.

7 THE COURT: I happen to be quite familiar with  
8 posttraumatic stress syndrome and it's all about things that  
9 happen in the past, not about things that are happening.

10 MS. NORDENBROOK: I have a final observation.

11 THE COURT: Go ahead.

12 MS. NORDENBROOK: That is based on the recorded  
13 conversations by Ms. Graziano. That recorded conversations of  
14 Ms. Graziano, which contrary to her claims do not show a  
15 depressed automaton.

16 For instance, in --

17 THE COURT: That wasn't the defendant's words  
18 herself. That's the lawyer's words. That's not a symptom of  
19 the ailment either.

20 In any event, go ahead.

21 MS. NORDENBROOK: Well, these conversations show her  
22 very much an active, conscious free participant, and director  
23 of the activities of other people in these -- in this  
24 conspiracy.

25 On October 6, 1999, she was intercepted directing her

1 brother-in-law Hector Pagan on who to deal with on that  
2 particular day.

3           On October 7, 1999, she directed Hector Pagan to mix  
4 poor quality marijuana with better quality marijuana and just  
5 sell it together.

6           She also instructed Hector Pagan on that day on how  
7 many containers he was to give each runner.

8           Finally, Hector Pagan, who wanted to change his pay  
9 day, asked Ms. Graziano if he could have his pay day on  
10 another day beside Friday, and she agreed.

11           In a conversation on October 18, it is a conversation  
12 not between Ms. Graziano and someone but, rather, an -- I have  
13 excerpted these for the purposes of -- for the purposes of  
14 this hearing. These are in the complaint and were a part of  
15 the complaint.

16           In the conversation on October 18, one of the runners  
17 is objecting to being directed by Mr. Pagan and Ms. Sanchez,  
18 and he says -- he says -- I'm sorry. He goes, isn't that up  
19 to Jenn, indicating his belief that what he is supposed to do  
20 and how he is supposed to conduct himself is subject to the  
21 direction of Ms. Graziano rather than of Mr. Pagan.

22           In that -- and in that same conversation -- oh, in a  
23 subsequent conversation on October 21, she semi upbraids  
24 Mr. Pagan for distributing what they call popcorn, which means  
25 small pieces that aren't welcomed by their customers in the

1 same way that better quality marijuana is, and she says that  
2 she doesn't want Mr. Pagan to distribute any more popcorn.

3 She also approves Mr. Pagan's use of Daniel Costanzo  
4 as --

5 THE COURT: All right.

6 MS. NORDENBROOK: -- as a source of supply.

7 THE COURT: I get the point.

8 MR. LEMOLE: May I be heard on those two issues? The  
9 medical report? The psychologist report?

10 THE COURT: Okay.

11 MR. LEMOLE: If not --

12 THE COURT: Go ahead. Go ahead.

13 MR. LEMOLE: Judge, the medical -- the psychological  
14 report that Ms. Nordenbrook referred to by Doctor Berrill  
15 interestingly states, I asked Jennifer if she could connect  
16 the psychological problems to her -- to her involvement in the  
17 instant offense. Ms. Graziano had a difficult time doing so.

18 Indeed, it's unusual to me that the -- the  
19 interviewing psychologist would ask the patient, so to speak,  
20 or the person who labors from the disorder, can you give the  
21 connection and that's one of the basis --

22 THE COURT: Did either of you even look at the  
23 Diagnostic and Statistical Manual and consider what we are  
24 talking about here? I don't think either of you have the  
25 slightest idea --

1 MS. NORDENBROOK: I did look --

2 THE COURT: -- what this ailment is. I mean, you are  
3 just talking. You are lawyers. You are not doctors.

4 MR. LEMOLE: I am trying to respond.

5 THE COURT: I've got the doctor's report. I can  
6 evaluate the doctor's report myself, with the assistance of  
7 professional sources.

8 MR. LEMOLE: Judge, just one further comment.

9 THE COURT: What?

10 MR. LEMOLE: On the tape that Ms. Nordenbrook  
11 referred to, at page six, she referred to a statement, you  
12 know, isn't that up to Jenn. Ms. Nordenbrook failed to state  
13 the next sentence says, the person says no, it is not up to  
14 her. And later on says, all she is good for is trying to get  
15 a lawyer for Ramon.

16 THE COURT: All right. There we go.

17 All right. Ms. Graziano, is there anything that you  
18 would like to say yourself in your own words before I impose  
19 sentence?

20 THE DEFENDANT: I would like -- I would like to -- to  
21 say that I am sorry to the Court and to the judge -- to you  
22 and to the government, but mostly to my son who is the most  
23 important thing that I'm here for today and I don't -- I don't  
24 want -- I'm sorry. I shamed him and put him in a situation  
25 where I might be taken away from him.

1 I just -- I could stand here and I could honestly say  
2 that this is something that I would never have normally done  
3 in my right life. I don't know how I got into this life. It  
4 was just crazy things and I would never do it again. That's  
5 for sure. I can say that with all of my certainty and I'm  
6 sorry. I just apologize.

7 THE COURT: All right. Well, you are right, that the  
8 child is -- in a sense has been, but in the future will be,  
9 the biggest victim here unless you figure out how to protect  
10 him and you've got to get out of this situation, these  
11 relationships, which -- of which you have been the primary  
12 victim up to now but he's going to be the victim in the future  
13 if you don't get both him and yourself into a new way of  
14 living.

15 There are -- the reason I mentioned this, these  
16 resources, these women's groups, let's say what we are talking  
17 about. There are women's groups out there who can help you  
18 put yourself in a frame of mind so that neither you or, I  
19 think most important, your son is abused in the future as a  
20 result of the unfortunate circumstances, I don't know what  
21 they are, that led you to be what you're like in the past and  
22 what you're like right now.

23 This posttraumatic stress syndrome, I don't question  
24 the reality of it, but as you probably know better than the  
25 lawyers, having had the education you have had, it is

1 something the prisoners had coming out of Korea, just a  
2 reliving of the experience for a period of time that doesn't  
3 make you depressed. It just puts you out of commission. It  
4 is a short -- terrifying short term reaction to things. It  
5 doesn't explain why people do or don't function or how they  
6 function.

7 I have to agree with the prosecutor, that  
8 during -- that you functioned reasonably well on an every day  
9 basis, both in running this drug operation and in the absence  
10 of this fellow who fortunately has been locked up.

11 I think the role adjustment that the lawyers have  
12 agreed to is probably a more accurate picture of your role  
13 than the one that the Probation Department assigned to you  
14 because I believe that what happened here was you took over a  
15 drug operation of a probably fairly scary person. You  
16 seem -- I mean, I guess you grew up in a fairly scary family  
17 and you certainly surrounded yourself with frightening people  
18 and you've just got to figure out a way to stand independently  
19 of them, to protect -- because these people turn on you and  
20 they'll turn on your son.

21 So one thing I know, as I have said already, is I am  
22 going to certainly recommend to the Bureau of Prisons that you  
23 receive the best psychotherapy they can give you to deal with  
24 this, but I hope while you are in prison you are able through  
25 correspondence or otherwise to get in touch with the people

1 you are going to need once you get out of prison to prepare  
2 you for the day when this -- these rather terrifying  
3 individuals seek you out again, and seek out your son.

4           In any event, I am going to -- aside from adjusting  
5 the offense level to indicate a lower role, I am not going to  
6 depart, both because I don't think this very real  
7 psychological problem that you have had in fact was the cause  
8 of, at least not the psychological cause of doing what you  
9 did, and I don't think I can say that reducing your sentence  
10 would assist in the treatment of your -- I don't think you've  
11 handled your family responsibilities very well up to now. I  
12 think there is a possibility for the future, but I don't think  
13 it would help your son much.

14           I think your son will be, as best I can judge it,  
15 taken -- safe and taken care of for the time you are going to  
16 be in prison, and in a way perhaps more safe than he'll be if  
17 you don't -- if you are taking care of him and don't get ahold  
18 of the problems that you have and will bring on him if you  
19 don't figure out how to get out of these abusive  
20 relationships.

21           So I am going to sentence you to the custody of the  
22 Attorney General for a period of twenty-one months, to be  
23 followed by a three-year period of supervision.

24           During the period of supervision, I am going to  
25 direct that you follow the directions of the Probation



1 Department with regard to psychotherapy.

2 I am going to impose the one-hundred-dollar special  
3 assessment that is required by law; and I am not going to  
4 impose a fine because financially you are not in a position to  
5 pay one.

6 On application of the government, I will dismiss --  
7 this is a single count.

8 MS. NORDENBROOK: Yes, it is, Your Honor.

9 THE COURT: So you may have a right to appeal this  
10 sentence. If you wish to pursue an appeal, you must file a  
11 notice of appeal within ten days. If you lack the funds to  
12 pay the costs of the appeal, the costs can be waived, and an  
13 attorney can be appointed to represent you at no cost to you.

14 I am going to fix a date in June for your surrender  
15 at the institution designated by the Bureau of Prisons.

16 I would recommend, actually -- well, I am not going  
17 to make a recommendation as to the facility without giving  
18 your attorneys an opportunity to look -- consider the  
19 options. There are, for example, in the women's detention  
20 facility in Lexington, Kentucky, there is, I believe, better  
21 medical resources for women than are available here in the  
22 New York metropolitan area. But probably if you are able  
23 through friends to maintain contact with your child here but  
24 not through visits in Lexington, probably would be better to  
25 have you here with such medical assistance as you can get.

1           I think the best medical assistance you can -- you  
2 will eventually get will be more specialized than anything,  
3 unfortunately, the Bureau of Prisons can give you.

4           MR. LEMOLE: Would Your Honor recommend a local -- a  
5 prison within the proximity of New York City or Jersey because  
6 of the fact that she does want to see her child?

7           THE COURT: All right. If that's what you would like  
8 to do, I can't say that Lexington is that much better. But  
9 you've got a lot of work ahead of you.

10          MR. LEMOLE: Would Your Honor consider recommending  
11 the shock program?

12          THE COURT: No.

13          Okay. The shock program? Come on.

14          MS. NORDENBROOK: Thank you, Your Honor.

15          (Matter concludes.)

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