

UNITED STATES DISTRICT COURT

District of COLORADO

UNITED STATES OF AMERICA
V.

JUDGMENT IN A CRIMINAL CASE

CHRISTOPHER WEAVER

Case Number: 12-cr-00261-MSK-01

USM Number: 38651-013

Scott Varholak, AFPD
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to Count(s) 1 and 2 of the Information
- pleaded nolo contendere to Count(s) _____
which was accepted by the Court.
- was found guilty on Count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 371	Conspiracy	06/10	1

The defendant is sentenced as provided in pages 2 through 11 of this judgment in accordance with the findings and conclusions made in open court, a transcript of which is attached hereto and incorporated herein by this reference. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on Count(s) _____
- Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

October 28, 2013
Date of Imposition of Judgment

s/ Marcia S. Krieger
Signature of Judge

Marcia S. Krieger, Chief U.S. District Judge
Name and Title of Judge

November 7, 2013
Date

DEFENDANT: CHRISTOPHER WEAVER
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ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 201(b)(2)	Bribery	06/10	2

DEFENDANT: CHRISTOPHER WEAVER
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IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 37 months as to Counts 1 and 2, to be served concurrently.

- The court makes the following recommendations to the Bureau of Prisons:

- The defendant is remanded to the custody of the United States Marshal.

- The defendant shall surrender to the United States Marshal for this district:
 - at _____ a.m. p.m. on _____ .
 - as notified by the United States Marshal.

- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - before 12 p.m. on date specified within 15 days of date of designation
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: CHRISTOPHER WEAVER
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SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 3 years as to Counts 1 and 2, concurrent.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement; and
- 14) the defendant shall provide access to any requested financial information.

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SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer. Approval will not be given unless the defendant is in compliance with the periodic payment obligations imposed pursuant to the Court's judgment and sentence.
2. The defendant shall participate in a program of mental health assessment and treatment, as approved by the probation officer, until such time as the defendant is released from the program by the probation officer.
3. The defendant shall make payment on the restitution obligation that remains unpaid at the commencement of supervised release. Within 60 days of release from confinement, the defendant shall meet with the probation officer to develop a plan for the payment of restitution. This plan will be based upon the defendant's income and expenses. The plan will be forwarded to the Court for review and approval. The plan will be revisited by the defendant and the probation officer on a quarterly basis.
4. As directed by the probation officer, the defendant shall apply monies received from income tax refunds, lottery winnings, inheritances, judgments, and any anticipated or unexpected financial gains to the outstanding court-ordered financial obligation in this case.

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$ 0.00	\$ 1,225,000.00

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
U.S. Department of Defense DFAS Indianapolis JFDBB Collections Branch ATTN: James McCord 8899 East 56 th Indianapolis, IN 46249		\$1,225,000.00	

TOTALS	\$ <u>0.00</u>	\$ <u>1,225,000.00</u>
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Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The Court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A Lump sum payment of \$ _____ due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The Court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

The special assessment is due in full immediately. The defendant shall make payment on the restitution obligation that remains unpaid at the commencement of supervised release. Within 60 days of release from confinement, the defendant shall meet with the probation officer to develop a plan for the payment of restitution. This plan will be based upon the defendant's income and expenses. The plan will be forwarded to the Court for review and approval. The plan will be revisited by the defendant and the probation officer on a quarterly.

Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Jonathan Hightower, 12-cr-00262-WJM-01 and Stephanie Charboneau, 13-cr-00138-PAB-01

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following Court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and Court costs.

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STATEMENT OF REASONS

I COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

- A **The Court adopts the presentence investigation report without change.**
- B **The Court adopts the presentence investigation report with the following changes.**
(Check all that apply and specify Court determination, findings, or comments, referencing paragraph numbers in the presentence report, if applicable.)
(Use page 4 if necessary.)
- 1 **Chapter Two of the U.S.S.G. Manual** determinations by Court (including changes to base offense level, or specific offense characteristics):
- 2 **Chapter Three of the U.S.S.G. Manual** determinations by Court (including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple Counts, or acceptance of responsibility):
- 3 **Chapter Four of the U.S.S.G. Manual** determinations by Court (including changes to criminal history category or scores, career offender, or criminal livelihood determinations):
- 4 **Additional Comments or Findings** (including comments or factual findings concerning certain information in the presentence report that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions):
- C **The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.**

II COURT FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply.)

- A No Count of conviction carries a mandatory minimum sentence.
- B Mandatory minimum sentence imposed.
- C One or more Counts of conviction alleged in the indictment carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the Court has determined that the mandatory minimum does not apply based on
- findings of fact in this case
 - substantial assistance (18 U.S.C. § 3553(e))
 - the statutory safety valve (18 U.S.C. § 3553(f))

III COURT DETERMINATION OF ADVISORY GUIDELINE RANGE (BEFORE DEPARTURES):

Total Offense Level: 29
Criminal History Category: I
Imprisonment Range: 87 to 108 months
Supervised Release Range: 1 to 3 years
Fine Range: \$ 15,000 to \$ 150,000

- Fine waived or below the guideline range because of inability to pay.

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STATEMENT OF REASONS

IV ADVISORY GUIDELINE SENTENCING DETERMINATION (Check only one.)

- A The sentence is within an advisory guideline range that is not greater than 24 months, and the Court finds no reason to depart.
- B The sentence is within an advisory guideline range that is greater than 24 months, and the specific sentence is imposed for these reasons. (Use page 4 if necessary.)
- C The Court departs from the advisory guideline range for reasons authorized by the sentencing guidelines manual. (Also complete Section V.)
- D The Court imposed a sentence outside the advisory sentencing guideline system. (Also complete Section VI.)

V DEPARTURES AUTHORIZED BY THE ADVISORY SENTENCING GUIDELINES (If applicable.)

A The sentence imposed departs (Check only one.):

- below the advisory guideline range
- above the advisory guideline range

B Departure based on (Check all that apply.):

1 Plea Agreement (Check all that apply and check reason(s) below.):

- 5K1.1 plea agreement based on the defendant’s substantial assistance
- 5K3.1 plea agreement based on Early Disposition or “Fast-track” Program
- binding plea agreement for departure accepted by the Court
- plea agreement for departure, which the Court finds to be reasonable
- plea agreement that states that the government will not oppose a defense departure motion.

2 Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below.):

- 5K1.1 government motion based on the defendant’s substantial assistance
- 5K3.1 government motion based on Early Disposition or “Fast-track” program
- government motion for departure
- defense motion for departure to which the government did not object
- defense motion for departure to which the government objected

3 Other

- Other than a plea agreement or motion by the parties for departure (Check reason(s) below.):

C Reason(s) for Departure (Check all that apply other than 5K1.1 or 5K3.1.)

- | | | |
|---|--|---|
| <input type="checkbox"/> 4A1.3 Criminal History Inadequacy | <input type="checkbox"/> 5K2.1 Death | <input type="checkbox"/> 5K2.11 Lesser Harm |
| <input type="checkbox"/> 5H1.1 Age | <input type="checkbox"/> 5K2.2 Physical Injury | <input type="checkbox"/> 5K2.12 Coercion and Duress |
| <input type="checkbox"/> 5H1.2 Education and Vocational Skills | <input type="checkbox"/> 5K2.3 Extreme Psychological Injury | <input type="checkbox"/> 5K2.13 Diminished Capacity |
| <input type="checkbox"/> 5H1.3 Mental and Emotional Condition | <input type="checkbox"/> 5K2.4 Abduction or Unlawful Restraint | <input type="checkbox"/> 5K2.14 Public Welfare |
| <input type="checkbox"/> 5H1.4 Physical Condition | <input type="checkbox"/> 5K2.5 Property Damage or Loss | <input type="checkbox"/> 5K2.16 Voluntary Disclosure of Offense |
| <input type="checkbox"/> 5H1.5 Employment Record | <input type="checkbox"/> 5K2.6 Weapon or Dangerous Weapon | <input type="checkbox"/> 5K2.17 High-Capacity, Semiautomatic Weapon |
| <input type="checkbox"/> 5H1.6 Family Ties and Responsibilities | <input type="checkbox"/> 5K2.7 Disruption of Government Function | <input type="checkbox"/> 5K2.18 Violent Street Gang |
| <input type="checkbox"/> 5H1.11 Military Record, Charitable Service, Good Works | <input type="checkbox"/> 5K2.8 Extreme Conduct | <input type="checkbox"/> 5K2.20 Aberrant Behavior |
| <input type="checkbox"/> 5K2.0 Aggravating or Mitigating Circumstances | <input type="checkbox"/> 5K2.9 Criminal Purpose | <input type="checkbox"/> 5K2.21 Dismissed and Uncharged Conduct |
| | <input type="checkbox"/> 5K2.10 Victim’s Conduct | <input type="checkbox"/> 5K2.22 Age or Health of Sex Offenders |
| | | <input type="checkbox"/> 5K2.23 Discharged Terms of Imprisonment |
| | | <input type="checkbox"/> Other guideline basis (e.g., 2B1.1 commentary) |

D Explain the facts justifying the departure. (Use page 4 if necessary.)

DEFENDANT: CHRISTOPHER WEAVER
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STATEMENT OF REASONS

VI COURT DETERMINATION FOR SENTENCE OUTSIDE THE ADVISORY GUIDELINE SYSTEM

(Check all that apply.)

A The sentence imposed is (Check only one.):

below the advisory guideline range

above the advisory guideline range

B Sentence imposed pursuant to (Check all that apply.):

1 Plea Agreement (Check all that apply and check reason(s) below.):

binding plea agreement for a sentence outside the advisory guideline system accepted by the Court

plea agreement for a sentence outside the advisory guideline system, which the Court finds to be reasonable

plea agreement that states that the government will not oppose a defense motion to the Court to sentence outside the advisory guideline system

2 Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below.):

government motion for a sentence outside of the advisory guideline system

defense motion for a sentence outside of the advisory guideline system to which the government did not object

defense motion for a sentence outside of the advisory guideline system to which the government objected

3 Other

Other than a plea agreement or motion by the parties for a sentence outside of the advisory guideline system (

C Reason(s) for Sentence Outside the Advisory Guideline System (Check all that apply.)

the nature and circumstances of the offense and the history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)

to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))

to afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))

to protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))

to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))

to avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6))

to provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))

D Explain the facts justifying a sentence outside the advisory guideline system. (Use page 4 if necessary.)

DEFENDANT: CHRISTOPHER WEAVER
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STATEMENT OF REASONS

VII COURT DETERMINATIONS OF RESTITUTION

A Restitution Not Applicable.

B Total Amount of Restitution: \$1,225,000.00

C Restitution not ordered (Check only one.):

- 1 For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
- 2 For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
- 3 For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
- 4 Restitution is not ordered for other reasons. (Explain.)

D Partial restitution is ordered for these reasons (18 U.S.C. § 3553(c)):

VII ADDITIONAL FACTS JUSTIFYING THE SENTENCE IN THIS CASE (If applicable.)

The defendant is sentenced as provided in pages 2 through 11 of this judgment in accordance with the findings and conclusions made in open court, a transcript of which is attached hereto and incorporated herein by this reference. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony cases.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 12-cr-00261-MSK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHRISTOPHER WEAVER,

Defendant.

REPORTER'S TRANSCRIPT
(Sentencing Hearing: Order)

Proceedings before the HONORABLE MARCIA S. KRIEGER,
Judge, United States District Court for the District of
Colorado, commencing at 10:35 a.m., on the 28th day of October,
2013, in Courtroom 901A, United States Courthouse, Denver,
Colorado.

APPEARANCES

MARK HENRY DUBESTER, Attorney at Law, U.S. Department
of Justice, Criminal Div-Fraud, 1400 New York Avenue, N.W.,
Washington, DC, 20530, appearing for the Government.

SCOTT VARHOLAK, Assistant Federal Public Defender, 633
17th Street, 10th Floor, Denver, Colorado, 80202, appearing for
the Defendant.

THERESE LINDBLOM, Official Reporter
901 19th Street, Denver, Colorado 80294
Proceedings Reported by Mechanical Stenography
Transcription Produced via Computer

1 (The following proceedings were had and entered of
2 record after the Court heard the arguments of counsel and
3 statement of defendant:)

4 *THE COURT:* Thank you.

5 I'll announce the sentence I intend to impose. And,
6 of course, counsel, you'll have an opportunity to make legal
7 objections before the sentence is imposed. If you believe that
8 my reasoning is premised upon error or if I raise an issue you
9 haven't had adequate opportunity to address, I invite you to
10 request a continuance.

11 Imposition of a sentence in a federal criminal case is
12 governed by a number of statutes. The umbrella statute is 18
13 U.S.C. Section 3553. In imposing sentence in this case, as in
14 all cases, I'm required to consider the objectives and the
15 factors set forth in that statute. The statute requires that
16 the sentence be sufficient but not greater than necessary to
17 satisfy particular objectives. The sentence must reflect the
18 seriousness of the offense; promote respect for the law;
19 provide just punishment; adequately deter criminal conduct;
20 protect the public from further crimes by the defendant; and
21 provide the defendant with needed educational or vocational
22 training, medical care, or other correctional treatment in the
23 most effective manner.

24 To fashion a sentence that meets these objectives, the
25 same statute directs me to consider particular factors. The

1 nature and circumstances of the offense; the history and
2 characteristics of the defendant; the kinds of sentences that
3 are available; the sentence prescribed by the federal
4 sentencing guidelines; the need to avoid unwarranted sentence
5 disparities among defendants with similar records found guilty
6 of similar conduct; and in the appropriate case, such as this,
7 the need for restitution.

8 At the beginning of this hearing I identified the
9 documents that I had studied in preparing for the hearing;
10 confirmed with counsel that they had had an opportunity, as had
11 the defendant, to consider those same documents; confirmed that
12 there were no other documents that I should be considering;
13 that there was no dispute as to the facts stated in the
14 presentence report; confirmed that there was no dispute as to
15 the calculation of the sentence under the federal sentencing
16 guidelines. That is where we start.

17 The guideline that applies to violations of 18 U.S.C.
18 Sections 371 and 201 is Section 2C1.1. The Base Offense Level
19 here is 14. The defendant is considered a public official as
20 described in Section 2C1.1 application note 1(c). The conduct
21 involved more than one bribe. As a consequence, there is an
22 increase in two levels in accordance with Section 2C1.1(b)(1).

23 In this case, the loss was at least a million dollars
24 but less than \$2.5 million. And as a consequence, there is an
25 increase of 16 levels as provided for in Sections 2C1.1(b)(2)

1 and 2B1.1(b)(1)(I). This results in an adjusted offense level
2 of 32. Then Mr. Weaver receives the maximum downward
3 adjustment for acceptance of responsibility under Section
4 3E1.1(a) and (b). He receives a three-level reduction, taking
5 his offense level to 29.

6 He has no criminal history, and as a consequence, he
7 has no criminal history points. That places him in Criminal
8 History Category I.

9 With a Criminal History Category of I and an offense
10 level of 29, the guidelines recommend incarceration of 87 to
11 108 months on Count 1, the maximum of which is 60 months by
12 statute. And on Count 2, 87 to 108 months, the maximum by
13 statute, 97 months.

14 Actually, I think the statutory maximum is not 97
15 months.

16 *MR. DUBESTER:* I believe it's 15 years, Your Honor.

17 *THE COURT:* I believe that's right. We have at least
18 an ambiguity in our presentence report.

19 Supervised release, the guidelines recommend 1 to 3
20 years on each count. The fine can range from between 15,000 to
21 \$150,000. There is a \$100 special assessment on each count.
22 And then the parties have agreed that the amount of restitution
23 is \$1,225,000. And that it should be a joint and several
24 obligation with Jonathan Hightower and Stephanie Charboneau,
25 each defendants in other cases.

1 I think it's important before I address the motion for
2 downward departure under 5K1.1 and the requested departure
3 under 5H1.11 and the defense motions -- defense -- defendant's
4 motion for variance, the purposes of sentencing.

5 Sentencing is not about determining whether the
6 defendant is a good person or a bad person. I've never seen
7 someone come into this courtroom who doesn't have good
8 qualities and who didn't make bad decisions. So this is not a
9 weighing of good qualities against bad decisions. What we're
10 concerned with in sentencing is conduct and the consequences of
11 conduct.

12 Here, the conduct was described in the plea agreement
13 and has been described to some degree in the course of this
14 sentencing. For at least a six-month period, the defendant
15 oversaw the delivery and disbursement of fuel at a forward
16 operating base, which is colloquially referred to as an FOB,
17 this was known as FOB Fenty. It was located near Jalalabad,
18 Afghanistan. Mr. Weaver, together with others, ordered fuel,
19 knowing that such fuel would never reach U.S. forces
20 destinations. Those destinations would not receive
21 approximately 90 truckloads of fuel. And the fuel, Mr. Weaver
22 knew, was going to be stolen. In fact, it was being sold; and
23 the proceeds of those sales went in part to Mr. Weaver.

24 This is a crime that has multiple components. And in
25 thinking about this crime, it resembles crimes of theft and

1 deceit that one sees outside a military context. It is a crime
2 of theft against an amorphous big entity. And we sometimes see
3 that in the context of crimes against corporations and crimes
4 against businesses or against the government. They're easy to
5 rationalize because there is no human face. But we take them
6 very seriously because there is a human consequence. And here,
7 the human consequence was the deprivation of U.S. forces of
8 fuel necessary to perform their jobs, a compromise of U.S.
9 standing in a foreign country because an American was willing
10 to sell U.S. assets to foreigners for personal profit, a theft
11 of taxpayer dollars, and a compromise of integrity of an oath
12 that was taken by Mr. Weaver and is taken by every service
13 member and every federal judge to uphold the Constitution
14 against the enemies, both foreign and domestic.

15 It's a serious offense on multiple levels. When the
16 Government counsel describes betrayal and disloyalty, he speaks
17 to a human reaction, a reaction of all those who either serve
18 in the military or support those who serve in the military.
19 This behavior undercuts the fundamental rule of law that our
20 country stands for. The rule of law that we pride ourselves on
21 is a belief that laws rule, not men or women. It means we
22 subordinate our personal interests to something greater than
23 ourselves. And in the military, that's known as service beyond
24 self. Mr. Weaver became a role model for something that is the
25 exact opposite, self beyond service.

1 This is not to say that Mr. Weaver did not honorably
2 serve in many capacities. But as he acknowledges, he abandoned
3 fundamental beliefs and commitments when he made this decision.
4 And I think he recognizes, although he did not articulate, that
5 this has an impact on him beyond its impact upon his family and
6 upon the government and upon former members of the armed
7 services.

8 The reason I asked him the questions I did about the
9 lessons to be learned or those that he had learned is because I
10 wanted to see if he had recognized that he had deceived himself
11 in this process and that he had compromised who he was as a
12 person. I don't think he's gotten there, but he's on the road.
13 It is not okay to justify actions such as these by saying, I
14 might have lost custody of my child. There are many parents
15 who have been in custody disputes and felt powerless in those
16 disputes, but they did not compromise their honesty and their
17 integrity. They did not break the law.

18 And it is not a justification to say that simply
19 because Mr. Weaver spent four tours overseas, away from his
20 family, that he engaged in this behavior. There are many
21 soldiers that have spent four tours away from their families
22 that have not engaged in this behavior. There is no
23 rationalization that can justify what has been done.

24 What I hear from Mr. Weaver is he takes
25 responsibility, and he's done the very best he could to make

1 amends. But he gets no gold star for not having resisted
2 efforts to discharge him from the Army, and he gets no gold
3 star for being honest and forthright in this action. That is a
4 ground, that is the base of what one would expect of a soldier.

5 Now, the cooperation that he has provided to the
6 government has resulted in benefit to the government. And in
7 accordance with 5K1.1 of the guidelines, the Government has
8 moved to depart downward with regard to sentencing to 37 months
9 of incarceration, a very significant downward departure. I
10 intend to grant that motion.

11 I do not intend to grant the motion for a further
12 departure under Section 5H1.11. I'm really not quite sure
13 whether Mr. Weaver's military service is in mitigation or in
14 aggravation of this offense. And assuming it has -- his good
15 record has some mitigation in effect, his violation of his oath
16 and his betrayal of his fellow soldiers and the circumstances
17 under which this crime was committed are also related to his
18 military service, and that is in aggravation. So I think it's
19 a wash.

20 As to the requested variance, he didn't devise the
21 scheme, but he took advantage of it. He didn't receive the
22 entire million some odd dollars, but he received 70 to \$90,000,
23 and he spent it. And as I said, there was no rationalization
24 that justified that behavior. It was a mistake, and I have no
25 doubt that Mr. Weaver will learn from the mistake. He's come a

1 long way in that regard.

2 But as I look at the sentencing objectives, I am
3 particularly concerned about promoting respect for the law and
4 adequately deterring other criminal conduct. I'm concerned
5 about the seriousness of this offense. I'm concerned about the
6 impact it has upon the trust and confidence of others who serve
7 our country and whether they can rely upon those with whom they
8 work. I'm concerned about what it says to other countries and
9 other citizens when we consider ourselves to be above the law,
10 something we hold dearly.

11 In considering what sentence is sufficient but not
12 greater than necessary, I am satisfied that the sentence is as
13 requested by the Government, 37 months of incarceration, to be
14 followed by 3 years of supervised release.

15 With regard to supervised release, I agree with
16 Mr. Varholak that a recommendation and condition that
17 Mr. Weaver participate in mental health counseling if required,
18 and definitely a mental health assessment is appropriate. And
19 the reason is this: One, he has lost his benefits. Some of
20 those benefits might be mental health treatment. But secondly,
21 whether he said so in the courtroom or not, I have every reason
22 to believe that regret will weigh heavy on Mr. Weaver, and that
23 regret can be poisonous to his future. Effective mental health
24 counseling can help mitigate that.

25 As to a fine, I find that he lacks the ability to pay

1 a fine. And I further find that even if he could pay a fine,
2 the restitution amount is so substantial that payment of
3 restitution would jeopardize his ability to pay a fine. I also
4 find that the support of children is an obligation which if he
5 fulfilled, it would impair his ability to pay a fine. And if
6 he paid a fine, it would presumably harm his children. I'm
7 required to impose a special assessment of \$100 for each count.

8 So in summary, the sentence here that I intend to
9 impose is a special assessment of \$200, no fine, a period of
10 supervised release of 3 years on each count, which by statute
11 run concurrently, and an incarceration term of 37 months. In
12 addition, I will impose the stipulated restitution amount of
13 \$1,225,000. And I find that for the same reason that
14 Mr. Weaver is unable to pay a fine, that no -- this sum will
15 bear no interest.

16 Any need for clarification, further explanation, or a
17 request for continuance?

18 *MR. DUBESTER:* Your Honor, one very, very small
19 matter. And I don't know that it's material, but I would bring
20 it to the Court's attention.

21 The Government had -- the plea agreement did say 90
22 trucks, truckloads of fuel. We have reexamined that number and
23 concluded that it was 70 trucks of fuel. We did communicate
24 that to the probation department in connection with the
25 restitution amount. But I just thought I would clarify that

1 for the record.

2 *THE COURT:* Thank you. And I'll take that as a
3 friendly amendment to my findings and so find.

4 *MR. VARHOLAK:* Your Honor, I'm assuming the 37 months
5 are concurrent to each other.

6 *THE COURT:* Correct.

7 *MR. VARHOLAK:* Okay.

8 *THE COURT:* Thank you.

9 Then, Mr. Weaver, would you and your counsel please
10 stand.

11 Based on the findings made of record pursuant to the
12 Sentencing Reform Act of 1984, it is the judgment of the Court
13 that the defendant be committed to the custody of the Bureau of
14 Prisons to be imprisoned for a term of 37 months on Count 1 and
15 37 months on Count 2, to be served concurrently.

16 Upon release from imprisonment, he'll be placed on
17 supervised release for a term of 3 years as to each of Counts 1
18 and 2, such terms to run concurrently.

19 Within 72 hours of release from the custody of the
20 Bureau of Prisons, he'll report in person to the probation
21 office in the district to which he is released. While on
22 supervised release, he will not commit another federal, state,
23 or local crime; he will not possess a firearm as defined in 18
24 U.S.C. Section 921; and he'll comply with the standard
25 conditions that have been adopted by the Court.

1 Because this sentence imposes a restitution
2 obligation, it will be a condition of supervision that he
3 pay -- make periodic payments on the restitution obligation in
4 accordance with a schedule to be developed between him and his
5 probation officer. Within 60 days of release from confinement,
6 he'll meet with the probation officer to develop a plan for
7 payments to be made to restitution -- the restitution
8 obligation. The plan will be based upon his income and
9 expenses, and the plan will be forwarded to the Court for
10 review and approval. This plan will be revisited by the
11 defendant and the probation officer on a quarterly basis. And
12 Mr. Weaver will submit to the probation officer any financial
13 information requested by the probation officer.

14 During the course of payment on the restitution sum,
15 Mr. Weaver will not incur any new credit charges or open any
16 lines of credit without approval of the probation officer. And
17 approval will not be given unless he is in compliance with the
18 periodic payment obligation schedule that is imposed by court
19 order.

20 As directed by the probation officer, he will apply
21 any moneys he receives from income tax refunds, lottery
22 winnings, inheritances, judgments, and any anticipated or
23 unexpected financial gains to the restitution obligation.
24 Restitution is set in the amount of \$1,225,000. It is a joint
25 and several obligation, together with whatever obligation is

1 imposed by the court for Jonathan Hightower in Case No.
2 12-cr-262 and Stephanie Charboneau in Case No. 13-cr-138.

3 The restitution obligation will not bear interest. No
4 fine is imposed for the reasons previously stated. I waive the
5 mandatory drug testing provisions of 18 U.S.C. Section 3583(d)
6 because I see no risk of future substance abuse by the
7 defendant. He will, however, cooperate in the collection of
8 DNA as directed by the probation officer. And he will during
9 the course of supervised release participate in a mental health
10 assessment. And should mental health counseling be warranted,
11 participate at the direction of the probation officer in
12 obtaining mental health treatment.

13 Special assessment of \$100 per count is imposed. That
14 is a total special assessment of \$200.

15 Counsel, is there any objection to Mr. Weaver
16 self-surrendering at an institution designated by the Bureau of
17 Prisons?

18 *MR. DUBESTER:* No, Your Honor.

19 *MR. VARHOLAK:* No.

20 *THE COURT:* Thank you. Then I find that Mr. Weaver is
21 not likely to flee or pose a danger to the safety of any other
22 person or the community. He will surrender at the institution
23 designated by the Bureau of Prisons before noon on the date
24 specified within 15 days of the date of designation.

25 Mr. Weaver, to the extent you have a right to appeal,

1 you have to exercise that right within 14 days after the date
2 of judgment -- entry of judgment in this case. You exercise
3 that right by filing a notice of appeal. If you do not do so
4 within that time period, you waive your right to appeal.
5 Ordinarily, Mr. Varholak would file the notice of appeal for
6 you. But if for some reason he's unable or unwilling to do so,
7 you may request and I will direct the Clerk of Court to file a
8 notice of appeal on your behalf.

9 The defendant's bond will be exonerated at the time of
10 surrender to the institution designated by the Bureau of
11 Prisons.

12 Is there any further business to bring before the
13 Court?

14 *MR. DUBESTER:* No, Your Honor.

15 *MR. VARHOLAK:* No, Your Honor.

16 *THE COURT:* Thank you, Mr. Dubester; thank you
17 Mr. Varholak; thank you to our probation officer, our court
18 staff, and our marshal staff. Good luck to you, Mr. Weaver.
19 We'll stand in recess.

20 (Recess at 11:44 a.m.)

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REPORTER'S CERTIFICATE

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

Dated at Denver, Colorado, this 29th day of October, 2013.

s/Therese Lindblom

Therese Lindblom, CSR, RMR, CRR