

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF ALABAMA**  
**NORTHEASTERN DIVISION**

UNITED STATES OF AMERICA, )  
 )  
 v. )  
 )  
 EDDIE PRESSLEY, )  
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 and )  
 )  
 EURICA PRESSLEY, )  
 )  
 Defendants. )  
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No. 5:09-cr-00154-VEH-PWG

**GOVERNMENT’S SENTENCING MEMORANDUM**  
**FOR THE DEFENDANT EDDIE PRESSLEY**

The United States of America, through undersigned counsel, respectfully submits its sentencing memo regarding the Defendant Eddie Pressley. As explained below, the Government submits that the Probation Department correctly computed the Defendant’s Guidelines sentence of life imprisonment, and that the factors set forth in 18 U.S.C. § 3553(a) support a sentence in accordance with that calculation. Accordingly, the Government recommends that Pressley be sentenced to life imprisonment.

## LAW

Although the Guidelines are not mandatory, they remain “the starting point and the initial benchmark” in determining the appropriate sentence. *Gall v. United States*, 552 U.S. 38, 49 (2007); *United States v. Talley*, 431 F.3d 784, 786 (11th Cir. 2005) (“After *Booker* ... the district court must [first] consult the Guidelines and correctly calculate the range provided by the Guidelines.”). “The Guidelines as written reflect the fact that the Sentencing Commission examined tens of thousands of sentences” over many years in an effort to achieve the objectives of 18 U.S.C. § 3553(a). *Rita v. United States*, 551 U.S. 338, 349 (2007). Thus, “it is fair to assume that the Guidelines, insofar as practicable, reflect a rough approximation of sentences that might achieve” those statutory objectives. *Id.* at 350. However, in a particular case, a sentencing court should not presume that a sentence within the Guidelines range is per se reasonable. *Gall*, 552 U.S. at 49; *see also Nelson v. United States*, 555 U.S. 350, 352 (2009) (per curiam).

Having correctly calculated the Guidelines range, the Court must “then consider what sentence is appropriate for the individual defendant in light of the statutory sentencing factors, 18 U.S.C. § 3553(a),<sup>1</sup> explaining any variance from the former with reference to the latter.” *Nelson*, 555 U.S. at 351. Although

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<sup>1</sup>Section 3553(a) requires the Court to consider the following factors in determining the appropriate sentence: (1) the nature and circumstances of the

the court must impose a sentence that is sufficient, but not greater than necessary, to comply with those purposes, 18 U.S.C. § 3553(a), “the requirement is not merely that a sentencing court . . . be stingy enough to avoid [a sentence] that is too long, but also that it be generous enough to avoid one that is too short.” *United States v. Irey*, 612 F.3d 1160, 1167 (11th Cir. 2010) (en banc), *cert. denied*, No. 10-727, 2011 U.S. Lexis 2703 (Apr. 4, 2011).

A challenge to the facts contained in the PSR must be asserted with specificity and clarity; otherwise, the objection is waived. *United States v. Bennett*, 472 F.3d 825, 832 (11th Cir. 2006); *United States v. Wade*, 458 F.3d 1273, 1277 (11th Cir. 2006) (stating “[i]t is the law of this circuit that a failure to object to allegations of fact in a PSI admits those facts for sentencing purposes”). Once a defendant properly objects to a fact contained in the PSR, the government bears the burden of proving that disputed fact by a preponderance of the evidence. *United States v. Martinez*, 584 F.3d 1022, 1027 (11th Cir. 2009); *United States v.*

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offense and the history and characteristics of the defendant; (2) the need for the sentence imposed (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (3) the kinds of sentences available; (4) the kinds of sentence and the sentencing range established by the Sentencing Guidelines; (5) any pertinent Guidelines policy statement; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense.

*Rodriguez*, 398 F.3d 1291, 1296 (11th Cir. 2005). If the government presents proper evidence, the district court must either: (1) make an explicit factual finding as to the allegation; or (2) determine that no such finding is necessary because the matter controverted will not be taken into account in sentencing the defendant.

*United States v. Lawrence*, 47 F.3d 1559, 1567 (11th Cir. 1995).

## ARGUMENT

### I. The Probation Department Correctly Computed Eddie Pressley's Sentencing Guidelines

The Pre-Sentence Report ("PSR") calculates the Defendant Eddie Pressley's adjusted offense level as 43. This figure is based upon the following calculations:

- a base offense level of 14 ;
- a 2-level increase because the offense involved more than one bribe;
- an 18-level increase because the payments to Eddie Pressley were more than \$2.5 million but less than \$7 million;
- a 2-level increase because Eddie Pressley was convicted under 18 U.S.C. § 1956;
- a 2-level enhancement because the money laundering offense involved sophisticated laundering;
- a 4-level enhancement because Eddie Pressley was an organizer or leader of extensive criminal activity;

- a 2-level enhancement because Eddie Pressley engaged in obstruction of justice; and
- an adjustment to 43 because an offense level of more than 43 is to be treated as a 43.

Eddie Pressley objects to certain characterizations of the evidence in the offense conduct section of the PSR. *See* Defendant's Objections to PSIR ("Def't.'s Obj.") at ¶¶ 1-6 (Document No. 147). Additionally, with respect to the above calculations, it appears that Pressley objects to the enhancements for his engaging in sophisticated money laundering, leadership role in the offenses, and obstruction of justice. *See id.* at ¶¶ 7, 9-10. As explained below, each of his objections is baseless and should therefore be rejected.

A. Eddie Pressley's Objections to His Offense Conduct are Meritless

Eddie Pressley makes a variety of objections to the offense conduct section of the PSR, most of which are conclusory and all of which are baseless. First, he asserts that the PSR overstates his authority and his conduct. Def't.'s Obj. at ¶ 2. The PSR states that, as an Army officer assigned to the Kuwait contracting office, Pressley was responsible for soliciting and reviewing bids for contracts for goods and services for DoD necessary to support Operation Iraqi Freedom, arranging for contracts to be awarded to Department of Defense ("DoD") contractors, and arranging for calls to be issued under blanket purchase agreements awarded to such

contractors. PSR at ¶ 19. The PSR is supported by the evidence admitted at trial. As this Court stated in its Opinion and Order denying Eddie Pressley's motions for a new trial based upon insufficiency of the evidence, "The Government presented ample evidence that, while he was an Army Major, Eddie Pressley arranged for Terry Hall ("Hall"), a defense contractor, to receive a blanket purchase agreement and related BPA calls for bottled water. The record also establishes that Eddie Pressley arranged for Hall to receive a fence contract and a modification to Hall's BPA which benefitted Hall." Document No. 145 at 17. The Court also held that "there was ample evidence from which a reasonable jury could find that Eddie Pressley received bribes from Gopal Nair and Shaher Fawzi Audah, including co-conspirator testimony, e-mail messages, Army contracting and payment records, bank records, and wire transfer reports." *Id.* at 16. Implicit in this holding is the finding that, as the evidence had shown, Pressley received these bribes in exchange for arranging for calls to be issued under a bottled water contract to Nair and a contract to be awarded to Audah to lay road paving materials.

Next, Pressley objects that the PSR describes the conduct of other persons which he claims had nothing to do with him. Deft.'s Obj. at ¶ 3 (objecting to references to conduct of Eddie Pressley's co-conspirators, including Hall, John Cockerham, and Eurica Pressley). Pressley's objection is belied by the record. This Court has already upheld the sufficiency of the evidence supporting each of

the charges against him, including the conspiracy charges contained in Counts One and Twelve. *See* Document No. 145 at 14-16.

Additionally, Pressley asserts that he did not obtain unlawful payments from contractors in exchange for official acts on his part. Deft.'s Obj. at ¶ 4. He does not support or explain this assertion. In any event, the jury found otherwise, a finding which the Court has upheld.

Finally, Eddie Pressley objects generally to various parts of the PSR's offense conduct section that are attributable to the testimony of Terry Hall and James Momon, because he claims that "much of that testimony was discredited." *Id.* at ¶ 1, 5-6. Pressley does not explain how Hall's or Momon's testimony was discredited—nor could he, in view of the fact that the jury obviously credited that testimony in finding him guilty of all charges and that the Court upheld the jury's verdicts. In any event, the Court need not consider such vague objections to the PSR. Challenges which are not asserted with specificity and clarity are deemed waived. *Bennett*, 472 F.3d at 832; *Wade*, 458 F.3d at 1277.

B. The Probation Department Correctly Found that Eddie Pressley Was an Organizer or Leader of Extensive Criminal Activity

The Probation Department found that Eddie Pressley was an organizer or leader of criminal activity that involved five or more participants or was otherwise extensive within the meaning of U.S.S.G. § 3B1.1(a). PSR ¶ 60. Pressley

summarily declares that “[h]e was not an organizer or leader, and the scheme was simple and not extensive.” Deft.’s Obj. at ¶ 10. Pressley does not elaborate his position.

Application of section 3B1.1(a) requires the district court to determine the role of the defendant and how many individuals were involved in the criminal activity. *See United States v. Yates*, 990 F.2d 1179, 1181 (11th Cir. 1993). The factors that a sentencing court considers to decide if the enhancement is applicable are: “(1) the exercise of decision-making authority, (2) the nature of participation in the commission of the offense, (3) the recruitment of accomplices, (4) the claimed right to a larger share of the fruits of the crime, (5) the degree of participation in planning or organizing the offense, (6) the nature and scope of the illegal activity, and (7) the degree of control and authority exercised over others.” *United States v. Jennings*, 599 F.3d 1241, 1253 (11th Cir. 2010); U.S.S.G. § 3B1.1, Applic. Note 4. “The defendant does not have to be the sole leader or kingpin of the conspiracy in order to be considered an organizer or leader within the meaning of the Guidelines.” *United States v. Rendon*, 354 F.3d 1320, 1332 (11th Cir. 2003), *cert. denied*, 541 U.S. 1035 (2004). The Eleventh Circuit has upheld a § 3B1.1(a) enhancement when the convicted defendant “had decision-making authority and exercised control.” *United States v. Suarez*, 313 F.3d 1287, 1294 (11th Cir. 2002), *cert. denied*, 540 U.S. 828 (2003).

Pressley's role adjustment is fully supported by the record. As for the number of individuals involved, the evidence at trial showed that the criminal activity involved Eddie Pressley, Eurica Pressley, John Cockerham, James Momon, Christopher Murray, Terry Hall, Bill Baisey, Gopal Nair, Shaher Fawzi Audah, Finbar Charles, and Dorothy Ellis. *See, e.g.*, Document No. 145 at 15-16 (Court's order upholding sufficiency of evidence supporting conspiracy charges, among others).

Regarding Pressley's leadership role, the Government adduced evidence at trial of each of the factors identified in Application Note 4, including Pressley's demanding payments for John Cockerham and himself, communicating frequently with Hall about the scheme, recruiting Eurica Pressley into the scheme and directing her activities, designating bank accounts into which the bribe money was paid, recruiting James Momon into the scheme, spending the bribe proceeds for real estate and luxury automobiles, and orchestrating an obstruction scheme. The Eleventh Circuit has upheld leadership role adjustments under analogous circumstances. *See, e.g., United States v. Santos*, 397 Fed. Appx. 583, 592 (11th Cir. 2010) (per curiam) (upholding leadership role enhancement in fraud scheme involving at least five participants, where defendant played large role in the scheme, exercised control or authority over at least one other participant, and organized obstruction scheme after coconspirator learned that FBI was

investigating); *United States v. Parker*, 302 Fed. Appx. 889, 894 (11th Cir. 2008) (per curiam) (holding that leadership role enhancement was proper where defendant participated in daily communications regarding the criminal scheme and managed a bank account that received \$1 million of criminal proceeds, an amount equal to or greater than that received by his co-defendants).

C. The Probation Department Correctly Found that Eddie Pressley's Money Laundering Offense Was Sophisticated

The Probation Department found that the money laundering offense involved “sophisticated laundering” within the meaning of U.S.S.G. § 2S1.1 because it involved shell corporations, two or more levels of transactions, transfers or transmissions involving criminally derived funds that were intended to appear legitimate, and offshore accounts. PSR ¶ 58 (citing U.S.S.G. § 2S1.1 & Applic. Note 5(A)).<sup>1</sup> Eddie Pressley objects that while the PSR may describe Hall's conduct, it mischaracterizes that of Pressley. Deft.'s Obj. at ¶ 9. Pressley apparently does not dispute the fact that the money laundering conspiracy of which he was convicted was sophisticated within the meaning of § 2S1.1; his sole

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<sup>1</sup> Note 5(A) explains that sophisticated laundering “means complex or intricate offense conduct pertaining to the execution or concealment of the 18 U.S.C. § 1956 offense,” and it typically involves the use of “fictitious entities,” “shell corporations,” “two or more levels (i.e. layering) of transactions,” or “offshore financial accounts.”

objection is that his contributions to the scheme were not sophisticated. Pressley is mistaken.

Pressley's conduct bears all the hallmarks of sophisticated laundering. The evidence at trial showed that Pressley arranged for Eurica Pressley to travel from the U.S. to Dubai and the Cayman Islands to set up bank accounts for the purpose of funneling over \$2 million in bribes to himself; that he, working with Terry Hall and Bill Baisey, arranged for a shell company and a bank account to be created in Louisiana, through which over \$800,000 in bribes was funneled to his wife and him; that Eddie Pressley forwarded bogus invoices to Terry Hall for the purpose of creating the false impression that Eurica Pressley had rendered legitimate consulting services to Hall's company; and that, in connection with the purchase of the Alabama Shoals property, Eddie Pressley and Eurica Pressley engaged in "layering," *i.e.*, two or more wire transfers involving criminally derived funds that were intended to appear legitimate. The enhancement is thus appropriate in this case. *See United States v. Duarte*, 408 Fed. Appx. 269, 271-72 (11th Cir. 2011) (per curiam) (upholding sophisticated laundering enhancement for defendant who established three shell companies to launder money, produced false documents to camouflage money transfers, and enlisted family member to serve as nominal owner of one of the shell companies); *United States v. Suraneni*, 346 Fed. Appx. 416, 419 (11th Cir. 2009) (per curiam) (finding the district court properly applied

sophisticated laundering enhancement where defendant's scheme involved two or more layers of transactions and the use of a shell corporation to conceal the source of his illicitly derived funds); *United States v. Galdos*, 308 Fed. Appx. 346, 362-63 (11th Cir. 2009) (upholding sophisticated laundering enhancement for defendant who created shell corporation used as depository for illicit funds and engaged in multiple levels of financial transactions).

Moreover, Pressley mischaracterizes § 2S1.1 by suggesting that it requires not only that the money laundering scheme generally have been sophisticated, but that each of his acts in furtherance of the scheme must have been sophisticated as well. The Eleventh Circuit rejected virtually an identical argument in *United States v. Puerto*, 392 Fed. Appx. 692, 700-01 (11th Cir. 2010). In *Puerto*, the defendant challenged a 2-point enhancement imposed under § 2S1.1 because he allegedly "did not engage in the planning of the layering of transactions that took place, and that although the jury found him guilty of various conspiracy charges, the level of sophistication for this enhancement was entirely attributable to another individual." 392 Fed. Appx. at 700. The Court upheld the enhancement because, although a host of individuals had engaged in the layering of financial transactions, the defendant too was involved in the conduct. *Id.* at 701. The Eleventh Circuit has recently interpreted an analogous Guideline similarly, stating that, "There is no requirement that each of a defendant's individual actions be sophisticated in order

to impose the enhancement. Rather, it is sufficient if the totality of the scheme was sophisticated.” *United States v. Ghertler*, 605 F.3d 1256, 1267 (11th Cir. 2010) (upholding enhancement under U.S.S.G. § 2B1.1(b)(9)(C)); *see also United States v. Jackson*, 346 F.3d 22, 25 (2d Cir. 2003) (finding identity theft scheme to be sophisticated although each step of obtaining information about victim was relatively simple because “the total scheme was sophisticated in the way all the steps were linked together so that [the defendant] could perceive and exploit different vulnerabilities in different systems in a coordinated way”) (cited approvingly in *Ghertler*)).

D. The Probation Department Correctly Found that Eddie Pressley Should Receive an Obstruction Adjustment

The Probation Department gave Eddie Pressley a 2-level adjustment for obstructing or impeding the administration of justice pursuant to U.S.S.G. § 3C1.1.<sup>2</sup> PSR at ¶ 61. Probation premised this enhancement upon the evidence adduced at trial that, after learning about the Government’s investigation, Pressley

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<sup>2</sup> That Guideline provides:

If (A) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (B) the obstructive conduct related to (i) the defendant’s offense of conviction and any relevant conduct or (ii) a closely related offense, increase the offense level by 2 levels.

devised an obstruction scheme with Terry Hall that involved destroying evidence and counseling others to make false statements to law enforcement. *Id.* at ¶¶ 51-52; *see also* Government’s Omnibus Memorandum in Opposition to the Post-Trial Motions of the Defendants Eddie Pressley and Eurica Pressley (Document No. 141) at 10-12, 28-29. Pressley objects generally to this adjustment without explaining the basis for his objection, thereby rendering it legally insufficient. *See Bennett*, 472 F.3d at 832 (objections to facts in PSR must be made specifically and clearly or they are waived). Even assuming that Pressley adequately preserved this objection, it should be overruled because the enhancement is proper here.

“Obstructive conduct can vary widely in nature, degree of planning, and seriousness.” U.S.S.G. § 3C1.1, Applic. Note 3. In the Commentary to § 3C1.1, the Sentencing Commission provided a non-exhaustive list of examples of the sorts of conduct that are covered by this Guideline, including: (a) “destroying or concealing or directing or procuring another person to destroy or conceal evidence that is material to official investigation or judicial proceeding (e.g., shredding a document or destroying ledgers upon learning that an official investigation has commenced”); (b) “threatening, intimidating, or otherwise unlawfully influencing a co-defendant, ... directly or indirectly, or attempting to do so; and (c) providing a materially false statement to a law enforcement officer that significantly obstructed or impeded the official investigation or prosecution of the instant offense.”

U.S.S.G. § 3C1.1, Applic. Note 4(a), (d), (g). “Material evidence” is defined as evidence that, if believed, would tend to influence or affect the issue under determination. U.S.S.G. § 3C1.1, Applic. Note 6.

The evidence of Pressley’s agreement with Hall to concoct an innocent explanation for the bribe payments and to destroy material evidence is sufficient by itself to support the obstruction enhancement. *See, e.g., United States v. Mason*, 168 Fed. Appx. 905, 908 (11th Cir. 2006) (“[Defendant’s] attempt to direct [a third party] to destroy or conceal material evidence is sufficient to support the enhancement for obstruction under comment 4(d) to section 3C1.1”); *United States v. Feliz*, 286 F.3d 118, 120-21 (2d Cir. 2002) (holding that defendant’s asking friends to give false alibi to police constituted willful obstructive conduct under § 3C1.1 despite fact that conduct occurred prior to his arrest); *United States v. Mankarious*, 151 F.3d 694, 710 (7th Cir. 1998) (upholding obstruction enhancement for defendant who tried to coach a coconspirator regarding what he should say to the FBI). Additionally, the Court could reasonably infer that Eddie Pressley corruptly influenced his wife to make false and misleading statements to law enforcement, which is an additional basis for the enhancement. *See, e.g., United States v. Lee*, 391 Fed. Appx. 831, 835-36 (11th Cir. 2010) (upholding an obstruction enhancement for a defendant who significantly impeded investigation by corresponding with co-defendants asking them to not implicate him in certain

crimes); *United States v. Ewing*, 129 F.3d 430, 434-35 (7th Cir. 1997) (finding it was proper to apply obstruction enhancement to defendant who told girlfriend to say he had no knowledge of the crimes); *United States v. Snider*, 976 F.2d 1249, 1251-52 (9th Cir. 1992) (upholding enhancement for defendant who tried to intimidate a possible witness into telling law enforcement investigator that “everything was okay”).

In addition to the conduct set forth in the PSR, there is evidence that Pressley engaged in obstruction prior to the commencement of the investigation. Indeed, throughout its existence, the scheme was replete with acts of concealment and obstruction, including bogus consulting arrangements (GX-29), a shell company (GX-35, GX-36, GX-37, GX-379), offshore bank accounts in the name of a straw owner (GX-63, GX-361, GX-362), fake consulting agreements (GX31, GX-68 at pp. 5-6), fabricated consulting invoices (GX-78, GX-92, GX-93, GX-111, GX-112, GX-115, GX-163, GX-487, GX-488), and coded e-mails (GX-135). Additionally, Pressley advised co-conspirator James Momon to obtain a personal cell phone so that he could change the SIM cards, explaining that “by changing the SIM cards, it would be – it would make it that much more difficult to investigators, specifically CID, criminal investigator division, to track our conversations.” (Trial Tr. at 1836). Obstructive conduct that occurs before the start of the investigation may be covered by § 3C1.1 where, as here, the conduct was purposefully

calculated, and likely, to thwart the investigation or prosecution of the offense of conviction. U.S.S.G. § 3C1.1, Applic. Note 1.

E. Eddie Pressley Is Not Entitled to A Downward Departure on the Ground that the U.S.S.G. § 2C1.1 Overstates the Seriousness of His Offense

Eddie Pressley claims that he is entitled to a downward departure because the pertinent Guideline, U.S.S.G. § 2C1.1, overstates the seriousness of his offense. Pressley reasons that: (1) the Government suffered no financial loss from his offense; (2) the individuals who paid Pressley bribes were “more than glad to do so”; and (3) adding points from the loss table of U.S.S.G. § 2B1.1 unreasonably inflates the offense level.” Def’t.’s Obj. at ¶ 11. Pressley’s assertions are unsupported and in any event do not justify a downward departure.

Pressley’s request for a downward departure rests upon several erroneous factual assertions. For example, he wrongly asserts that the government suffered no financial loss from his conduct. In fact, as this Court recognized in denying Pressley’s post-trial motions, “there was sufficient evidence at trial that the United States suffered a loss because Terry Hall testified that the price of the bottled water was increased by the amount of the bribes.” Document 145 at 17 n. 9. Moreover, contrary to Eddie Pressley’s assertion, there was no evidence at trial that Terry Hall, or Gopal Nair, or Shaher Fawzi Audah were “glad” to pay bribes to Eddie Pressley or other Army contracting officials. In fact, Terry Hall testified several

times that he paid off Eddie Pressley because he believed that Pressley would prevent him from getting military contracts otherwise. Eddie Pressley's request for a downward departure is thus unsupported by the evidence.

However, Pressley would not be entitled to a downward departure even if the facts supported him. Pressley appears to assume that the sole focus of the pertinent guideline, U.S.S.G. § 2C1.1, is financial injury to the Government. Yet, insofar as section 2C1.1 applies to bribery and honest services fraud, the guideline encompasses the benefit to the corrupt public official and intangible harm to the Government, not just (or even mainly) financial injury to the Government. Thus, the Guideline provides that the offense level should be increased by the greatest of: (a) the amount of the payment to the public official, (b) the benefit obtained or to be obtained in return for the payment, or (c) the loss to the Government from the offense. U.S.S.G. § 2C1.1(b)(2); *see also id.*, Background note ("Section 2C1.1 also applies to fraud involving the deprivation of the intangible right to honest services under 18 U.S.C. §§ 1341-1343 ... Such fraud offenses typically involve an improper use of government influence that harms the operation of government in a manner similar to bribery offenses."); *cf.* U.S.S.G. § 2B1.1 (Guideline covering financial frauds against the government). In prescribing that the base offense level be increased by the greatest of the benefit to the bribe recipient, the gain to the bribe payer, or the loss to the government, the Sentencing Commission

reasoned that, “for deterrence purposes, the punishment should be commensurate with the gain to the payer or the recipient of the bribe, whichever is greater.” *Id.*, *Background note*. This reasoning is of course supported by the federal sentencing statute. See 18 U.S.C. § 3553(a)(2)(B) (sentencing court should consider need for sentence imposed to afford adequate deterrence).

Nor is it unfair to increase Pressley’s offense level in accordance with the loss table of U.S.S.G. § 2B1.1. The amount of the bribe is an eminently fair measure of the gravity of his crimes. Pressley chose to escalate the seriousness of his offenses by misusing his important position with the U.S. military to drive up the amount of the bribes over \$3 million. At least one of the contractors passed on the cost of the bribes to the government. It is therefore appropriate for his sentence to be increased accordingly. *See* 18 U.S.C. § 3553(a)(2)(A) (sentence should reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense).

## II. The Court Should Not Vary From the Guidelines-Prescribed Sentence

None of the statutory sentencing objectives justify a variance from the recommended Guidelines calculation. To the contrary, these factors fully support that sentence. The recommended sentence thus appropriately reflects the nature and circumstances of the offenses and the history and characteristics of the defendant, reflects the seriousness of the offenses, promotes respect for the law,

provides just punishment for the offenses, would afford adequate deterrence to criminal conduct, and would protect the public from further crimes of the defendant.

Although the Government is not seeking an enhancement to Eddie Pressley's offense level on the ground that he held a high-level decision-making position or a sensitive position, *see* U.S.S.G. §2C1.1(b)(3), the facts which would support such an enhancement are relevant to the § 3553(a) analysis. The Court should, in applying the pertinent statutory sentencing factors, heavily weight the fact that Eddie Pressley took advantage of his influential and sensitive position.

As stated above, this Court has already concluded that there was "ample evidence" that Pressley arranged for Hall to receive a BPA and related calls for bottled water and a fence contract. *See* Document No. 145 at 17. Pressley's officer evaluation reports (attached below as Exhibit A) reinforce the importance and sensitivity of Pressley's position. For example, Pressley's October 1, 2005 report states that, in his capacity as a Contingency Contracting Officer assigned to the Southwest Asia Contracting Command, Pressley was "responsible for analyzing purchase requests, conducting market research determining proper procurement methods, preparing solicitations, evaluating offers and awarding contracts." Exhibit A (10/1/2005 officer evaluation) at bates no. 218-0000426.

Pressley's July 12, 2005 evaluation explains the important role that he played in the Kuwait contracting office:

MAJ Pressley has played a major role in the support of the OIF [Operation Iraqi Freedom] III troop rotations. MAJ Pressley executed over \$7.9 million in base operations contracts providing crucial support for the Arcent [Army Central Command] Support Group-Kuwait (ASG-KU) Reception, Staging, Onward Movement, and Integration (RSOI) mission. ... MAJ Pressley has also performed the role as team leader when necessary and has taken the responsibility of administering the Dining Facility (DFAC) contract with an annual value of \$100 million in the absence of the primary contracting officer. He also spearheaded the acquisition of the Navy/Coast Guard boat pier at Shuaiba Port providing a significant impact on the sea security of arriving vessels, significantly improving the efficiency of operations at the Sea Port of Debarkation (SPOD).

*Id.* at bates no. 218-0000427. On October 28, 2005, Pressley's commanding officers stated that he "is the number one Major in this command. He diligently executed over \$10.3 million in base operations contracts in support of Operation Iraqi Freedom." *Id.* at bates no. 218-0000430.

Pressley's job entailed procuring goods and services that were vital to the success of the war effort – including bottled water for the troops in the desert. To do so, he had access to confidential information about various DoD procurement activities -- information which Pressley manipulated to his personal financial benefit and passed on to Hall so that Hall could obtain an unfair advantage in the contracting process to the detriment of the Army. *See also United States v. Matzkin*, 14 F.3d 1014, 1021 (4th Cir. 1994) (holding that evidence supported

high-level decision-maker enhancement of defendant's offense level, despite fact that Department of Navy employee whom defendant bribed had no power to award contracts on his own, because employee was in "sensitive position"; employee sat on contract award review panel, which enabled him to obtain and pass on to defendant confidential bid information under circumstances that could compromise integrity of the bid process and cost the government much money over time). Moreover, the Army relied heavily upon contracting specialists like Pressley. *See* Trial Tr. at 1845 (contracting officers rarely disregarded specialists' recommendations because the Kuwait contracting office "had more requirements than we had contracting officers. They didn't have the time to review like they normally would or should the various recommendations that were being brought to them.").

The federal judge who sentenced Eddie Pressley's co-conspirator John Cockerham recognized the legal significance of these facts in applying a 4-level enhancement pursuant to U.S.S.G. § 2C1.1(b)(3). Cockerham objected to the Government's request for the enhancement on the ground that, for much of the time he was in Kuwait, his contracting warrant was suspended. Transcript of December 12, 2009 Sentencing in *United States v. John Cockerham, Jr.*, No. 07-CR-511-WRF (document no. 256) at 19-23. (Transcript attached hereto as Exhibit B). Judge Ferguson found that Cockerham was a high-level decision-maker,

observing that “I didn’t think there was any question that Major Cockerham was able to influence the awarding [of] these contracts and the continuation of these contracts in the amount of millions of dollars, and it may be that there’s some things I don’t quite understand about that, but that seems, to me, to be an incredibly high level position, that you could influence the award of contracts that would be in the millions of dollars ...” *Id.* at 15. The court added, “it is difficult to believe that Mr. Cockerham could have created a conspiracy and accepted – and received bribes of such a nature of he had no influence or authority to do anything ...” *Id.* at 18. Alternatively, the court held that, “If not in a high level decision-making position, [Cockerham] was at least in a sensitive position ... just assume he had no warrant authority ... still, he’s a major in the United States Army, which is a very important position, ... he was someone in a very high position and a very sensitive position and knew things that had to be of benefit of people who wanted contracts and were willing to pay bribes for contracts.” *Id.* at 30-31.

Like Cockerham, Pressley held an influential and sensitive position. Judge Ferguson’s findings and analysis apply equally to Eddie Pressley. Insofar as the Guidelines “seek to embody the § 3553(a) considerations, both in principle and in practice[,]” *Rita*, 551 U.S. at 350, and “the Guidelines themselves reflect application of the § 3553(a) factors in the ‘mine run’ of cases,” *Irey*, 612 F.3d at

1185, the fact that Pressley held a highly influential and sensitive position is an important factor in the § 3553(a) analysis.

Finally, the Court should reject Eddie Pressley's claim that he deserves a lesser sentence because bribery is allegedly common in the Middle East. *See* Def't.'s Obj. at ¶ 11. As Judge Ferguson explained in sentencing John Cockerham:

You know, I don't think it makes any difference what words you use, a bribe is a bribe and, of course. I mean we – we know we're fighting two wars, we're fighting a war in Afghanistan where you just have to read the papers to know that one of the great concerns in that war is the corruption of high level officials in Afghanistan and, you know, people just need to tell people, "No, that's not the way we go business. We don't take these kind of blessings." We just don't do that; this is the United States of America.

Exhibit B at 34-35.

## **FORFEITURES**

Following the return of the jury verdicts, the Defendants Eddie Pressley and Eurica Pressley stipulated to the following:

1. The forfeiture of not more than \$21 million as property constituting or derived from proceeds obtained as a result of: (a) the bribery conspiracy offense charged in Count 1; (b) the substantive bribery offense charged in Count 2; (c) the honest services wire fraud scheme charged in Counts 3 through 10; and (d) the money laundering conspiracy charged in Count 11 of the indictment. Trial Tr. at 2699.

2. The forfeiture of a timeshare in the Timber Creek Vacation Resort located in Jefferson County, Missouri. *Id.* at 2700. The complete legal description of this property is “a 1.923% undivided interest as tenant-in-common in and to Unit No: 007 (the "Unit"), Timber Creek Resort, Phase 1, a vacation resort in Jefferson County, Missouri, as per the recorded plat thereof and according to the Amended and Restated Declaration of restrictions, Covenants and Conditions recorded in Book 1033, Page 513 and Supplemental Declaration recorded in Book NI A, Page N/A real Property Records of Jefferson County, Missouri (the "Declaration"), together with the exclusive right to occupy the Unit during Use Period No. 19 beginning May 7, 2005, as said Use Period is defined in the Declaration, upon and subject to all of the terms, restrictions, covenants, conditions and provisions in the Declaration, referred to as the "Vacation Ownership Interest."

3. The forfeiture of approximately 55 acres of land located in Athens, Alabama. *Id.* The complete legal description of this property is “Approximately 55 acres of land located in Limestone County, further described as the Marvin Littrell Acres Subdivision containing 55 acres as shown by the map or plat of said subdivision on file in the Probate Office of Limestone County, Alabama, in Plat Book G at Page 139, including any appurtenances and attachments thereon, except for the parcel described in the Warranty Deed recorded on April 10, 2006, in Book 2006, Page 21743 on file in the Probate Office in Limestone County, Alabama.”

4. The forfeiture of a 2007 BMW 750Li Sedan automobile. *Id.* The VIN of this automobile is WBAHN83557DT71570, and it was purchased by Eddie Pressley on or about March 5, 2007.

5. The forfeiture of a 2003 Lincoln Navigator automobile. *Id.* The VIN of this automobile is 5LMFU28R83LJ21349, and it was purchased by Eddie Pressley on or about November 23, 2003.

6. The forfeiture of \$5,500,000 as property constituting or derived from proceeds obtained as a result of engaging in a monetary transaction with criminal proceeds charged in Count 12 of the indictment. *Id.*

7. The forfeiture of \$678,407.10 as property constituting or derived from proceeds obtained as a result of engaging in a monetary transaction with criminal proceeds charged in Counts 13 through 22 of the indictment.<sup>3</sup> *Id.*

### **CONCLUSION**

For all the reasons stated above, the Government recommends that Eddie Pressley be sentenced to life imprisonment, and requests forfeiture of money and property in accordance with the stipulations described above. The Government will submit a proposed forfeiture order in the near future.

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<sup>3</sup> The Defendants also stipulated to the forfeiture of certain tracts of land at 995 Lake View Road in Florence, Alabama. *Id.* at 2699-2700. However, the Government is not pursuing this piece of property.

Dated: November 13, 2011

Respectfully submitted,

JACK SMITH  
Chief, Public Integrity Section  
Criminal Division  
U.S. Department of Justice

By: /s/ Peter C. Sprung  
Peter C. Sprung  
Edward J. Loya, Jr.  
Trial Attorneys

## CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2011, I caused a copy of the foregoing Government's Sentencing Memorandum to be served upon counsel of record via the Electronic Case Filing System of the United States District Court for the Northern District of Alabama.

/s/ Peter C. Sprung  
Peter C. Sprung  
*Attorney for the United States of America*

00823687

OFFICER EVALUATION REPORT										SEE PRIVACY ACT STATEMENT ON DA FORM 67-9-1									
For use of this form, see AR 623-105; the proponent agency is ODCSPER																			
PART I - ADMINISTRATIVE DATA																			
a. NAME (Last, First, Middle Initial) PRESSLEY, EDDIE L.				b. SSN ██████████-4698	c. RANK MAJ	d. DATE OF RANK Year: 2004, Month: 10, Day: 01			e. BRANCH QM	f. DESIGNATED SPECIALTIES / FMOS INVO 51C									
g. UNIT, ORG., STATION, ZIP CODE OR APC, MAJOR COMMAND SWA Contracting Command/CFLCC PARC APO AE 09366 (FORSCOM)								h. REASON FOR SUBMISSION 05 Annual											
i. PERIOD COVERED						j. RATED MONTHS 12	k. NONRATED CODES	l. NO. OF ENCL 0		m. RATED OFFICER COPY (Check one and date)									
FROM Year: 2004, Month: 06, Day: 08		THRU Year: 2005, Month: 06, Day: 07						1. Given to Officer: <input type="checkbox"/>		Date: 12 JUL 05									
								2. Forwarded to Officer: <input checked="" type="checkbox"/>		Date: 12 JUL 05									
n. PSB INITIAL						o. CMD CODE FC		p. PSB CODE FS26											
PART II - AUTHENTICATION (Rated officer's signature verifies officer has seen completed OER Parts I, VI and the admin data is correct)																			
a. NAME OF RATER (Last, First, MI) HESS, JOHN P.			b. SSN ██████████-1877	c. RANK LTC	d. POSITION COMMANDER			e. SIGNATURE <i>[Signature]</i>		f. DATE 12 JUL 05									
g. NAME OF INTERMEDIATE RATER (Last, First, MI)			h. SSN	i. RANK	j. POSITION			k. SIGNATURE		l. DATE									
m. NAME OF SENIOR RATER (Last, First, MI) NEUMANN, MARKUS R.			n. SSN ██████████-2768	o. RANK COL	p. POSITION COMMANDER			q. SIGNATURE <i>[Signature]</i>		r. DATE 12 JUL 05									
s. SENIOR RATER'S ORGANIZATION SWA CONTRACTING COMMAND/CFLCC PARC Fort McPherson, GA 30330				t. BRANCH FA	u. SENIOR RATER TELEPHONE NUMBER DSN (312) 367-4889			v. E-MAIL ADDRESS markus-neumann@us.army.mil											
w. This is a referred report; do you wish to make comments? <input type="checkbox"/> Yes, comments are attached <input type="checkbox"/> No								x. SIGNATURE OF RATED OFFICER <i>[Signature]</i>		y. DATE 12 JUL 05									
PART III - DUTY DESCRIPTION																			
a. PRINCIPAL DUTY TITLE Contracting Officer						b. POSITION ADC/BR 51C00													
c. SIGNIFICANT DUTIES AND RESPONSIBILITIES. REFER TO PART IVa, DA FORM 67-9-1 Contingency Contracting Officer assigned to the Southwest Asia Contracting Command, Coalition Forces Land Component Command (CFLCC) supporting over 200,000 Soldiers, Airmen, Marines and Sailors in five Division, one Corps Staff and one Army Staff in support of Operation Iraqi Freedom (OIF) as well exercises, contingency operations and deployment within CFLCC's Area of Responsibility. Responsible for contracting warfighter requirements for supplies and services needed for combat operations using both Simplified Acquisition Procedures and formal contracting methods in accordance with Federal Acquisition Regulations. Responsible for analyzing purchase requests, conducting market research, determining proper procurement methods, preparing solicitations, evaluating offers and awarding contracts.																			
PART IV - PERFORMANCE EVALUATION - PROFESSIONALISM (Rater)																			
CHARACTER Disposition of the leader; combination of values, attributes, and skills affecting leader actions																			
a. ARMY VALUES (Comments mandatory for all "NO" entries. Use PART Vb.)																			
1. HONOR: Adherence to the Army's publicly declared code of values				5. RESPECT: Promotes dignity, consideration, fairness, & EO				Yes No											
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO				<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO				<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO											
2. INTEGRITY: Possesses high personal moral standards; honest in word and deed				6. SELFLESS-SERVICE: Places Army priorities before self															
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO				<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO															
3. COURAGE: Manifests physical and moral bravery				7. DUTY: Fulfills professional, legal, and moral obligations															
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO				<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO															
4. LOYALTY: Bears true faith and allegiance to the U.S. Constitution, the Army, the unit, and the soldier																			
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO																			
d. LEADER ATTRIBUTES / SKILLS / ACTIONS: First, mark "YES" or "NO" for each block. Second, choose a total of six that best describe the rated officer. Select one from ATTRIBUTES, two from SKILLS (Competence), and three from ACTIONS (LEADERSHIP). Place an "X" in the appropriate numbered box with optional comments in PART Vb. Comments are mandatory in																			
b.1. ATTRIBUTES (Select 1)			1. MENTAL Possesses desire, will, initiative, and discipline			2. PHYSICAL Maintains appropriate level of physical fitness and military bearing			3. EMOTIONAL Displays self-control; calm under pressure										
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO										
b.2. SKILLS (Competence) (Select 2)			4. CONCEPTUAL Demonstrates sound judgment, critical/creative thinking, moral reasoning			5. INTERPERSONAL Shows skill with people: coaching, teaching, counseling, motivating and empowering			6. TECHNICAL Possesses the necessary expertise to accomplish all tasks and functions										
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO										
b.3. ACTIONS (LEADERSHIP) (Select 3) Major activities leaders perform: influencing, operating, and improving			1. COMMUNICATING Displays good oral, written, and listening skills for individuals / groups			2. DECISION-MAKING Employs sound judgment, logical reasoning and uses resources wisely			3. MOTIVATING Inspires, motivates, and guides others toward mission accomplishment										
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO										
OPERATING Short-term mission accomplishment			4. PLANNING Develops detailed, executable plans that are feasible, acceptable, and suitable			5. EXECUTING Shows tactical proficiency, meets mission standards, and takes care of people/resources			6. ASSESSING Uses after-action and evaluation tools to facilitate consistent improvement										
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO										
IMPROVING Long-term involvement in the Army; its people and organizations			7. DEVELOPING Invests adequate time and effort to develop individual subordinates as leaders			8. BUILDING Spends time and resources improving teams, groups and units; fosters ethical climate			9. LEARNING Seeks self-improvement and organizational growth; envisioning, adapting and leading										
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO										
e. APFT: PASS				DATE: MAY 05				HEIGHT: 67				WEIGHT: 170				YES			
d. JUNIOR OFFICER DEVELOPMENT - MANDATORY: YES OR NO ENTRY FOR RATERS OF LTs AND WO1s.																			
WERE DEVELOPMENTAL TASKS RECORDED ON DA FORM 87-9-1a AND QUARTERLY FOLLOW-UP COUNSELINGS CONDUCTED?																			
<input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>																			

DA FORM 67-9, OCT 97

REPLACES DA FORM 67-8, 1 SEP 79, WHICH IS OBSOLETE, 1 OCT 97

USAPA V2.01

NAME PRESSLEY, EDDIE L.		SSN ██████████-4698	PERIOD COVERED 20040608 - 20050607
PART V - PERFORMANCE AND POTENTIAL EVALUATION (Rater)			
a. EVALUATE THE RATED OFFICER'S PERFORMANCE DURING THE RATING PERIOD AND HIS/HER POTENTIAL FOR PROMOTION <input checked="" type="checkbox"/> OUTSTANDING PERFORMANCE, MUST PROMOTE <input type="checkbox"/> SATISFACTORY PERFORMANCE, PROMOTE <input type="checkbox"/> UNSATISFACTORY PERFORMANCE, DO NOT PROMOTE <input type="checkbox"/> OTHER (Explain)			
b. COMMENT ON SPECIFIC ASPECTS OF THE PERFORMANCE AND POTENTIAL FOR PROMOTION. REFER TO PART III, DA FORM 67-9 AND PART IV, b, AND c DA FORM 67-9-1.			
MAJ Eddie Pressley has performed his duties as contracting officer in an absolutely outstanding manner. Eddie came here willing to learn contingency contracting and has played a major role in the support of the OIF III troop rotations, the largest movement of troops since World War II. MAJ Pressley executed over \$7.9 million in base operations contracts providing crucial support for the Arcent Support Group-Kuwait (ASG-KU) Reception, Staging, Onward movement, and Integration (RSOI) mission. During negotiations for the Public Warehouse Corporation wash rack project, Eddie discovered major deficiencies and provided alternatives to meet these requirements, which resulted in savings in excess of \$1.5 million. MAJ Pressley has also performed the role as team leader when necessary and has taken the responsibility of administering the Dining Facility (DFAC) contract with an annual value of \$100 million in the absence of the primary contracting officer. He also spearheaded the acquisition of the Navy/Coast Guard boat pier at Shuaiba Port providing a significant impact on the sea security of arriving vessels, significantly improving the efficiency of operations at the Sea Port of Debarkation (SPOD). MAJ Pressley is a valuable member of this organization. Promote to Lieutenant Colonel and select for battalion level command. Unlimited potential.			
c. IDENTIFY ANY UNIQUE PROFESSIONAL SKILLS OR AREAS OF EXPERTISE OF VALUE TO THE ARMY THAT THIS OFFICER POSSESSES. FOR ARMY COMPETITIVE CATEGORY CPT THROUGH LTC, ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.			
Would best serve the Army in OSCF 51			
PART VI - INTERMEDIATE RATER			
PART VII - SENIOR RATER			
a. EVALUATE THE RATED OFFICER'S PROMOTION POTENTIAL TO THE NEXT HIGHER GRADE <input checked="" type="checkbox"/> BEST QUALIFIED <input type="checkbox"/> FULLY QUALIFIED <input type="checkbox"/> DO NOT PROMOTE <input type="checkbox"/> OTHER (Explain below)		I currently senior rate <u>18</u> officer(s) in this grade A completed DA Form 67-9-1 was received with this report and considered in my evaluation and review <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (Explain in c)	
b. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)  HQDA COMPARISON OF THE SENIOR RATER'S PROFILE AND BOX CHECK AT THE TIME THIS REPORT PROCESSED  <div style="border: 1px solid black; padding: 5px; width: fit-content;">                     CENTER OF MASS                 </div> RO: MAJ PRESSLEY EDDIE L 422984698  SR: COL NEUMANN MARKUS R 556312768  DATE: 2005 07 12  TOTAL RATINGS: 45  RATINGS THIS OFFICER: 1		c. COMMENT ON PERFORMANCE/POTENTIAL MAJ Pressley's performance has been exceptional. He continually demonstrates himself as an outstanding leader and total acquisition professional. Possessing a growing technical proficiency, a customer service orientation, and demonstrated leadership, MAJ Pressley played a key role to the success of this command as well as units on the battlefield that he supported. During a period of high personnel turnover, MAJ Pressley was the individual customers and peers relied upon to share knowledge and make the mission happen. Promote to Lieutenant Colonel and select for Battalion level contracting command. Unlimited potential.	
		d. LIST 3 FUTURE ASSIGNMENTS FOR WHICH THIS OFFICER IS BEST SUITED. FOR ARMY COMPETITIVE CATEGORY CPT THROUGH LTC, ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.	
		Contracting Commander; Director of Contracting; OSD Acquisition Staff Would best serve the Army in OSCF 51	

00861472

OFFICER EVALUATION REPORT										SEE PRIVACY ACT STATEMENT ON DA FORM 67-9-1					
PART I - ADMINISTRATIVE DATA															
a. NAME (Last, First, Middle Initial) <b>PRESSLEY, EDDIE L.</b>				b. SSN ████████-4698	c. RANK <b>MAJ</b>	d. DATE OF BIRTH Year: <b>2004</b> Month: <b>10</b> Day: <b>01</b>		e. BRANCH <b>QM</b>	f. DEPARTMENTAL SYMBOLS / GRADE (Two) <b>51C/9200</b>						
g. UNIT, ORG., STATION, ZIP CODE OR APO, MAJOR COMMAND <b>SWA Contracting Command/CFLCC PARC APO AE 09366 (FORSCOM)</b>							h. REASON FOR SUBMISSION <b>03 Change of Rater</b>								
i. PERIOD COVERED				j. RATED MONTHS <b>4</b>	k. NONRATED CODES	l. NO. OF ENCL.		m. RATED OFFICER COPY (Check one and date)		n. PSR INITIAL	o. CMD CODE	p. PSR CODE			
FROM	THRU						1. Given to Officer		Date						
Year	Month	Day	Year	Month	Day			<b>28 Oct 2005</b>		<b>H</b>	<b>FC</b>	<b>FS26</b>			
2005	06	08	2005	10	14										
PART II - AUTHENTICATION (Rated officer's signature verifies officer has seen, completed DER Parts I-VII and the admin data is correct)															
a. NAME OF RATER (Last, First, MI) <b>Pershing, David</b>			b. SSN ████████-3738	c. RANK <b>LTC</b>	d. POSITION <b>SWA Contracting CDR</b>	e. SIGNATURE 		f. DATE <b>28 Oct 2005</b>							
g. NAME OF INTERMEDIATE RATER (Last, First, MI)			h. SSN	i. RANK	j. POSITION	k. SIGNATURE		l. DATE							
m. NAME OF SENIOR RATER (Last, First, MI) <b>Neumann, Markus R.</b>			n. SSN ████████-2768	o. RANK <b>COL</b>	p. POSITION <b>Commander</b>	q. SIGNATURE 		r. DATE <b>28 Oct 2005</b>							
s. SENIOR RATER'S ORGANIZATION <b>SWA CONTRACTING COMMAND/CFLCC PARC (FORSCOM)</b>				t. BRANCH <b>FA</b>	u. SENIOR RATER TELEPHONE NUMBER <b>DSN 367-1394</b>	v. E-MAIL ADDRESS <b>markus-neumann@us.army.mil</b>		w. This is a referred report. Do you wish to make comments? <input type="checkbox"/> Yes, comments are attached <input type="checkbox"/> No		x. SIGNATURE OF RATED OFFICER 		y. DATE <b>28 Oct 2005</b>			
PART III - DUTY DESCRIPTION															
a. PRINCIPAL DUTY TITLE <b>Contracting Officer</b>						b. POSITION ACDBR <b>51C00</b>									
c. SIGNIFICANT DUTIES AND RESPONSIBILITIES: REFER TO PART IVa, DA FORM 67-9-1 <b>Contingency Contracting Officer assigned to the Southwest Asia Contracting Command, Coalition Land Component Command (CFLCC) supporting over 200,000 Soldiers, Airmen, Marines and Sailors in five Divisions, one Corps Staff and one Army Staff in support of Operation Iraqi Freedom (OIF) as well exercises, contingency operations and deployment within CFLCC's Area of Responsibility. Responsible for contracting warfighter requirements for supplies and services needed for combat operations using both Simplified Acquisition Procedures and formal contracting methods in accordance with the FAR, DFAR and AFAR. Responsible for analyzing purchase requests, conducting market research, determining proper procurement methods, preparing solicitations, evaluation offers and awarding contracts.</b>															
PART IV - PERFORMANCE EVALUATION - PROFESSIONALISM (Rater)															
CHARACTER Disposition of the leader: combination of values, attributes, and skills affecting leader actions															
b. ARMY VALUES (Comments mandatory for all "NO" entries. Use PART Vb.)															
1. HONOR: Adherence to the Army's publicly declared code of values				2. INTEGRITY: Possesses high personal moral standards; honest in word and deed				3. COURAGE: Manifests physical and moral bravery				4. LOYALTY: Bears true faith and allegiance to the U.S. Constitution, the Army, the unit, and the soldier			
5. RESPECT: Promotes dignity, consideration, fairness, & EO				6. SELFLESS-SERVICE: Places Army priorities before self				7. DUTY: Fulfills professional, legal, and moral obligations							
Yes				No				Yes				No			
<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>			
b. LEADER ATTRIBUTES / SKILLS / ACTIONS: First, mark "YES" or "NO" for each block. Second, choose a total of six that best describe the rated officer. Select one from ATTRIBUTES, two from SKILLS (Competence), and three from ACTIONS (LEADERSHIP). Place an "X" in the appropriate numbered box with optional comments in PART Vb. Comments are mandatory in															
b.1. ATTRIBUTES (Select 1)			1. MENTAL Possesses desire, will, initiative, and discipline			2. PHYSICAL Maintains appropriate level of physical fitness and military bearing			3. EMOTIONAL Displays self-control; calm under pressure						
Fundamental qualities and characteristics			<input checked="" type="checkbox"/> YES <input checked="" type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input checked="" type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input checked="" type="checkbox"/> NO						
b.2. SKILLS (Competence) (Select 2)			4. CONCEPTUAL Demonstrates sound judgment, critical/creative thinking, moral reasoning			5. INTERPERSONAL Shows skill with people: coaching, teaching, counseling, motivating and empowering			6. TECHNICAL Possesses the necessary expertise to accomplish all tasks and functions						
Skill development is part of self-development; prerequisite to action			<input checked="" type="checkbox"/> YES <input checked="" type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input checked="" type="checkbox"/> NO			<input checked="" type="checkbox"/> YES <input checked="" type="checkbox"/> NO						
b.3. ACTIONS (LEADERSHIP) (Select 3) Major activities leaders perform: influencing, operating, and improving			7. TACTICAL Demonstrates proficiency in required professional knowledge, judgment, and warfighting												
INFLUENCING Method of reaching goals while operating / improving			1. COMMUNICATING Displays good oral, written, and listening skills for individuals / groups			2. DECISION-MAKING Employs sound judgment, logical reasoning and uses resources wisely			3. MOTIVATING Inspires, motivates, and guides others toward mission accomplishment						
OPERATING Short-term mission accomplishment			4. PLANNING Develops detailed, executable plans that are feasible, acceptable, and suitable			5. EXECUTING Shows tactical proficiency, meets mission standards, and takes care of people/resources			6. ASSESSING Uses after-action and evaluation tools to facilitate consistent improvement						
IMPROVING Long-term improvement in the Army, its people and organizations			7. DEVELOPING Invests adequate time and effort to develop individual subordinates as leaders			8. BUILDING Spends time and resources improving teams, groups and units; fosters ethical climate			9. LEARNING Seeks self-improvement and organizational growth; envisioning, adapting and leading						
c. APFT: <b>PASS</b>			DATE: <b>MAY 2005</b>			HEIGHT: <b>67</b>			WEIGHT: <b>170</b>			YES			
d. JUNIOR OFFICER DEVELOPMENT - MANDATORY YES OR NO ENTRY FOR RATERS OF LTs AND WO1s															
WERE DEVELOPMENTAL TASKS RECORDED ON DA FORM 67-9-1a AND QUARTERLY FOLLOW-UP COUNSELINGS CONDUCTED?															
YES <input type="checkbox"/> NO <input type="checkbox"/> <input checked="" type="checkbox"/>															

DA FORM 67-9, OCT 97

REPLACES DA FORM 67-8, 1 SEP 78, WHICH IS OBSOLETE, 1 OCT 97

USAPA V2.01

OCT 21 2005  
218-0080429

218-000425

NAME PRESSLEY, EDDIE L.		SSN 4698	PERIOD COVERED 20050608 - 20051014
<b>PART V - PERFORMANCE AND POTENTIAL EVALUATION (Rater)</b>			
a. EVALUATE THE RATED OFFICER'S PERFORMANCE DURING THE RATING PERIOD AND HIS/HER POTENTIAL FOR PROMOTION <input checked="" type="checkbox"/> OUTSTANDING PERFORMANCE, MUST PROMOTE <input type="checkbox"/> SATISFACTORY PERFORMANCE, PROMOTE <input type="checkbox"/> UNSATISFACTORY PERFORMANCE, DO NOT PROMOTE <input type="checkbox"/> OTHER (Explain)			
b. COMMENT ON SPECIFIC ASPECTS OF THE PERFORMANCE AND POTENTIAL FOR PROMOTION. REFER TO PART III, DA FORM 87-9 AND PART IVa, b, AND c DA FORM 87-9-1. An absolutely superb performance of duty in a challenging wartime assignment. MAJ Pressley is the number one Major in this command. He diligently executed over \$10.3 million in base operations contracts in support of Operation Iraqi Freedom. He is able to visualize the requirement and dictate a plan that guarantees success. MAJ Pressley was selected to establish a plan that would bring a contractor that was 87% behind schedule on building tents for our soldiers. As a result of implementing his recommendations all surge tents were completed ahead of schedule. MAJ Pressley possesses an ideal blend of assertiveness, caring, diligence, and determination. This coupled with his stalwart belief in the Army Values made him an invaluable asset to this command. Promote early to Lieutenant Colonel and select for Battalion level command. Unlimited potential.			
c. IDENTIFY ANY UNIQUE PROFESSIONAL SKILLS OR AREAS OF EXPERTISE OF VALUE TO THE ARMY THAT THIS OFFICER POSSESSES. FOR ARMY COMPETITIVE CATEGORY CPT THROUGH LTC, ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE. Would best serve the Army in OSCF 51			
<b>PART VI - INTERMEDIATE RATER</b>			
<b>PART VII - SENIOR RATER</b>			
a. EVALUATE THE RATED OFFICER'S PROMOTION POTENTIAL TO THE NEXT HIGHER GRADE <input checked="" type="checkbox"/> BEST QUALIFIED <input type="checkbox"/> FULLY QUALIFIED <input type="checkbox"/> DO NOT PROMOTE <input type="checkbox"/> OTHER (Explain below)		I currently senior _____ 21 _____ officer(s) in this grade A completed DA Form 87-9-1 was received with this report and considered in my evaluation and review <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (Explain in c)	
b. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)  HQDA COMPARISON OF THE SENIOR RATER'S PROFILE AND BOX CHECK AT THE TIME THIS REPORT PROCESSED  <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">                     ABOVE CENTER OF MASS                 </div> RO: MAJ PRESSLEY EDDIE L 422984698  SR: COL NEUMANN MARKUS R 556312768  DATE: 2005 10 31  TOTAL RATINGS: 56  RATINGS THIS OFFICER: 2		c. COMMENT ON PERFORMANCE/POTENTIAL Major Pressley is clearly in the top 10% of all majors that I rate. He flawlessly executed the myriad of tasks associated with being a Contingency Contracting Officer in support of OPERATION IRAQI FREEDOM (OIF) and ENDURING FREEDOM (OEF). Eddie worked relentlessly to ensure all contractual obligations were either met or corrective actions in place. His commitment to the command and its mission is evidenced by his willingness to extend his tour to finish critical contracts. Assign him the most demanding branch qualifying jobs. Absolutely unlimited potential. His performance mandates consistent below the zone promotions and commensurate schooling. Future Battalion level command is a must for this talented Acquisition Corps officer.	
d. LIST 3 FUTURE ASSIGNMENTS FOR WHICH THIS OFFICER IS BEST SUITED. FOR ARMY COMPETITIVE CATEGORY CPT THROUGH LTC, ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE. Contracting Commander; Director of Contracting; OSD Acquisition Staff Would best serve the Army in OSCF 51			

RA 53-1A-76, 4 OCT 04

**OATH OF OFFICE - MILITARY PERSONNEL**

For use of this form, see AR 135-100; the proposing agency is CDGSPCP

**DATA REQUIRED BY THE PRIVACY ACT OF 1974**

**AUTHORITY:** 5 USC 3331, 552, 552a; 10 USC 10204.  
**PRINCIPAL PURPOSE:** To create a record of the date of acceptance of appointment.  
**ROUTINE USES:** Information is used to establish and record the date of acceptance. The SSN is used to identify the member. The date of acceptance of appointment is used in preparing statements of service and computing basic pay date.  
**DISCLOSURE:** Completion of form is mandatory. Failure to do so will cause the appointment to be invalid.

**INSTRUCTIONS**

INDICATE THE APPOINTMENT FOR WHICH OATH IS BEING EXECUTED BY PLACING AN "X" IN APPROPRIATE BOX. REGULAR ARMY COMMISSIONED OFFICERS WILL ALSO SPECIFY THE BRANCH OF APPOINTMENT WHEN APPOINTED IN A SPECIAL BRANCH.

This form will be executed upon acceptance of appointment as an officer in the Army of the United States. Immediately upon receipt of notice of appointment, the appointee will, in case of acceptance of the appointment, return to the agency from which received, the oath of office: (in this form) properly filled in, subscribed and attested. In case of non-acceptance, the notice of appointment will be returned to the agency from which received, (by letter) indicating the fact of non acceptance.

**COMMISSIONED OFFICERS**

**WARRANT OFFICERS**

REGULAR ARMY ACQUISITION CORPS  
*(Branch, when so appointed)*  
 ARMY OF THE UNITED STATES, WITHOUT COMPONENT  
 RESERVE COMMISSIONED OFFICER

REGULAR ARMY  
 ARMY OF THE UNITED STATES, WITHOUT COMPONENT  
 RESERVE WARRANT OFFICER

I, PRESSLEY, EDDIE L. JR  
*(First Name, Middle Name, Last Name)*

122-98-4698  
*(Social Security Number)*

having been appointed an officer in the Army of the United States, as indicated above in the grade of  
MAJOR do solemnly swear (or affirm)

that I will support and defend the Constitution of the United States against all enemies, foreign and domestic, that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office upon which I am about to enter; SO HELP ME GOD

*(Signature - last name as shown above)*

SWORN TO AND SUBSCRIBED BEFORE ME AT CAMP ARIFJAN, KUWAIT

THIS FIFTH DAY OF OCTOBER, 2004

JOHN R. PLATT, LIC, EN, USA  
*(Rank, Component, or Office of official administering oath)*

*(Signature)*

**FOR THE EXECUTION OF THE OATH OF OFFICE**

- When sworn, any person shall not be appointed to any office or position under the Government of the United States, the duties of which require the taking of an oath, until he has taken and subscribed the oath prescribed by 5 USC 3331.
- 5 USC 3331 and 14709 delineate the necessity of executive oath administration of officers.
- The oath of office may be taken before any commissioned officer of any component of any Armed Force, who the carrier of any active duty (10 USC 101-1) or before any commissioned warrant officer when acting as an adjutant, assistant adjutant, acting adjutant, or personnel adjutant in any of the Armed Forces. (See 1674)

Article 135, AR 135-100. A commissioned warrant officer administering the oath of office will use this form and return the form to the official who signed.

4. Oath of office may also be taken before any commissioned officer with authority to administer the oath of the United States or by the local commanding officer, adjutant, assistant adjutant, or acting adjutant, by a warrant officer, or the warrant officer of the person administering the oath, and if so administered by the official, the official's capacity to administer oaths must be certified in writing, signed by a clerk or adjutant or other person in an official capacity.



FOR THE DEFENDANT:

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The above styled and numbered cause was reported by  
computerized stenography and produced by computer.

1 (December 2, 2009.)

2 THE CLERK: SA-07-511. The United States versus  
3 John Cockerham.

4 THE COURT: Can I have announcements from the  
5 Government.

6 MR. PLETCHER: Good afternoon, Your Honor.  
7 Mark Pletcher for the United States. With me is Emily Allen  
8 and Richard Evans.

9 THE COURT: Thank you, Mr. Pletcher and Ms. Allen and  
10 Mr. Evans. Thank you so much.

11 MR. PARKS: And Jimmy Parks, Your Honor, for the  
12 defendant John Cockerham.

13 THE COURT: Thank you so much, Mr. Parks. Welcome.  
14 Mr. Parks, I did find -- I think you called to our attention  
15 two motions that you -- I think you filed yesterday. One is a  
16 proffer and supplement to motion to dismiss on violation of  
17 defendant's right to speedy trial and I -- I have that. We  
18 have not been able to pull up I guess the motion itself.  
19 Apparently, there's a motion and then a proffer and supplement  
20 to the motion. Is that correct?

21 MR. PARKS: Yes, Your Honor.

22 THE COURT: Okay. As I understand at least the  
23 proffer and the supplement to the motion, you are arguing that  
24 because there's been a delay since the time of the plea that  
25 the Speedy Trial Act has been violated. Is that correct?

1 MR. PARKS: Yes, Judge. And -- before I go into  
2 that, can I ask the Court's indulgence on one particular  
3 issue, something that I didn't even think about, but Major  
4 Cockerham had wanted to take some notes during the course of  
5 the proceedings. He may want to pass me some notes to inform  
6 the Court of certain things. He's been very effective in  
7 assisting me in this motion, as well as others, but he can't  
8 do with the handcuffs on. I wonder if the Court would -- He  
9 has asked me to ask the Court if he can get at least his right  
10 hand freed up just to take notes. Would that be appropriate?

11 THE COURT: Marshal, do you have the keys with you?

12 A MARSHAL: Yes, Your Honor.

13 THE COURT: I'll allow that, so he can take notes.  
14 Now, Mr. Cockerham, don't make any sudden movements or  
15 anything that might cause the marshals to think that there's  
16 something strange going on, so you have to be very careful  
17 about how you deal about this courtesy that's been extended,  
18 okay?

19 THE DEFENDANT: Yes, Your Honor. Thank you.

20 THE COURT: Thank you very much.

21 MR. PARKS: And, Judge, back to my response, I'm not  
22 sure what could have happened to the motion. I -- It seemed  
23 to me --

24 THE COURT: When did you file the original motion to  
25 di smi ss?

1 MR. PLETCHER: Judge, we have extra copies.

2 THE COURT: Do you? Okay. That would be helpful.

3 I --

4 (Handed to the Court.)

5 MR. PARKS: We received a notice of deficiency I  
6 think on the -- Because it was a sealed document, we received  
7 a notice of defense see on the certificate of service on it  
8 but we believe we corrected that deficiency. My staff told me  
9 that we did, Your Honor. That may have been part of the  
10 problem.

11 THE COURT: Okay. This was filed November 30th.  
12 Correct? At least that's when you electronically -- you state  
13 you electronically filed it?

14 MR. PARKS: Yes, sir.

15 THE COURT: That would have been Monday. Correct?

16 MR. PARKS: Yes, sir.

17 THE COURT: Okay. Go ahead.

18 MR. PARKS: Judge, in that regard, I have a -- I  
19 guess in a situation like, Your Honor, I believe the pertinent  
20 case law is provided in the motion. Additionally, I have a  
21 proffer that we supplemented. The motion had some exhibits  
22 attached to it. The dates and times are in the Court's  
23 record, obviously, of the settings in this particular case,  
24 and I had adequately described that we had initially indicated  
25 that we wanted time, the defense had made a motion, and we had

1 even agreed to a reset of sentencing at one time and a joint  
2 agreement with the prosecution for that to take place. I just  
3 have I think, Judge -- I would like, I guess, with the Court's  
4 indulgence, just for the sake of keeping everything concise  
5 and together, submit my proffer and the date timeline that I  
6 have to the Court as a proffer for the evidence in this motion  
7 and then I'd like to, if I could, Judge, call Mr. Cockerham,  
8 but I'd like to do it at the bench. Some of the harm  
9 issues -- in fact, the primary harm issue that we would talk  
10 about would be part of the reason why the motion was sealed.

11 THE COURT: Okay. Well, I will certainly let your  
12 proffer stand in support and accept it as given. Before we go  
13 any further though with Mr. Cockerham, let me see if the  
14 Government wishes to respond to this matter. A response would  
15 be helpful since until today I wasn't aware that this had been  
16 filed. Sometimes it just takes a while for an electronic case  
17 filing to show up in Dallas, so Mr. Pletcher.

18 MR. PLETCHER: It's only been filed in the last day  
19 and-a-half or so --

20 THE COURT: Right.

21 MR. PLETCHER: Last week.

22 THE COURT: 48 hours.

23 MR. PLETCHER: We have not -- obviously, did not  
24 submit a written respond. The motion to dismiss on this basis  
25 is, frankly, a little bewildering at this late point. The

1 Speedy Trial Act itself applies to the time between either  
2 indictment or arrest and trial. There is no statutory or  
3 common-law right to a speedy sentencing.

4 As far as Speedy Trial Act goes, the United States  
5 submitted on October 1st, 2007, a written motion to toll the  
6 Speedy Trial Act on a number of bases, including this was a  
7 complex case, it was voluminous discovery and there was an  
8 unavailability of a key witness. Your Honor granted that  
9 motion on the 9th of October, 2007, and time was excluded for  
10 six months, that is until approximately April 2008. In that  
11 intervening time, John Cockerham pled guilty, so there has  
12 been no Speedy Trial Act violation.

13 To the extent there may or may not be a case out  
14 there that suggests that one is entitled to a speedy  
15 sentencing, I don't think we've found that case. The cases  
16 cited by the defendant I don't think are on point in that  
17 regard; in fact, sets forth in this motion there is no right  
18 to speedy sentencing. But particularly in this case, it isn't  
19 the case that John Cockerham was being held and we all just  
20 forget about what was going on, he was specifically delayed  
21 sentencing so that his cooperation could mature as our  
22 investigation proceeded. And sentencing, Judge, you ordered a  
23 Presentence Report initially that -- and sentencing was set  
24 for September of 2008. At that point, the -- as Mr. Parks has  
25 I think accurately set forth in his defendant's exhibit a

1 timeline, but then it came upon in September of 2008, after  
2 the -- as the first sentencing date was approaching, the  
3 parties made a joint motion to continue sentencing for quite  
4 some time to allow Mr. Cockerham's cooperation to continue to  
5 mature. He accurately points out in some of his papers he has  
6 been debriefed on a number of occasions, he's provided  
7 information, he has helped interpret documents, and all of  
8 this is sort of par for the course for someone cooperating  
9 with the government that you don't sentence immediately, you  
10 keep everyone's incentives aligned so that -- some of the case  
11 law says the particular facts in this case warranted the  
12 delay, if there even has been a delay in sentencing.

13 At each subsequent time when sentence had to be  
14 reset, many based on Your Honor's retirement from San Antonio  
15 and move to Dallas, was based on Court's schedule. There was  
16 no -- The Government hasn't asked for sentencing to be reset  
17 except when joined by the Defense to allow Major Cockerham's  
18 cooperation to mature. So, at this point, the word that I can  
19 best come up with is "bewildering." The sentencing, to the  
20 extent that it was put off or postponed, was done Major  
21 Cockerham's benefit and now to sort of seek redress, based  
22 on -- having received the benefit of those postponements, it's  
23 bewildering.

24 THE COURT: Thank you very much. Yes, Mr. Parks.

25 MR. PARKS: Judge, if I can respond. With the

1 Court's indulgence, if you would allow me to do this by  
2 proffer, I would like to go ahead and just mark what I'm going  
3 to be talking about --

4 THE COURT: Okay.

5 MR. PARKS: -- for the purposes of this hearing, if  
6 that's okay, Your Honor?

7 THE COURT: Sure.

8 MR. PARKS: And the Court can look at it. Do you  
9 want me to do it in total, just paperclip them?

10 THE CLERK: Yeah.

11 MR. PARKS: And make it one exhibit?

12 (Handed to the Court.)

13 THE COURT: I think it won't be necessary to hear  
14 from Major Cockerham.

15 MR. PARKS: Okay.

16 THE COURT: But I'll allow you to do the proffer.

17 MR. PARKS: I think, Judge, that proffer would cover  
18 what he would testify to.

19 THE COURT: Okay.

20 MR. PARKS: I would -- It may seem like, and I guess  
21 it obviously is, Judge, a very late filing in this regard.  
22 There are, I guess, a couple of reasons why we had this  
23 window. We felt the need to file it I think before sentencing  
24 because I believe that's appropriate and it needs to be done  
25 then and that's why I need to get a ruling, I think, before

1 the sentencing starts.

2 THE COURT: Sure.

3 MR. PARKS: The second thing, it came in response to  
4 a motion filed, Document 175, on November 30th, 2009, by the  
5 Government. It was their Memorandum and Motion For Downward  
6 Departure.

7 In the Memorandum and Motion For Downward Departure,  
8 there's an issue. I believe is it a controverted issue, but I  
9 believe our position is a fairly simple one and it looks like  
10 the dates support our position. And this is how it works,  
11 Judge. If I can explain it clearly, I'm not sure that I can,  
12 but I'll do the best I can, is that we -- we believe that the  
13 case law that we provided will indicate in the brief, at least  
14 the case Casarez-Ramirez, I believe, which is a case out of  
15 Judge Quinn's court, is one in which the courts basically say,  
16 look, the Speedy Trial Act, although it is applicable to a  
17 trial, it does not really preclude raising the issue on  
18 sentencing, that an individual constitutionally by due process  
19 has the right to a speed sentence and his rights can be  
20 violated, under constitutional speedy trial rights and due  
21 process rights, if he is not sentenced for an inordinate  
22 period of time.

23 What drew our attention to this and the reason we  
24 would take an action of this substance is that when we  
25 expected to gain a tremendous benefit based upon the

1 memorandum filed by the Government, it was filed on November  
2 30th, and, frankly, surprised me quite a bit. I was very  
3 disturbed by it. And part of the reason I was disturbed is  
4 because I believed that -- you will see in there that  
5 information that should have benefited us inured to our  
6 detriment, and that's the harm analysis in these cases. What  
7 the cases basically say is if sentencing is extended for a  
8 protracted period and during that period there is evidence  
9 that has been acquired that the judge uses to sentence an  
10 individual more harshly, then he's been harmed, then  
11 essentially the -- I guess it's kind of like a quasi or pseudo  
12 Barker/Wingo factors, and that's the way I portrayed it in  
13 here, is that you've got the length of sentencing has been  
14 protracted, but that doesn't really bring the motion to  
15 dismiss for the fore front. What does is that there has been  
16 information that's been gleaned by the Government. In this  
17 case, information gleaned is what we believe is a result of  
18 your efforts and efforts to try to benefit yourself are  
19 actually used in the sentencing memorandum to harm you, to try  
20 to actually be a portion of the argument or a portion of facts  
21 supporting an argument to raise your guideline for life.

22 THE COURT: So then it's the effort to increase the  
23 guidelines four levels is -- is your -- sort of the basis of  
24 your harm argument?

25 MR. PARKS: Yes, sir. There's a -- there's an issue,

1 and it's in the Presentence Report, it's adequately covered  
2 there, that we've left open for argument today, and that is  
3 the high level position, decision-making authority by an  
4 individual. It's a four level increase. We've left it open.  
5 The Government has made their position. In the memorandum  
6 they describe it well.

7 But here's the basic issue, Judge, without me  
8 mentioning any names and the like -- and I've talked to the  
9 Government today, and they dispute this timeline. Actually  
10 how they gathered their information. I think that leaves me  
11 with some concern over a Castagar issue about this  
12 information, because as I look at the timeline, what we see  
13 from the outside, knowing that we're not privy to all the  
14 information they have, if we're just looking at documents,  
15 newspaper accounts, PACER recordation of filings, what we see  
16 is that Major Cockerham gave information on two individuals.  
17 They were listed in the report and I would ask the Court, so I  
18 don't have to say it out loud in open court, to just refer to  
19 that for a moment. Those two individuals have been subject to  
20 prosecution as a result of this. I don't think they have been  
21 sentenced yet.

22 That information and his relationship with them is  
23 now being used in a memorandum to increase. As part of the  
24 argument -- I admit it's not the sole substance of the  
25 argument, but it's a substantial portion of the argument to

1 try to convince you to raise his guidelines four levels. That  
2 occurred during a period of time between guilt and sentencing,  
3 as far as we can tell, from those dates.

4 We gave information regarding those individuals. We  
5 believed that it was acted upon. A substantial period of time  
6 later, they were arrested and entered pleas, and now our  
7 relationship with them is being described to the Court as one  
8 to try to I guess convince you that we were in a high level  
9 position and that our guidelines should be increased.

10 Now, the reason that bothers me, Judge, is because we  
11 would think the information we gave was supposed to benefit us  
12 and not hurt us. Our plea bargain agreement even said that --  
13 I believe it's at page 7 where we quote 1B1.A, that any  
14 information that we give to the prosecutors is not to be used  
15 against us; and we gave information in this regard.

16 I believe the Government's argument will be, well,  
17 this is a Castagar issue. We had information separate and  
18 apart, exogenous information, from what you gave us. That  
19 being true, we don't really know that. We filed a motion  
20 based on what we see and what we see in the timeline of events  
21 that occurred and also in the course of the debriefings. We  
22 believe with the information that we know, with the  
23 information that we gave, that we should be getting credit for  
24 that and not suffering a detriment. But as it fits in the  
25 speedy trial, that becomes the harm that we've suffered as a

1 result of the delay and that's essential to -- I mean, it's  
2 essentially analogous to I believe -- I'm not looking at the  
3 case right now, but I think it's Casarez-Ramirez or something,  
4 out of El Paso.

5 THE COURT: Yes. The -- Well, let me say, I do  
6 understand that the Government did mention the involvement of  
7 Mr. Cockerham and the other people that had -- now have found  
8 themselves indicted and I think have pled guilty, but the  
9 thing that really, as I contemplate the Government's motion  
10 for a four level enhancement under section 2C1.1(b)(3) which  
11 says if the offense involved any public official in a high  
12 level decision-making or sensitive position, then there should  
13 be a four level adjustment upward. The thing that was most, I  
14 guess, important to me was the fact that Mr. Cockerham had a  
15 position where, you know, he could by himself approve -- at  
16 least make initial approval of substantial multimillion  
17 dollars contracts, as the Government said, "With the stroke of  
18 a pen." This is on page 7 of the Government's motion,  
19 Government's -- the Memorandum of the Government in Aid of  
20 Sentencing and Motion For Downward Departure and under  
21 2C1.1(b)(3), the Government says on page 7, the first full  
22 paragraph, "More importantly" -- this is the last sentence of  
23 that paragraph -- "More importantly, by virtue of his  
24 multimillion dollar contracting warrant, defendant was able to  
25 bind the United States with the stroke of his pen," indeed

1 over -- "and indeed over the course of his deployment to  
2 Kuwait, the defendant obligated the United States to expend  
3 tens of millions of dollars." That -- I mean, anyone that has  
4 that authority, to me, certainly would seem to be a public  
5 official in a high level decision-making or sensitive  
6 position. I mean, I -- at least that -- I, of course, wanted  
7 to hear your argument about that, but that sentence is the one  
8 sentence that attracted me to the Government's argument, not  
9 to the fact that Mr. Cockerham and others had had some  
10 involvement here. And I didn't think there was any question  
11 that Major Cockerham was able to influence the awarding of  
12 these contracts and the continuation of these contracts in the  
13 amount of millions of dollars, and it may be there's some  
14 things I don't quite understand about that, but that seems, to  
15 me, to be an incredibly high level position, that you could  
16 influence the award of contracts that would be in the millions  
17 of dollars; and so that was the thing that really attracted me  
18 to the Government's argument --

19 MR. PARKS: Yes, sir.

20 THE COURT: -- frankly, not the other matters that  
21 were involved. Those people have to answer for what they've  
22 done and Major -- Mr. Cockerham has to answer for what he's  
23 done. So I don't know if that makes a difference here, but my  
24 focus was not on these other issues that you raise.

25 MR. PARKS: Yes, sir.

1 THE COURT: Also, I will tell you, if there was  
2 concern about delay in sentencing, I would have certainly  
3 addressed that immediately. I think our goal was to try to  
4 sentence everybody at the same time --

5 MR. PARKS: Yes, sir.

6 THE COURT: -- and I've tried to accommodate, for  
7 example, lawyers for Ms. Blake about that because I do know  
8 they were in a very high profile trial in Dallas on public  
9 corruption charges. But I -- And I understand you're saying,  
10 well, this -- now its come to my attention that because of  
11 what Mr. Cockerham did and what he told the Government that  
12 he's been prejudiced by it and, at least from my point of  
13 view, that's a part of my decision-making.

14 MR. PARKS: Judge, my position is very simple.  
15 First, I would like to say that you have always been  
16 accommodating on settings as best you can with your schedule  
17 and we've always appreciated that and that's the reputation  
18 you have as being a good and honorable judge in that regard.  
19 What happened here though is, like I say, it's a very simple  
20 issue with me as -- and I'll be frank with you, if this  
21 sentencing took place months from now, I wouldn't be  
22 complaining. If it took place a year from now, I probably  
23 wouldn't make a complaint. I mean, that's the realistic  
24 aspect of this, provided my client was being helped by the  
25 delay. But all of a sudden when I saw the sentencing

1 memorandum, I thought, "Boy, this is going to make me look  
2 like a snail oil salesman for filing this thing but, in  
3 reality, I can't walk away from it because all of a sudden  
4 during the course of the time between the plea and sentencing  
5 the Government has garnered information we believe from us and  
6 they're using it against him, and I thought that's the prong  
7 of the motion in this particular issue. So as long as we were  
8 receiving the benefit, that's the way I am, I wanted the  
9 benefit for my client. But as soon as he's going to suffer,  
10 it's a problem.

11 So I would like to say this, Your Honor. That if --  
12 I believe that if -- that is our primary focus of harm on this  
13 issue. If the Court is not going to consider the claim that  
14 he was training these other two individuals to accept bribes,  
15 if that's inconsequential to you and not a consideration of  
16 your decision here, then I think I lose on that harm argument.

17 Now, the other part of it though, when you start  
18 talking about the high level position, I'll concede something  
19 else that I -- that you are the fact finder and you may very  
20 well read what the Government has placed before you and accept  
21 those as the facts and if you do I lose on that issue also.

22 THE COURT: Well, if there is some argument that  
23 Mr. Cockerham was merely a functionary that without authority  
24 or influence of any kind, well, certainly, you know, I will  
25 listen to that. I'm not here to cut anybody off on that.

1 But, you know, I do think there's been an admission here that  
2 bribes totaling \$9.6 million were received and it is somewhat  
3 difficult to imagine that Mr. Cockerham could have created a  
4 conspiracy and accepted -- and received bribes of such a  
5 nature if he had no influence or authority to do anything, so  
6 that -- and that -- but as I say, I'm not cutting you off on  
7 that argument.

8 MR. PARKS: Thank you, Judge. Could I ask this, I  
9 guess just to keep from getting too redundant at this hearing:  
10 Would it be all right for me then to go into that issue right  
11 now?

12 THE COURT: It --

13 MR. PARKS: It would be the high level issue when we  
14 talk about the guidelines.

15 THE COURT: Yes.

16 MR. PARKS: But it pertains to these particular  
17 individuals and the issue that you've raised regarding the  
18 high level right now in my motion.

19 THE COURT: Right. What I will do is I will allow  
20 you to -- we will kind of combined the arguments regarding the  
21 four level upward departure that I've just been discussing  
22 with your motion for speedy trial and then I'll rule on them  
23 both before we begin the sentencing.

24 So I've certainly read the Government's arguments in  
25 favor of a four level upward adjustment under Section

1 2C1.1(b)(3) and now I will be glad to hear your opposition to  
2 that.

3 MR. PARKS: Judge, I guess, first, I think with the  
4 factual basis that you gave me, I couldn't argue with a  
5 conclusion that he was a high level official and I believe the  
6 Government will argue those facts. But I want to tell you the  
7 other side, the countervailing facts, that in some cases are  
8 inconsistent, some cases just downright diametric to what  
9 you're going to see in the Government's motion.

10 We filed a response to that motion and in the  
11 response we've kind of laid out our position, Your Honor, and  
12 we would challenge the public official and high level  
13 decision-making or sensitive position and what it takes is a  
14 description, I guess, basically, of what he did.

15 The first thing you talked about was the warrant  
16 authority. It's my understanding that he only had a \$5  
17 million warrant authority. I know what you're thinking,  
18 "Well, 5, 10, that's inconsequential, that's so much money."  
19 But the pertinent point of that is that warrant authority only  
20 existed for about three and-a-half months, from the end of  
21 October of 2004 until January of 05. And as best as I can  
22 tell, the Government can certainly correct me, I don't think  
23 there's any issue about any contracts during that period when  
24 he had the warrant authority that are in issue today. So  
25 during the pertinent, germane periods of time, he did not have

1 warrant authority of five million or ten million dollars.

2           The individuals who supervised his authority and  
3 made -- supervised his position and made those decisions were  
4 Major Davis, the director of contracting for Camp Arifjan, and  
5 Mr. Steve Shenks, and they awarded the contracts and had the  
6 supervising authority, we believe, during all the pertinent  
7 parts of the issues raised in this indictment.

8           I don't believe the Government will have a contract  
9 that pertains to any count in the indictment that  
10 Mr. Cockerham has signed. He didn't sign or approve of any of  
11 those contracts. He had no substantial influence over the  
12 contracts. In fact, I would like to take a minute with you  
13 and go through the bid process, because it's difficult for me  
14 to understand how complex it is. During the period -- during  
15 the period we're talking about, any authority he had, whether  
16 it be actual, ostensible, or apparent had been withdrawn and  
17 he had no authority to make decisions. Here's what he did,  
18 and I liken it somewhat to a clerk who has ministerial duty  
19 of filling in the blanks on a template; because it starts this  
20 way: The first step is the requesting entity, that would be  
21 the entity that needs the particular product, sends a request  
22 to Camp Arifjan. Secondly, a supervisor then assigns the  
23 request to a subordinate. A team of three contracting  
24 officers, called the Peer Review Team, all of who have to have  
25 warrant capacity, each of them is a warranted officer, then

1 review the bid. Major Cockerham is neither part of the Peer  
2 Review Team nor is he the supervisor nor is he the requesting  
3 entity. At that point, Judge, an attorney reviews the bid;  
4 and, once again, that is not Major Cockerham. Then the  
5 director of contracting reviews the bid after the attorney,  
6 corrections are then made regarding the details of the bid and  
7 specifications. At that point, Mr. Major Cockerham, or  
8 someone in his position at his level, would then take those  
9 changes that have been interlineated or delivered to him and  
10 insert those changes into the bid. That would be an  
11 administrative not a discretionary act. He is actually just  
12 carrying forward and putting the bid together because of the  
13 decisions made over his head. The bid is then sent back to  
14 the attorney. Then it's referred back to the director of  
15 contracting. A price analysis is then conducted. And the  
16 price analysis I thought was important to me, because what we  
17 are talking about here is bottled water. I don't imagine the  
18 specifications could be too great. We're not talking about  
19 the building of a nuclear power plant. I think, really, the  
20 substantial issue when you are talking about bottled water is  
21 price; price and the ability to deliver. So the price  
22 analysis is conducted. The bid then goes back through this  
23 process a second time. The requesting agency approves that  
24 the bid meets their specifications; the Peer Review Committee,  
25 comprised of the three warrant officers, reviews the bid

1 again; the director of contracting does a double check on the  
2 bid; the attorney then reviews it again a second time and  
3 approves the bid; the supervisor then approves the bid. None  
4 of those individuals was Major Cockerham. Major Cockerham  
5 now, or someone in his like stead or position, will then  
6 notify the requesting entity that their bid has been  
7 approved -- I'm sorry -- will notify the contractor that their  
8 bid has been approved and they will be the individuals on the  
9 contract or the company on the contract. Then G-4 Supply and  
10 the logistics office request a quantity of goods signifying a  
11 price, a quantity, and a delivery location. Again, Major  
12 Cockerham is not part of that process. The price, the  
13 quantity, and the delivery location are decided by the  
14 requesting entity, the base or commander officer that needs  
15 the good, then Major Cockerham would take a template and he  
16 would fill in by cutting and pasting the prices, the quantity,  
17 and the delivery location into the template.

18 Now, I'm not bringing those out to you to say that he  
19 didn't do wrong, we pled guilty and we are here to accept our  
20 responsibility. But when I look through those particular  
21 steps, I don't see them fitting into the high level decision  
22 making. The case that the Government actually talks about is  
23 an individual named Berlin and in that particular case, Judge,  
24 he was part of a committee that reviewed the documents, he had  
25 much more -- he had much more say in the documents, he had

1 knowledge that he could give to contractors who were bidding,  
2 he sat on the Peer Review Committee, and what the Court held  
3 was that because he sat on this Peer Review Committee, he had  
4 some control over what contracts were accepted.

5 In this case, the very pertinent point that the court  
6 used to find that he was -- the defendant in that case,  
7 Mr. Matskin, was a high level employee, is that particular  
8 issue of the Peer Review Committee. Mr. Cockerham did not sit  
9 on committee and he couldn't have because he was not a  
10 warranted officer at that time.

11 THE COURT: Well, why don't I then hear from the  
12 Government on that issue.

13 MR. PARKS: Yes, sir.

14 THE COURT: Mr. Pletcher, or one of your colleagues.  
15 The were -- one is that -- that I'm interested in, while  
16 Mr. Cockerham had warrant authority, nothing happened, there  
17 were no bribes taken or contracts that involved bribes; and  
18 then, second, really, his full participation thereafter in the  
19 contracts that involved bribes was administrative only and he  
20 was just filling in blanks. So if you could address those two  
21 issues.

22 MR. PLETCHER: I'll do my best, Your Honor. The  
23 combination of this issue with Mr. Park's motion to dismiss on  
24 Speedy Trial Act grounds I think combines two things that  
25 aren't -- shouldn't naturally go together. This issue is

1 wholly separate. There's no legal basis to dismiss the case.  
2 There is no harm here one way or the other. The issue here is  
3 what position did Major Cockerham hold; what were his  
4 responsibilities in that position; was he a high level  
5 decision-maker; was he in a sensitive position? As we have  
6 set forth in our papers, that enhancement is clearly in the  
7 disjunctive; that is, you can be either or both and in this  
8 case Major Cockerham was both in a high level decision-making  
9 position and also in a sensitive position, given the nature of  
10 his role.

11 What Mr. Parks just described as the contracting  
12 process, and this is not the contracting process as the  
13 Government understands what was happening in Kuwait and what  
14 Major Cockerham was doing, to the extent we look to the  
15 record, and if Your Honor is interested, Special Agent  
16 Greg Schilling is here today prepared to testify about this  
17 particular issue and it's also Major Cockerham's position, but  
18 I would also proffer to you what Agent Schilling would say and  
19 decide whether that's necessary.

20 I wanted to first hand up to Your Honor what's been  
21 marked as Government's Exhibit 1. This is a spreadsheet that  
22 we've put together -- and I'll give a copy to Mr. Parks -- of  
23 the contracts at issue.

24 THE COURT: And I will admit Exhibit 1 and I'll admit  
25 the exhibits that Mr. Parks has submitted.

1 MR. PLETCHER: Thank you, sir. The contracts at  
2 issue as part of this conspiracy, so these are the bottled  
3 water contracts and contracts that were let to other -- to  
4 other companies from whom Major Cockerham took bribes. I  
5 think that portion of Your Honor's question is undisputed.  
6 Mr. Cockerham has admitted in his plea to have received 9.6  
7 million dollars in bribe money in return for awarding these  
8 contracts. I think that's, Your Honor, intuitive pretty much  
9 describes that he was in a high level decision-making  
10 position. You have to do something to generate 9.6 million  
11 dollars in bribe money. That means that you have the  
12 authority to cause someone great benefit.

13 In this chase, each one of these water contracts was  
14 worth 10 million dollars and Major Cockerham is the person who  
15 identified the contractors who would be awarded these  
16 contracts; he filled out the paper work; he signed his portion  
17 of the contract; when there was an approval above him, he was  
18 the point person on water.

19 He was also then the person who made every single --  
20 not every single -- made the majority of bottled water calls  
21 that is to order the actual water and in Major Cockerham's --  
22 this is some of the evidence that he submitted that I want to  
23 draw to Your Honor's attention that's relevant to his high  
24 level decision-making decision. In his officer evaluation  
25 report for 2004 and 2005, his commander writes: "He's

1 responsible for supporting the commander and taking charge in  
2 his absence. Level 2 certified, contracting, holds a five  
3 million dollar warrant that is unlimited for modifications,  
4 task orders, change orders, and delivery orders. He did have  
5 a 10 million dollars warrant later on as part of that.

6 THE COURT: Let me ask: The argument Mr. Parks says,  
7 no matter what warrant he had, he never had any warrant when  
8 the contracts at issue were let or extended or whatever.

9 MR. PLETCHER: Based on Agent Schilling's review of  
10 the electronic computer system that they keep at Camp Arifjan,  
11 I'm not sure of the exact dates, but at least partially in the  
12 relevant time period Major Cockerham completed 354 contract  
13 actions as a contracting officer and over 450 as either the  
14 creator or contracting officer representative in -- again,  
15 this is something that Major Cockerham submitted in support in  
16 that packet of letters that he was given, his meritorious  
17 service medal states: "His outstanding leadership and efforts  
18 were instrumental in providing exceptional support for  
19 numerous contract actions across U.S. Cencom's area of  
20 responsibility valued at over 300 million dollars. Major  
21 Cockerham's actions reflect great credit upon him, his unit,  
22 and the United States Army. So these are evidence that Major  
23 Cockerham was directly impacting the contracting actions at  
24 Camp Arifjan, Kuwait, and that his -- and that his ability to  
25 do that was consistent throughout the time period and he

1 generated 9.6 million dollars because of it.

2 I don't want the Court to get fixated on a warrant  
3 issue because he had a 5 million dollars warrant, it may or  
4 may not have been held in abeyance at one point or given back.  
5 He always had the power to make calls, to force the Government  
6 to take delivery of bottled water. There are any number of  
7 contract documents that we were provided in discovery with  
8 Major Cockerham's name on them, so he always had that ability  
9 and he was always participating and as major and you can see  
10 what his reviews say about him as someone who was prominent in  
11 contract levels.

12 I think that speaks to his level decision making  
13 ability, but he was also in a sensitive position. The  
14 enhancement is disjunctive, but it's an independent basis on  
15 which Your Honor can apply the basis. He was, like the  
16 engineer in Matskin, privy to confidential information,  
17 procurement sensitive information that can be made even more  
18 sensitive by the fact that it's taking place in Kuwait for  
19 goods and services that are destined for our troops in Iraq.  
20 And there's nothing more sensitive, in my opinion, than  
21 bottled water going to troops who are fighting a war in a  
22 desert. And to the extent this conduct involves self-  
23 enrichment on the basis of bottled water going up to the  
24 desert, that I think really just speaks how sensitive the  
25 position was.

1           He procured other things and the bribes were paid on  
2 other things as well: Sewage removal; bunkbeds; gravel;  
3 tents; things called "camp packages." But, really, the  
4 gravamen of the illegal conduct here is exhibited on  
5 Government's Exhibit 1 and each one of these companies had at  
6 least one 10 million dollar bottled water contract for which  
7 the Government ultimately paid out \$110,816,938.

8           And those things, and we've cited all the case law  
9 from all the prevailing circuits that's relevant to this  
10 issue, but I do want to call Your Honor's attention to two  
11 other cases that don't have reported decisions. In Austin,  
12 Major John Revard pled guilty to almost identical conduct. He  
13 was a major in, I believe, the United States Army. He was a  
14 contracting person and was engaged the same conduct. I  
15 believe his total take was in the hundreds of thousands of  
16 dollars for the -- in return for the award of contracts.  
17 Major Revard's sentence was enhanced by four levels because he  
18 was in a high level decision-making position. Likewise, Major  
19 Teresa Baker in the Western District of Oklahoma was similarly  
20 situated. She was a contracting officer, almost exactly  
21 situated, with a 10 million dollar warrant who served at camp  
22 Victory in Iraq and she was in charge of awarding contracts  
23 for gravel road construction, and in her case the issue was  
24 similarly left disputed and the judge there enhanced her  
25 sentence also by four levels, finding that she was both a high

1 level decision-maker by virtue of her position of a major, a  
2 general officer who commands the respect and -- of the -- and  
3 obedience of all the junior officers and has been promoted for  
4 her wisdom and experience, but also that she was in a  
5 sensitive position based on being deployed, forward deployed,  
6 to Iraq and procuring goods and services for our men and women  
7 in uniform. So I think those two cases go toward the  
8 uniformity of the application of this enhancement and, if  
9 anything, Major Cockerham was more important to the office in  
10 Kuwait, he had more responsibility, he awarded more contracts,  
11 and ultimately the proof is in the pudding because he was able  
12 to receive more money in bribes.

13 THE COURT: Thank you very much. I will give you  
14 about a two minute response.

15 MR. PARKS: Your Honor, I wasn't arguing the whole  
16 issue, I was just trying to address the issue that the Court  
17 brought up. What seemed important to you was the 10 million  
18 dollar contracting authority warrant, that he was warranted  
19 for that contract, and so I addressed it --

20 THE COURT: Well, and I appreciate that. The  
21 Government has extended that even if there is no warrant  
22 authority, say I assume there is none --

23 MR. PARKS: Right.

24 THE COURT: -- certainly, Major Cockerham at the time  
25 was in a very sensitive position, he knew what was going on in

1 regard to the contracting issues, he had information about the  
2 contracting issues, he could certainly share that information  
3 with those who might be interested in bribes, and it is -- the  
4 reason I had a hard time getting my mind around the opposition  
5 to this argument, with all due respect --

6 MR. PARKS: Yes, sir.

7 THE COURT: -- you're an outstanding lawyer,  
8 Mr. Parks, is if he had absolutely no authority to do  
9 anything, why did anybody pay him a bribe? It sounds like to  
10 me it was serendipity that he was able to tell these people,  
11 "Don't worry, you're going to get the contract, and if you do,  
12 you're going to bribe me on it," and miraculously they got the  
13 contract but he had nothing to do with the contract and the  
14 awarding of the contract, and so he was either a very lucky  
15 person or, you know, something was just strange about how  
16 these contracts were ordered and issued when he had nothing to  
17 do with them. He was at least in a sensitive position. If  
18 not in a high level decision-making position, he was at least  
19 in a sensitive position. And, again, that doesn't have  
20 anything to do with the issues that were raised about these  
21 other people and so forth, but if there's no -- if he had --  
22 just assume he had no warrant authority --

23 MR. PARKS: Right.

24 THE COURT: -- and just assume he was just filling in  
25 the blanks --

1 MR. PARKS: Yes, sir.

2 THE COURT: -- still, he's a major in the United  
3 States Army, which is a very important position, field grade  
4 officer -- I'll take that back. But he was someone in a very  
5 high position and in a very sensitive position and knew things  
6 that had to be of benefit to people who wanted contracts and  
7 were willing to bribe for contracts. And I don't know how, as  
8 good a lawyer has you are, I don't know how you can argue  
9 otherwise on that.

10 MR. PARKS: I'm fixing to do it though, Judge.

11 THE COURT: Okay. I'll give you a few minutes.

12 MR. PARKS: And, I will tell you, it was a very  
13 pointed question when you said, "Well, Mr. Parks, why would  
14 anybody bribe him? Why would they give him the money?" And  
15 the key is: You talked about serendipity, and I will tell you  
16 what I'm about to tell you, is it was almost metaphysical in  
17 nature. It wasn't serendipitous; it was an act of God. It  
18 happened by these steps. It started first with Major  
19 Cockerham coming back to Camp Arifjan and finding out that  
20 everybody was blackballed. Almost everybody was blackballed.  
21 Colonel Hess and Colonel Pershing were involved in corruption  
22 at that time. People couldn't do business with the United  
23 States Government. As a result of Major Cockerham's efforts  
24 and his concern over people not being able to do business with  
25 the Government, he began an investigation and he began to work

1 with other individuals to try to find out why so many people  
2 were blackballed. Over the course of time, Major Cockerham  
3 asserts, that the bid process started to open up, it started  
4 to become fair, that other individuals looking into what was  
5 happening there, found some improprieties and decided at that  
6 point that the bid process should be fair, that it should be  
7 opened up, that would make fairer prices, it would stop the  
8 graft and corruption. And here's what I believe the  
9 Government will agree to, because I've heard them say it, is  
10 that once that happened, we start down, he was approached over  
11 a dozen times and it took him a lot of cajoling and convincing  
12 to get him involved. And here was the rational. It was not a  
13 we'll give you money to give us the contract, we'll give you  
14 money to tell us the bids. The way this happened is once the  
15 bids opened up, there were people that came and approached  
16 him, because remember I told you before, Judge, on the process  
17 Major Cockerham, or someone in his like stead, would then call  
18 the company to tell them that they had gotten the bid. As  
19 much as he told those individuals, "I didn't have anything to  
20 do with it. You got the bid because the process has been  
21 opened up and you are now allowed to do business with the  
22 United States Government." As much as he said that, they  
23 said, "But our god requires that we bless you. You have  
24 changed our lives. You have given us a chance to do business.  
25 You have stopped people who were nefarious from cutting us

1 off. It is imperative that we bless you." And this was said  
2 over and over to him. And I've even heard the Government say,  
3 "We know that they came to him at least twelve times and each  
4 time he ejected it and said, "No, I won't accept your  
5 blessing. I really didn't have anything to do with it." But  
6 as they cajoled him and continued to come, they even -- they  
7 even went to the point talking to him about our own President  
8 and said, "Listen, you don't understand. There's nothing  
9 wrong with this. We can give you money for your family to do  
10 business. In fact, we want to do business in America. We  
11 love the way Americans do business. We know that you all have  
12 plenty of money. We'd like to do business on in the mainland  
13 U. S. A." He would instructed them, "Look, you're going to  
14 have a very difficult time, it's very competitive there, there  
15 are different rules," and they would say, "Get us involved  
16 with your sister, your wife, let us find somebody who can help  
17 us do business in America and we can give them the money."

18 He resisted for a long time and then there came that  
19 telling moment when they said, "Gosh, do you realize that when  
20 George H. W. Bush was the director of the CIA, the Saudis did a  
21 lot of business with George W. Bush. There's nothing wrong  
22 with a relative doing business with someone just because  
23 you're in a position of authority." They kept using examples  
24 like that, and he eventually succumbed and he committed the  
25 crimes. It's not a defense. He committed the crimes and he

1     pled guilty to the crimes. But the money, as he saw it, was  
2     actually money that was profit that would have been made. The  
3     prices were already set on, let's say as an example, bottled  
4     water. The contract was already done on bottled water. He  
5     didn't make the calls.

6             Now, the Government will argue this point, that he  
7     changed calls. But the point is, the calls came from the G-4.  
8     The calls came from individuals saying, "Look, we need so much  
9     bottled water to go to this base." He would then fill in the  
10    blanks on that particular document. But because these  
11    companies believed that he was the one making the decisions,  
12    he was their point man, he was the bell winner for the United  
13    States Government, they would come back and in their words  
14    bless him for the business that they got --

15            THE COURT: Well --

16            MR. PARKS: -- and in our words, it's a bribe, it's a  
17    crime, Your Honor, but it happened that way. It happened  
18    almost in the reverse of our normal thought process of bribes.

19            THE COURT: I understand. I've still see him, if not  
20    in a high level decision-making position, certainly in a  
21    sensitive position.

22            You know, I don't think it makes any difference what  
23    words you use, a bribe is a bribe and, of course, I mean we --  
24    we know we're fighting two wars, we're fighting a war in  
25    Afghanistan where you just have to read the papers to know

1 that one of the great concerns in that war is the corruption  
2 of high level officials in Afghanistan and, you know, people  
3 just need to tell people, "No, that's not the way we go  
4 business. We don't take these kind of blessings." We just  
5 don't do that; this is the United States of America. And so I  
6 understand your argument and I appreciate it, certainly well  
7 stated by a great lawyer, but your objections to the  
8 enhancement are overruled and I will apply the four level  
9 enhancement.

10 Do you have any other objections to the Presentence  
11 Investigation Report?

12 MR. PARKS: Your Honor, before -- I'm sorry. I don't  
13 want to miss my ruling on the motion to dismiss on speedy  
14 trial --

15 THE COURT: And I will overrule your motion to  
16 dismiss for speedy trial. Thank you. And I will overrule it  
17 because my decisions have nothing to do with the issues of  
18 other persons and other involvement, it's with what I  
19 understand happened here and how it happened and I think even  
20 within your good argument there is an indication that  
21 Mr. Cockerham did hold a sensitive position, so I will  
22 overrule the motion to dismiss for speedy trial reasons to  
23 find that there has been no prejudice to Mr. Cockerham.

24 Thank you for reminding me of that. Do you have any  
25 other objections?

1 MR. PARKS: Judge, I do. Let me get to it quickly.

2 THE COURT: I do show that you did not agree to  
3 Mr. Cockerham having an aggravating role in the instant  
4 offense.

5 MR. PARKS: Yes, sir. Your Honor, and that's a joint  
6 agreement. We agreed and the prosecutor agreed at the time --  
7 On page 4 of the plea agreement, it indicates that we agree  
8 that there will be no other adjustment to the guideline level  
9 other than those that are deemed appropriate in the plea  
10 sentence. I talked to them even before the sentencing and  
11 asked and they are still willing to abide by that. We both  
12 recommend to the Court that, based on the circumstances, he  
13 should not gain an upward two levels for his role in the  
14 offense.

15 THE COURT: The Government agrees to that?

16 MR. PLETCHER: Yes, Your Honor. The plea agreement  
17 itself, or clauses of the plea agreement, sets forth our  
18 understanding of the guidelines.

19 THE COURT: Then the Court will grant the objection  
20 to the adjustment for role in the offense on paragraph 21 and  
21 there will not be a two level enhancement.

22 MR. PARKS: Thank you, Judge.

23 THE COURT: Now, if I could, Ms. Mendoza, let's make  
24 sure then we know what -- where we are with the enhancements  
25 and what the guideline ranges are.

1           PROBATION OFFICER: Your Honor, without role, the  
2 total offense level is 41.

3           THE COURT: Okay.

4           PROBATION OFFICER: The Criminal History Category  
5 remains the same at I.

6           THE COURT: Okay. Let me ask, do both sides agree  
7 with that calculation? 41-1?

8           MR. PLETCHER: Yes, sir. 41 before any adjustment  
9 for substantial assistance.

10          THE COURT: Okay. And I think you do, too. I know  
11 you don't agree with my ruling, Mr. Parks, but you agree it's  
12 now 41 and I?

13          MR. PARKS: To that calculation, yes, sir.

14          THE COURT: Now, under count one, we would still have  
15 a 60 month --

16          PROBATION OFFICER: That's correct, Your Honor.

17          THE COURT: -- sentence. Under count fifteen, we  
18 would still have a 180 month sentence.

19          PROBATION OFFICER: That's correct, Your Honor.

20          THE COURT: And then under count five, what would it  
21 be?

22          PROBATION OFFICER: It would still remain at 240,  
23 Your Honor.

24          THE COURT: It would still remain at 240.

25          PROBATION OFFICER: Yes, sir.

1 THE COURT: Okay. And supervised release for counts  
2 one, four, and five would be two to three years. Correct?

3 PROBATION OFFICER: Remains the same, yes.

4 THE COURT: And the fine range for count one would  
5 be --

6 PROBATION OFFICER: Your Honor, they would all remain  
7 the same.

8 THE COURT: Is that 25,000 to 28,300?

9 PROBATION OFFICER: 800. 28 --

10 THE COURT: 28,800; is that right?

11 PROBATION OFFICER: 28,800,000.

12 THE COURT: The fine range --

13 PROBATION OFFICER: Three times the amount of the  
14 loss, Your Honor.

15 THE COURT: Okay. Give me what it would be then. It  
16 would be 28,800,000.

17 PROBATION OFFICER: That's right.

18 THE COURT: Okay. Restitution is at 9.6 million  
19 dollars. And the special assessment is \$300.

20 PROBATION OFFICER: That's correct, Your Honor.

21 THE COURT: Okay. Now, Mr. Parks -- I'm sorry,  
22 Ms. Mendoza, anything else?

23 PROBATION OFFICER: No, Your Honor.

24 THE COURT: Before -- Let me let the Government make  
25 a statement and then I'll hear from you.

1 MR. PARKS: Yes, sir.

2 THE COURT: And I have read all the submissions.  
3 Mr. Cockerham made many submissions and I have read all those  
4 and I appreciate everything that people have written to me  
5 about this matter.

6 Yes, Mr. Pletcher.

7 MR. PLETCHER: Thank you, Your Honor. From July  
8 30th, 2004, to December of 2005, Major Cockerham engaged in,  
9 at least what has been reported, as the largest Department of  
10 Defense corruption scheme in history. I have no way of  
11 independently verifying that, but it's 9.6 million dollars  
12 that Major Cockerham, we believe, received, that is either him  
13 or his designees pledged to have received; it could be up to  
14 15 million dollars or more.

15 There's certainly little I can say that does quite as  
16 much to describe this case as what I'm going to mark as  
17 Government's Exhibit 2. This is Major -- a ledger that Major  
18 Cockerham made accounting for the money. In the left-hand  
19 column, if you sort of split it two thirds across the width of  
20 the page, you have the "have" column and then on the  
21 right-hand side you have the "anticipated" column. In each  
22 one of those columns down the left-hand side, that's money  
23 that Major Cockerham, through his designees, actually received  
24 for engaging in this bribery conduct. Government's Exhibit 1,  
25 which I submitted earlier, is the quid pro quo. That's what

1 the contractors got: \$110,983,000; or something like that.  
2 And he, engaging in this conduct, was not bestowed blessings.  
3 He was not bestowed religious tenants that our God requires.  
4 Of these contractors, two are American citizens; one is  
5 Indian; several -- one is Saudi; one is Lebanese. These are  
6 just bribes. These are bribes paid in return for contracting  
7 actions called on bottled water, on sewage, on beds, on  
8 bunkbeds, other things our soldiers needed in Kuwait and Iraq.  
9 And whatever the motivations being that the letters that  
10 John Cockerham's family and minister submitted, I think the  
11 second page of that Government's Exhibit 2 sort of sets it all  
12 out, which is of the total he was going to receive 15 million  
13 dollars, ten percent, 1.5 million below the line was  
14 designated to build a church.

15 In doing so, in perpetrating this, Major Cockerham  
16 was smart. He kept all the money in cash. It's very hard for  
17 the Government to trace money in cash. There are no wire  
18 transfers, there's no bank receipts, there's no means by which  
19 to trace the flow of funds, absent ledgers that people make.

20 What I'm going to mark as Government's Exhibit 3 is a  
21 ledger that his sister Carolyn Blake made of the money she  
22 received and, again, all this money received in cash, three  
23 million dollars and change, and on the second page you can see  
24 that Ms. Blake -- and Mr. Evans will talk more about  
25 Ms. Blake -- but Ms. Blake had designated for herself ten

1 percent that she was just going to keep has a fee.

2 And what's particular revealing about this  
3 spreadsheet is that it's all written in code. For the first  
4 couple of days after we uncovered this ledger, we were  
5 scouring around for who are Sharon Miller and Felicia Hamilton  
6 and Julia Lanshing, until it finally dawned on us these are  
7 just code words for male contractors in Kuwait, that these  
8 people represent companies who had paid this money to  
9 Carolyn Blake on John Cockerham's behalf.

10 But the fact that it's written in code and that there  
11 are other aspects of code that Your Honor has heard about in  
12 this case underscore, I think, the consciousness of guilt, the  
13 secrecy, the attempt to hide what was going on and ultimately  
14 it just became too hard to hide 9.6 million dollars; but not  
15 for a lack of trying.

16 With how many ever companies, eight separate  
17 companies on the ledger, and 9.6 million dollars in cash  
18 delivered to four or five designees in return for 110 million  
19 dollars in contracting actions, Major Cockerham and his -- his  
20 family and his designees needed a way to -- and this is what's  
21 captured in count five -- launder the money, to basically  
22 conceal and disguise its ownership, its location, it's source,  
23 to squirrel it away so that it would be available.

24 And we've put together the demonstrative in what I'm  
25 going to mark has Government's Exhibit 4, and these pictures

1 are certainly more helpful for me than any words I could say.  
2 This is a map of the world and the various locations where  
3 either Major Cockerham or his designees delivered money, kept  
4 money, or investigated doing the same; and, you know, from  
5 money in Dubai, which was in safe deposit boxes; money in  
6 Kuwait; money that was designated for someone to take to  
7 Jordan -- first to Israel and then to Jordan -- where it  
8 remains in a safe deposit box; a trip Major Cockerham and his  
9 friend took to the Caribbean where they investigated offshore  
10 accounts in Barbados, opened an account at the First Caribbean  
11 Bank at one point; money that was sent by a third, fourth,  
12 fifth designee from Kuwait into an account in Nevada where  
13 that person then visited Major Cockerham and his wife at their  
14 home in San Antonio and delivered an ATM card so that he would  
15 be able to remove the money unknown to anyone else, an ATM  
16 card that under someone else's name with an account in Nevada;  
17 money that was given to an acquaintance that was ultimately  
18 transferred to an account in UBS in Virginia; money that was  
19 given to another relative under the pretense of opening a  
20 company in Louisiana. This is an enormous undertaking to  
21 launder 9.6 million dollars, all while ostensibly performing  
22 one's duty as a major in United States military servicing our  
23 men and women in uniform in Kuwait. The United States,  
24 through protracted efforts, Your Honor, is aware of this  
25 investigation and its scope has, if you are interested, I

1 certainly was --

2 THE COURT: How much longer do you have to go?

3 MR. PLETCHER: Just a few minutes -- of what 1.7  
4 million dollars looks like when it's recovered from a safe  
5 deposit box at one of these locations around the world. And  
6 that is not a blessing bestowed upon someone for a favorable  
7 activity. That is just cash in a paper bag delivered to a  
8 designee and squirreled away for a different time and  
9 different place with the hopes of we'll be able to come back  
10 and get it.

11 So you take those two things together and eventually  
12 the scheme unraveled and this case began and then Major  
13 Cockerham, after he had initially begun -- after his house was  
14 searched, he and other people that he enlisted, some which  
15 we'll hear more about today, engaged in a pattern of  
16 obstruction of justice that lasted seven months in the first  
17 part of 2007. And during that time, instead of coming forth  
18 with the information that he initially had, he began to create  
19 cover stories, submit false documents, things to his  
20 co-conspirators in Kuwait to basically cleans the situation or  
21 attempt to do so. Millions of dollars got returned to the  
22 people who it was paid by at that time to hold that money has  
23 been unable to be recovered and that pattern and practice  
24 lasted until Major Cockerham was arrested in July of 2007.  
25 That was just as immense an undertaking. Faking mail

1 accounts; third, fourth parties going over to Kuwait to  
2 perform certain activities; people meeting surreptitiously in  
3 bathrooms, in banks, doing other things with additional safe  
4 deposit boxes, moving money around; and that forms the basis  
5 of the obstruction of justice enhancement. But it's those  
6 three pillars of conduct that we're here to talk about, that  
7 we're here to sentence on today, an enormous bribery scheme  
8 followed by an enormous undertaking to launder the money, and  
9 then when push-came-to-shove, an enormous pattern of  
10 obstruction of justice in an attempt to throw the Government  
11 and its investigators off the trail.

12           The pictures I think all do a better job than any  
13 words I can say and Your Honor has already -- has already  
14 spoken some about the importance of this, but the -- the facts  
15 of this case have reverberated throughout the Middle East,  
16 throughout our war effort, throughout the morale of people  
17 serving both in Kuwait, Iraq and Afghanistan. This is an  
18 enormous failure of integrity. John Cockerham probably isn't  
19 a person who has lived his life as a failure of integrity; I  
20 think the opposite. His personal circumstances are  
21 impressive. He achieved what he achieved as one of fifteen or  
22 seventeen children from Louisiana and joined the U.S.  
23 military. By all indications and some of the things before  
24 Your Honor, he served with honor and integrity as company  
25 commander, did several tours of duty in Kuwait before moving

1 into contracting command. This was, no doubt, an aberration  
2 of sorts, but it wasn't an aberration of limited duration and  
3 it wasn't an aberration of limited scope. It was an enormous,  
4 enormous failure of integrity. It's a crime of the proportion  
5 that we have not yet seen again in the cases that we've been  
6 investigating, prosecuting out of any feeder of activity.

7 Just turn briefly to the factors of 3553, because  
8 that is now post-Booker, Your Honor, statutory rubric. We've  
9 talked about the nature and circumstances of the offense, the  
10 nature and circumstances and offense characteristics of Major  
11 Cockerham as well, but the guideline sentence here is a  
12 sentence that takes into account all of these factors. There  
13 is not room here to depart downward or depart upward based on  
14 -- based on anything in the record. Probation has found no  
15 basis for departure or variance and the United States  
16 wholeheartedly agrees. We look at this case and it's a case  
17 that is ripe for specific deterrents, but it's also a case  
18 that is a message about general deterrents. A major in the  
19 Army with this type of responsibility is something who all of  
20 us place a great deal of trust in and it's not just one major  
21 in Kuwait, it's all majors in all of the Army who are  
22 listening to this case right now and the contracting command,  
23 the auditors, the investigators for the Army, everyone is  
24 watching this case intently because of the message that it  
25 will send to what we require of the United States, not this

1 moral, relativistic concept that Mr. Parks has asked to us  
2 engage upon, that it's okay in their culture, it's okay over  
3 there. We are the people who have brought American  
4 involvement to Kuwait, to Iraq, to Afghanistan, and if we are  
5 to be successful in combatting corruption within the Afghan  
6 government, we must first be accountable to ourselves and to  
7 what we do, regardless of where it takes place. I guess all  
8 of that put into 3553, the United States, Your Honor,  
9 respectfully suggests the appropriate sentence is one within  
10 offense level 37. The United States has made a four level  
11 motion for downward departure based on Major Cockerham's  
12 substantial assistance with ongoing investigations. Far from  
13 being no reward, as Mr. Parks has couched it, my sort of rough  
14 sketch is that that's a reward, that's an acknowledgement to  
15 this cooperation to the tune of about 120 months off where he  
16 would have been as a level 41. So that -- that is a  
17 substantial benefit that the United States is recommending to  
18 Your Honor and, given that, we believe we -- we strongly  
19 believe that a sentence within offense level 37 is  
20 appropriate. That would include a term of incarceration, I  
21 think, between 210 and 262 months with, obviously, credit for  
22 the time Major Cockerham has served.

23 The fine, if Your Honor finds that there's an ability  
24 to pay a fine, and I'm not sure about Probation's finding in  
25 that regard --

1 THE COURT: I'm not going to issue a fine. The  
2 restitution amount is substantial.

3 MR. PLETCHER: Is 9.6 million dollars. Exactly. And  
4 there is a mandatory special assessment of \$300. I would also  
5 just note that there is a forfeiture order which needs to be  
6 made part of the final judgment in the amount of 9.6 million  
7 dollars for which any money recovered be credited to Major  
8 Cockerham, I believe, as an offset.

9 THE COURT: Right. And do you have a copy of that  
10 order available for me to sign or is it just your wish that it  
11 be put in the judgment?

12 MR. PLETCHER: Yes, sir.

13 THE COURT: Okay.

14 MR. PLETCHER: It needs to statutorily be part of the  
15 final judgment of criminal conviction.

16 THE COURT: I will put in it the judgment.

17 MR. PLETCHER: Before I relinquish the podium, let me  
18 maybe sure I haven't forgotten anything.

19 THE COURT: Okay. I think you've been pretty  
20 comprehensive.

21 MR. PLETCHER: Mr. Evans points out that I have  
22 forgotten something. Imposition of sentence, the United  
23 States respectfully removes to dismiss counts two, three, and  
24 six.

25 THE COURT: I understand. And I understand that the

1 Government's recommendation under its departure motion is a  
2 sentence of 210 months?

3 MR. PLETCHER: It's a sentence within offense level  
4 37. We're not making a specific recommendation as to -- Well,  
5 yes. Yes, Your Honor, 210 months. The guideline range is 210  
6 to 262.

7 THE COURT: Right. Okay. Thank you very much.  
8 Okay. Mr. Parks, if you and Mr. Cockerham will approach the  
9 podium.

10 MR. PARKS: We will, Judge, thank you.

11 THE COURT: I think you can -- Yes, sir. I'll hear  
12 from you and then I'll hear from Mr. Cockerham.

13 MR. PARKS: Judge, I'll -- We've, I guess, been up  
14 before this podium several times, Your Honor, in your court,  
15 and it seems that I'm up against outstanding prosecutors. I  
16 know that from my work with them. I respect them a lot and I  
17 respect what they do. And once again, I almost feel my words  
18 and my position is just being stuffed down my throat, and I  
19 think Mr. Pletcher did an excellent job of that. But let me  
20 take it just one step further and tell you I'm not as naive as  
21 it may sound. It's not that I believe or that I'm trying to  
22 present to the Court that what happened was some kind of  
23 religious experience or that what happened was something that  
24 individuals from whatever religion, whatever tribe, whatever  
25 country would believe that this kind of a blessing was not

1 inappropriate. As a matter of fact, Mr. Cockerham was told at  
2 times that his country would perceive this as a bribe and they  
3 would perceive it as a crime.

4 It's my position, Judge, that I want you to know that  
5 I believe not that this was legitimate but that these  
6 individuals prayed upon his religiosity, they prayed upon his  
7 belief in God, they played upon his Christianity to use that  
8 to cajole him into this activity.

9 THE COURT: Well, I appreciate that. I do want you  
10 to know this dose not resonate with me.

11 MR. PARKS: Okay.

12 THE COURT: It does not resonate about me that  
13 because people of another faith, Muslim or whatever, are  
14 telling you that this is not a bribe in our culture, in our  
15 religion, this is a blessing, and so you can take it and it's  
16 okay, it's okay under our religion and your religion, that  
17 does not have any meaning for me. I -- I don't know how in  
18 the world you rationalize this in terms of religion.

19 You know, I know something about religion and if  
20 religion teaches us anything, it is that we should walk in the  
21 paths of righteousness and it's not righteous to take money  
22 that you haven't earned that is not yours, it's just not  
23 righteous. And so to come to me today and maybe -- maybe  
24 Major Cockerham is going to say this and say my religion made  
25 me do it, my faith made me do it, I -- it doesn't work. I

1 mean, and, in fact, it -- it makes me think that Major  
2 Cockerham is trying to minimize what has happened here, he is  
3 trying to legitimize what has happened, he is trying to  
4 rationalize what has happened, that his acceptance of  
5 responsibility only goes so far. What happened here is an  
6 outrage. It is an outrage. We have our troops in the field  
7 dying in the deserts of the Middle East. You know, can you  
8 only imagine what kind of thirst they have as they go about  
9 their duties, and Mr. Cockerham's taking 9.6 million dollars  
10 in bribes.

11 Now, please. You have to do the best you can with  
12 this, but the approach being made here today is an approach  
13 that is very unseemly. Using religion as an excuse, it is  
14 very unseemly. Religion can't stand for this. It can't mean  
15 this. Religion means righteousness; and to come in and say,  
16 "Well, I'm a righteous, religious man, so it's okay for me to  
17 take 9.6 million dollars in bribes," it just can't fly. And  
18 if that's your argument, keep it short, because I'm ready to  
19 sentence. Keep it short, if that's -- if that's the argument  
20 being made here, keep it short.

21 MR. PARKS: Judge, it's -- it's certainly not the  
22 argument being made. I think I've -- I've misspoken again and  
23 I've said it in the wrong context, and I apologize.

24 THE COURT: Well, some of this comes through in the  
25 papers that Mr. Cockerham sent me.

1 MR. PARKS: Yes, sir.

2 THE COURT: Some of it comes through, and I realize  
3 that, you know, you're -- you're a wonderful lawyer, but --  
4 and you're trying to do the best you can, but what happened  
5 here was where a man, perhaps a good man in many ways, but,  
6 Mr. Cockerham, you failed miserably in your duty, in your duty  
7 to our country, in your duty to our Army, in your duty to our  
8 troops. You failed miserably in this defining moment in your  
9 life. And I just don't see that we can whitewash that or  
10 excuse it or minimize it.

11 So I'm glad to hear -- I do know that Mr. Cockerham's  
12 had, in many ways, an admirable life, came from very difficult  
13 and poor circumstances, worked hard, made a place for himself  
14 in the Army, got his degrees in education, has had a good  
15 relationship with his wife and his family and with his church.  
16 I know all those things. But at a time when it counted most  
17 of all, Mr. Cockerham failed miserably, and that's why we're  
18 looking at a very substantial sentence here.

19 MR. PARKS: I guess, Judge, if I could, I would like  
20 to withdraw that argument. I -- I don't want to do my client  
21 any harm, but I don't --

22 THE COURT: There's nothing -- You're not doing your  
23 client -- Let me tell you, you are a good lawyer, but can we  
24 take another approach?

25 MR. PARKS: Yes, sir.

1 THE COURT: It would perhaps be more helpful to me.

2 MR. PARKS: And, Your Honor, if I could, if -- just  
3 so you'll understand my position, if I believe that was the  
4 defense and Mr. Cockerham believed it was a defense to his  
5 activity, he would have talked me into going to trial. We  
6 don't believe it's a defense. We've don't believe any aspect  
7 of religion is even a factor in this. I -- all I'm doing is  
8 really going through the history of what happened and I  
9 apologize to you. I just -- I didn't want Mr. Pletcher's  
10 argument that I was making the claim that it was religion and  
11 religion caused this to be one that the Court accepted. I  
12 don't. I believe that -- that the people who approached him  
13 approached him on those terms and I don't believe that they  
14 were honorable people. I don't trust in that, either. I  
15 believe that both sides of each of these transactions are  
16 dishonorable malefactors and that's why we stand before you  
17 today. But I did want to answer your question of how this  
18 came about without his contracting and warranting authority  
19 and go through the timeline of what happened to him.

20 I'll do think, and it may not mean any difference to  
21 you, Your Honor, but to me it did mean a little difference to  
22 me when I found out that he'd been approached a dozen times  
23 before he succumbed. He succumbed, he's guilty, and that's  
24 why we're here today. But I think part of his resolve and  
25 maybe resisting initially is because of the kind of individual

1 he is and how he was raised. As you said, and I won't belabor  
2 it, he was raised in -- with fifteen children, they didn't  
3 even have running water up until he was in high school. They  
4 couldn't afford food to sustain the family. They would have  
5 to farm themselves and live off what they farmed on a lot of  
6 occasions. For him to rise above all that, I think it takes  
7 remarkable character and a remarkable individual, and I say  
8 that with a full understanding that I believe that makes it a  
9 much greater fall from grace. It doesn't excuse anything, to  
10 me. It means that I think there needs to be a greater apology  
11 to all those who you have harmed and all those who you have  
12 betrayed because they believed in you and trusted in you for  
13 what you were able to accomplish. But as my responsibility as  
14 an advocate, Judge, I just want to point out to you that the  
15 facts of what happened speak for themselves. I can't defend  
16 them, and we didn't try to defend them. But the facts of his  
17 life prior to that are remarkable. And I know that even  
18 though they may not mean much at all, they are meaningful.  
19 Under 3553, the kind of individual we deal with, a individual  
20 without a criminal record, an individual that until and up  
21 until this time this happened, was a remarkable individual of  
22 great accomplishment, a great family man, an honorable man  
23 with many awards and honors, someone who I would have looked  
24 up to and someone who impressed me and someone who I would  
25 even hope my own children would emulate. But the activity

1 speaks for itself and I can stand here and apologize to you,  
2 and we're ready to accept your punishment for what he did, but  
3 I would hope the Court would consider in looking forward to  
4 the future of what will this man be like when and if he is  
5 released, what will this man be like at that point in his life  
6 that the Court would consider not only the activity in this  
7 particular case for which he's about to be sentenced, but  
8 would also kind of measure that in the full time frame of the  
9 kind of individual that he was before.

10 THE COURT: Thank you.

11 MR. PARKS: That's all I would like to bring out,  
12 Your Honor.

13 THE COURT: Thank you very much. Mr. Cockerham.

14 MR. PARKS: Could he get his notes, Your Honor, real  
15 quick?

16 THE COURT: Okay.

17 MR. PARKS: Judge, before I finish, while we're doing  
18 that, -- could we approach for just a minute?

19 THE COURT: The lawyers --

20 MR. PARKS: On the 5K1 motion real fast?

21 THE COURT: Okay.

22 (Off-the-record discussion.)

23 THE COURT: Okay. Mr. Cockerham, you may come  
24 forward. Okay. You may speak, sir.

25 THE DEFENDANT: Your Honor, first, I would just like

1 to give honor to God in the name of our Lord and Savior Jesus  
2 Christ, and to the Holy Spirit, and more especially, my  
3 honorable family and -- and also to you, Judge Furgeson, for  
4 this -- the Court's time, and the Department of Justice, the  
5 Department of Defense, and all the other federal agencies, and  
6 to my attorney Jimmy Parks and all who are present here today  
7 on my behalf. And I -- I'd just like to just take a minute  
8 and just say a quick prayer before I go on, if that's okay  
9 with the Court.

10 THE COURT: Okay.

11 THE DEFENDANT: I would like to say the Lord's  
12 Prayer, both in Spanish and in English, if you will enjoy me.

13 (The defendant speaks in Spanish.)

14 THE DEFENDANT: Our father, which art in heaven,  
15 hallowed be Thy name, Thy kingdom come, Thy will be done on  
16 earth as it is in heaven. Give us this day our daily bread  
17 and forgive us our trespasses as we forgive those who trespass  
18 against us. And lead us not into temptation, but deliver us  
19 from the evil one, for Thine is this the kingdom, the power,  
20 and the glory forever.

21 Father God, I just thank you. I ask Your grace and  
22 mercy upon this Court, upon the Honorable Judge and his family  
23 and all that he is. And also, Father, that he might  
24 understand what I am about to say and, Father, that you would  
25 put it in his heart that things aren't always as they seem to

1 be. And also, Father, I pray for the prosecutors and, Father,  
2 that You would just continue to direct their hearts and minds  
3 as we continue to work together on the -- as I -- with them in  
4 the future as I have to possible testify in some criminal  
5 cases and also the civil suits. And, Father, I pray  
6 especially for my family and all that this has brought upon  
7 them, that You will give them the faith and grace to overcome  
8 and to keep on keeping on and to keep the love strong and keep  
9 You as the center of their life and that this, too, shall pass  
10 soon that we shall be reunited, and we give You just all glory  
11 and honor. In Jesus's name, amen.

12 Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 THE DEFENDANT: First of all, I apologize to the  
15 courts, sir, and the whole government system that -- and the  
16 time and the money and so forth that has been spent on my  
17 behalf. And also I would like to apologize to the Department  
18 of Defense and the Human Resource Command and the Acquisition  
19 Corp and the federal government and even to the governments of  
20 Iraq, Jordan, Saudi Arabia, Turkey, Great Britain, and  
21 Germany. And I also express my regrets and gratitude to all  
22 of the soldiers, the sailors, marines, civilians that I've  
23 come to know, love, and serve with around the world. And I  
24 ask for forgiveness, as Christ forgives all of our sins also.

25 And, Your Honor, I would just like to refer you to a

1 letter written by the lead prosecutor. It's Exhibit 8, and  
2 it's actually from -- and I know you have this letter -- it's  
3 from Major Joel Cummins, and he's the lead prosecuting  
4 attorney for the Department of Defense for the State of Texas  
5 for Fort Hood and El Paso and Dallas and so forth, and he's  
6 one of the top and one of the best, but I just wanted to refer  
7 you to his last three lines, verse 6, 7, and 8 and he says,  
8 "John has a gift for helping people with their problems. He  
9 would spend hours talking with soldiers about their issues.  
10 Many soldiers preferred having John mediate their marital  
11 problems even over the chaplain. John had a reputation of a  
12 commander who did not rush to judgment and respected other  
13 people's point of view. And once a person gets to know John,  
14 you know that his deeply felt religious convictions drive his  
15 daily actions. He lived his faith without being sanctimonious  
16 and with absolute certainty I believe that John intended to  
17 use the ill-gotten money for a church when he first took it  
18 and I'm relatively familiar with the facts of the case and I  
19 know John well. I know that the only way he could start down  
20 this road was with a sincere belief that his actions were for  
21 the greater good. And our" -- and he closes, "I respectfully  
22 ask this board or anyone to contact me for any assistance."

23 But this is the lead prosecutor, not the defense  
24 attorney, whatever, for the entire three corps division  
25 covering Fort Hood, San Antonio, El Paso, and Dallas.

1           Your Honor, before I go into the rest of it, I would  
2 just like to recap just a minute on what my esteemed attorney  
3 here, the point he was making, and -- and I tried to put  
4 myself sitting in your seat and -- and see how this would  
5 appear to you, and I can see how it would absolutely be a  
6 discombobulated process, and that you would see me as some  
7 nefarious individual of malfeasance, but what I need to do is  
8 take you for a minute and twist it and put you in my point of  
9 view and give you the facts of what really happened.

10           I did three tours, actually, in Kuwait. The first  
11 tour there was corruption going on, but I was very new, I  
12 didn't really understand it, and I began to have people get  
13 back into the contracting system who had gotten kicked out  
14 because they would not accept bribes.

15           When I came back the second time, those individuals  
16 got in touch with me. By this time, many of them were  
17 multimillionaires and many of them told me, said, "Because you  
18 went in and challenged the system, we're now able to get  
19 contracts" and said it's because of you and I said, "Well,  
20 don't thank me, thank God." And they said, well, -- and many  
21 of them are Muslims in other nations, some of them don't even  
22 believe in God, and they told me, they said, "Well, if you're  
23 anything like this God, we may consider your -- your God."  
24 Many of them made offers of appreciation and so -- and I told  
25 them no numerous, numerous times.

1           Later, what led up to this and we -- I think, without  
2 being in a position that was even challenging for my attorney  
3 to explain the complexity of what was going on and the  
4 situation, my -- on a -- all of these contracts was actually  
5 awarded by somebody else. And also, Your Honor, I did not  
6 have a 10 million dollars warrant, so I couldn't have awarded  
7 them. What happened in the process of time, contracts were  
8 going to be cancelled. My boss and the previous boss had  
9 cancelled contracts and given them to other friends of theirs,  
10 of people that they were taking kickbacks from and so forth,  
11 and so I actually stepped in when their contracts were going  
12 to be cancelled and went to the G-4 and he is like, "Well, you  
13 know, if this is going on," he says, "well, take it to the  
14 general," and -- which is actually in some of my files. And  
15 so I took it no General Leonard, and he says, "So you mean to  
16 tell me that your colonel is directing you to cancel these  
17 contracts and give them to two companies that he'd prefer even  
18 at a higher price?" And I said, "Yes, sir, that's the  
19 situation," so he sent e-mail, which they should have,  
20 rescinding directing my commander not to cancel their  
21 contracts.

22           In the process of time, my commander got very upset  
23 at me and he equated me down to a private, took all  
24 responsibility away from me, but the one who was the other  
25 major who was doing the request had notified the contractors

1 that I had stopped their contracts from being cancelled and  
2 that I went against my commander and took to it the general .  
3 So what they, in turn, came back and said, many of the  
4 contractors, when they met with me, they said we heard what  
5 you have done for us and we are multimillionaires now, some of  
6 them were even billionaires, and they said, "We want to show  
7 some appreciation for what you did." And I told them, "You  
8 don't owe me anything." But they continued and so -- and then  
9 I began to rationalize it. I said, "Well, I'm" -- because  
10 what we were told is that -- I've never even heard of this  
11 public official thing, but in the contracting world, you are  
12 only responsible if you are the director of contracting and if  
13 you are a warranted officer, the one who signs the contracts,  
14 or if you were in collusion with the warranted officer who  
15 signed the contract --

16 THE COURT: Well, we're here talking about something  
17 that doesn't have anything to do with Army Department of  
18 Defense rules. We've are talking about things that have to do  
19 with sentencing guidelines, so we've -- we've passed that  
20 subject up. I -- I know you would like to argue again about  
21 that subject, but that subject has been resolved.

22 What I'm looking for is what will, you know, -- what  
23 you'd like to say about your future and what you're looking  
24 for and so forth. That's what I'd like to hear.

25 THE DEFENDANT: Okay, Your Honor. And I -- Thank

1 you. I was just giving what really happened. It was because  
2 of the contracts, them keeping them from being --

3 THE COURT: Cancelled.

4 THE DEFENDANT: -- cancelled. And so it was not in  
5 kickbacks. They had already received the money and this was  
6 their own money that they were giving back, it was not other  
7 governments. And to even take it further, Your Honor, how  
8 more rationalized it was, the fight that I had always, you  
9 know, said that I wanted to do a church and so forth, and if  
10 you notice at the bottom of the list that I gave you -- I  
11 mean, I'm sorry, that -- that attorney Pletcher gave you, the  
12 main thing it said at the bottom was for building a church.  
13 So you don't go into bribing and being -- because -- and then  
14 put at the bottom of it to build a church. So in my heart of  
15 hearts what I honestly believed that this was actually a  
16 blessing because I -- I said, "I am not the one bribing like  
17 my bosses. I didn't go and meet or change prices or  
18 anything." I said that, "They're giving this to me because,"  
19 they told me, they said, "Well, we made millions and billions,  
20 so that's like you having a hundred dollars and given a key at  
21 one dollar to go to the -- just said, 'Here's a dollar, go buy  
22 you a soda.'" You wouldn't think about much of that dollar.  
23 Well, that's the way that they looked at giving a million.  
24 And they said, "Well, are you going" -- "What do you want to  
25 do" And I said, "A church," and the said, "Well" -- Also and I

1 told them that my sister wanted to do a mission and so forth  
2 and they said, "Well, are you going to help Arabic people  
3 also," and I said, "Well, certainly." And I said, "My sister  
4 is going to do" -- "she is already helping displaced Arabic  
5 women from several countries." So that's how it got to that.  
6 I was actually fighting against it, and they have the records  
7 showing where I went up against my boss, my general. That's  
8 why the contractors were giving the money. It was not -- they  
9 already had the money. I was in no position to influence at  
10 the time they were given and, in fact, during the time that I  
11 was in a position of influence with a warrant, I never stepped  
12 out of line.

13           And so even Ms. Ann Brickley, they can --  
14 Mr. Pletcher can attest that they had a hard time --  
15 Ms. Brickley spent about three weeks convincing me that I was  
16 actually wrong for receiving it. That's how either that --  
17 that's how convinced that I was that it was a blessing because  
18 I didn't have a warrant and so -- and I -- and, according to  
19 the Army guidelines, it says if you have a warrant or you are  
20 in collusion with somebody that has a warrant, and all my  
21 authority had been stripped, and the reason my bosses stripped  
22 my authority is because I wouldn't falsely award contracts and  
23 so that's -- and that's the gist of my point and I just wanted  
24 you to understand it from that perspective.

25           And now I'm not in any ways, now that I know better,

1 justifying it and -- but at the time, I really thought that it  
2 was direction from God and not for me for any wealth. It was  
3 intended to build things that -- They will tell you 85% of the  
4 information that they found at my house with the papers, with  
5 the money, even from Mr. Pletcher's own words, he even told me  
6 that most of the documents were from church, was all church  
7 related church material, church articles, and he even informed  
8 me his self that he could see through my notes when -- how I  
9 evolved to the receiving and accepting the money.

10 So all I'm saying is, now that I understand, now that  
11 I know better, yes, I did receive it, but that is not my  
12 nature to go now that -- Because the way the Army looked at  
13 things, and their rules and guidelines are very different, now  
14 that I've been reading from the way -- from the outside books,  
15 the Uniform Code of Military Justice is very different from  
16 the criminal codes that are in the outside penal system and I  
17 was just familiar with the -- and did not even realize that I  
18 was subjected to the. As a military officer -- to the  
19 civilian criminal codes but only to the UCMJ, and according to  
20 what I was receiving, since it was their money after the fact,  
21 that I had not done anything wrong. Now I do know that I did  
22 but it should have been, if anything, being charged with an  
23 RS-1 for unauthorized gratuities versus bribes.

24 THE COURT: Do you -- does it -- Is it strange to you  
25 that you went to all this length to hide the money, to take

1 the money in cash, to secret it away everywhere, you thought  
2 that -- it was okay, but you still thought you had to hide the  
3 money, secret it, put it all over these different countries,  
4 that didn't -- that's not an indication to you that you  
5 thought you were doing anything wrong? If you didn't think  
6 you were doing anything wrong, why didn't you just take a  
7 check and put it in your bank account?

8 THE DEFENDANT: Okay. And I can answer that very  
9 simply, Your Honor. First of all, the way it was painted was  
10 not the way that it happened. I did not --

11 THE COURT: You didn't take cash then?

12 THE DEFENDANT: Your Honor, personally, I never  
13 received a penny myself, but let me tell you what did happen.  
14 The contractors themselves, I had no knowledge about  
15 international banking or how to open up an account or  
16 anything. The contractors themselves said, "Major Cockerham,  
17 you -- you have helped us and you've been good to us," says,  
18 "We will help you because your government will think that you  
19 done something wrong or that you did a bribe, so we will help  
20 you open up an account." It sounds just -- the way that it  
21 was presented was is not according to the practices of how it  
22 happened, it's -- it was just simply this: They said, "Hey,  
23 let's open" -- "you can open up a safety deposit box," and I  
24 had not even -- when they talked about me receiving it, they  
25 had talked about it for a couple of months. It was just

1 simply when they knew my wife was coming, I'm sure it was some  
2 of them, and they said, "Oh, well, when your wife is here,  
3 we'd would like to meet her," and then it went into "We would  
4 like to give her -- help her set up an account and all this to  
5 give you this appreciation and maybe later you can help us set  
6 up some businesses in the state and get some trade," and so  
7 they did help set up an account in Kuwait with my -- with my  
8 wife. And this was a one time trip, and several vendors came  
9 and then they -- the only reason it ended up going to the buy  
10 was just because the laws for opening up things are much more  
11 difficult in Kuwait, so they just took it to the bank. That  
12 was the only two places. Then -- and that was just a one time  
13 trip, and I humbly, again, apologize to my lovely wife for  
14 even -- now that I understand what was going on, for even  
15 involving her in this. But what happened --

16 THE COURT: Well --

17 THE DEFENDANT: -- was that they just simply gave her  
18 the money and it was in -- they brought over suit cases, but  
19 all these bags and stuff, nobody was --

20 THE COURT: Well --

21 THE DEFENDANT: -- you know, trying -- this was what  
22 they said, "This is how to set it up to keep you out of  
23 trouble because your government -- we are giving it to you to  
24 keep us from losing our contracts because we would have lost  
25 millions of dollars had you not done what you did, so we are

1 giving this to you but your -- your country will think that  
2 it's something wrong, but this is our money, and so this is  
3 how to set it -- set it up."

4 THE COURT: Well, I appreciate your explanation.  
5 It -- You have to understand that if everyone would accept  
6 that kind of information from people doing contracting with  
7 the government, the corruption in our government would be so  
8 pervasive that our government couldn't operate. I will tell  
9 you that your argument almost is, "I was going to do this for  
10 the church so that was my end and so whatever means I took to  
11 get money for the church was good and, you know, that's not  
12 the church is all about. That's not what religion is all  
13 about. I think we look at religion in the most favorable  
14 light to it and religion is about righteousness, about doing  
15 the right thing; and what you did, there is no way to look at  
16 it from beginning to end as a right thing. There -- you were  
17 being paid by the U.S. Army to do your duty and you did not do  
18 your duty and, in fact, you know you -- you failed so  
19 substantially in doing your duty that you caused massive harm  
20 to our country and to our armed forces because, you know,  
21 things like this spread and people say, "Well, you know, Major  
22 Cockerham could do this, maybe I can do it." And everything  
23 collapses if there's no sense of duty. So I appreciate your  
24 statement, I understand your statement, but I don't accept  
25 your statement, because if you were sitting there thinking it

1 was okay for somebody to pay somebody to you 9.6 million  
2 dollars beyond what your salary was, then your -- your ability  
3 to rationalize goes to delusion is all I can tell you'll.

4 I --

5 THE DEFENDANT: May I -- Your Honor, and I understand  
6 that, but it was not payment. It was appreciation. They had  
7 the contracts, they had been paid. This was all after the  
8 fact --

9 THE COURT: I appreciate your statement. I  
10 understand your statement. You have made your statement. I  
11 don't accept your statement --

12 THE DEFENDANT: Yes, sir.

13 THE COURT: -- and, you know, we cannot operate that  
14 way.

15 THE DEFENDANT: And I -- I understand.

16 THE COURT: -- our government can't. I wore the  
17 uniform of the United States Army for two years.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: It was one of the greatest privileges of  
20 my life. I served with men in a war zone -- I never did  
21 anything brave -- but I served with men who did and I even  
22 served with men who didn't come back, and first and foremost,  
23 you have to do your duty, and you didn't do your duty and  
24 that's just the end of the story and I think I'm ready to  
25 pronounce the sentence at this time.

1 THE DEFENDANT: Yes, sir. Your Honor, before you  
2 pronounce it, I would like to say a couple of things. I agree  
3 that I didn't do my duty and I fell short to the influence of  
4 the contractors. I did not realize that I was being used by  
5 them at that time.

6 THE COURT: I -- Please don't. You are continuing to  
7 repeat yourself. If you want to say something different, you  
8 may. But to continue to excuse your conduct -- I've listened  
9 to you for twenty-five minutes and the whole time you have  
10 used to excuse your conduct. If you want to say something  
11 besides that, I will hear you, but only briefly, because I --  
12 you keep coming back to the same thing, "I am not at fault  
13 here." So what else do you want to tell me? Briefly.

14 THE DEFENDANT: Okay, Your Honor. I am at fault and  
15 what I want to say is that what I was able to do with working  
16 with the esteemed Department of Justice, colleagues, there  
17 was -- I was able to assist the Department of Justice and  
18 about nine other agencies with their view of the theater of  
19 the operation and a number of multiple vendors and acquisition  
20 personnel that fell prey to the self-corroding system there in  
21 the Middle East. More importantly than that, I was able to  
22 they them restart the process on a solid foundation with the  
23 appropriate amount of contracting and acquisition personnel.  
24 We went from having a 100 people in an office to now well over  
25 2,000 there, which is the numbers that should have been, and

1 now the adequate systems are in place to where the contractors  
2 don't feel like they have to do with the whole gift thing.

3 I have also conducted some forty-five debriefings,  
4 exhausted many hours, days, weeks, months, and years, and I  
5 have debriefed in detail with distinct professionals that I've  
6 grown to appreciate and hold in the highest regards. I  
7 provided and continue to provide an overwhelming amount of  
8 assistance to them on a plethora of cases that they are  
9 investigating. Some of them most notable I briefed on a  
10 monthly basis and trials and, of course, Attorney Richard B.  
11 Evans and Ann Brickley from the Public Integrity Section, and  
12 the list goes own and on. These are under the Honorable M.  
13 Welch, and along with Mr. Pletcher and Matthew Hamilton and  
14 then a series of military lawyers.

15 Skipping down from that, corrections and  
16 ameliorations. Here I stand before you've asking for leniency  
17 and consideration. I'll help to recuperate, according to  
18 their numbers and the papers, over some 17 million of what now  
19 appears to be billions that were ill or misappropriated gains  
20 that the Department of Defense has neglected for an extended  
21 time. I've also given up all accounts of information, papers  
22 on everything that I have, and also I did not use one cent of  
23 it enrich my own personal life-style. And I don't want to be  
24 a part of a problem anymore. What I'm trying to do with this  
25 team here and all the other -- some nineteen agencies that I

1 have worked -- nine agencies, the nineteen agents, that I have  
2 worked with and am working with, is to be a part of the  
3 solution now and the Department of Justice trial attorneys,  
4 the federal agents informed me that they were able to indict  
5 many people because of me. They are actually able to clean up  
6 the acquisition community and I can say that I am happy that  
7 it was me who was a part of it and not -- and that -- not to  
8 be here, not to justify it, but since I am here, was glad that  
9 it was me who ended up going to jail than many others because  
10 also even within the jail facility I've been able to help  
11 hundreds of guys accept Christ, learn to read and write, and  
12 change their whole violent attitude and now actually want to  
13 go back and contribute to life and put families back together  
14 and get off of drugs and so forth.

15 And -- and this -- and I pray God will see us  
16 through, but now after them making me understand, and I do  
17 accept full responsibility, and I could not have gone forward  
18 in peace with starting the church with this looming in my  
19 rearview mirror and so now, because of all this, I now  
20 understand how the vices of Satan can go and how it can move a  
21 person from being of one nature to another nature through  
22 undue or false influence as I was from under the contractors  
23 really believing I'd done something good.

24 My prayers go out to the military officers who have  
25 lost their lives in suicides because of the failed military

1 system.

2 THE COURT: Please. You may make those prayers in  
3 private.

4 THE DEFENDANT: Okay.

5 THE COURT: Where I think Jesus suggested was the  
6 best place to do it, so --

7 THE DEFENDANT: All right.

8 THE COURT: If you want to talk -- I've heard what  
9 you had to say. I understand you've given substantial  
10 assistance and will continue to do so and that does you  
11 credit. If you have anything to say, you may wrap it up in a  
12 minute.

13 THE DEFENDANT: Okay.

14 THE COURT: In this minute. One minute.

15 THE DEFENDANT: All right. Well, then let me close  
16 and I just would like to -- Let me get my papers straight  
17 here.

18 THE COURT: Okay. I'll give you a minute to close.  
19 One minute to close.

20 THE DEFENDANT: Okay, sir. Just a quick few people.  
21 I would like to apologize to my dear wife, and I do love you.  
22 My sister, for getting you involved. It was never under  
23 the -- any intent and -- and my dear niece and so I'm just so  
24 sorry. Love covers a multitude of sins and I just pray God's  
25 mercy upon us, and -- Judge, I am just -- I am truly sorry for

1 this. I am so enlightened and what --

2 THE COURT: And I appreciate your apology. It is  
3 time for this sentencing to occur.

4 THE DEFENDANT: Okay. Just two minutes. What I have  
5 asked you --

6 THE COURT: Say what you want to say, but you've  
7 spent most of this time excusing your conduct saying you never  
8 had any concept what you were doing was wrong and now you have  
9 been informed by the Government that it was wrong and you now  
10 understand. I don't accept that. So I do accept your  
11 apology, I do accept the good conduct you've had before this  
12 act, I do accept your assistance to the Government. It's  
13 time -- You seem to think that if you take the next five or  
14 six hours something different is going to happen here, but  
15 because of what you have said already, nothing different is  
16 going to happen. So one last word; that's it.

17 THE DEFENDANT: Okay. What I want to ask you, Judge,  
18 is to, please, place whatever sentencing for my wife, my  
19 sister, and my niece on me.

20 THE COURT: That will not happen. That cannot  
21 happen. They are free agents. They -- I cannot do that and  
22 you -- you will get your sentence for your responsibility and  
23 they will get theirs.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: This is way past the time to be thinking

1 about that. It's -- The time to have been thinking about that  
2 was when the first bribe was taken. Okay. Anything else?

3 THE DEFENDANT: I was -- On a lighter note, in  
4 closing, I was just simply amazed about the parallel of yours  
5 and my careers. As you mentioned, you were in the service and  
6 you were a captain during the Vietnam war running around in  
7 the jungles and I was actually running around in the jungles  
8 of -- in the swamps of Louisiana at that time and I also  
9 couldn't help but notice that you were commissioned by  
10 President William Jefferson Clinton in 1994 and I was also  
11 commissioned by him in 1994 also as a second lieutenant, and  
12 you were in El Paso with the second -- I'm sorry. I was -- in  
13 94, you were there in El Paso and I noticed and at the same  
14 time I was there in '94 doing funeral details for a pastor in  
15 Odessa and Midland and what was more striking was you were a  
16 district judge in Odessa in 2000 and I was there as a captain  
17 in Midland and Odessa during 2000 during the last rites for  
18 the fallen veteran officers, mostly World War I and World War  
19 II, and then a MBA from U.T. -- I'm sorry, Jewish Doctorates  
20 from U.T., and then I was getting my MBA from U.T. and what  
21 was -- and so, sir, I just honor your service for paving the  
22 way for us and setting the service up so that it was better as  
23 I came along and, hopefully with the work that we're doing, we  
24 are able to do that and what was most impressive, you  
25 receiving the bronze star for meritorious service medal for

1 your honor, loyalty, and patriotism, and then I received the  
2 meritorious service medal with the oak leaf cluster for  
3 service, and then I notice that you also worked with the Late  
4 Halbert Woodward of which my crew did the honor service for  
5 and I appreciate his service also from the Navy to this great  
6 nation. And I -- noticing that you were in El Paso, I was  
7 just wondering if you had the opportunity to meet the  
8 distinguished Joseph Woodruff?

9 THE COURT: No, I didn't, but I do appreciate your  
10 linking our careers together. Thank you so much. And I  
11 appreciate that you paid that attention.

12 THE DEFENDANT: And, Judge, on a smaller note,  
13 what -- what is -- being from Louisiana and the South and we  
14 eat grits, what is beer grits?

15 THE COURT: I don't know. I'm sorry.

16 THE DEFENDANT: Okay. I mean, it was some  
17 organization at the time linked to you, but maybe it was --

18 THE COURT: Yes --

19 THE DEFENDANT: Maybe they were just using your name.

20 THE COURT: Perhaps.

21 THE DEFENDANT: Well, perhaps.

22 THE COURT: Thank you very much, Mr. Cockerham.  
23 Mr. Cockerham, let me say that there is so much about your  
24 life that's been good. You've really brought yourself up by  
25 your shoestrings, by your boot straps, and you had an

1 impressive career in the Army. You've fought for a good  
2 education. You've been a good family man, and after this has  
3 happened you have worked very hard to make amends, to make it  
4 up, to work with the Government. All those things I  
5 understand. And it makes this case all the more tragic, that  
6 somebody whose record indicates such goodness could have done  
7 something that was so wrong. And I will tell you that you  
8 have accepted responsibility and have pled guilty --

9 THE DEFENDANT: Yes, sir.

10 THE COURT: But there is a part of you that has not.  
11 You kept telling me that you didn't understand what you were  
12 doing was wrong, and after you heard about it and learned  
13 about it, "Yes, what I did wrong and that's why I pled  
14 guilty." True penance, true acceptance of responsibility,  
15 means to accept the thing done and the thing done here was  
16 pernicious in every respect and the example set, if it ever  
17 took hold in our -- in our Army and our Department of Defense,  
18 in our public service life, would be the ruination of this  
19 country, so I have to -- I have to sentence you with the eye  
20 that the good that you've done for and since this incident has  
21 to be weighed against the terrible thing that you did during  
22 this time which I think was a defining moment. So I will now,  
23 with that understood, pronounce your sentence.

24 Pursuant to the Sentencing Reform Act of 1984,  
25 pursuant to the government motion before me, pursuant to the

1 factors in 18 United States Code, Section 3553, I find and do  
2 order the following sentence:

3 As to count one, you are sentenced to 60 months in  
4 prison; as to count four, are you sentenced to 180 months in  
5 prison; and as to count five, you are sentenced to 210 months  
6 in prison; all to run consecutive -- all to run concurrently.  
7 All to run concurrently.

8 You will be, as to counts one, four, and five, you  
9 will be sentenced to 3 years of supervised release; again, to  
10 run concurrently.

11 There will be no fine. But the Government's motion  
12 for forfeiture in all things is granted and you are ordered to  
13 pay restitution in the amount of \$9.6 million dollars. All  
14 funds that are seized and collected by the Government will be  
15 credited to that amount. And you will have to pay a special  
16 assessment of \$300.

17 You've will be given credit for all time you have  
18 spent in custody to this date. And that is the sentence.

19 Marshal, I will remand Mr. Cockerham to your custody.

20 MR. PARKS: Judge, Mr. Cockerham has asked me to make  
21 a request that he be allowed to self-surrender.

22 THE COURT: That request is denied. Yes, sir.

23 MR. PLETCHER: Your Honor, just two things. If you  
24 would just on the record grant the motion to dismiss the  
25 remaining counts.

1 THE COURT: I will grant that motion.

2 MR. PLETCHER: And I believe, I had spoken to  
3 Mr. Parks earlier and I'll let him make the request, but that  
4 suggested the potential of making a recommendation out of the  
5 facility of the Bureau of Prisons. I just don't want  
6 Mr. Parks to walk away from the podium without having thought  
7 about that --

8 THE COURT: I just need a recommendation. I don't  
9 need a speech, I just need a recommendation.

10 MR. PARKS: I don't know what the answer was, Judge,  
11 I'm sorry. Did you sign that?

12 THE COURT: You -- you can phone it in to me.

13 THE DEFENDANT: Okay.

14 THE COURT: He can phone it to me and we'll put it  
15 in. You've are remanded to the marshal's custody.

16 THE DEFENDANT: Thank you, Your Honor --

17 THE COURT: Yes, sir.

18 THE DEFENDANT: -- for everything. And I do get it,  
19 Your Honor. I am repentant and I thank you for everything.

20 THE COURT: Good luck. Thank you.

21 THE DEFENDANT: Good bless you.

22 THE COURT: Yes, sir.

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I, DENVER B. RODEN, United States Court Reporter for the United States District Court in and for the Western District of Texas, San Antonio Division, hereby certify that the above and foregoing contains a true and correct transcription of the proceedings in the above entitled and numbered cause.

WITNESS MY HAND on this 3rd day of February, 2010.

/s/ Denver B. Roden  
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