

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER, JUDGE

UNITED STATES OF AMERICA,)

Plaintiff,)

VS.)

No. 14-cr-00534-CRB-3

KEVIN B. CULLINANE,)

Defendant.)

San Francisco, California
Tuesday, May 8, 2018

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff: U.S. DEPARTMENT OF JUSTICE
Antitrust Division
450 Golden Gate Avenue
Box 36046, Room 10-0101
San Francisco, California 94102

**BY: ANDREW J. MAST
ALBERT SAMBAT
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For Defendant: LAW OFFICE OF DORON WEINBERG
523 Octavia Street
San Francisco, California 94102

BY: DORON WEINBERG, ESQUIRE

Also Present: Jill Spitalieri, U.S. Probation

Reported By: Katherine Powell Sullivan, CSR No. 5812, RMR, CRR
Official Reporter

1 Tuesday - May 8, 2018

1:00 p.m.

2 P R O C E E D I N G S

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4 **THE CLERK:** Calling criminal action CR 14-0534, USA
5 versus Kevin B. Cullinane.

6 Counsel, please step forward and state your appearances
7 for the record.

8 **MR. MAST:** Good afternoon, Your Honor. Andrew Mast on
9 behalf of the United States.

10 **MR. WEINBERG:** Good afternoon, Your Honor. Doron
11 Weinberg for defendant, who is present.

12 **THE COURT:** Fine. Good afternoon.

13 **MS. SPITALIERI:** Good afternoon, Your Honor. Jill
14 Spitalieri, Probation.

15 **THE COURT:** Good afternoon.

16 This is the third sentencing of the day and also the third
17 in what the Court anticipates to be 23 sentencings of
18 defendants involved in the criminal activity, which the
19 defendants already entered a plea of guilty.

20 I made some remarks at the outset of the hearing this
21 morning, in advance of Mr. Giraud's sentencing.

22 Were you here, Mr. Weinberg?

23 **MR. WEINBERG:** I was.

24 **THE COURT:** Okay. Did you communicate those to your
25 client?

1 **MR. WEINBERG:** I did.

2 **THE COURT:** Those remarks will be incorporated in the
3 sentencing comments of the Court.

4 So with that, let me turn to the government, and we'll
5 hear from the government; then we'll hear from defense counsel;
6 and, finally, Mr. Cullinane.

7 **MR. MAST:** Your Honor, I believe there was one
8 outstanding objection.

9 **THE COURT:** Exactly.

10 The Court has reviewed the evidence and has found that
11 it's appropriate to set the role in the offense as indicated by
12 the government. And, therefore, the sentencing guideline, the
13 adjusted offense level is 17; criminal history category is I;
14 guideline range is 24 to 30 months, over objection.

15 **MR. MAST:** Thank you, Your Honor.

16 Mr. Cullinane is among the most culpable among the 23
17 defendants in this case; has a significant volume of commerce
18 which the government submits is \$18.5 million. And apart from
19 Cullinane's partners that made up the Big 5, no other defendant
20 in this case rigged even half as many properties as Kevin
21 Cullinane.

22 The government respectfully recommends a sentence of 27
23 months in custody, which represents a midrange guideline
24 sentence, and recommends he pay a criminal fine of \$462,760 and
25 restitution of \$139,258.

1 Turning, first, to the nature and circumstances of the
2 offense. Mr. Cullinane was significantly involved in
3 bid-rigging conduct occurring at the auctions. Although he was
4 only charged in San Mateo, the government has also identified
5 rigged properties that he participated in in San Francisco.
6 And in the conversation with another co-conspirator, he
7 indicated that he had been involved in bid-rigging conduct that
8 occurred well before the charged period, as early as the late
9 1990s.

10 Cullinane -- Mr. Cullinane was perceived by other
11 co-conspirators as an ambassador to this group of five. He
12 dealt directly with multiple co-conspirators in making
13 bid-rigging agreements, including Laith Salma, Troy Kent, and
14 Matthew Worthing.

15 And he was also actively involved in negotiating payoffs.
16 When Lath Salma, through his father, initially sought to
17 purchase a property for his son to live in, Cullinane
18 approached his father and insisted upon a \$150,000 payoff.
19 When Salma, after this payoff agreement had been reached,
20 attempted to renegotiate the amount of the payoff,
21 Mr. Cullinane threatened Mr. Salma that he would ruin his
22 reputation in the industry.

23 Mr. Cullinane contends this transaction was a finder's
24 fee, but that contrasts with both the account of Mr. Salma and
25 his brother who was present at that auction.

1 Mr. Salma also, later on in the conspiracy, by this time a
2 co-conspirator, complained to Mr. Cullinane about payoffs and
3 other requirements that the Big 5 imposed on other bidders.
4 But Cullinane merely told Salma that's the way it's always been
5 at the auctions and that's the way it would continue.

6 In considering the nature and circumstances of the
7 offense, it's worth noting that Cullinane's volume of commerce
8 does not account for all the properties he rigged.

9 Specifically, he was involved in 27 properties in which he
10 received payments not to bid, and accepted \$139,000 in payoffs,
11 and none of this is counted towards his volume of commerce.

12 As a member of the Big 5, Mr. Cullinane is substantially
13 more culpable than other bidders and knowingly participated in
14 the bid-rigging conduct and profited immensely from his
15 involvement.

16 A substantial sentence is also needed to reflect respect
17 for the law, provide just punishment and deterrence.

18 As I mentioned, Mr. Cullinane did not fully appreciate his
19 involvement in this \$150 [sic] transaction, or at least hasn't
20 accepted responsibility for that transaction, and, in addition,
21 in filings to the Court somewhat seeks to blame the victims
22 themselves of the offense. While many victims were lending
23 institutions, that does not mitigate Mr. Cullinane's
24 culpability.

25 As I indicated in my remarks at the sentencing proceedings

1 this morning, general deterrence is an important factor, and
2 this conduct was rampant. As the Court is aware, 23
3 individuals have pleaded guilty. And this conduct is not just
4 occurring -- did not just occur in San Mateo and San Francisco.
5 And I mentioned the approximately 60 other defendants who are
6 sentenced for their participation in similar conspiracies in
7 the East Bay, as well as cases the government has brought in
8 Florida, Georgia, North Carolina, Alabama, and just recently
9 Mississippi.

10 Unless and until courts impose adequate sentences
11 necessary to deter criminal conduct, it will continue, and
12 fines alone, especially given Mr. Cullinane's substantial
13 assets, will not provide adequate deterrence. Without a
14 substantial custodial sentence, Mr. Cullinane and others like
15 him will be given a green light.

16 A substantial sentence is also necessary to avoid
17 unwarranted sentencing disparities. The Court will sentence 20
18 other defendants in this case. And, as I mentioned previously,
19 Mr. Cullinane is among the most culpable participants when
20 compared to the others.

21 The government has already highlighted some of the
22 sentences that defendants in the East Bay proceedings have
23 received, but they have on occasion been given guideline
24 custodial sentences.

25 Finally, the government notes that Mr. Cullinane is being

1 sentenced because of what he did, not because of who he is.
2 But his conduct was ongoing and involved in this bid rigging.
3 And in considering the nature and circumstances of the
4 defendant, the Court notes that unlike Mr. Grinsell, who was
5 sentenced this morning, Mr. Cullinane does not face similar
6 health issues, certainly not as serious as Mr. Grinsell's.

7 Therefore, the government recommends a substantial
8 Guidelines-level custodial sentence necessary to reflect the
9 seriousness of his conduct, promote respect for the law, deter
10 future bid rigging and white collar crime generally, and
11 requests the Court impose a 27-month custodial sentence
12 consistent with the Guidelines, and that he serve three years
13 supervised release, and in conjunction with his criminal fine
14 and restitution orders.

15 Thank you, Your Honor.

16 **THE COURT:** Thank you.

17 Mr. Weinberg.

18 **MR. WEINBERG:** Thank you, Your Honor.

19 This is not easy because, in fact, Mr. Cullinane is one of
20 the most decent, caring, and generous people I know. Not just
21 among my clients but among the people that I know.

22 He's made a serious mistake. There's no question about
23 that. He made a serious error of judgment. He committed a
24 crime. He recognizes that.

25 And I want to speak immediately to that point because

1 Mr. Cullinane comes before this Court having pled guilty at the
2 end of these proceedings, long after other people did, long
3 after other people made cooperation agreements, long after
4 people provided evidence and information to the government.

5 And the government now seeks to punish him for that by
6 demanding a sentence of 27 months for conduct which other
7 people -- which does not exceed the conduct of other people for
8 whom the government is recommending eight to ten months or
9 less.

10 And that is because Mr. Cullinane didn't plead guilty and
11 cooperate. And I think it's important, Your Honor, to spend a
12 minute on that history.

13 When this case began, everybody was charged with mail
14 fraud and bid rigging. The government took the position that
15 no one could make a deal, no one could agree to cooperate, no
16 one could offer substantial assistance, no one could end their
17 prosecution unless they were willing to plead to mail fraud and
18 agree to the imposition of the mail fraud Guidelines. It was
19 plainly wrong. Legally wrong, analytically wrong, morally
20 wrong. It just was wrong.

21 Mr. Cullinane and a few other people, with my advice and
22 advice of other people, said, "You didn't commit fraud.
23 There's no fraud here. You shouldn't have to" --

24 **THE COURT:** You weren't here this morning when I
25 addressed this issue, but let me give you my views of this

1 issue.

2 I don't for a moment disagree with your representation
3 that the government had an indictment containing mail fraud,
4 mail fraud counts as well as bid rigging, antitrust violations.

5 Nor do I disagree that -- though I don't know, but I mean
6 I don't see any reason why I would doubt it, that the
7 government took the position that in order to get a 5K1
8 substantial assistance, a defendant would have to plead to one
9 or more of the wire fraud counts or mail fraud counts. I
10 understand that and I understand the defendant's view that that
11 was unreasonable. And I also -- defense counsel's view.

12 And, also, I understand the ultimate disposition of the
13 mail fraud counts, its dismissal by either Judge Hamilton or by
14 some motions and so forth. So ultimately it was not required
15 of defendants to plead in order to get the benefit of a 5K1,
16 plead to those counts ultimately.

17 But what I don't understand is why a defendant who
18 believes that they committed bid rigging wouldn't come in and
19 plead to that. They wouldn't have the benefit of an agreement,
20 but, as you know, Mr. Weinberg, better than anybody in this
21 room, this Court entertains pleas to a single count in an
22 indictment, proceeds with sentencing. And frequently in that
23 sentencing -- and, matter of fact, I can't imagine that there's
24 any factual scenario where I wouldn't sentence that would take
25 into account all the facts and circumstances thereby obviating

1 the realistic threat of a criminal prosecution on mail fraud.
2 That's exactly what I've done in other cases, of which you're
3 quite aware.

4 The bottom line is, as to that, I do not hold it against
5 the defendant that he didn't do so. I assume he didn't do so
6 because counsel advised him that he should take a different
7 course of conduct in terms of how the case should proceed. And
8 he's not going to be penalized for that.

9 Now, you can say, well, the government is penalizing him
10 in their recommendation. They may or may not be. The Court is
11 not going to consider the fact that he pled whenever he pled.
12 He pled whenever he pled by virtue of, I would guess, a legal
13 strategy of counsel, and that's fine. It's not going to be
14 held against him.

15 Defendants do that in almost every case. They hire a very
16 good lawyer, and the lawyer advises them to do A, B and C, and
17 they follow that advice.

18 I don't take it as a lack of remorse. I don't take it as
19 an untimely plea. I don't view it that way. It won't be
20 reflected in my sentencing. May be reflected in the
21 government's recommendation, but not on the Court's
22 disposition.

23 So you need not spend any time on that because I'm not
24 here to say the government was wrong and you were right or you
25 were wrong and the government was right. It makes no

1 difference to the sentencing. The fact of the matter is,
2 defendant committed the crime, he came in, he pled guilty, he
3 gets three points for acceptance of responsibility.

4 No, he doesn't get the 5K1 departure. I understand that.
5 But that's solely in the hands of the government in any event.
6 And the decision of when to plead guilty, that's entirely his
7 decision, and I certainly won't hold it against him.

8 But, on the other hand, I don't think you can argue that
9 he would have pled guilty, would have gotten the 5K1 had the
10 government been more reasonable in their position. You may
11 believe that.

12 **MR. WEINBERG:** I know that.

13 **THE COURT:** May be true.

14 **MR. WEINBERG:** Your Honor --

15 **THE COURT:** I don't sit around and say -- because the
16 Court has no jurisdiction over the issue of a 5K1. None. You
17 know that very well.

18 The motion rests solely within the discretion of the
19 government. That's a governmental decision as to when and
20 under what circumstances to offer a substantial assistance
21 departure. And the Court simply isn't going to consider it
22 because it would be improper for the Court to consider it, in
23 the Court's view.

24 I'm not holding it against him. I'm simply going to take
25 his plea as it is and give him acceptance of responsibility

1 because, in fact, he is deserving of the acceptance of
2 responsibility calculation.

3 **MR. WEINBERG:** Well, Your Honor, I think the Court
4 should be concerned if, in the exercise of its judgment, the
5 government says, "We won't give you substantial assistance
6 unless you plead to a crime you didn't commit," which was
7 essentially what the government was saying.

8 I met with the people running this prosecution. I met
9 with the second in command of the Department of Justice
10 Antitrust Division. And I said, We are prepared to plead
11 guilty to bid rigging. We are prepared to cooperate fully. We
12 are prepared to tell everything we know about our own conduct
13 and everybody else's, but we didn't commit mail fraud. They
14 refused to consider that.

15 **THE COURT:** Well, but then you had the option of
16 coming in and pleading before the Court.

17 **MR. WEINBERG:** Yes, Your Honor, but then we still
18 would have had a mail fraud charge.

19 **THE COURT:** Mr. Weinberg, you're not following what
20 I'm saying. You know that that would make no difference to the
21 Court.

22 **MR. WEINBERG:** No, but we would still have a mail
23 fraud charge to fight.

24 **THE COURT:** Mr. Weinberg, we've gone through this in
25 other cases. You have helped defendants who have come in and

1 pled to charges less than the full sheet while your clients
2 were still in jeopardy on the other charges.

3 And I have explained -- and you know it's the Court's
4 practice, and I've never deviated from it, never -- that if a
5 defendant comes in and pleads to a major charge that, absent a
6 mandatory minimum -- and there were no mandatory minimums
7 there -- the sole discretion rests with the Court as to the
8 appropriate sentence. It does not rest with the United States
9 government.

10 That's how the process works. And you know that's how the
11 process works because you have represented defendants in front
12 of me in which I have done exactly that.

13 **MR. WEINBERG:** The situations were entirely different,
14 Your Honor, and you know that.

15 **THE COURT:** How?

16 **MR. WEINBERG:** Because this case was one in which the
17 remaining charge was not only a principal charge but one on
18 which the government was insisting on pursuing in every single
19 case. To plead guilty to the lesser charge and to leave the
20 major charge there would have simply left us with mail fraud
21 charge pending guilty plea for bid rigging.

22 Now, let me say one more thing.

23 **THE COURT:** You can say. I don't subscribe to your
24 view of that.

25 **MR. WEINBERG:** Let me say --

1 **THE COURT:** Since it is of no consequence to the
2 sentencing, in the Court's view --

3 **MR. WEINBERG:** Well, it is -- well, all right. We'll
4 see how that plays out.

5 But let me say this. The fact that Mr. Cullinane and four
6 other defendants in this case initially said, no, we're not
7 going to plead to mail fraud, we are going to insist on
8 resisting that charge, willing to plead to bid rigging, is the
9 reason, is the reason why no other defendant in this case has
10 to face mail fraud charges.

11 Because Mr. Galloway came to me because he heard that I
12 was taking the position that mail fraud was an unfair and
13 incorrect charge, and he asked me to take over his
14 representation, and I did.

15 And the issue came to Judge Hamilton before it came to
16 this Court. And the government was forced to recognize, not
17 just by Judge Hamilton's order -- they accepted that order
18 without appeal, and they allowed everybody who had already pled
19 guilty to withdraw their guilty pleas to mail fraud because of
20 the ruling in *Galloway* which would not have happened if
21 Mr. Cullinane and his group had not declined to accept mail
22 fraud.

23 The sentencing of every single one of the 70 defendants in
24 this district, who faced these charges, has been reduced by
25 about 50 percent because Mr. Cullinane had the courage to say

1 that's not -- that's not a charge that I should be required to
2 admit to; I didn't commit that crime.

3 **THE COURT:** What? Did you say reduced 50 percent?

4 **MR. WEINBERG:** Yeah. When I met with Mr. David Ward
5 about this case, we worked out the Guidelines. The Guidelines
6 for Mr. Cullinane would have been 46 months on mail fraud and
7 23 months on bid rigging.

8 **THE COURT:** I don't disagree with that. But what I'm
9 saying to you is that I have viewed this case, and I think
10 along with Judge Hamilton and Judge Donato, as a bid rigging
11 case.

12 Whether the government attaches a mail fraud count, which
13 either may be technically correct or not, or not, doesn't
14 change the case. The case is a bid rigging case. The case is
15 these defendants, on the steps of a courthouse, rigged public
16 bids. That's what they did.

17 You can call it anything you want to call it, but you know
18 what? It's bid rigging. That's what it is. And that was your
19 argument. And I bought it because it's true, it is a bid
20 rigging.

21 I don't care whether there was a guideline out there that
22 you could sort of shoehorn into that would be three times. And
23 I think that -- well, I don't want to speculate because it's
24 not necessary.

25 I don't want to speculate as to what could have happened,

1 should have happened, would have happened, because all know we
2 know is what happened. What we know happened is they dropped
3 the mail fraud counts, and he pled guilty to one count of --
4 he's charged with one count -- to one count of the bid rigging,
5 which I think is entirely appropriate because that's what his
6 conduct was. Not more; not less.

7 **MR. WEINBERG:** And we have the government recommending
8 a 27-month sentence.

9 **THE COURT:** They can recommend. I understand that.

10 **MR. WEINBERG:** Okay.

11 **THE COURT:** And, of course, I consider the
12 government's recommendation. And if you were to say, look,
13 they would have recommended 46 months, I understand that.

14 But the fact of the matter is that notwithstanding a
15 recommendation, a court does its own analysis as to what is the
16 essential offense. The essential offense here is bid rigging,
17 as you have argued --

18 **MR. WEINBERG:** From day one.

19 **THE COURT:** -- from day one. So I would sentence as a
20 bid rigging case, not as a mail fraud case.

21 And if you say, well, the Court's under pressure because
22 the government takes an unreasonable position, really? I mean,
23 the government could -- I don't feel the pressure from the
24 government. I don't know how else to say it.

25 With due respect to the government, that's the government.

1 Then there's the defense. Then there's the court. The Court
2 happens to be an independent entity. And I'll exercise my
3 judgment based upon what I see, the nature of the crime, the
4 3553(a) factors.

5 **MR. WEINBERG:** We'll get to those.

6 **THE COURT:** You look at the 3553(a) factors, there's
7 nothing about mail fraud in those factors. You look at the
8 nature of the crime.

9 Now, you do look at the Sentencing Guidelines. But the
10 Court does not intend to give a sentencing guideline sentence
11 here in any event. So, you know, so --

12 **MR. WEINBERG:** Your Honor, I appreciate --

13 **THE COURT:** I want to assure everybody, that's the
14 direction I'm going in. So your sense of injustice about it
15 all, while it is sincere, doesn't necessarily translate into
16 the Court doing something different from what the Court would
17 do even if those charges hadn't been there.

18 **MR. WEINBERG:** I know Your Honor was a criminal
19 defense lawyer for many years. And I really --

20 **THE COURT:** Well, what --

21 **MR. WEINBERG:** -- really can't imagine Your Honor
22 telling a client, "Don't worry about it, don't worry what the
23 government says, don't worry about what the charge is, this
24 judge will do the right thing, go ahead and plead."

25 **THE COURT:** No, I'm not saying the judge will do the

1 right.

2 **MR. WEINBERG:** Right.

3 **THE COURT:** I think you can get some sense, given what
4 your experience has been, of how I would treat it.

5 And, by the way, by the way, there's always -- well,
6 anyway, I think I've said enough on this subject. I don't
7 think you should be concerned about the history here because
8 I'm -- I may very well take into account, if you so urge, his
9 lost opportunity to cooperate. I think that is a legitimate
10 argument, and I understand you making that argument.

11 **MR. WEINBERG:** I am.

12 **THE COURT:** That is a fair argument, and I'll consider
13 it.

14 **MR. WEINBERG:** Okay.

15 **THE COURT:** So to the extent that's the argument
16 you're making, I accept that argument.

17 **MR. WEINBERG:** Then let me proceed to some of my other
18 points.

19 I do want to speak a little bit about the circumstances of
20 the offense before I get to the 3553s and Mr. Cullinane
21 himself.

22 With regard to leadership role, I accept the Court's
23 determination that this conduct fits. I'm not sure whether it
24 was because of Mr. Cullinane's specific conduct or because of
25 his involvement with the group which played that role. But in

1 either event, I think it's a close question. And in measuring
2 the sentence with that leadership role included, I think it
3 should be borne in mind that that was a close question as to
4 whether he truly played a leadership role.

5 In fact, he was universally viewed by the people involved
6 as kind of a peacemaker, a moderator, a good influence, a
7 positive force within the group.

8 The other question has to do with volume of commerce. And
9 I'll say one thing. Mr. Cullinane's volume of commerce is
10 computed at about \$18 million, slightly over. And there was
11 a -- yesterday I remarked about a number of situations in which
12 there was a very nominal amount of money paid to stop bidding,
13 where properties were worth 600-, 500-, \$400,000, and 1- or 2-
14 or \$3,000 exchanged hands. And I talked about the
15 disproportion in those amounts. Well, there is another fact.
16 I think Mr. Jacobs may have alluded to it, but I think is
17 significant.

18 What was going on in those cases where there's a 600- or
19 \$500,000 property, with only 1- or \$2,000 payoff, or \$3,000
20 payoff, what was going on there is there was no competitive
21 bidding. Just somebody who knew what was going on would come
22 up to one of the people in the group and say, well, if you
23 don't want me to bid, you need to give me \$2,000. You don't
24 want me to bid, you need to give me \$3,000. And everybody knew
25 what was going on and that money changed hands.

1 It didn't affect the bidding. If that little scam had not
2 gone on, as people did all the time, the property would have
3 sold for no more than what the bank asked for.

4 And if you look at the properties here, which fit that
5 description in which there was no interference with commerce --
6 the exchange of 1,000 or \$2,000 had no actual impact on the
7 bidding -- you have \$7,700,000 worth of that property. And
8 that brings you just about down to that \$10 million border.

9 So, once again, with the two-level enhancement for volume
10 of commerce we are again at the very lowest level, at the
11 borderline of that enhancement as well.

12 So 5 points of the 17 that are counted against
13 Mr. Cullinane are, shall we say, open to question, or weak, or
14 balanced, and not clear and not decisive. And in comparison to
15 others, his role is significantly, significantly less.

16 But with regard to the nature of the offense, this was a
17 time when a lot of very good people made a lot of very foolish
18 choices.

19 You have 70 people in this district. Almost every one of
20 them, I think, with perhaps two or three exceptions, are highly
21 regarded law abiding business people with great experience, who
22 made the error of getting involved in a wave of euphoria, if
23 you will, unrealism if you will, but also greed. There's no
24 question judgments were made for profit. But they were being
25 made in a context in which people, you know, began to believe

1 that the rules were relaxing or being relaxed.

2 People made misstatements of judgment, but they are the
3 people who wouldn't normally make them and just made them in --
4 in the ethos of that moment.

5 And I think that Mr. Cullinane did, you know, make the
6 mistake of going along and getting involved. He did it
7 knowingly. He doesn't say anybody compelled him to do it or
8 urged him to do it.

9 But I think it's not a small thing for the Court to notice
10 that the 70 people who come before the Court -- with, again,
11 very, very, very few exceptions -- are people all of whom bring
12 before the Court an admirable biography, an admirable life
13 history, but they joined in a moment in which it was too
14 inviting to resist, and they failed to resist.

15 And for that they accept responsibility. And for that
16 they should be punished. But it should be seen in the context
17 of what was going on in the market between 2006 and '7, 2009
18 and '10, in which hundreds of entities, very large entities,
19 and thousands of people, both borrowers who exaggerated their
20 loans, brokers who encouraged the exaggeration of loans,
21 auction participants who made agreements on the side not to bid
22 up, all of that was going on in a context in which I think
23 those very same people would not have ever acted alone and
24 independently.

25 But the real, you know, focus, I think, for the discussion

1 and the decision by this Court is the person, the nature and
2 circumstance of -- and the history of Kevin Cullinane.

3 He is a person whose entire life has been lived in an
4 exemplary fashion, with the exception of this mistake.
5 Exemplary fashion. He is a family man of incredible loyalty
6 and love. He's a member of his community, who is generous and
7 kind and committed.

8 He suffered tragedy, a great tragedy as the Court knows.
9 But his response to that tragedy was not to feel badly for
10 himself, of course he did, not just to feel badly for his
11 family, of course he did, not just to take care of his family,
12 which he did, but to reach out to other people and to try to
13 help other people who were in danger or in the process of
14 suffering that same torture.

15 I'm one of them. I have a daughter who has some
16 difficulties, and Mr. Cullinane has been remarkable in reaching
17 out to me, to try to offer advice and comfort and solace based
18 on his experience.

19 But that's just not -- that's not just coming from me.
20 You see that in the letters that you've received from people
21 who he has reached out to help because he has experienced a
22 depth of grief and loss that he doesn't want other people to
23 feel. So he's turned that to the aid of other people rather
24 than to sorrow for himself or protection for himself and his
25 family alone.

1 And that has been his style. He has been a generous,
2 giving member of the community, of whatever community he is in.
3 Whether it's the community of the school that his kids go to,
4 the community of the church they attend and are active in, the
5 community that they live in.

6 Kevin Cullinane is a giving, loving, good person who made
7 clear -- clear and continuous for a period of time -- error of
8 judgment, committed violations of law that he should not have
9 committed. But he has already paid a significant price, and I
10 would ask the Court not to impose an additional significant
11 price of incarceration.

12 I think that a period of home detention so he can be with
13 his family and continue to support and protect each other would
14 be appropriate. A period -- a fine of a significant enough
15 amount to make a difference to Mr. Cullinane would be
16 appropriate. Community service would be appropriate.

17 But putting him in jail and taking him away from his
18 family and out of his community for any significant period of
19 time, I believe, is greater than necessary to achieve the
20 purposes of sentencing, and I would ask the Court not to do
21 that.

22 **THE COURT:** Mr. Cullinane, do you want to address the
23 Court?

24 **THE DEFENDANT:** Thank you, Your Honor.

25 I'll try to keep this as short as I can.

1 2,672 days ago I got a knock on my door, and I was in the
2 process of getting my kids ready for school. And I opened the
3 door, and there was two gentleman there, and they flashed
4 badges, and they said, "We're here to see you," and I'm like,
5 wow, okay.

6 I looked around. I thought, Someone is playing a joke on
7 me. There's something wrong here. But it wasn't a joke.
8 There were two gentlemen from the FBI who came to visit my
9 house to discuss this issue with me.

10 I never imagined anything like this would ever happen. I
11 never thought or really considered the price and what the
12 circumstances would be thereafter for my actions, which I take
13 full responsibility for.

14 I never really understood how it was going to affect my
15 family, my friends, my partners, my co-workers, and my
16 business. And I never, ever imagined that this would
17 contribute to the situation I had with my daughter. My lapse
18 in judgment has brought me here today to answer for these --
19 these actions.

20 Kind of before I began -- and I want to try to keep it as
21 short as possible. I want to thank you personally because the
22 first day I showed up in this court I was terrified, just
23 absolutely -- matter of fact, I think I came here and I was
24 listening to a FedEx case you were hearing before, and I
25 remembered you making comments and saying things that broke the

1 ice, that made it easier in a way.

2 And I think there was certain times that you did that in
3 this case, where as frightened as I was and as hard as it was
4 for me, you were able to make it a little bit easier for us.
5 And I thank you for that because this is not something I'm used
6 to and have never gone through and, quite frankly, will never
7 go through again.

8 More specifically, during this process when I was telling
9 my family about it, I was able to talk to my Aunt Ann, who's
10 here today, Ann Wiegner, who you might remember. She wrote a
11 letter on my behalf.

12 She told me that when you met years ago she was dating a
13 friend of yours, Lester O'Shea, who you went to Lowell, and you
14 traveled across country, going to Harvard, where you both
15 attended graduate school.

16 And she was hosting a spinster party at which you told her
17 Lester was a little right of Attila the Hun, which in addition
18 to making her laugh at that time -- and you knew Lester. I
19 think that's probably a joke that you understand, but it also
20 identified in her opinion, which she already kind of knew about
21 him at that point, you kind of just confirmed that. And she
22 told me the story, and it made me feel better about who I was
23 dealing with as a person who was going to be rendering judgment
24 on me.

25 I want to thank all the people and friends and family,

1 most of which are sitting behind me now. Many more wanted to
2 come that I -- I asked not to or just tried to keep it easy.

3 I feel like this is my George Bailey moment. One of my
4 favorite movies ever is *It's a Wonderful Life*. And I probably
5 watched it over a hundred times. And I never imagined that my
6 friends or family, my community, would rally to support me and
7 my family almost in the same way it was depicted in the movie.
8 And, at the same time, I also recognize that he battled
9 something that my family has battled and some of my other
10 family members are battling in terms of how they look at their
11 lives and how they're dealing with their depression.

12 I need to single out my family for their support. My
13 beautiful wife, Lisa, thank you for being there for me and the
14 girls. Please know that you are the love of my life and that
15 the legal process we've endured all these years is now coming
16 to an end. It in no way diminishes the pain of the loss of
17 Ali, but I know what we are going through now is nothing
18 compared to what we have been through over the last year and a
19 half. You have always been the best part of me, and I couldn't
20 have imagined being able to get through this without you.

21 My daughters, Rachel and Christina, I'm so proud of both
22 of you and the women you've become. I am so proud -- excuse
23 me. I am so excited about your future and the future that your
24 mother and I will have with you. The dark cloud of this
25 process is beginning to clear away and is now going to be

1 behind us. We can continue to devote our energy to helping
2 families like ours and giving them the tools that they need to
3 prevent their children from not recognizing there is a better
4 way and a hand to pull them from the darkness.

5 My friends and relatives, I can't thank you guys enough
6 for your unwavering support during this whole deal.

7 Doron, I can't think of anyone else that I would rather
8 have navigate me through this whole legal nightmare. I thank
9 you.

10 I don't profess my legal issue had a major role in what my
11 daughter was dealing with emotionally when she made the
12 decision to take her own life. I'm sorry.

13 What I do know is that the pressures all adolescents are
14 dealing with, boyfriends, schoolwork, siblings, college
15 applications, parents, friends, drugs, alcohol, you name it,
16 they all have the ability to stack up and at some point
17 overwhelm them. These are kids that are developing their
18 brains. How much each of them can take on is subject to what
19 they are -- where they are at in their emotional and physical
20 development.

21 I have to take responsibility that my legal situation put
22 additional stress on my girls and, for that matter, my entire
23 family. I now have to live with the rest of my life wondering
24 if I hadn't put my family through this nightmare could I have
25 been more focused on understanding what my daughter was going

1 through and been there to really help her.

2 Everyone has a limit on their ability to process and deal
3 with all the stress life places on us. Just like a cup, there
4 is a limit to how much we can hold in emotionally before we
5 lose containment.

6 I stand here before you today a father who has lost more
7 than any potential sentence that can be rendered by Your Honor.
8 The last seven years plus have been extremely difficult, but
9 they pale in significance to the last year and a half and what
10 we've been dealing with as a family. Unfortunately, that
11 process won't be over anytime soon, and likely will be
12 something that we'll will be dealing with until I draw my last
13 breath.

14 I take full responsibility for my actions that have placed
15 me here today. It is a mistake that has cost me more than my
16 job or my reputation and any money.

17 If there's anything I've learned from this is that what
18 really matters is your family and their health. My actions put
19 them in harm's way. It eventually contributed to the loss of
20 what I hold most dear, the very life of a daughter I wanted to
21 nurture and protect.

22 I humbling beg the Court to allow me to continue to be
23 there for my family and help them through the difficult times
24 to come. They are still processing the loss of Ali, and need
25 my emotional and physical support just as I need theirs.

1 No matter what is decided today, I do know that with your
2 decision I can turn the page on this chapter in my life and
3 begin to focus on the future. It is the future that I can
4 guarantee will not bring me before this Court or any other
5 court ever again.

6 I thank you again, for your consideration.

7 **THE COURT:** Well, let me proceed with sentencing.
8 Mr. Cullinane, would you step forward.

9 I'd like to make a couple of observations. First, of
10 course, you will not repeat this offense in any way, shape, or
11 form. And the sentence that I would impose is not really
12 directed as a specific deterrent to you.

13 You have suffered. You have suffered in ways that no
14 court, no judgment of any court could cause you to suffer. And
15 that is, of course, tragic. I think it's a factor that the
16 Court can consider in imposing a sentence.

17 I think, as I indicated to Mr. Weinberg, I'm going to
18 impose -- I'm varying downward in the sentence really for two
19 reasons.

20 First, I think there is a lost opportunity to receive a
21 substantial assistance departure; and, also, I think your
22 personal situation warrants a downward departure. Both of
23 those are taken into consideration by the Court.

24 A couple of other things though. First, I can't speak to
25 your daughter's decision. I know it will haunt you the rest of

1 your life that somehow these activities contributed to it. I
2 don't know if that's true. And I hope -- I know how active you
3 are in helping other parents, and so forth, who are faced with
4 a similar situation.

5 I hope it gives you some insights into the fact that
6 mental illness is frequently out of the control of those people
7 who care so much about their child. You just can't do it. You
8 can -- you take responsibility for it because we all take
9 responsibility for our children.

10 But it's one thing to take responsibility, and it's
11 another thing to take the blame. And the problem with mental
12 illness is that it's a disease. The problem with mental
13 illness is that it's stigmatized. The problem with mental
14 illness is that it's not receiving the attention that it has to
15 receive in order to invite cures for it.

16 We all know that. I mean, I don't know that we all know
17 it, but I guarantee you I do. And I know Mr. Weinberg does. I
18 know that right across the board it's hard to find a family
19 that hasn't been affected in some way, shape, or form by some
20 mental illness. And the lucky ones get through it; the unlucky
21 ones may not. Help should be for the unlucky as well as just
22 the lucky.

23 I just hope that you are able to come to terms with this
24 in a way that meaningfully addresses this point and that you
25 don't take a responsibility for the tragedy that has happened

1 to you.

2 Turn around a moment and look at all these people, because
3 they are people who love you, who respect you, who you have
4 touched in so many ways. And they are here in their silence
5 but to testify on your behalf, on your character, on who you
6 are. Nothing that I can impose, no sentence that I can impose
7 or what I say detracts from that in any way. It's something
8 you created through your lifestyle, through your conduct,
9 through your love. And you're to be admired for that.

10 I think that, obviously, and I think Mr. Weinberg is
11 correct that when you start to sentence the individual or its
12 individualized sentencing, obviously one looks at any case
13 differently.

14 The concern I have -- and I addressed it earlier, because
15 it didn't relate to any one defendant but related to all
16 defendants -- is the general deterrence that some period of
17 confinement has.

18 Maybe I'm naive, but I think that had a person such as
19 yourself understood before that, you know, if you engage in
20 this kind of conduct you'll go to jail, I don't think for a
21 moment you would have chosen this kind of conduct. So it
22 serves as a general deterrent, in my view.

23 Perhaps one of the more famous legislators of a whole
24 series of penalties for securities violations, which were the
25 Sarbanes-Oxley bill in which they raised penalties for white

1 collar offenses, said that what's important as a deterrent for
2 white collar offenses is confinement. The length of
3 confinement, he said, is not important. It's the specter of
4 confinement.

5 And I don't think you would think -- and I know you
6 wouldn't think, gee, if he just gives me a fine and puts me on
7 probation and orders community service and so forth, you know,
8 that wouldn't be a deterrent to people.

9 I don't think you would stand here and be here for
10 anything, no matter what the sentence is, if you knew and
11 appreciated what you have gone through the last seven years. I
12 can believe that.

13 But the fact is that there is, at least in the Court's
14 view, a recognition that in white collar offenses, if a white
15 collar offender, potential white collar offender knows he or
16 she will go to jail or there's a high likelihood they would go
17 to jail, I think that serves as a deterrent.

18 So reflecting the variances that I think are appropriate,
19 I am sentencing you as follows:

20 Pursuant to the Sentencing Reform Act of 1984, it is the
21 judgment of the Court that Kevin Cullinane is hereby committed
22 to the custody of the Bureau of Prisons, to be imprisoned for a
23 term of eight months.

24 This, again, is a variance from the guideline range and
25 reflects the factors that I have stated.

1 Upon release from imprisonment, you shall be placed on
2 supervised release for a term of three years. Within 72 hours
3 of release from the custody of the Bureau of Prisons, you shall
4 report in person to the probation office in the district to
5 which you are released. While on supervised release, you shall
6 not commit another federal, state, or local crime, and shall
7 comply with the following additional conditions:

8 You shall perform 800 hours of community service at a
9 homeless shelter as directed by the Probation Office.

10 You shall pay any restitution, fine and special assessment
11 that is imposed by this judgment and remains unpaid at the
12 commencement of the term of supervised release.

13 You shall cooperate in the collection of DNA as directed
14 by the probation officer.

15 You shall not own or possess any firearms, ammunition,
16 destructive devices, or other dangerous weapons.

17 Further ordered that you shall pay to the United States a
18 special assessment of \$100. Payment shall be made to the
19 Clerk, U.S. District Court, 450 Golden Gate Avenue, Box 36060,
20 San Francisco, California.

21 Criminal monetary penalties are due immediately and shall
22 bear interest pursuant to 18 U.S.C. Section 3612(f).

23 The Court defers the restitution hearing until -- what
24 date did I set Defendant Giraudos's?

25 **THE CLERK:** June 1st, at 2:00 p.m.

1 **THE COURT:** -- until June 1st, at 2:00 p.m.

2 I invite your counsel to have discussions with the
3 government, to see whether you can agree on an appropriate
4 amount.

5 Weighing the factors set forth in 5E1.2d, 1 through 8, and
6 that's the provision dealing with fines, as well as the
7 guidance of 2R1.1, fine schedule, and having found that the
8 volume of commerce exceeds \$10 million, the fine is set at
9 \$500,000, which is 5 percent of 10 million. I think I got that
10 right.

11 You will voluntarily surrender within 60 days. If there
12 is any issue as to a facility designated, please contact your
13 lawyer, and I'll arrange a later date for your self-surrender.

14 I will recommend that you be confined to a, what, what do
15 you --

16 **MR. WEINBERG:** Camp-type facility.

17 **THE COURT:** Minimum security.

18 **MR. WEINBERG:** Camp type, if possible, if appropriate,
19 as close as possible to the Bay Area.

20 **THE COURT:** Okay. That will be the recommendation of
21 the Court.

22 You know, I mean, this is some period of time. It will go
23 very quickly. But I think it's appropriate for all the reasons
24 that I've stated.

25 I do know how hard this is on your family. I must say,

1 though, I have to tell everybody here who is upset by the
2 sentence and by all of this, I do -- and I'm not trying to say
3 anything other than what the experience of federal judges are.
4 And Mr. Weinberg knows it. There isn't a crime that occurs
5 that I have to sentence where it doesn't have a terrible impact
6 on the family. It does in this case have some impact on your
7 family. I understand that.

8 But I must say every defendant who walks in here loses a
9 wife, a husband, childcare, all sorts of things, and they were
10 in a position far less advantaged as yours. Nevertheless,
11 nevertheless, the impacts on families are severe. I wish they
12 weren't. I know that if I could sentence people irrespective
13 of their families, it would be great. But you can't.

14 And, of course, the argument is that when a crime is
15 committed you actually have to think about what impact it would
16 have on your family. I'm sure had you thought about it you
17 would have never committed this crime because you're far too
18 decent a person to do that.

19 So I regret that it's had this impact. I understand it.
20 But, you know, as we all know, life goes on. And there's a lot
21 of good you have done, and there's a lot more good you can do.

22 You are a young man. I mean, everyone looks young to me;
23 except Mr. Weinberg, he looks a little ancient up there. But
24 everybody does look young.

25 And the fact of the matter is you have a whole life ahead

1 of you, and a lot of joyful experiences and a lot of contacts
2 with all those people out there. And I wish you luck.

3 Okay. We're in recess.

4 **MS. SPITALIERI:** Your Honor, just two little
5 housekeeping things.

6 **THE COURT:** Yes.

7 **MS. SPITALIERI:** The surrender date, do you want it
8 7/9?

9 **THE COURT:** Yes, July 9th, on or before July 9th.

10 **MS. SPITALIERI:** And then the \$500,000 fine, you want
11 that paid lump sum?

12 **THE COURT:** The fines and restitution shall be paid
13 immediately. It's due immediately. If it's not paid
14 immediately, there's an interest provision for it. But I'm not
15 going to have an installment plan or anything like that. We
16 don't need it.

17 **MS. SPITALIERI:** So due today?

18 **THE COURT:** Yeah. Well, it's due immediately. That
19 means, really, payment within 15 days without interest, as I
20 understand it.

21 **MR. WEINBERG:** I don't know if it's an immediate
22 question or not, but I know that frequently in these matters
23 there are conditions of probation that --

24 **THE COURT:** All those conditions I'm not imposing.

25 **MR. WEINBERG:** You're not.

