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U.S. DISTRICT COURT  
INDIANAPOLIS DIVISION

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BRIGGS  
CLERK

UNITED STATES OF AMERICA,

07-1381

Plaintiff

-v-

CHRIS A. BEAVER,  
RICKY J. BEAVER,

Defendants

CAUSE NO. IP-06-61-CR M  
Indianapolis, Indiana  
February 9, 2007

U.S.C.A. -- 7th Circuit  
FILED

Before the  
HONORABLE LARRY J. MCKINNEY

AUG 24 2007 SK

OFFICIAL REPORTER'S TRANSCRIPT OF  
DISPOSITION PROCEEDINGS

GINO J. AGNELLO  
CLERK

APPEARANCES:

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Indianapolis, IN 46204

PROCEEDINGS TAKEN BY MACHINE SHORTHAND  
TRANSCRIPT PRODUCED BY COMPUTER-ASSISTED TRANSCRIPTION

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1 (Call to order of the court, 3:15 P.M.)

2 THE COURT: You may be seated.

3 This is United States versus Chris Beaver, which was set  
4 first of the two sentencings. I'm informed by counsel that  
5 he would like to address the issue of the Guideline  
6 calculation with both defendants at the same time.

7 So, Mr. Chris Beaver and Mr. Rick Beaver, would you both  
8 step up here to the lectern, please.

9 Would you raise your right hands, sirs.

10 (Defendants sworn)

11 THE COURT: Can I have your name first for the  
12 record.

13 DEFENDANT CHRIS BEAVER: Chris Anthony Beaver.

14 THE COURT: And yours?

15 DEFENDANT RICKY BEAVER: Ricky Joe Beaver.

16 THE COURT: Both of you recognize today is set for  
17 your sentencings?

18 DEFENDANT CHRIS BEAVER: Yes.

19 DEFENDANT RICKY BEAVER: Yes.

20 THE COURT: Both of you have had an adequate  
21 opportunity to go over the presentence investigative report  
22 with your lawyer?

23 DEFENDANT CHRIS BEAVER: Yes.

24 DEFENDANT RICKY BEAVER: Yes.

25 THE COURT: Now, the first matter that we will

1 address today, gentlemen, is the Guideline calculation. That  
2 would be paragraphs 21 through 37 of the Guidelines. And, as  
3 you undoubtedly know, your lawyer has made some objections to  
4 these calculations, and it is with those objections that we  
5 will deal to begin with. So I'll hear his statement and  
6 argument on that, and if either of you have testimony you  
7 want to give on that, then I'll hear that.

8 So, at this point we will turn it over to your counsel  
9 and you gentlemen can have a seat.

10 MR. LOCKWOOD: May I retrieve my notes, sir?

11 THE COURT: You may, sir.

12 MR. LOCKWOOD: As the Court knows, the Government's  
13 Guideline calculation comes to a 20. We respectfully dispute  
14 that on two grounds primarily.

15 First, we do not believe that the six level increase for  
16 effect -- or impact on commerce is appropriate.

17 And secondly, we believe that both of these defendants  
18 are entitled to consideration for and, in fact, the  
19 application of a four level decrease for their minimal  
20 participation.

21 Some of the issues that we would argue, Your Honor --

22 THE COURT: I don't mean to interrupt.

23 So the record reflects, those would be in both instances,  
24 I think, the same paragraph number. Those would be paragraph  
25 23 and paragraph 25. It is paragraph 23 and 25 in Ricky

1 Beaver's and paragraph 22 and 24 in Chris's.

2 MR. LOCKWOOD: Yes, sir, that is correct.

3 In support of -- one of the reasons that we suggest, sir,  
4 that the impact on commerce calculation is incorrect is that  
5 we dispute the life of the conspiracy as it pertains to each  
6 of these defendants.

7 The testimony at trial, indeed, from two witnesses was  
8 that there was a horse barn meeting in July that was attended  
9 by Ricky Beaver. Mr. Beaver will testify in this sentencing  
10 hearing today that the first meeting he attended was a  
11 Signature Inn meeting, and that the next meeting he attended  
12 was a horse barn meeting. Both of those meetings occurred in  
13 the year 2002. That would, of course, cause the calculation  
14 of the impact on commerce to be affected because the  
15 Government has calculated all of the gross sales of MA-RI-Al  
16 Corporation from the year 2000 through the year 2004.

17 We also suggest, Your Honor, and we have some figures  
18 that we have calculated, if you would have us recite those in  
19 the record:

20 THE COURT: Yes.

21 MR. LOCKWOOD: We suggest, sir, that the conspiracy,  
22 by most accounts, did not begin until the summer, perhaps, of  
23 2000. We don't believe, therefore, that all of the gross  
24 sales of MA-RI-Al Corporation should be counted for that  
25 year. We believe that 50 percent of them would have taken

1 place prior to even the Government's alleged beginning of  
2 this particular conspiracy.

3 We also suggest, sir, that in the year 2004, specifically  
4 in May, that a number of arrests were made that would have  
5 effectively stopped the conspiracy, and we don't believe that  
6 all of the sales of MA-RI-Al Corporation in the year 2004  
7 should be included in the calculation.

8 May is 42 percent, approximately, 41.66 percent of a  
9 year. and so we have in our calculations eliminated  
10 approximately half of the 2000 figure that is presented to  
11 the Court by the Government by Mr. Schleef's memorandum, in  
12 Exhibit A specifically, and we have also subtracted out  
13 approximately 58 percent of the sales in May.

14 Beyond that, sir, we believe --

15 THE COURT: What does that give you then?

16 MR. LOCKWOOD: May I be excused for a moment?

17 THE COURT: Sure.

18 MR. LOCKWOOD: For Ricky that would be 42 percent of  
19 the 2002 calculation of the Government, which equals  
20 \$5,659,423. All of the sales for 2003, which, according to  
21 the Government figures, 14,354,549. And for May of 2004, and  
22 I said half, but I guess I calculated May, 2002, because the  
23 testimony, I think, was that it was in the spring, more or  
24 less, of the year that perhaps that first horse barn meeting  
25 was held, and in May of -- I'm sorry, May of 2002 is the

1 calculation for the Signature Inn meeting in the spring of  
2 that year. And then in May of 2004, sir, that would amount  
3 to \$5,996,182, for a total of \$26,010,154 for Ricky. We  
4 would suggest, sir, that that was the first time that Ricky  
5 could be logically included in the conspiratorial agreement.

6 As to Chris Beaver, the testimony most favorable to the  
7 Government's case was that the first meeting that Chris  
8 Beaver attended was in October of 2003. October is  
9 approximately 83 percent of the year. Eighty-three percent  
10 of the 2003 gross sales of MA-RI-Al Corporation of  
11 \$14,354,549 is 5 million -- I'm sorry, \$11,914,000 --  
12 \$11,914,276. And if again the calculation stops at May of  
13 2004, that is an additional \$5,196,182, for a total of  
14 \$17,910,458.

15 Also, Your Honor, there is an issue, I believe, of  
16 whether or not it is within the discretion of this Court to  
17 attribute all of the sales of the corporation to either or  
18 both of these individuals. While it is appropriate under the  
19 law, as I understand it, to make estimations, and while it is  
20 also permissible under the law to have a presumption that all  
21 of the sales of the corporation should be counted in this  
22 calculation, we only know of one court -- that is in the 6th  
23 District -- that has addressed that issue, and that seems to  
24 say -- or the 6th Circuit, rather. That case seems to say  
25 that it is up to the judge to consider these things, but it

1 is not necessarily impermissible for the judge to consider  
2 factors that would mitigate against attributing all of the  
3 gross sales to the individual.

4 So on that basis, Your Honor, we would suggest that there  
5 should be no more than a four point increase in the level of  
6 punishment.

7 We do agree this is a level 12 offense to begin with.  
8 And in summary, if you add four to that, that is 16. We  
9 would argue that both of these gentlemen are entitled to a  
10 minimal participation reduction of four levels. That takes  
11 it back down to a 12.

12 We believe also that the fact that there was  
13 misrepresentations made to government employees, the FBI  
14 agents, is inescapable by these defendants -- I'm just trying  
15 to be honest with the Court -- not because the  
16 representations misled these officers. We would argue  
17 vehemently that under the facts of this case they did not and  
18 could not have misled them, but we believe that that has to  
19 be added.

20 Some of the information, Your Honor, that we would  
21 suggest in support of Mr. Beaver, Rick Beaver's testimony,  
22 that this conspiracy began as to him in 2002 is that  
23 Mr. Haehl, one of the witnesses upon whom the Government  
24 relies principally in their presentence memorandums,  
25 testified that he believed that Rick Beaver was present at



1 the 2000 horse barn meeting. But he also testified in Volume  
2 II, page 197, at line 21, through page 198, line 6, that he  
3 never again spoke to Ricky Beaver, and that the only time  
4 that he had ever spoken to Ricky Beaver was at this 2000  
5 horse barn meeting. It seems almost incredible to me that  
6 there could be that long of a gap if these folks were  
7 actively participating and if Mr. Beaver had, in fact, been  
8 at the 2000 horse barn meeting.

9 Now, to be fair, the star witness, it seems to me, for  
10 the Government in this case is Scott Hughey. And Mr. Hughey  
11 testified at Volume II, page 323, lines 11 through 19, that  
12 there were, quote, "Several phone calls" that he made to  
13 Ricky Beaver, but Mr. Hughey could only recall that they  
14 occurred between the first meeting and before the last  
15 meeting. Mr. Hughey, you may recall when he was on the  
16 witness stand, testified that he had tried to assist the  
17 investigation by drawing a time line, and that in that time  
18 line he had not only pencilled in things that happened, but  
19 he also numbered all of these events. In this  
20 documentation -- I have a copy of it at counsel table -- I  
21 believe it is number 9. The only time that Mr. Hughey  
22 mentions that he talked to Rick Beaver was at a Dairy Queen  
23 meeting that Mr. Hughey testified to in court, and that was  
24 not until the latter part of 2002, Your Honor.

25 And so we believe the best evidence is, after you hear

1 from Ricky Beaver, that this conspiracy could not have begun  
2 as to Ricky Beaver or Chris Beaver until at least 2002. And  
3 we believe the best evidence also is that it could not have  
4 begun as to Chris Beaver until October of 2003.

5 So, based upon those kinds of arguments, Your Honor, we  
6 would contest the calculation of the Government.

7 THE COURT: All right.

8 MR. LOCKWOOD: If you want me to go ahead and  
9 address the issue of whether or not they are deserving of  
10 minimal participation, I can do that.

11 THE COURT: I do.

12 MR. LOCKWOOD: All right, sir.

13 I will use Mr. Hughey again, if I may, as an example. In  
14 the time line of events that can be constructed from all of  
15 the FBI summaries, the 302s, and from the grand jury  
16 testimony, Mr. Hughey was involved in individual face-to-face  
17 contacts with other co-conspirators on at least 32 occasions.  
18 And that does not count telephone calls that he admitted that  
19 he made by and between or to and among the various  
20 conspirators. Other co-conspirators ranged from 18 contacts  
21 to 20-some contacts. And, Your Honor, these were contacts  
22 that were often face-to-face contacts. They were luncheon  
23 meetings, there were meetings at Shell stations where this  
24 conspiracy was discussed.

25 The only thing in this record that pertains to these

1 defendants, taking the Government's case in the most  
2 favorable light, is two meetings that were attended by Ricky  
3 Beaver and one meeting that was attended by Chris Beaver,  
4 together with the testimony of Mr. Hughey to the effect that  
5 he made several phone calls to Ricky Beaver and one or two --  
6 I'm quoting that from the record -- one or two telephone  
7 calls to Chris Beaver. Compared to -- I would go so far as  
8 to say that I have tried to study this record in the context  
9 of all the other co-defendants as thoroughly as I possibly  
10 could, and I can say without hesitation that the involvement  
11 of these gentlemen in this conspiracy, in terms of their  
12 contacts, both telephonic and personal, is miniscule compared  
13 to virtually all of the other co-conspirators.

14 And that would conclude my argument on those two points,  
15 sir.

16 I have also asked the Court to consider a two point  
17 reduction in the level because I believe that these gentlemen  
18 have admitted their role in this conspiracy in the fashion  
19 that they have, and that they should be considered for that  
20 two point reduction, but that is not one of the points the  
21 Court asked me to address at this point.

22 THE COURT: I would like to have all your arguments  
23 on all the issues on the Guidelines.

24 MR. LOCKWOOD: Well, it is very unusual, Your Honor,  
25 to have a two point reduction for admitting your

1 participation in a conspiracy like this when you have not  
2 made a confession, when you have not pled guilty, when you  
3 have not testified, perhaps, for the Government. And the  
4 Government has its policies. It is always a temptation at a  
5 time like this, if I may say, to want to reargue the facts,  
6 and I'm not going to do that. It is also sometimes a  
7 temptation to say the Government is oppressive with that.  
8 But we don't have to go too far back in history to find out  
9 what -- you know, why there is this Sherman Antitrust Act.  
10 There was a time, about the same time that women got the vote  
11 in the late 19th, early 20th century, when John Rockefeller  
12 and Henry Ford were making 50 million dollars a year and  
13 their employees were making 500 a year. It is those kind of  
14 abuses that these laws were passed to prevent, in part.

15 So I'm not making minimal of my clients' participation.  
16 The jury has found them guilty. I don't mean to say that  
17 they should not have believed Scott Hughey, or that they even  
18 did, we don't know, but they did find them guilty.

19 Nevertheless, the Court may recall that after the initial  
20 statement to the FBI agents, a statement that was made, by  
21 the way, at about almost exactly the same time that Mr. Alan  
22 Beaver was telling FBI agents that his son and his nephew had  
23 been to meetings, the very next day there was a call and  
24 followed by -- or a telephone call from the corporate counsel  
25 to the Chicago office of the U.S. Attorney and there was a

1 disclosure that both of these gentlemen had not been truthful  
2 to the FBI. There was no evidence in this case, has been no  
3 evidence in this case, that there was ever any follow-up  
4 made, and that is because there never was.

5 There is also evidence in the case, Your Honor, from the  
6 FBI agents, the field agents that were involved in this, that  
7 their job, along with the other agents that were involved in  
8 the searches, their job was to gather information and then  
9 funnel it to the case agent. By the time the case agent  
10 received that information it had to be apparent to everybody  
11 that my clients had made an initial misstatement.

12 So they have never claimed, other than that first  
13 statement, what they tried to retract, that they did not go  
14 to these meetings, that they did not participate, and under  
15 rare circumstances -- I would like to get, obviously, as much  
16 consideration for my clients as I can -- under rare  
17 circumstances it is permissible, I believe, under the law for  
18 the Court to consider a two level reduction for admitting  
19 their participation in this conspiracy to the extent that  
20 they were involved.

21 We tried the case on the basis that what they did did not  
22 constitute an agreement. We did not try this case based upon  
23 the proposition that we weren't guilty, or we were somewhere  
24 else, or somebody made us do it. And it is not appropriate,  
25 Your Honor, in my humble opinion, to punish someone for

1 taking their case to trial. And one way to offset the fact  
2 that you get consideration from the Government, which I'm not  
3 opposing if you cooperate, one way to offset that is to  
4 consider awarding these gentlemen a two level reduction  
5 because they did admit what participation they did have in  
6 this conspiracy.

7 And I thank you, sir.

8 THE COURT: Did you have any testimony you wanted to  
9 put in on any of these issues?

10 MR. LOCKWOOD: Yes. I would like to call Ricky  
11 Beaver, please.

12 THE COURT: You can do that.

13 MR. LOCKWOOD: Mr. Beaver.

14 THE COURT: You have already been sworn.

15 DEFENDANT'S WITNESS, RICKY BEAVER, PREVIOUSLY SWORN  
16 DIRECT EXAMINATION

17 QUESTIONS BY MR. LOCKWOOD:

18 THE WITNESS: I would like to --

19 MR. LOCKWOOD: Excuse me, Mr. Beaver. Right now  
20 what I want to do now is ask you some questions.

21 THE WITNESS: Okay.

22 MR. LOCKWOOD: And you will be subject to  
23 cross-examination. So when I'm finished one of the gentlemen  
24 from the Government will probably have some questions for  
25 you?

1 THE WITNESS: Okay.

2 Q. First of all, would you identify yourself?

3 A. Ricky Joe Beaver.

4 Q. You are the same Ricky Joe Beaver that was previously  
5 tried in this court and found guilty of conspiracy --

6 A. Yes.

7 Q. -- to fix prices, in violation of the Sherman antitrust  
8 Act, is that correct?

9 A. Yes.

10 Q. You were also found guilty of Count 2 of your indictment  
11 that you made misstatements to the Federal Bureau of  
12 Investigation?

13 A. Yes.

14 Q. Mr. Beaver, I would like to ask you when you first  
15 became involved with the co-conspirators that have testified  
16 in this case?

17 A. 2002, and I believe May.

18 Q. And why do you believe that, sir?

19 A. A couple of reasons. The first that comes to mind is I  
20 was going through some marital problems with what is my  
21 ex-wife now, and that began April and May. And I just  
22 remember that I was going through kind of that at the same  
23 time that Mr. Butch Nuckols had called me to attend a meeting  
24 at the Signature Inn.

25 Q. And you believe that that would have been in May of

1 2002?

2 A. Yes.

3 Q. And did you attend another meeting after that?

4 A. Yes, I did.

5 Q. When was that meeting?

6 A. It was more into the summer, I believe June or July of  
7 2002.

8 Q. Where was that meeting?

9 A. At Butch Nuckols' barn.

10 Q. Did you attend any other meetings?

11 A. No, other than I met Scott Hughey at a Dairy Queen.

12 Q. Any other meetings at all?

13 A. No. Another thing that comes to mind, and after hearing  
14 the testimonies of everybody, is everybody said that at the  
15 first horse barn meeting John Huggins was there. I have  
16 never met that man in my life, not knowingly. I might have  
17 met him in passing, not knowing who he is.

18 Q. Were you asked to attend any meetings other than the  
19 ones you described?

20 A. Yes.

21 Q. Tell us about that.

22 A. Scott Hughey called me late -- or in the summer of 2003  
23 and invited me to another meeting at Butch's house, which I  
24 had declined. I had seen on my phone where he had called me  
25 several times before that and I didn't answer the phone.



1 Then finally I answered the phone and he invited me to that  
2 meeting, which I told him I wasn't going to go.

3 Q. When was the Dairy Queen meeting you had with  
4 Mr. Hughey, sir?

5 A. I don't recall exactly. It was -- I believe it was  
6 between the Signature Inn meeting and the horse barn meeting.

7 Q. What year would that have been?

8 A. 2002.

9 MR. LOCKWOOD: Thank you. That's all I have.

10 THE COURT: Cross-examine.

11 CROSS-EXAMINATION,

12 QUESTIONS BY MR. EPSTEIN:

13 Q. Sir, it is your testimony that you didn't attend a horse  
14 barn meeting in July of 2000, is that correct?

15 A. Correct.

16 Q. You were here for the testimony of Richard Haehl  
17 identifying that you were at that meeting, is that correct?

18 A. Yes.

19 Q. So it is your testimony that he was not telling the  
20 truth?

21 A. I don't think he was accurate, no.

22 Q. So when he says that he identified you as being an  
23 attendant at the 2000 horse barn meeting, your testimony here  
24 today is that is not true?

25 A. Yes, that's correct.

1 Q. Scott Hughey testified you were at the 2000 horse barn  
2 meeting, is that correct?

3 A. Correct.

4 Q. Are you saying that Mr. Hughey's testimony was  
5 incorrect?

6 A. Yes.

7 Q. When the FBI came and interviewed you you were asked if  
8 you attended a meeting at Nuckols' horse barn, isn't that  
9 correct?

10 A. Correct.

11 Q. You told the agent that you had not, is that correct?

12 A. Correct.

13 Q. You were asked if you had any knowledge of a meeting at  
14 Nuckols' horse barn, is that correct?

15 A. Yes.

16 Q. And you said you had no knowledge of a meeting at  
17 Nuckols' horse barn?

18 A. Correct.

19 Q. In fact, you denied any knowledge of ever discussing  
20 fixing the price of concrete or meeting with people to  
21 discuss it, isn't that correct?

22 A. Yes.

23 Q. When asked whether you were aware of or participated in  
24 any discussions or meetings in which price fixing or setting  
25 prices was discussed, you told the FBI you were not aware of

1 any such meetings?

2 A. Yes, I did.

3 Q. So you have told all these lies, correct?

4 A. Uh-huh.

5 Q. But we are supposed to believe today your testimony  
6 versus other witnesses who put you at the July, 2000 horse  
7 barn meeting?

8 A. Correct.

9 MR. EPSTEIN: Nothing further, Your Honor.

10 THE COURT: All right. Anything else for this  
11 witness?

12 MR. LOCKWOOD: No, sir.

13 THE COURT: You may step down, sir.

14 (Witness excused)

15 THE COURT: Would the Government like to respond to  
16 this argument?

17 MR. EPSTEIN: Your Honor, as we discussed, I'll be  
18 making most of the comments, but Mr. Schleaf will also be  
19 adding a few additional comments that he believes are  
20 relevant.

21 First, taking the volume of commerce argument. First of  
22 all, I would like to make clear I believe the defense counsel  
23 has confused some things in saying we would want to include  
24 all sales, or gross sales, of Beaver Materials during this  
25 period. And that is simply not true. If you look at our

1 sentencing memorandum, the numbers that we took are the sales  
2 numbers for only ready-mix concrete sales that were provided  
3 in the financial documents provided by the company itself.  
4 These are their numbers, they are only for ready-mix  
5 concrete, they don't include any other products, and they are  
6 only for the relevant period.

7 Again, as defense counsel acceded, it is a preponderance  
8 of the evidence standard, and there is a rebuttable  
9 presumption, as the 7th Circuit said in *Andreas* that, and I  
10 quote, "A rebuttable presumption that all sales during the  
11 conspiracy were affected by the illegal agreement."

12 Similarly, the 6th Circuit in *Hayter Oil* said, "We  
13 concluded that the volume of commerce attributable to a  
14 particular defendant convicted of price fixing includes all  
15 sales of the specific type of goods or services which were  
16 made by the defendant, or his principal, during the period of  
17 the conspiracy without regard to whether individual sales  
18 were made at the target price."

19 Your Honor, we believe that we have met the preponderance  
20 of the evidence standard that the conspiracy, as to these  
21 defendants, began in July of 2000. You have heard the  
22 testimony of Richard Haehl. You heard the testimony of Scott  
23 Hughey. You have seen documents at trial that substantiate  
24 that.

25 In terms of the evidence, what you have got to weigh is

1 the sworn testimony of the two witnesses and their  
2 documentation versus the defendant, who testified here today,  
3 admittedly has an obvious interest in not placing himself at  
4 that July, 2000 meeting, and has shown a propensity to tell  
5 falsehoods when it suits him.

6 Going through more specifically the volume of commerce  
7 calculation, Your Honor has had a chance to look at the  
8 sentencing memorandum, and on page 7 the Government goes  
9 through in specific detail how it arrives at its numbers. If  
10 it would please the Court, I would go through them. If you  
11 are comfortable with them --

12 THE COURT: Do it again.

13 MR. EPSTEIN: Okay. We basically took again the  
14 company's own ready-mix concrete sales number for the full  
15 years 2001, '02, and '03. For 2001 the total sales are  
16 \$10,693,073. For 2002, total ready-mix concrete sales were  
17 \$13,474,830. And for 2003 the total ready-mix concrete sales  
18 by Beaver was \$14,354,549. That comes to \$38,522,452. That  
19 doesn't include ready-mix concrete sales through July, 2000  
20 through October of 2000, or November, 2003 through May, 2004.  
21 A simple proration of again the company's own documentation  
22 of ready-mix concrete sales during that period yields an  
23 additional \$11,932,764 in ready-mix concrete sales for a  
24 total volume of commerce of \$50,455,216, well above the 40  
25 million dollar threshold for a six point increase.

1           In addition, the president of Beaver itself, Alan Beaver,  
2 testified, and his testimony is consistent with a number in  
3 that range. I believe his testimony was 10 to 15 million  
4 dollars annual sales.

5           We believe there is more than sufficient evidence in the  
6 record and presented here today to show the volume of  
7 commerce attributable to these defendants is more than 40  
8 million dollars. We have pointed to the testimony of several  
9 witnesses that not only said what meetings these defendants  
10 were at, but also that they abided by the agreement and they  
11 were pricing in accordance.

12           Again, Richard Haehl at page 159, lines 20 through 22,  
13 testified that when Ricky called him in one instance Ricky  
14 felt like we had an agreement to limit discounts and IMI  
15 strayed from that number and he had bid according to how we  
16 should bid.

17           Scott Hughey also testified about conversations he had  
18 with Ricky Beaver where the defendant told him that, "Beaver  
19 Materials didn't deviate, we were where we were supposed to  
20 be." That is in the trial transcript at page 324, lines 10  
21 to 11. And Hughey also testified the defendant's comments  
22 indicated he and Beaver Materials were adhering to the  
23 agreement and discounting no more than the agreed upon  
24 amount. And again, page 324, lines 12 through 16, and 327,  
25 line 22, through 328, line 15.

1           So we don't throw in the sales numbers without some  
2 caution. But again, these are the company's own numbers.  
3 They are based on testimony by witnesses that Beaver, and  
4 Ricky and Chris, were abiding by the agreement and pricing in  
5 accordance with. These sales, this 50 million dollars in  
6 sales, is attributable to the defendants.

7           Again, Mr. Schleef is going to address a couple of  
8 comments to Chris Beaver, but let me address the remaining  
9 arguments.

10           As to minimal participant. It is beyond question that  
11 some people did more than these two defendants. Scott Hughey  
12 and Butch Nuckols, we have come before the Court and argued  
13 were leaders of the conspiracy. We are not arguing they were  
14 leaders, but they are a pivotal part of the conspiracy. They  
15 joined the conspiracy, they were conspirators. They might  
16 not have done as much, but without them Beaver Materials is  
17 not a conspirator. The conspiracy is not as effectual and  
18 may not have worked. Without them the conspiracy doesn't  
19 work. They attended numerous meetings, they participated in  
20 additional telephone conversations. You have heard witnesses  
21 testify as to a conversation with Richard Haehl about pricing  
22 on a specific project. A telephone conversation with Price  
23 Irving about pricing on a specific project. Several  
24 conversations with Scott Hughey about pricing on specific  
25 projects. In addition to the horse barn meetings and the

1 Signature Inn meeting.

2 In addition, Ricky Beaver's own uncle, Alan Beaver,  
3 testified that he knew he was talking to competitors. This  
4 is not a one time appearance at a meeting where he wasn't  
5 sure or -- neither of the defendants were sure why they were  
6 going, that they didn't know what this was about. This was  
7 repeated conduct and repeatedly showing up and repeatedly  
8 advancing the interests of the conspiracy.

9 So, Your Honor, they are not minimal participants. They  
10 are conspirators.

11 As for the argument that they are entitled to points for  
12 acceptance of responsibility, I have to admit, Your Honor,  
13 I'm a little baffled by this. To my mind they have shown  
14 absolutely no acceptance of responsibility, let alone  
15 anything warranting a two point departure. As we have  
16 spelled out in our sentencing memorandum, the application  
17 notes to 3E1.1 are pretty clear.

18 Sorry, one second, Your Honor.

19 Excuse me one second, Your Honor.

20 Sorry about that, Your Honor.

21 Application notes 2 and 4 to 3E1.1 indicate -- the  
22 application note 2, "This adjustment is not intended to apply  
23 to a defendant who puts the Government to its burden of proof  
24 at trial by denying the essential factual elements of guilt,  
25 is convicted, and only then admits guilt and expresses



1 remorse." That is precisely the case here. And to be  
2 honest, it is not even clear that the defendant today accepts  
3 responsibility.

4 Although, that application note goes on to state that,  
5 "Conviction by trial does not automatically preclude a  
6 defendant for consideration for reduction," it lists specific  
7 rare situations, which we don't believe are applicable here.

8 What we have here is a defendant who has been convicted  
9 at trial, and even in his sentencing memorandum attempts to  
10 walk away and minimize his conduct.

11 In their objections to the PSI on page 7, "The defense  
12 was not based upon a denial of his attendance at meetings  
13 during which price fixing was discussed and agreements  
14 acceded to some of the participants in the meeting." He is  
15 talking about other people acceding to agreements, but not  
16 himself. He still contends that his participation is limited  
17 to attendance at meetings.

18 But perhaps even more telling, "The defendant contends  
19 that this case is the extraordinary case in that even though  
20 defendant continues to maintain that he is not guilty of  
21 conspiring to fix prices." He still is maintaining he is not  
22 guilty. He has been found guilty. A jury of his peers  
23 rendered that verdict.

24 In addition, application note 4 says, "Conduct resulting  
25 in an enhancement under 3C1.1, obstructing or impeding the

1 administration of justice, ordinarily indicates the defendant  
2 has not accepted responsibility for his criminal conduct."  
3 Again, there may be extraordinary cases, but there is no  
4 evidence here that this is such a case.

5 These defendants lied to the FBI, attempted to impede an  
6 investigation, and now they are to be heard asking for points  
7 for acceptance of responsibility.

8 The Government's position is not that because they put  
9 the Government to its burden of proof they are not entitled  
10 to points for acceptance of responsibility. The Government's  
11 position is they should not be rewarded for obstructing, for  
12 lying, and then at the end of the day still not accepting  
13 responsibility, but wanting the points off their sentence.

14 Mr. Schleef can argue.

15 MR. SCHLEEF: Your Honor, I have a few things to  
16 add, and I apologize if any of it is duplicitous.

17 The indictment in this case charged both Defendants with  
18 engaging in a conspiracy to suppress and eliminate prices at  
19 which ready-mix concrete was sold from July, 2000 to May  
20 2004. Credible evidence was introduced to support this  
21 charge, evidence that was, in fact credited by a jury of  
22 their peers and they were convicted of just that conspiracy  
23 from July, 2000 to May, 2004.

24 What exactly was this evidence? Both Richard Haehl and  
25 Scott Hughey testified that Ricky Beaver attended a meeting

1 with competitors in the summer of 2000. Defense makes much  
2 of the fact that Price Irving did not place Mr. Beaver at  
3 this meeting. But Price Irving, by his own testimony, was  
4 not involved in pricing until 2002 and, therefore, would have  
5 had no reason to be at a pricing discussion meeting in 2000.

6 Ricky Beaver himself now places himself at the 2002 horse  
7 barn meeting. And while he denies that he was at the 2000  
8 meeting, this is a man that has demonstrated a propensity to  
9 lie.

10 Chris Beaver replaced Ricky Beaver at the October 22nd,  
11 2003, horse barn meeting. Ricky had made a few mistakes in  
12 pricing according to the agreements that had previously been  
13 reached. Price Irving, Butch Nuckols, and Scott Hughey all  
14 testified that this was the reason that Chris Beaver replaced  
15 Ricky Beaver at the October, 2003 horse barn meeting. Chris  
16 attended this meeting to ensure that his company, Beaver  
17 Materials, effectively implemented the agreements.

18 While Chris only attended the one meeting, as evidence  
19 has demonstrated, he was aware and approved of the conspiracy  
20 from its inception. Both Chris and Ricky told the FBI that  
21 Chris was being groomed to be president of MA-RI-AL, or  
22 Beaver Materials, after his father retired. Both Chris and  
23 Rick told the FBI that they were on Beaver Materials' board  
24 of directors. Chris and Rick are the sons of the two owners  
25 of Beaver Materials. They are the heirs to the thrown, so to

1 speak, and will be inheriting the company.

2 Testimony established that both men were involved in  
3 pricing. It is clear that while Chris Beaver may not have  
4 been present at the 2000 horse barn meeting, or the 2002  
5 meetings, he clearly understood and knew what was going on.  
6 After the October 22nd, 2003, horse barn meeting he expressed  
7 his enthusiasm for the agreements by offering to expand the  
8 conspiracy to include Jason Mann of American Concrete. He  
9 also engaged in at least one or two conversations with  
10 co-conspirators in the short time between October, 2003 and  
11 May, 2004.

12 The volume of commerce, therefore, should be attributed  
13 to the entire period of the conspiracy and applied to both  
14 men, as both men were equally culpable in the conspiracy for  
15 the entire period, even if they weren't both at all meetings.

16 I will defer to my co-counsel's representations about  
17 volume of commerce. I only elect to add that the numbers we  
18 used, the Government used, were numbers provided by the  
19 company themselves. And they were numbers that the company  
20 represented as just the concrete sales removed from  
21 MA-RI-Al's entire sales from documents that have been  
22 submitted to the Court in defendant, MA-RI-Al Corporation's  
23 upcoming ability-to-pay sentence hearing. And while these  
24 numbers are not exactly the same time period as was the  
25 conspiracy, over the past five years the company has had

1 total annual sales on average of \$15,200,000. The company  
2 represented to the Government that the actual concrete sales  
3 were less than that. We are not challenging those figures  
4 for the purpose of this sentencing. We have, in fact, used  
5 them and still come up with a volume of commerce far in  
6 excess of 40 million dollars. And the numbers that MA-RI-AL  
7 gave to us, stating that these were only the concrete sales,  
8 are significantly less than the average of all sales.

9 I would like now to turn to the acceptance of  
10 responsibility as it applies to Chris Beaver.

11 First, Mr. Beaver argues -- or defense counsel argues for  
12 a downward adjustment for Chris Beaver's minimal  
13 participation in the conspiracy. But a role within the  
14 company, as demonstrated by his grooming to be president, his  
15 involvement in pricing, his responsibility as a  
16 self-proclaimed member of the company's board of directors,  
17 supports the knowledge and understanding and active  
18 participation in this scheme that does not warrant a minimal  
19 participant status.

20 And as far as an acceptance of responsibility argument  
21 goes, as my co-counsel pointed out, the Government was put to  
22 its burden of proof and met that burden. The defendant,  
23 Chris Beaver, denied guilt. He was convicted and isn't even  
24 now admitting guilt. The Government submits he is only  
25 expressing remorse for his conviction.

1 Chris Beaver was convicted of making false statements  
2 under 18 U.S.C. Section 1001, which defense counsel admits  
3 gives him an automatic two level enhancement under the  
4 Guidelines. And he does not now except responsibility for  
5 his actions, as the pre-trial report makes quite clear -- as  
6 the objections to the pre-trial report make quite clear. On  
7 page 9, in a statement also included in Ricky Beaver's  
8 objections to the pre-trial sentencing report, defense  
9 counsel specifically said that the defendant continues to  
10 maintain that he is not guilty of conspiring to fix prices.  
11 And this even after a jury of his peers has found otherwise.

12 For these reasons, in addition to the comments to the  
13 Sentencing Guidelines mentioned by my co-counsel expressing  
14 the very unusual circumstances that a downward departure  
15 would ever be used in a circumstance where the Government has  
16 been put to its burden of proof at trial and the defendant  
17 was convicted of making false statements in violation of 18  
18 U.S.C. 1001, the Government submits that they are not  
19 eligible for the acceptance of responsibility deduction.

20 Thank you.

21 THE COURT: Thank you.

22 Counsel, you have the last word in this argument.

23 MR. LOCKWOOD: Your Honor, if I may, as to Chris  
24 Beaver only.

25 You were present, of course, during the entire trial.

1 You know what the testimony was. I believe the testimony was  
2 unequivocal, sir, from corporate counsel, as well as from  
3 Alan Beaver, that Chris is not a member of the board of  
4 directors. I'm sure that is particularly significant. If he  
5 is a conspirator, then he is a conspirator.

6 But that and one other cut, the unkindest cut of all, is  
7 the alleged contact between Mr. Beaver and Jason Mann, which,  
8 according to the testimony in this case, is nonexistent. The  
9 testimony was that Chris had agreed to talk to Jason Mann.  
10 The Government had Jason Mann subpoenaed. Jason Mann was  
11 here for an entire day and you never heard from him. I think  
12 we are entitled to an inference that if the Government had  
13 had favorable testimony to the effect that Chris Beaver had  
14 talked to Jason Mann about a conspiracy they should have put  
15 Jason Mann on the witness stand. We are not required to  
16 prove anything.

17 As to Chris also only, testimony that has been referred  
18 to by Mr. Schleef to the effect -- I believe Mr. Schleef --  
19 to the effect that Chris replaced Ricky because Ricky had  
20 made some mistakes were testified to, sir, as assumptions by  
21 the witnesses themselves. They did not testify that anyone  
22 had -- that either Chris or Ricky had told them that Chris  
23 had replaced Ricky, let alone that it was because Ricky had  
24 made some mistakes.

25 So those kind of things, we believe, are typical of a

1 little bit of stretching on behalf of the Government, and we  
2 again urge you that the proper level is no more than a 14 for  
3 Chris Beaver.

4 And he would like to make a statement of allocution at  
5 the appropriate time.

6 THE COURT: Right. Well, he certainly will have an  
7 opportunity to address the Court.

8 MR. LOCKWOOD: Yes, sir.

9 THE COURT: And he can address me now if it is about  
10 this Guideline.

11 MR. LOCKWOOD: Okay. I don't believe it is about  
12 the Guidelines, no, sir.

13 THE COURT: All right. You can have a seat, then,  
14 and I'll address these issues.

15 I'll address the base offense level first.

16 MR. LOCKWOOD: I'm sorry, Your Honor, may I, if it  
17 is appropriate, I can address the Ricky Guidelines. I didn't  
18 know if you wanted to keep that separate.

19 THE COURT: My understanding is that what you wanted  
20 to do was to address paragraphs 21 through 33 -- or through  
21 37 as to both.

22 MR. LOCKWOOD: Yes, sir.

23 THE COURT: All right. So the first issue, then, is  
24 the base offense level.

25 It is important to begin with the indictment in this case



1 because the jury found the defendants guilty of the charge.  
2 And the indictment charges in this case, of course, that  
3 Count 1 was conspiracy to suppress and eliminate competition  
4 by fixing the prices at which ready-mix concrete was sold in  
5 the Indianapolis, Indiana metropolitan area. That was the  
6 first finding of guilt for both of these defendants.

7 In the indictment itself it describes that the -- or it  
8 alleges that the indictment began as early as July of 2000 up  
9 until May the 25th of 2004. And alleged that these  
10 defendants and the co-conspirators; Irving Materials,  
11 Builder's Concrete & Supply, and others, were involved in  
12 that.

13 Now, it is, I think, worth noting that in the allegations  
14 on the means and method of the conspiracy and in describing  
15 the defendants and co-conspirators in this case I don't  
16 believe it is specific as to who did what to whom at what  
17 time. It is the general allegation that that is the time  
18 period of the offense. And so it is fair for us to address  
19 where within this conspiracy of which these defendants were  
20 found guilty their conduct actually begins and ends, because  
21 when we address -- we do that for the specific offense  
22 characteristic here.

23 I should say fundamentally that the base offense level is  
24 a 12, and that is a 12. That is what the United States  
25 Sentencing Guideline Commission addresses to the generic

1 offense. And it is with the specific offense characteristic  
2 that the parties disagree.

3 And the first issue, then, is whether the volume of  
4 commerce attributable to these defendants, either  
5 individually or each of them, would be more than 40 million  
6 dollars. If it is less than 40 million dollars -- I think if  
7 it is above 20 and up to 40, then it is four points in  
8 addition. And if it is over 40 it is six points. And so it  
9 is fair to address the evidence as to when these defendants  
10 began to become involved in this conspiracy.

11 And the evidence of two of the co-conspirators at the  
12 trial was, I think, Hughey and Nuckols both, that the  
13 defendant, Ricky Beaver, was at that meeting.

14 MR. EPSTEIN: Your Honor, it was actually Hughey and  
15 Haehl.

16 THE COURT: I'm sorry, it was Mr. Haehl.  
17 Mr. Nuckols didn't say that. And both of those gentlemen  
18 said that Ricky Beaver was there.

19 And then the question is, do we -- and Mr. Beaver has  
20 denied that. And so the first issue is one of credibility.  
21 I think the jury believed these witnesses that appeared  
22 testifying against the defendants or the defendants would  
23 have been found not guilty.

24 In this particular instance when I make a credibility  
25 decision I look at what I heard during the course of the

1 testimony and then I listen also to Mr. Beaver as he denied  
2 it. And it is true that Mr. Beaver has been found guilty of  
3 lying to the FBI, and it does make it difficult for the Court  
4 to pick among several statements and decide to agree with  
5 Mr. Beaver, that he didn't lie here, but he did lie here.  
6 And viewing the evidence as a whole from the witnesses at the  
7 trial and considering Mr. Beaver's record on truth telling,  
8 I'm going to find that he was, in fact, at that meeting in  
9 2000.

10 And then the question becomes what evidence is there  
11 that, having been there, the corporation went ahead and did  
12 its best to abide by the agreement that was arrived at at the  
13 meeting? And the evidence is not exact. The evidence is  
14 testimony from co-conspirators about phone calls. The dates  
15 of those phone calls are not exact, but the evidence is that  
16 they flow over the course of a particular time, at least from  
17 the time of the meeting in 2000 until May. It is not every  
18 day. It is not every week. These defendants don't appear at  
19 all of the meetings, and that isn't necessary in this case.  
20 What is necessary is that the defendants continued to  
21 knowingly and willfully participate in the conspiracy, and  
22 the jury was instructed that in order to find them guilty  
23 they would have to find that these gentlemen not only entered  
24 into the agreement, but that they also intended to join and  
25 associate with the criminal design and purpose of the

1 conspiracy, that the intent was more than knowledge,  
2 acquiescence, carelessness, indifference, or lack of concern,  
3 but rather is informed and interested cooperation. And the  
4 point is that interested cooperation evidence comes from the  
5 co-defendants -- the co-conspirators through the course of  
6 that time.

7 And the jury was also instructed that if the defendant,  
8 with an understanding of the unlawful character of the  
9 conspiracy, knowingly and willfully joins in the conspiracy  
10 on one occasion, that is sufficient to convict him of the  
11 conspiracy, even though he hadn't participated at earlier  
12 stages in the scheme. So the jury had the whole panoply of  
13 time before them. But, as I said, I have chosen to not  
14 believe Mr. Ricky Beaver because of his record and believe  
15 the two witnesses that testified that he was there in the  
16 year 2002 -- or 2000, and that there were various and sundry  
17 phone calls along the way, and that there was an appearance  
18 more than once of enthusiasm for the conspiracy, and that  
19 that continued throughout that time from 2000 until May of  
20 2004. So I think the specific offense characteristic of 6 is  
21 appropriate.

22 Now, then, an adjustment for role in the offense is  
23 always an issue in a conspiracy. And the question is with  
24 whom do we compare the role in this offense? Now, there is  
25 no question that if we compare these defendants with

1 Mr. Hughey or Mr. Nuckols, and even, I think, Mr. Haehl,  
2 their role in the overall conspiracy wouldn't have been as  
3 much. But Mr. Nuckols and Mr. Hughey both got extra points,  
4 as I recall, in their Guideline calculation for being  
5 leaders.

6 And the other issue is where within the specific offense  
7 characteristics, where within the total amount of the -- the  
8 total volume of the commerce did these two individuals fit?  
9 Is there one of them or both of them that didn't contribute  
10 as much to that 50 million as the other? I think the  
11 evidence is in this case from the conversation over the phone  
12 and testified to by various of the co-defendants, that their  
13 conduct was not minimal in this, that they were enthusiastic,  
14 in fact, about achieving the goals of this conspiracy. And,  
15 as counsel have pointed out, there was one opportunity for  
16 Mr. Chris Beaver to phone someone else. And the question is,  
17 did he or didn't he? I don't know that it really matters,  
18 actually. What matters is that he was willing to do so in  
19 furtherance of the conspiracy. Whether the call was ever  
20 really made does not affect, it seems to me, either the  
21 specific offense characteristic or the adjustment for the  
22 role in the offense, so I will not -- I find that under the  
23 Guidelines there is no adjustment for the role in the offense  
24 applicable in this case.

25 And the issue of acceptance of responsibility. I think

1 under the Guidelines you get two points off for acceptance of  
2 responsibility, and sometimes even three, but in this case  
3 they wouldn't be eligible for three. And the issue on two is  
4 made relatively easy by the fact that there is still to this  
5 day a maintaining of not guilty on the conspiracy, and that  
6 is just not consistent with an acceptance of responsibility  
7 in the case. So I won't add that acceptance of  
8 responsibility.

9 And I will find that the appropriate Guideline  
10 calculation in this case is found at paragraph 37 of the  
11 presentence investigative report, which finds that the total  
12 offense level in the case is a 20.

13 I note, gentlemen, both of you have a Criminal History  
14 Category of I. I trust neither of you disagree with that?

15 DEFENDANT CHRIS BEAVER: No.

16 DEFENDANT RICKY BEAVER: No.

17 THE COURT: All right, then, at this time, having  
18 determined what the Guideline calculation is, I'll hear from  
19 you gentlemen as to what you think the appropriate sentence  
20 ought to be.

21 MR. LOCKWOOD: Mr. Beaver now?

22 THE COURT: Yes, now is the opportunity for both of  
23 them to speak, if they would like.

24 MR. LOCKWOOD: Mr. Chris Beaver, Your Honor.

25 DEFENDANT CHRIS BEAVER: Thank you, Your Honor, for

1 letting me speak to you today. I would like to speak to you  
2 a little bit about who I am, what I did and didn't do, and I  
3 don't want to take too much of your time, but --

4 THE COURT: You take your time. I'm not in a hurry.

5 DEFENDANT CHRIS BEAVER: Thank you.

6 I know you received letters from people that I asked to  
7 write. These are letters that I felt that would do an  
8 accurate and a truthful telling you who I am, what I stand  
9 for, what type of person I am at work, what type of person I  
10 am at home, what type of person I am outside of those two  
11 areas.

12 I also did not ask my family members, other than my wife  
13 and daughter, to write letters. You know, it is painful  
14 enough for me to put my mother and father and my brothers  
15 through this, and my other family members. The disgrace to  
16 the name that I give them and the things that I did, I just  
17 couldn't ask myself or ask them to write letters to you. It  
18 is something that I felt very strongly against. I know my  
19 mother and father and I have had conversations about that,  
20 but I felt like the people that I asked to write the letters  
21 would give you a true and accurate who I am, what I stand  
22 for, and these letters I'm very proud of. These letters are  
23 not easy for me to read. It is not easy to read letters  
24 about yourself.

25 I would like to start out a little bit about some of the

1 things that has been said about myself. I feel like I'm a  
2 good person. I feel like I go to work. I'm a father. I'm a  
3 person that tries to help the community. I'm a person that  
4 every day tries to help someone someday, somehow. I like to  
5 give and I like to help.

6 When I found out that we possibly could be communicating  
7 with some of our competition was from my neighbor, Dan  
8 Butler, who has been in front of you before. We do not speak  
9 about work. He just mentioned that there was something that  
10 he felt like I should see or do. I told him my displeasure  
11 in that. Shortly after that he called me on a cell phone and  
12 he asked me if I would want to attend a meeting. He called  
13 me, it was around October 16th, and I went to my father  
14 immediately, told my father what was asked of me. Mr. Butler  
15 did not tell me what the meeting was about, he just said it  
16 was very important for me to be there. We then left my have  
17 father's office and went to my uncle's office.

18 We discussed it. We felt like that we wasn't sure. When  
19 you are talking about family members, people that you work  
20 with every day, you hate to accuse someone of something. At  
21 that time I don't think that we ever thought that Rick was  
22 doing anything that would harm the company, but we wasn't  
23 sure. We wasn't sure what was going on. We knew through  
24 conversations we felt like that he said things, or gestured  
25 in a way, but I don't think that my father and uncle and



1 myself ever thought that he was doing anything that was  
2 unlawful.

3 We did not know, and it is ignorance of the law, which  
4 makes it our fault, no one else's fault, that just going to  
5 the meeting is the same as participating. My father -- and  
6 again, that is ignorance on my part. I'm not asking for  
7 forgiveness for that. I know my father, I know my uncle, I  
8 know they would never send me somewhere that they felt like  
9 would put me in jeopardy or in jail.

10 I went to that meeting with strict rules that I was not  
11 allowed to discuss anything about our business. I was not  
12 allowed to answer. I was not allowed to give anything in  
13 that meeting. I was only allowed to listen, and that is what  
14 I did. I listened to what I heard. It was something that  
15 frightened me. It was something that I knew that was not  
16 right.

17 I immediately, after I left that meeting, I called my  
18 father. And that meeting was over between 4:30 and a quarter  
19 to 5:00. I was on the phone with my father at 4:53. I  
20 talked to him for 18 minutes. Eighteen minutes is how long  
21 it took for me to get from Butch's barn to our office. I  
22 went inside, I met with my uncle, my father, explained what  
23 was going on. My father advised me to do no more. Do not do  
24 anything with this. This is done. This is something that  
25 this company does not do. This is not something that this

1 company is allowed to participate in. I thought it was the  
2 end of my part in that part.

3 When I met with Jason Mann, or anybody, the only time I  
4 met with Jason Mann was to discuss computers, trucks, things  
5 that would help his company. We were in the process of  
6 becoming merged into one. Jason Mann was a young person.  
7 His father had died. It is someone that I just felt  
8 compassion to. I always thought what would happen if my  
9 father passed away? How would I, how could I, what would we  
10 do to keep that family business going? I reached out to  
11 Jason. We worked together. But in my role as an operations  
12 manager I could care less about the price of concrete. I  
13 just have to make sure I can produce it and I can get it on  
14 the job. It is sales and ownership that takes care of the  
15 pricing, not me.

16 You heard testimony that I have been groomed to be my  
17 father's replacement. That is true. You heard testimony  
18 that I was a part of the -- a board member. That is not  
19 true. It is an operations board where we discuss what goes  
20 on.

21 The thing that was talked about when that officer come to  
22 my house was what are you doing today? In 2003, December,  
23 2003, through the winter of '04, we hired a group called  
24 Centricity, Wayne Bartel. They were brought in to mentor me  
25 and Rick and to help this company be prosperous. My father

1 and uncle grew a great company, but until then I had no role  
2 or involvement in pricing. My involvement was operations. I  
3 do the nuts and bolts, the grease, the dirt. I do all the  
4 hard work. As I stand here today that is why my body is  
5 broke, because of what I have done.

6 When we brought Wayne in he mentored me and explained  
7 laws and everything that you should do, and do right. He is  
8 a great person and he did a great job. I spent that whole  
9 winter with him in his office, in our office, doing power  
10 points, teaching me how to do things.

11 During that time I also figured out that I was very  
12 dyslexic. That is what caused a lot of my problems with  
13 numbers and communicating with people. So I spent a large  
14 amount of time in class, dyslexic classes. I did everything  
15 I could to be a good son, a good person for the company,  
16 someone the employees could be proud of.

17 But until that point I didn't care about pricing. Until  
18 then we never looked at pricing. From 2003 on, yes, I did.  
19 The winter of 2003/2004, yes, that is when they decided that  
20 I could run a company because that is what Centricity was  
21 hired to do, to tell my father whether or not I had what it  
22 took to be the president, and that is when I talked about  
23 that with the officer. That is when we took that role.

24 I try to be a good father. I try to be a good boss. I  
25 try to do what is right. And I have always tried to be as

1 honest as I could. As you stated a minute ago, you have to  
2 wonder what my honesty is because I did lie to an officer.  
3 It is something that I'm not very proud of. It is something  
4 that I will be punished for. I accept that punishment. It  
5 is something against my character. It is something that, as  
6 a father, I chose to do. As those officers said in my  
7 house -- they were very polite. One FBI officer, one state  
8 police officer, they asked me questions. The questions they  
9 asked me were about my uncle, not my cousin. And my uncle  
10 has never attended a meeting. And as I knew that something  
11 was wrong with the questions they asked I got worried, I got  
12 nervous, and I was very scared. As I looked up my stairway I  
13 could see my daughters standing there looking at me. That is  
14 something I could not bear for them to haul me out of my  
15 house in handcuffs. So I made a decision to get them out of  
16 my house as quick as I could, not thinking that I could just  
17 end the conversation, not thinking that all you could do is  
18 just say I do not answer anymore questions.

19 I was told and brought up by my parents to be honest as  
20 and truthful as you could. At that moment I broke that bond  
21 and I lied to that officer. I lied to that officer that I  
22 was not at the meeting. They never asked me if Rick was ever  
23 at the meeting. They asked if my Uncle Gary was at the  
24 meeting. They had that confused. When they come to our work  
25 they had warrants for my Uncle Gary and my office. They

1 never asked about Rick because I don't think they knew who  
2 Rick was. The people that informed the FBI officers informed  
3 them that it was Gary Beaver that had gone to all these  
4 meetings, not Rick Beaver.

5 So when FBI officers are asking you questions that you  
6 know are wrong and your children are watching you, you know  
7 that you are going to go to jail, something is going to go  
8 wrong, and I cannot stand to bear to watch my children watch  
9 me handcuffed and hauled out of my house.

10 I went straight to work. We called the attorney, told  
11 the attorney what we did. He is a company attorney. We  
12 believe that he, at that moment, called and told them our  
13 total involvement.

14 We then felt like we would be brought back in for  
15 questioning, and we never was. We asked our attorney. Why  
16 aren't they bringing us? Why aren't they asking us? We felt  
17 like they would come and ask us again.

18 We are not denying that I ever went to the meeting. We  
19 are denying that we did price fixing. We are denying that we  
20 ever did anything to harm our company, or the employees, or  
21 our customers.

22 I never denied that I ever lied to an officer when I was  
23 asked, and I never denied that I went to a meeting. Only  
24 when I was scared that they would handcuff me in front of my  
25 children. That is wrong and I understand. And again, as the

1 Court sees fit, I lied, and I will be punished for that, and  
2 I accept that punishment.

3 But the only thing I ask the Court is that I will be  
4 punished for what I did. I went to a single meeting. I did  
5 not speak in that meeting like the people told you in this  
6 court. I listened. When they brought up Jason's name there  
7 was great conversations about that. I knew that we was real  
8 close to having a merger and I did not want them to attack  
9 Jason the way they were talking in that meeting. Jason was a  
10 large man. His father was a large man, and they were  
11 verbally abusive to people, and they felt like they had to  
12 gang up on him. I then spoke up and said, "I will talk to  
13 Jason." I never talked to Jason about price. I never wanted  
14 to. As far as I consider, my father told me it was done.  
15 That was the last time I went to a meeting and it is the last  
16 time I talked price to any of my competition.

17 What I know and what I saw in those 302s sickened my  
18 heart. It is something that I just felt like I just couldn't  
19 believe. We were brought up as young men honorable and my  
20 father has built an honorable company. As the letters show  
21 you, I try to do what is best for the employees, not always  
22 what is best for us, because sometimes you have to have great  
23 employees to carry you through the tough times, and that is  
24 what we have today.

25 Yes, I have done wrong and I will be punished, and that

1 is what you will do today. I accept that punishment. We  
2 come to court only to say that we did not do any price  
3 fixing. Yes, we went to a meeting. I accept my punishment  
4 when those people told me I was guilty, and I am very  
5 remorseful for what I have done. I have spent many hours  
6 meeting every one of our customers that I could, or would  
7 want to meet with us, and told them exactly what we have  
8 done, told them we are guilty, and we are charged with a  
9 federal crime and we are a federal criminal, and if you  
10 would, or you do not want to do business with that, we  
11 respect that decision. That is a very painful thing to do,  
12 but it is something that you have to do. You have to show  
13 remorse. That is the only way you can heal a heart is by  
14 remorse and making sure the people are giving back what you  
15 took.

16 I have done more to my family, I have done more to my  
17 friends and my co-workers and my customers than I ever  
18 thought I would do. I never thought I would be in this  
19 building, the building that you respect and I respect because  
20 it is a beautiful building, it is a building of hard work.  
21 But it is a building of justice, and when you come to a  
22 building of justice and are proven guilty I will be punished  
23 and I accept that punishment and I will do what I can to make  
24 that something I will remember for the rest of my life.

25 But again, I ask the Court to punish me for what I did,

1 not for what I didn't do. I never conspired price, I never  
2 set price. Only after the winter of 2003 and 2004 was I ever  
3 involved in pricing. That is when Centricity taught me how  
4 to do power points and talk to customers. And just like  
5 today, they taught me how to speak, they taught me how to  
6 read, they taught me how to write. Before that point in time  
7 that was something that scared me because, as a dyslexic  
8 person, it is not a hinderance that you are, it is just  
9 something you have got to work hard to get over. It is  
10 something that they taught me how to do, and I'm very proud  
11 of that.

12 But today I'm not a very proud man because I have done  
13 something that I will never ever be able to repay. I hurt my  
14 family. That is something I cannot redo and I cannot fix.

15 I do accept the punishment you give me today and I will  
16 go forward. I will live a life trying to repay the people I  
17 hurt, and that is something I will do.

18 I thank you for listening to me. If you have any  
19 questions of me, I would like to answer those if you have  
20 any.

21 THE COURT: Do you deny the truth of the testimony  
22 that we heard that you were enthusiastically involved in this  
23 conspiracy?

24 DEFENDANT CHRIS BEAVER: I do deny that I was  
25 enthusiastic because I did not say hardly anything in that



1 meeting. I do not deny I was involved because, as I learned,  
2 by law just me walking in that door means I'm involved, means  
3 I am guilty of conspiracy to set price. But, no, I did not  
4 speak to Mr. Hughey. I have phone records. I did not talk  
5 to Jason Mann about price. At that point in time during that  
6 meeting they had to actually write the pricing down for me  
7 because I had no idea what the price of concrete was. During  
8 that meeting, as I sat by Butch Nuckols, he reached into his  
9 pocket and pulled out his paper and wrote down the pricing.  
10 That was destroyed when my father said we are no longer going  
11 to do that. The reason they wrote that down, I had no idea  
12 what -- how they discounted. I could not explain it very  
13 well. When they were talking about eight, ten, \$20 discounts  
14 I did not understand what they were talking about. Because  
15 when you talk about discounts do you take it from the very  
16 first number, or do you take it from the discount they get  
17 minus the other discount? That is why Mr. Nuckols wrote that  
18 down for me, so I could take it back, because I had no idea  
19 what pricing was. That is not something that I did. And in  
20 my line of work, when you work with family members you learn  
21 to trust. I just make the trucks go. Until that point in  
22 time in December of 2003/2004, until then. Before that that  
23 is all I did, I made equipment run, I made people work.  
24 After that, that is when they brought me in to learn how to  
25 do pricing, and that is what Centricity, Wayne Bartel, did.

1           THE COURT: I think you need to understand too that  
2 in order for you to have been found guilty of this crime the  
3 jury would have to have believed that the Government proved  
4 beyond a reasonable doubt that you were aware of the common  
5 purpose and were a willing participant in the charged  
6 conspiracy with the intent to advance the purpose of the  
7 conspiracy. That is not proven just by going to a meeting.  
8 You need to understand that.

9           DEFENDANT CHRIS BEAVER: I do understand.

10          THE COURT: Anything else?

11          DEFENDANT CHRIS BEAVER: No, Your Honor.

12          THE COURT: Okay. You want to speak for this man  
13 now?

14          MR. LOCKWOOD: Well, Your Honor, I believe that he  
15 is a good man. I believe that he is a good father.

16          I would say that this was a company that was much smaller  
17 than the other conspirator's companies.

18          We would ask the Court to give Chris Beaver all of the  
19 consideration that you possibly can, having made your  
20 decision about the level of the offense.

21          Beyond that I believe that I have spoken on behalf of  
22 Mr. Beaver, Chris Beaver, earlier and I would incorporate  
23 those remarks at this time. But I don't think that is  
24 necessary. The way we have handled this I believe I have  
25 said everything that I can say on behalf of Chris Beaver.

1 Thank you.

2 THE COURT: Just a minute. I want to think about  
3 something here before you sit down.

4 I think you asked, maybe before I made my determination  
5 on what the Guideline calculation was, I think I asked if you  
6 would like to put any other evidence on. And you put all the  
7 evidence on you wanted, is that right?

8 MR. LOCKWOOD: Yes, sir, I believe so.

9 THE COURT: All right, you can have a seat.

10 MR. LOCKWOOD: Thank you.

11 THE COURT: We are just addressing Mr. Chris Beaver.

12 MR. SCHLEEF: Your Honor, price fixing is a serious  
13 offense. You have been through multiple sentencings in this  
14 case and you know that Congress has demonstrated that they  
15 believe this is a serious offense by recently increasing the  
16 fines and penalties applicable to such crimes. And they have  
17 emphasized the importance of prison time. And this is all  
18 reflected in the Sentencing Guidelines.

19 And I do not feel the Government needs to address whether  
20 Chris is a good person or a bad person. All types of people  
21 break the law; good and bad, parents, the religious, the  
22 kind. But there are not two sets of law, one to apply to  
23 those in society we consider bad people and one that applies  
24 to those that society considers good people that made a  
25 mistake. Both good and bad men are punished when they break

1 the law, and this should not be an exception.

2 The defendant grew up in the business, a family business,  
3 and should have known better than to engage in the behavior  
4 and activities that he did. And, in fact, he did know  
5 better.

6 When interviewed by the FBI he lied. He lied about  
7 attending meetings. And I believe Neal Freeman, the FBI  
8 agent interviewing Mr. Chris Beaver, testified that Chris  
9 volunteered that he didn't think anyone from Beaver would be  
10 involved in meetings at Butch Nuckols' horse barn and he  
11 could not speculate on what would be discussed at such  
12 meetings.

13 Agent Freeman testified that he questioned Chris Beaver  
14 multiple times and in multiple ways about these meetings with  
15 competitors and Chris denied meeting with anyone from  
16 Builders, from IMI, from American, from Shelby, and from  
17 Carmel. He denied collectively meeting with these companies  
18 and he denied meeting with any individuals from these  
19 companies.

20 These were not just simple denials, they were multiple  
21 and consistent. And he added texture to the denials,  
22 indicating he couldn't imagine what was transpiring at Butch  
23 Nuckols' horse barn.

24 If the defendant was truly innocent of the crime of price  
25 fixing, as he maintains, why would he lie? The Government

1 submits he lied because he knew he was guilty and he knew he  
2 broke the law. The Government also submits that he never  
3 came forward to correct his statements, never admitted guilt,  
4 never offered cooperation.

5 The defense references a letter, a conversation by a  
6 former counsel for the defendants, Mr. Sheeks, I believe,  
7 and, if memory serves, the evidence introduced at trial on  
8 this letter said something to the effect that, "One of my  
9 clients may have misrepresented something when he was spoken  
10 to by the FBI." One of them, never said which one, was at a  
11 meeting at Butch Nuckols' horse barn. Which meeting, what  
12 was discussed, who went there, nobody knows, and Mr. Sheeks  
13 did not include it in his letter. A letter he admitted was  
14 an accurate representation of the conversation he had had.

15 Chris Beaver still maintains his innocence of price  
16 fixing today, even in the face of conviction by a jury of his  
17 peers.

18 Your Honor, you have sentenced multiple men for their  
19 involvement this conspiracy, including another man this  
20 morning, John Blatzheim, who expressed remorse. I have heard  
21 no remorse today.

22 This is a man who has demonstrated lack of respect for  
23 the law and his sentence should reflect this. His sentence  
24 should serve as deterrent not only for this man's conduct,  
25 but for all others who would seek financial gain at the

1 expense of others. His sentence should serve as a deterrent  
2 to those who would lie, conceal, and evade those men and  
3 women whose jobs it is to ensure people comply with our  
4 nation's laws.

5 Throughout the sentencings that have transpired in this  
6 conspiracy much has been made of sentencing disparity and the  
7 need to keep sentences within reason to one another. But I  
8 believe it is important to note that there is only need to  
9 avoid an unwarranted sentencing disparity. This is a case of  
10 a man who repeatedly denied guilt, put the Government to its  
11 burden at trial, a burden the Government met. Chris Beaver  
12 has been convicted of two offenses and I submit that he  
13 stands before this Court with head unbowed continuing to deny  
14 his guilt of the crime of price fixing.

15 He expresses remorse for lying to the FBI, and I submit  
16 he expresses remorse for being convicted and the hurt and  
17 harm it has caused his family and company. Your Honor, this  
18 is a case that warrants a sentencing disparity.

19 For this reason the Government respectfully requests the  
20 Court's imposition a sentence of 36 months, a term of  
21 supervised release, and a fine that the Court deems the  
22 defendant is capable of paying.

23 I have nothing further.

24 THE COURT: Thank you.

25 Mr. Beaver, you and your lawyer want to step back up

1 here, please.

2 Anything else that either of you would like to say?

3 MR. LOCKWOOD: Well, Your Honor, we believe that all  
4 of the goals that are set forth in Title 18, Section 3553(a),  
5 would be met with a minimum sentence in this case. We don't  
6 believe that Chris is a danger to society, don't believe that  
7 there is a risk he will reoffend. We believe that there is  
8 an emphasis on trying to make sentences -- trying to make  
9 some parity in sentencing, and we don't believe that Chris  
10 Beaver is the evil that perhaps the Government would have  
11 Your Honor believe.

12 Thank you.

13 THE COURT: Thank you.

14 Well, Mr. Beaver, I start with the legislative  
15 suggestions on sentencing in this case. And, as you know,  
16 Count 1 on the Sherman Antitrust violation could cause you to  
17 serve three years imprisonment. And, as you know also, I  
18 think, by now, that Count 3 could result in five years  
19 imprisonment for making false statements. I don't have to  
20 tell you at this point why it is against the law to fix  
21 prices. I don't have to tell you why it is against the law  
22 to make false statements. It is fairly obvious.

23 And so let's focus, then, on the crimes of which you have  
24 been found guilty. I am concerned that when you are found  
25 guilty of the crime of conspiracy and you maintain your

1 innocence, I think people do that all the time and you are  
2 not required to suddenly jump up and say, "I agree with the  
3 jury." But you should understand that when the sentencing  
4 judge listens to the case and listens to the verdict of the  
5 jury, that I do agree with the jury's verdict, and so you are  
6 being sentenced for the crimes that the jury -- of which the  
7 jury found you guilty.

8 DEFENDANT CHRIS BEAVER: I do accept that, Your  
9 Honor.

10 THE COURT: I understand that. I understand. I'm a  
11 little concerned about your thought that you got found guilty  
12 because you went to a meeting. You got found guilty because  
13 the jury thought you were a willing participant in the  
14 charged conspiracy with the intent to advance the purpose of  
15 the conspiracy. The jury believed, or had to believe in  
16 order to arrive at that conclusion, that the testimony  
17 against you -- that the statements made by these witnesses  
18 were true and that you had, in fact, done that.

19 I'm concerned about your thought that the only reason  
20 that you -- or that in your conversation with the police  
21 authorities that they didn't ask the right questions,  
22 perhaps, and that you were afraid that if you told them the  
23 truth you would be carted off right there in front of your  
24 kids. Now, that is certainly a frightening thought for  
25 anybody, but there are other arrangements that can quickly be



1 made so that you could sit down with these people and tell  
2 them everything that you wanted to tell them.

3 I'm concerned also that you still think that -- or that  
4 you think that when you called your lawyer that he was going  
5 to take care of everything and you wouldn't have to -- you  
6 just wait for somebody to contact you, particularly in light  
7 of what the lawyer's letter actually said was that one of my  
8 clients may have misrepresented something. We heard that  
9 from the testimony when we saw the letter, I believe, and  
10 listened to your lawyer, your business lawyer, Mr. Sheeks,  
11 talk about that.

12 And I have some appreciation of the condition of  
13 dyslexia. I understand how that can interfere with your  
14 ability to appropriately receive written stimuli when you  
15 look and you read. I understand that is a difficulty. I  
16 don't pretend to be a psychologist, or a doctor, or anything  
17 like that, but I can recognize that dyslexia does sometimes  
18 interfere with a person's ability to receive outside stimuli.  
19 And that can all be a bad day when a bunch of policemen show  
20 up at your house.

21 But here is what I also think: When you get -- and  
22 again, I believe that you are guilty. I agree with the jury.  
23 And I look at the Guidelines to see what the Guidelines have  
24 to say, and we have talked about that, about the base offense  
25 level for the generic circumstance of violating this

1 particular law. And then there is another base offense level  
2 for lying to the authorities. We talked about the specific  
3 offense characteristics. And again, I arrive at that number  
4 because I think that is what the evidence shows. And it is  
5 something, and I recognize, with which you disagree. But  
6 again, I believe that you violated the law in this area, and  
7 so I think the 20 was appropriate. And the 20 gives us a  
8 range of 33 to 41 months.

9 And I look at these 3553(a) factors to see if the 3553(a)  
10 factors suggest any consideration for the Court that I  
11 wouldn't otherwise have thought just looking at the  
12 Guidelines. And I look again at the nature and circumstances  
13 of the offense, and that is included in the Guidelines under  
14 the base offense level and the specific offense  
15 characteristics and the adjustment for obstruction of  
16 justice, and those matters.

17 In addition, I think that there is a tendency on the part  
18 of individuals who break the law in the white collar area,  
19 and other areas too, I suppose, to, in their own minds, deny  
20 and distort a bit to protect themselves and, in your case,  
21 your family and to protect your business too.

22 Now, I look at your history and characteristics. My  
23 goodness, if even one of these letters is to be believed, you  
24 have made a fine contribution to your community. You have  
25 done unselfish things in your activities with your

1 associates. I read in somebody's -- I don't know if it was  
2 one of yours or your cousin's -- but I read of a time when  
3 your father -- or Alan, I should say, distinguished himself  
4 in his generosity with his employees. And one of the things  
5 that a sentencing judge has to face now and again is that  
6 really, really nice people involve themselves in breaking the  
7 law. That really kind people, people that go to church on  
8 Sunday, people that do more than that, that participate 100  
9 percent in these things, have a failure now and again. And,  
10 you know, one of the biggest problems that you had was not  
11 speaking directly and truthfully to the FBI and the policemen  
12 when they came in, and that is a risk that you take when you  
13 make that decision to protect yourself or your family. When  
14 you make that decision you don't really have time, I don't  
15 suppose, or even think about writing down on a piece of paper  
16 risks that that gives you. When you lie to them look at all  
17 the things that you risked.

18 Goodness, I read some wonderful letters from some  
19 wonderful people that care a lot about you. Those in your  
20 family, those outside your family. And if you could have  
21 seen that at that point you would probably have said, "Well,  
22 I'll take the kids and tell them to go somewhere else and  
23 then I'll deal with these people, and if they take me, they  
24 take me, and I'll bond out, or whatever, and I'll be back."  
25 But you didn't do that, and that particular decision may

1 even, I suspect, probably is out of character for you anyway,  
2 from what I read. But that is what causes you the problem.  
3 That is the beginning of the end for you in this case. That  
4 may very well be one of the reasons why the jury decided to  
5 believe you were involved in all of this. So I take that  
6 into account.

7 You know, the Guidelines don't take into account very  
8 much of that, and the reason for that is simple, and that is  
9 in a white collar crime situation most of the defendants are  
10 pretty nice people. People that violate environmental laws  
11 don't do it because they hate the environment, they do it  
12 because they are trying to save a couple of bucks and save  
13 their business. And the same thing is true here. I would be  
14 the last to say, or even imply, that you were not -- or that  
15 you were evil or that you were a bad person. We have to face  
16 what you did, though.

17 DEFENDANT CHRIS BEAVER: Correct.

18 THE COURT: And we have to assess the consequences  
19 of the risks that you took. And those consequences,  
20 unfortunately for you, are rather severe. And I do need for  
21 this sentence to reflect the seriousness of this offense and  
22 to promote respect for the law and provide just punishment  
23 for the offense.

24 This is, as I said, a white collar crime. This is a  
25 crime, an antitrust crime. The Guidelines are rather

1 specific about these kinds of crimes and what is available  
2 and what isn't as a penalty.

3 And I want to afford adequate deterrence to criminal  
4 conduct, not just of yours, and I would be absolutely stunned  
5 if you ever violated the law again, frankly, from reading all  
6 these letters and listening to your testimony today. But I  
7 am concerned about others in any market faced with a problem  
8 as they assess their own risk at what decision they might  
9 make, whether they want to go ahead and misrepresent things  
10 to somebody, or if they want to go ahead and ignore the  
11 antitrust laws, they ought to know that that is a difficulty.

12 And when you take the risk of -- we talk about going to  
13 trial. I think your counsel suggested that a person ought  
14 not to be penalized for going to trial. And I agree, you  
15 ought not to be penalized. You get rewarded for coming  
16 forward and cooperating, but you don't get rewarded, or the  
17 same rewards, for going to trial. And when you go to trial,  
18 as you now know, you take a big risk. And I hope that you  
19 sat down and listed the risks, the pros and cons on each side  
20 of that.

21 But, anyway, here we are, and I want the sentence to  
22 adequately deter other people's criminal conduct. And I also  
23 want this sentence to be reflective of my concern for a lack  
24 of disparity within the sentencings of everybody involved in  
25 this case. Now, you stand before me today looking at more

1 months than anyone so far, and the reason for it is you don't  
2 get the reward for coming forward and you don't get the  
3 considerations that comes with that. You don't get the  
4 consideration for coming forward and providing testimony to a  
5 jury, and you have decided that the position that you wanted  
6 to take to begin with, which was to protect yourself and your  
7 family, should continue all the way through the risk of  
8 trial, and that is why you don't get the benefits so far.

9       So I don't view the sentence that I'm about to give you  
10 to be an unreasonably disparate because you have voluntarily  
11 accepted risks throughout this proceeding that others did  
12 not, or at least tried to correct prior to trial.

13       So, with that in mind, and the Guideline provisions  
14 providing for 33 to 41 months, I think, in fact, that -- let  
15 me look here a minute.

16       That the Guidelines range of 33 to 41 months is a little  
17 too high for the -- a little too close to the maximum you  
18 could receive under the conspiracy charge, and I'm going --  
19 and that is the charge that carries the most numbers under  
20 the Guidelines. I'm going to reduce it by two and find that  
21 the range of 27 to 33 months more appropriately reflects the  
22 harm done in this case and reflects the 3553(a) factors. And  
23 as a result, Mr. Beaver, I'm going to sentence you to 27  
24 months.

25       And so you are committed to the custody of the Bureau of

1 Prisons to be imprisoned for a term of 27 months on Counts 1  
2 and 4 to be served at the same time.

3 I consider a fine in this case. I look at your available  
4 income to pay a fine and I note that the bulk of your income,  
5 or the bulk of your assets, are in your retirement account.  
6 And in one of your -- I'm looking at the wrong one, but I  
7 think that is still true in yours, that is the bulk.

8 DEFENDANT CHRIS BEAVER: It is.

9 THE COURT: And I think that because of the civil  
10 matter that still pends in this matter that a large fine, at  
11 least a Guideline fine, isn't appropriate. And so it is my  
12 view that a small fine would be appropriate because I think  
13 that there needs to be a monetary component to the sentence.  
14 So I'm going to fine you today in the amount of \$5,000.

15 DEFENDANT CHRIS BEAVER: I appreciate that, sir.

16 THE COURT: I would like to have that paid within 90  
17 days of sentence.

18 DEFENDANT CHRIS BEAVER: I'll do that.

19 THE COURT: I'm departing from the fine Guideline  
20 range based on your financial resources and future ability to  
21 pay. I find you don't have the ability to pay interest, and  
22 I'll waive the interest requirement.

23 You will notify the probation officer of any material  
24 change in economic circumstances that might affect your  
25 ability to pay the fine.

1 I'm not imposing restitution, as it is determined that  
2 the complex issues of fact related to the cause and the  
3 amount of the loss would complicate and prolong the  
4 sentencing process to the degree that the burden outweighs  
5 the need to provide restitution.

6 On release from imprisonment you will be placed on  
7 supervised release for a term of one year on Count 1 and two  
8 years on Count 4 to be served at the same time.

9 Within 72 hours of release from the custody of the Bureau  
10 of Prisons you will report in person to the Probation Office  
11 in the district to which you are released.

12 While you are on supervised release you will not commit  
13 another federal, state, or local crime. You will not possess  
14 a firearm, ammunition, destructive device, or any other  
15 dangerous weapon.

16 You will submit to the collection of a DNA sample.

17 You will refrain from any unlawful use of a controlled  
18 substance. You are suspended from drug testing mandated by  
19 the Crime Control Act of 1994 based on my determination you  
20 pose a low risk of future substance abuse.

21 Further, you will comply with the standard conditions, as  
22 well as those adopted by the Judicial Conference of the  
23 United States, as well as these conditions:

24 If you haven't paid your fine, you will pay your fine  
25 while you are on supervised release.



1           And you will provide the probation officer access to any  
2 requested financial information while any remaining fine  
3 balance is owed.

4           You do owe the special assessment of \$200, and that  
5 amount is due immediately.

6           Is there any reason why Mr. Beaver shouldn't remain under  
7 the same conditions of pre-trial release as previously  
8 imposed?

9           MR. VONDRAK: No, Your Honor.

10           THE COURT: All right, then, you will enjoy those  
11 same conditions of pre-trial release and surrender yourself  
12 to the institution designated by the Bureau of Prisons.

13           Do you have anything further on that issue?

14           MR. LOCKWOOD: Would the Court please recommend  
15 Terre Haute, the camp at Terre Haute?

16           THE COURT: Certainly, I would recommend the camp at  
17 Terre Haute, and a minimum security facility otherwise.

18           MR. LOCKWOOD: I'm sorry, sir?

19           THE COURT: I said, and a minimum security facility  
20 otherwise.

21           MR. LOCKWOOD: Thank you.

22           THE COURT: Anything else from the Government?

23           MR. SCHLEEF: Nothing from the Government.

24           DEFENDANT CHRIS BEAVER: Thank you.

25           THE COURT: Mr. Ricky Beaver.

1 Anything you would like to say, sir?

2 DEFENDANT RICKY BEAVER: I had prepared a few things  
3 to say, but after what I just heard I don't know if it would  
4 really make a lot of difference.

5 I do want to express my apologies for putting the system  
6 to trial and taking this to trial and lying to the FBI agents  
7 when they confronted me at our office. I would like to  
8 apologize for that.

9 The meetings, Your Honor, I would like to just say a  
10 couple of more things about that. Not that it makes any  
11 different, but just to kind of clear my mind.

12 Price Irving stated under oath, Your Honor, that he was  
13 at both meetings that I was at. And he said that he took his  
14 position and went to his first meeting in 2002. Not that it  
15 changes anything, I'm not trying to change your mind, Your  
16 Honor. And my role in Beaver Materials in March of 2000 to  
17 July of 2000, during that time my role in sales was minimal.  
18 My cousin, Chris, and I at the time were building a batch  
19 plant in Waverly, Indiana, which is south of Indianapolis,  
20 and all of our time was consumed building that batch plant.  
21 So I really wouldn't have had the time to go to a meeting if  
22 they invited me.

23 The first meeting that I was invited to I had a phone  
24 call from Butch Nuckols. And at the position -- I was trying  
25 to move up through our company. I was kind of flattered that

1 somebody up here of mine would invite me to go to a meeting.  
2 He said it was a credit meeting. They was discussing some  
3 issues in the concrete industry.

4 I went to that meeting. There was a lot of bickering  
5 back and forth about everybody trying to steal each other's  
6 customers. Paving concrete. They talked a lot about paving  
7 concrete. There was some large finishers on large commercial  
8 jobs that weren't paying their bills. There wasn't really  
9 anything that pertained to us at that meeting. They was  
10 complaining about the prices getting too low and they kind of  
11 needed to do something about it.

12 I left that meeting and a few months later I was called  
13 to go to another meeting. At the time I thought, you know, I  
14 know better than this, but I'm going to go. That is when I  
15 went to the meeting at Butch Nuckols' horse barn.

16 They did start talking where about price and setting  
17 price discounts. I had a sick feeling when I left that  
18 meeting, Your Honor, and I knew that what I was doing wasn't  
19 right and I wasn't sure what I was supposed to do about it.  
20 I had made up my mind then that I wasn't going back if I was  
21 approached to go back, and a long time had passed before I  
22 was asked to go back, and in which that case I denied that.

23 One thing, when the FBI confronted me at our office --  
24 and I'm not trying to give excuses for lying. There is no  
25 excuse for that. I think through some of my letters it will

1 justify that I'm a truthful person. But when they confronted  
2 me one of the things that went through my mind is I had just  
3 received custody of my two sons. I didn't want to lose that.  
4 I didn't want to harm my family.

5 I had visions, you know, when I was a little kid I  
6 remember going out to the plant when my uncle and my dad,  
7 they didn't -- their employees didn't go on strike when the  
8 rest of them did, so they machine-gunned their trucks. I  
9 didn't want that to happen. There was all these things in  
10 that situation. There was a lot of things racing through my  
11 mind, everything but the truth, so I just -- I denied telling  
12 the truth with the expectation that we could get with them  
13 later and tell them after our attorneys got there. I didn't  
14 know what to do, Your Honor, but I guess that is the element  
15 of surprise. It still gives me no excuse. I should have  
16 told them that I would tell them everything that I knew. I  
17 apologize for that.

18 Another thing that my family and I thought that we would  
19 go to trial is the plea agreement that Mr. Lockwood went to  
20 Washington, D.C. and came back with was three years  
21 incarceration and I believe it was \$300,000 fine. And at the  
22 time I thought all I went to was two meetings and we didn't  
23 agree on anything, so we thought there is -- it just wasn't  
24 something that we could accept, so we thought we will go to  
25 trial. That is why we decided to go to trial. And we never

1 had any other plea offers other than that. So I don't feel  
2 like that we received much of a chance to sit down with them  
3 and go over a plea. Maybe that is my ignorance and that is  
4 not the Court's problem.

5 But again, Your Honor, I apologize for any dishonesty.  
6 That is not my character. I apologize to my family and I  
7 apologize to the FBI agents. I have always had them in the  
8 highest respect. And I hold this Court in the highest  
9 respect and I respect your decisions.

10 That's all.

11 THE COURT: All right. Counsel.

12 MR. LOCKWOOD: Well, Your Honor, much has already  
13 been said on behalf of Mr. Beaver. I would be remiss,  
14 however, if I didn't add this in his behalf. He too is a  
15 fine man and I believe this is certainly aberrant conduct on  
16 his behalf.

17 We understand also that -- you know, we lawyers and  
18 judges know what it means to have to make credibility  
19 decisions and we watch juries do that all the time.

20 At the trial we did not feel that it was particularly  
21 relevant whether he went to a meeting at a particular time.  
22 We thought that impacted the sentencing more than it did.

23 And we believed also that Mr. Irving's documentation of  
24 the 2002 meeting, as well as his testimony at sentencing and  
25 other factors that we have already mentioned, might weigh in

1 the Court's decision. But again, please don't take it from  
2 me that I don't appreciate the heavy responsibility that any  
3 court has in making these kinds of decisions.

4 Again, sir, we ask you to weigh the Guideline levels that  
5 you have already imposed, or decided to impose in this Court,  
6 versus the criteria set forth in Title 18, Section 3553(a),  
7 and we ask for as lenient a sentence as the Court can impose  
8 in this circumstance.

9 Thank you.

10 THE COURT: Thank you. You can have a seat and I'll  
11 hear from the Government.

12 MR. EPSTEIN: Thank you, Your Honor.

13 Before I begin, I just make one or two things clear for  
14 the record.

15 When you were going through the Sentencing Guidelines you  
16 didn't mention the two part enhancement for the obstruction.  
17 I just specifically wanted to remind you that was in there.

18 And also when you gave the PSI reference for the total  
19 Guidelines range I think you referenced paragraph 38, which  
20 is in Ricky's, and also paragraph 37, which is in Chris's.

21 THE COURT: Thank you.

22 MR. EPSTEIN: Also one other point, I think, just  
23 for the record. They referenced a plea agreement that was  
24 offered to them. I would like to state for the record that  
25 the Government made several approaches to counsel for both

1 Ricky and Chris with plea offers and were summarily rejected  
2 each time.

3 Much like Mr. Schleef told you, it is the Government's  
4 position we are a system of laws and not a system of men.  
5 Those laws apply equally to somebody whether they are a good  
6 person or a bad person, a church-goer or not a church-goer,  
7 whether they commit a crime that we designate to be white  
8 collar or blue collar, if you break the law the law applies  
9 equally to you as it would to anybody else.

10 The defendant has apologized for certain mistakes that he  
11 made. What he really is apologizing for, or should be  
12 apologizing for, are the choices that he made. He chose to  
13 go to that first horse barn meeting. After he met with his  
14 competitors, knew what they were talking about, he chose to  
15 go to the Signature Inn meeting. He chose to pick up the  
16 phone and call Richard Haehl. He chose to speak with Price  
17 Irving about prices. He chose to talk to Scott Hughey about  
18 prices. And he chose, when the FBI showed up and gave him  
19 the opportunity to tell them what he knew, he chose to lie to  
20 them.

21 We have heard a lot through different sentencing hearings  
22 and through the trial about how there was a race to the  
23 Department of Justice and certain people lost that race. The  
24 defendant had every opportunity to cooperate at any point  
25 during his involvement in the conspiracy. He could have

1 said, "I'm not going to do this anymore. I need to report  
2 this conduct. This isn't right." But he didn't do that. He  
3 continued on. He continued to advance the interest of the  
4 conspiracy. Even on the day the FBI came he could have come  
5 clean and said, "Here is what I know. I want to tell you. I  
6 want you to know all the facts," but he didn't.

7 Again, Your Honor, focusing on the 3553(a) factors, as my  
8 counterpart, Mr. Schleef, mentioned, 3553 is designed in part  
9 to prevent unwarranted disparities in sentencings. But for  
10 the reasons he put forth with respect to Chris Beaver we  
11 believe they are equally applicable to Ricky Beaver. The  
12 Guidelines range in this case would not result in an  
13 unwarranted disparity. Sure, it would result in a disparity,  
14 but that disparity is not unwarranted.

15 They wind up -- Chris and Ricky in this matter wind up  
16 with a higher Guidelines range because, again, they chose to  
17 take the case to trial, so they don't get the benefit of the  
18 acceptance of responsibility. They chose to lie to the FBI,  
19 and that resulted in an enhancement to their sentence.

20 In addition, let's not forget the other 3553(a) factors.  
21 The seriousness of the offense. We have been before you far  
22 too often and told you far too many times about Congress'  
23 statement about the seriousness of antitrust offenses. We  
24 believe Your Honor is well aware.

25 Adequate deterrence, not only with respect to this



1 defendant, but as we pointed out in other sentencing  
2 hearings, the issue is also deterrence to the business  
3 community at large.

4 Your Honor may remember several years ago that  
5 Mr. Vondrak and I stood before you in sentencing hearings for  
6 Harold Vogel and Dennis Saner in the Indianapolis textbook  
7 case. The message that was sent with those sentences  
8 obviously didn't get to these conspirators. But we would  
9 urge that sentence that you issue today be loud enough that  
10 it be heard by others in the business community so they know  
11 this conduct is unacceptable and will be dealt with harshly.

12 Finally, acceptance of responsibility. As you heard the  
13 defendant stand up here, he is still fighting the battle over  
14 whether he was at the July, 2000 horse barn meeting after  
15 multiple witnesses testified that he was and after Your Honor  
16 decided earlier in this hearing that he was for purposes of  
17 sentencing.

18 He apologies for his dishonesty and lying to the FBI,  
19 but, as with his cousin, doesn't take responsibility for  
20 participating in conspiratorial conduct. He is willing to  
21 admit that he attended meetings, but, as Your Honor pointed  
22 out, and as we pointed out numerous times in the trial, the  
23 agreement is the crime. Your Honor gave a very specific  
24 instruction to the jury. Mere presence is not sufficient.  
25 The agreement is the crime. He is still fighting that and

1 still unwilling to accept that.

2 And let's not forget he lied to the FBI. He has  
3 attempted to minimize his role in the conspiracy by limiting  
4 the number of contacts that he will admit to. And again, as  
5 we pointed out earlier in today's hearing, in his and his  
6 counsel's objection to the PSI he admits that he attended  
7 meetings, but not that he reached agreements, and he  
8 admits -- or he still maintains that he is not guilty. These  
9 don't sound like the words of someone who is recognizing the  
10 wrongful conduct and accepting responsibility for it.

11 For all those reasons; the Guideline calculations, the  
12 consideration of all of the 3553(a) factors, the Government  
13 respectfully requests the Court sentence the defendant to a  
14 Guidelines range term of imprisonment of 36 months, a period  
15 of supervised release, and a fine of whatever amount the  
16 Court determines he has the ability to pay.

17 Thank you, Your Honor.

18 THE COURT: Thank you.

19 Mr. Lockwood, you and Mr. Beaver want to step back up  
20 here, please.

21 Anything else either of you would like to add?

22 DEFENDANT RICKY BEAVER: No, Your Honor.

23 MR. LOCKWOOD: No, sir. Thank you.

24 THE COURT: Well, again, Mr. Beaver, you were  
25 present when Mr. Chris Beaver was sentenced, and I start at

1 the same place in your case, and that is at the legislative  
2 advice on sentencing. You could receive up to three years  
3 for the Sherman Antitrust Act violation and five years for  
4 lying to the investigative officers.

5 And again, I don't think I have to explain to you how  
6 important it is to the economy of the United States that  
7 price fixing doesn't occur. And I don't think I have to tell  
8 you how important it is to avoid making false statements to  
9 investigative officers.

10 DEFENDANT RICKY BEAVER: No.

11 THE COURT: And in your case it is the same as  
12 Mr. Chris Beaver's to the extent that I hear what you say  
13 about your role. And what you have said, both of you, is  
14 consistent with what your view is and why you think certain  
15 things should happen in different ways today. But again, I'm  
16 sentencing you today on what the jury found you guilty of on  
17 those two crimes.

18 And I think it is also important to reflect on the notion  
19 that your misrepresentations and denials to the investigative  
20 officers severely impeded your credibility before this jury  
21 and, in fact, enhanced the credibility of the witnesses that  
22 appeared and testified against you. And those are, as I said  
23 before, those are the kinds of risks that you take when you  
24 decide not to tell the truth to the investigators when they  
25 show up.

1           And I hear you say maybe that is the element of surprise.  
2 I think more than that it is -- and that certainly is a  
3 role -- that plays a role in it, and the consequences are now  
4 what they are.

5           But the other factor is your need to protect that status  
6 quo and to stay where you are and protect yourself and your  
7 family, and it is not unusual for me to see that distortion  
8 and denial in protection of self and family and family  
9 interests and business interests and just the status quo.

10          So with that, then, I go to the Guidelines. And I have  
11 discussed those Guidelines, and we have the base offense  
12 level, which is the 12, which is the generic crime, the harm  
13 done. These numbers are expressions from the Guideline  
14 Commission in an attempt to quantify that harm done to get to  
15 the ultimate sentence. And I have spoken of that specific  
16 offense characteristic because I think under the evidence  
17 believed by the jury that this is the appropriate  
18 calculation. And the adjustment for obstruction of justice  
19 is certainly appropriate.

20          And so then we are left at the same range on this finding  
21 of the total offense level of 20 and the Criminal History  
22 Category of I, the same range being the 33 to 41 months.

23          And then again I look at these 3553(a) factors to  
24 determine if they mention things that are not mentioned by  
25 the Guidelines, or if they illustrate that the Guidelines do,

1 in fact, reflect the appropriate matters. And, of course,  
2 the first thing is the nature and circumstances of the  
3 offense, and those are reflected in the Guideline  
4 calculations.

5 The basis of the -- well, the characteristics of the --  
6 or the circumstance of the offense has so much to do, as I  
7 said before I think, with the misrepresentation. And the  
8 conclusion of the jury, not only that your credibility was  
9 not very good, but that the witnesses who appeared  
10 credibility's was very good.

11 The nature of the offense. The Guidelines take into  
12 account the base offense level, the specific offense  
13 characteristics, and then your history and characteristics.  
14 The Guidelines don't reflect those too much, as there is no  
15 reward here for having come forward and shared information  
16 with the Government early.

17 And I read all these letters. I read the ones to your  
18 cousin and I read these with yours, and there are some  
19 really -- you have got some wonderful friends, Mr. Beaver.  
20 Some very sincere and focused, straightforward and honest  
21 people that you have the good fortune to know.

22 DEFENDANT RICKY BEAVER: Yes, Your Honor.

23 THE COURT: And, you know, everybody won't write a  
24 letter. Some of them think that if they write a letter that  
25 I'll see to it that the IRS audits their taxes. And so these

1 folks wrote one anyway. Of course, we don't do that. I'm  
2 interested in these matters for various reasons.

3 And again, one of the unfortunate things that you see  
4 from behind the bench is that some really fine people who  
5 conduct themselves appropriately in their lives 99 percent of  
6 the time will come across a situation and make the wrong  
7 choice. And the risks from that choice seem expediently in  
8 your favor at the time and then it turns out later they are  
9 not, and that is exactly where we are in this case.

10 And this sentence needs, of course, to reflect the  
11 seriousness of the offense, to promote respect for the law,  
12 provide just punishment for the offense. I do want this  
13 sentence to reflect the seriousness of lying to the  
14 investigative officers and being involved in a conspiracy to  
15 fix prices over a significant period of time, afford adequate  
16 deterrence to criminal conduct so others don't do this, and  
17 to protect the public from further crimes of yours. I think,  
18 Mr. Beaver, frankly, that that is not going to happen. We  
19 are not going to see you again. When you are on supervised  
20 release you probably -- you and your cousin will be the  
21 probation officer's best clients.

22 So I think, in fact, again that the base -- or that the  
23 Guideline calculation reflects the 3553(a) factors with the  
24 same conclusion to which I arrived before, and that is that  
25 they are -- the range is a little too close to the maximum

1 you could receive for this crime, given that even though  
2 there is a second crime to which you could get up to five  
3 years, the driving numbers in the Guidelines are the numbers  
4 on the conspiracy count, and I'll reduce that in your case  
5 also by two and sentence you to 27 months.

6 You are, therefore, committed to the custody of the  
7 Bureau of Prisons to be imprisoned for a term of 27 months on  
8 Counts 1 and 4 to be served at the same time.

9 I consider a fine for you too, Mr. Beaver, and I looked  
10 at where the bulk of your money is, and I understand that  
11 when you are in prison you will still have these civil  
12 matters to deal with and your family will still have  
13 considerable expenses, and so I reject a fine within the  
14 Guidelines.

15 I do think that there ought to be a monetary component to  
16 this punishment, or this sentence, so I will fine you also in  
17 the amount of \$5,000, which is to be paid within 90 days of  
18 sentencing. I find you don't have the ability to pay  
19 interest, and I waive that interest requirement.

20 You will notify the probation officer of any material  
21 change in economic circumstances that might affect your  
22 ability to pay that fine.

23 I'm not imposing restitution, as it was determined that  
24 the complex issues of fact related to the cause of the amount  
25 of the victims' loss would complicate and prolong the

1 sentencing process to the degree that the burden outweighed  
2 the need to provide restitution.

3 On release from imprisonment you will be placed on  
4 supervised release for a term of one year on Count 1 and two  
5 years on Count 4 to be served at the same time.

6 Within 72 hours of release from the custody of the Bureau  
7 of Prisons you will report in person to the probation office  
8 in the district to which you are released.

9 While you are on supervised release you will not commit  
10 another federal, state, or local crime. You will not possess  
11 a firearm, ammunition, destructive device, or any other  
12 dangerous weapon.

13 You will cooperate with the collection of a DNA sample.

14 You will refrain from any unlawful use of a controlled  
15 substance. You are suspended from drug testing mandated by  
16 the Crime Control Act of 1994 based on my determination that  
17 you pose a low risk of future substance abuse.

18 Further, you will comply with the standard conditions as  
19 adopted by the Judicial Conference of the United States, as  
20 well as these following additional conditions:

21 You will pay any fine that is imposed that remains unpaid  
22 at the commencement of the supervised release.

23 You will provide the probation officer access to any  
24 requested financial information while any remaining fine  
25 balance is owed.



1           You do owe the United States a special assessment of  
2 \$200. Payment of that fine and special assessment is due by  
3 statute immediately. It will be paid to the Clerk of United  
4 States District Court.

5           Any reason why Mr. Beaver should not remain under the  
6 same conditions of pre-trial release as previously imposed?

7           MR. EPSTEIN: No, Your Honor.

8           THE COURT: All right, then, Mr. Beaver, you can  
9 remain under the same conditions of pre-trial release as  
10 previously imposed, and you will surrender yourself to the  
11 institution designated by the Bureau of Prisons as notified  
12 by the United States Probation Office.

13           Do you have anything further you would like to say on  
14 that issue?

15           MR. LOCKWOOD: We request recommendation of the  
16 Court to Terre Haute, the farm at Terre Haute.

17           THE COURT: I will recommend that Mr. Beaver also  
18 serve his time at the farm in Terre Haute, or at least at a  
19 minimum security institution.

20           Now, sir, would you step back up here to the lectern,  
21 please.

22           Both of you gentlemen have the right to appeal the  
23 decision of that jury. If that is what you want to do you  
24 contact Mr. Lockwood here and he will notify the Court within  
25 the next 15 days if that is what you want to do.

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Anything else?

MR. LOCKWOOD: No.

THE COURT: Anything from the Government.

MR. VONDRAK: No, Your Honor.

THE COURT: Good luck to you, gentlemen.

MR. LOCKWOOD: Thank you, Your Honor.

(The Court adjourned at 5:25 P.M.)

6\p

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT  
FROM THE RECORD OF THE PROCEEDINGS IN THE ABOVE  
MATTER.



GLEN L. CUNNINGHAM  
OFFICIAL COURT REPORTER

2/20/07

DATE