

1 MS. FAWCETT: Your Honor, this is the United States
2 of America versus Mark Komoroski. The defendant is in the
3 courtroom. He's here with his attorneys, Mr. Noci to and Mr.
4 Gelso. He's here to be sentenced.

5 THE COURT: Okay. Let the record reflect that I have
6 the presentence report, I have government's motion for downward
7 departure and I also have numerous letters written on behalf of
8 the defendant and -- as well as counsel's sentencing
9 memorandum, which I appreciate. And I ask the defendant, did
10 you get a copy of the presentence report?

11 THE DEFENDANT: Yes, I did.

12 THE COURT: Have you had an opportunity to discuss it
13 with your lawyers?

14 THE DEFENDANT: Yes, I did, Your Honor.

15 THE COURT: At this stage it's appropriate for me to
16 simply ask if there's anything the defendant, his counsel or
17 government counsel wish to state before we proceed to the
18 sentencing judgment?

19 MR. GELSO: Your Honor, Mr. Komoroski has reviewed
20 the presentence report. We have no objections filed to the
21 computations calculated therein. Secondly, Your Honor, there
22 is a motion for downward departure as Court has recognized with
23 respect to his cooperation in this case. We have -- the
24 government has described his cooperation. We elaborated on
25 that in our sentencing memorandum. I don't intend to rehash

1 what's in the memo itself. However, Your Honor I would like to
2 the say to the Court Mr. Komoroski understands that he did make
3 a mistake, Your Honor, with respect to that last e-mail that
4 was sent out. He understands that mistake. I understand -- he
5 understands also that the government's recommendation for a
6 downward departure in this case is being tempered or held back
7 to a certain extent because of the mistake he made. He
8 understands that he acknowledges that he's accepting
9 responsibility for his conduct, Your Honor, with respect to
10 that mistake.

11 However, Your Honor, we do believe that his
12 cooperation as the government indicated, was significant absent
13 that mistake. We would ask the Court to consider his
14 cooperation as discussed in the memo both under the 5 K.
15 motion, which we condition occur in the government's request as
16 well as under the 3553 A. factors. Your Honor, we are going to
17 proceed if it's -- with a little bit of a bifurcated
18 presentation in this case. Attorney Noci to will address the
19 3553 A. factors concerning Mark's history and characteristics
20 as well as the nature and circumstances of the offense. Upon
21 his conclusion, Your Honor, I will address very briefly the
22 remaining 3553 A. factors not to rehash what's in the memo but
23 in that context. So if the Court's indulgence, I would ask Mr.
24 Noci to to discuss the nature and circumstances of the offense.

25 THE COURT: You can remain seated.

1 MR. NOCITO: Mr. Komoroski stands before you after
2 having pled guilty to violating section -- Title 18 United
3 States Code Section 371. It was a criminal conspiracy, Your
4 Honor. The conspiracy related it exporting articles of the U.
5 S. without the required licenses and authorizations as well as
6 mail fraud, money laundering, and there were other exported
7 weapons violations. He knows what he did was illegal, Your
8 Honor. He admits his guilt and accepted responsibility.

9 Your Honor, I believe that the background for Mark's
10 conduct rested in certain needs that Mark had and also his
11 personality. Those things combined with his meeting with Mr.
12 Korznikov created, as we indicated in our memorandum, an
13 unfortunate perfect storm in this case. Your Honor, neither
14 attorney Gelso nor I offer this as an excuse for what happened,
15 but we do think it places it into context to help the Court
16 understand why Mr. Komoroski acted as he did. I present it in
17 that sense, Your Honor. A couple factors I would like to
18 mention, Your Honor, you are aware from the memorandum Mark
19 took over the business from his father.

20 And he and his father had constantly butted heads
21 with Mark's ideas for -- in his view -- advancing the business
22 and making changes in the business. This is especially so with
23 Mark's venture into the internet aspect of business and into
24 the international component of his business. His father
25 opposed those moves, and Mark had a need to make that part of

1 the business successful essentially to prove his dad wrong.
2 That was one factor that was in the background. In addition,
3 Your Honor, there were three different financial pressures that
4 were confronting Mark in his business. Mark -- his brother,
5 who was one his partners, and a third partner had bought Mark's
6 dad out of the business. They only have a considerable amount
7 of money. The payments they were making to his dad were
8 cutting into the business profits. That's one financial
9 pressure he was facing.

10 In addition, Mark's brother needed money to sustain
11 the Bloomsburg store. As you will remember from the
12 presentence report memorandum, there were two stores.
13 Unfortunately Mark's brother had a gambling problem and he was
14 arrested and, in fact, pled guilty to bookmaking charges. So
15 there was a financial drain with his brother through his
16 gambling problems that created a problem with the Bloomsburg
17 business. So that was a second financial pressure Mark was
18 facing.

19 Then again he was facing pressure from essentially
20 just competition from the big national chains such as Dicks and
21 Wal-Mart which were putting small independent dealers out of
22 business, and Mark needed a solution to those financial
23 problems. So his need to prove his dad wrong and his need to
24 solve his financial problems intercepted Your Honor with his
25 meeting with Sergey Korznikov. It was a perfect storm as I

1 will describe. Mark and Korznikov met over the internet, and
2 then Korznikov became a customer in person. Most of Mark's
3 sales to Korznikov were international and involved shipments to
4 Russia. In this sense, Your Honor, Korznikov was the answer to
5 Mark's problem with proving his dad wrong by showing how the
6 international business could succeed and also an answer to
7 those financial problems. Korznikov became Mark's -- through
8 his business became Mark's biggest customer. And in addition
9 to the needs we mentioned, certain personality traits of Mark's
10 came into play as I will mention.

11 Korznikov, as I said, became Mark's biggest customer.
12 Korznikov himself was a decorated retired Russian military
13 officer. He seen combat in Afghanistan and sophisticated in
14 the world. He befriended Mark, and his company became Mark's
15 biggest customer. Korznikov was able to convince Mark he was
16 involved in Russian special forces and was fighting terrorism.
17 And, in fact, Paragraph 7 of the presentence report mentioned
18 that a purchase order from Tactica, Korznikov's business, which
19 Mark provided to the agents reflected that Tactica was a member
20 of an elite counterterrorism unit.

21 So in light of Mark's needs and his personality, this
22 played right into Korznikov's hands, Your Honor. The
23 personality traits I mentioned were set forth in a number of
24 letters we presented to you. Mark's sister described him as a
25 small town simple guy. His mom's letter stated that Mark had a

1 child like quality about him, and I believe this makes him less
2 aware of the dangers of some of his decisions. Finally, the
3 friend of Mark's who wrote that a flaw that Mark had was being
4 too trusting in his business associates and friends. These
5 personality traits of Mark's coupled with his needs to expand
6 the international business to solve his financial problems, led
7 Mark to -- as wrong as it was -- submit to Korznikov and
8 Korznikov played him like a Stradivarius. Mark was wrong for
9 what he did. He admitted it, but there's that background. As
10 the presentence report set forth, Your Honor, Korznikov
11 directed Mark to mislabel shipments of clothing, which that was
12 not the case.

13 He directed Mark to grossly under value goods that
14 were shipped to Russia and also directed Mark to deliver
15 shipments to recipients and addresses other than Tactica to
16 avoid detection. Korznikov led Mark down the path, and Mark
17 did willingly follow, Your Honor. He wanted to prove his dad
18 wrong and wanted to solve those financial problems. And he
19 did. And that was our problem, Your Honor. I believe that
20 Mark always felt Korznikov was fighting terrorism.

21 I think part of Mark's personality traits are
22 reflected in Paragraph 38 of the presentence report where
23 Mark's own wife stated she never trusted or her felt
24 comfortable with Korznikov. Even Mark's 16-year-old daughter
25 picked up on a problem with him, but Mark didn't, Your Honor.

1 So there were these reasons, Your Honor, that led Mark on the
2 path that he undertook. We don't offer it as an excuse, Your
3 Honor. But it does place Mark's conduct in some context. The
4 other side of Mark, Your Honor, was set forth in the letters
5 that we presented to you as well. And they illustrate Mark's
6 many good qualities. One of the recurrent themes in the letter
7 was Mark's work ethic. He is a very hard worker. He's a hard
8 worker himself. His hard work resulted in providing employment
9 to many members of the community. He employed college
10 students, elderly people to try to help.

11 Mark is very concerned about his employees now and
12 concerned about the survival of the business while he's
13 incarcerated. Mark also contributed to a lot of community
14 projects through his business. He was a good corporate citizen
15 in that sense. He contributed to benefits, projects, different
16 events, donating shoes to low income children, which shows his
17 good heart, Your Honor. I think it's illustrated in his wife's
18 letter where it described how he befriended the elderly
19 gentleman who lived near him -- the can man they called him --
20 made sure his Christmas was bright.

21 I thought another trait of Mark's kind heart or
22 another illustration of Mark's kind heart was the description of
23 how Mark treated his father-in-law who was suffering from
24 alcoholism. And that really demonstrated a kind heart on
25 Mark's part. The letters that he received also illustrated

1 devotion to his family. His sister wrote of how Mark kept his
2 family together after his parents divorced, meaning his
3 siblings, Mark sister's children, Mark's nieces and nephews
4 remarked of the many kindnesses to them. Essentially they were
5 city kids and Mark brought to them a love of the outdoors and
6 something that is dear to them to this day. Mark's wife and
7 daughters and also his daughter's boyfriend are very important
8 today along with Mark's mother-in-law to support Mark. And
9 their letters describe -- I think what better than immediate
10 family -- described the close and loving relationship that they
11 have and what a good husband and father Mark is.

12 And I think that although factors are appropriate
13 factors for the Court's consideration and do speak well of Mark
14 as -- as a decent individual, Your Honor. Your Honor, Mark
15 would like to address you briefly at this point.

16 THE DEFENDANT: I'm sorry to the Court, my family and
17 everybody I hurt. It will never happen again.

18 MR. GELSO: Your Honor, the remaining factors have
19 been discussed in the sentencing memorandum. I'm not going to
20 rehash what's already in there, a consideration for Mark's age
21 and recidivism associated with it as well as the type of crime
22 and cases cited therein. However, Your Honor, there is a
23 factor would like to discuss with the Court which is called
24 disparity, Your Honor, the disparity factor under 3553 A. 6.
25 Your Honor, before coming into court today, I did a quick

1 search to find cases in which there are export violations
2 similar to Mark's.

3 There are a number of corporate defendants who have
4 had violations for export violations for night vision optics.
5 For example -- I will take off a couple of them -- Bushnell in
6 2002 was fined for \$650,000 and five years' probation for
7 exporting over 500 night ranger vision devices to Japan and
8 other countries. In 2008 I. T. T. Corporation was fined a
9 hundred million dollars for exporting, again, articles similar
10 to Mark, night vision goggles to China. In 2008 also Ri adskaff
11 was involved in -- worked at O'Hare airport and was involved in
12 smuggling into the country \$296,000 as well as exporting weapon
13 scopes -- I believe that was to Lebanon if I am not mistaken.
14 He received two years' incarceration.

15 Again, in 2008 the Green Supply Company was fined
16 \$17,500 and received two years' probation for again exporting
17 in violation of night vision -- controlled items that were --
18 night vision scopes. In '07 Philip Chen was imprisoned for two
19 years and ordered to pay a \$50,000 fine for exporting night
20 vision cameras to China. Cabella's, the wholesaler of sporting
21 goods was fined \$680,000 for --

22 THE COURT: What is interesting about the cases
23 you're alluding to and something that has to go through your
24 mind when you consider this case -- you're alluding to cases
25 where they exported materials to countries that needed it.

1 This was a case that was illegally importing stuff from Russia
2 -- the very things that they exported. You'd have a greater
3 understanding why they had to export the material that was
4 exported to Russia. If you have an answer to that question, I
5 would like to know it.

6 MR. GELSO: Why the materials were exported?

7 THE COURT: Why did they have to export this to
8 people in Russia to engage in counterterrorism?

9 MR. GELSO: Your Honor, I don't have an answer per se
10 as to why Korznikov in this case had told Komoroski he need it,
11 okay. He said he needed it for the Russian special forces for
12 the Tactica and -- which is in the presentence report. Why
13 they truly needed it beyond the fact of what Korznikov said, I
14 don't know, Your Honor. What I do know though is that if you
15 look at these cases that I'm citing -- you know, similar to
16 China, similar to Lebanon -- as a matter of fact, the Balli
17 Aviation two months ago exported three Boeing 747s to -- I
18 believe it was Iran in violation of export licenses. I agree
19 with Your Honor it is countries outside of the United States
20 who needs these items and these export violations are happening
21 and getting to them and people are profiting from them. I
22 understand that, Your Honor.

23 However in this case, the guideline sentence is
24 dramatically increase -- or disparate I guess the better way of
25 putting it -- in line with other cases where people have had

1 more violations in scope than Mark. I understand they are
2 corporate defendants, and I understand corporations can't be
3 sent to jail. But there were people behind that. And I would
4 just ask this Court to consider those other cases and all the
5 things we have been saying. We are not saying Mark should not
6 be punished. He must be punished. I understand, so does Mark
7 and his family understand the Court's responsibility with
8 respect to that. We believe a sentence more in line with the
9 proposed sentence is consistent with these other cases as well
10 as the nature and -- I'm sorry -- Mark's history and
11 characteristics as attorney Noci to discussed as well as his
12 cooperation being tempered by what the government -- by the
13 misstep that Mark had taken, Your Honor.

14 Based upon those factors, Your Honor, we would ask
15 the Court to impose the sentence in our sentencing memorandum.
16 We also ask the Court, Your Honor, to make a recommendation
17 that Mark serve his sentence in the least restrictive facility
18 proximate to his residence in Nanticoke. We also ask the Court
19 for a self-surrender date, Your Honor. Thank you, Your Honor.

20 MS. FAWCETT: Your Honor, my presentation to the
21 Court will be relatively brief because I believe we had
22 extensive and several discussions concerning some of the
23 factors at issue in this case with both the Court and defense
24 counsel. I would suggest that the Court -- that the
25 presentation made by Mr. Noci to and Mr. Gelso provide context

1 for the offenses that were committed by the defendant. They
2 don't provide -- and I think actually this was candidly
3 admitted by both counsel -- they neither provided an excuse for
4 the offense, nor did they provide a basis to mitigate the
5 seriousness of the offense that was committed here. And I
6 don't believe Your Honor that it is an exaggeration to state to
7 the Court that this offense impacted on or potentially impacted
8 on national security. The issue that is presented in the
9 government's 5 K. motion concerning his conduct that occurred
10 close to the time of the guilty plea, the e-mails that have
11 been discussed as I have stated to the Court previously I
12 believe bear on his credibility as a witness in the upcoming
13 proceedings because that is certainly information that will be
14 disclosed to defense counsel. It bears on whether he was truly
15 remorseful for the crime that's been committed here.

16 It bears on whether or not he has truly accepted
17 responsibility, and it bears on whether or not he is going to
18 be rehabilitated. Now, the government is not suggesting to the
19 Court that he should not receive credit for acceptance of
20 responsibility. We have indicated that he should receive
21 credit for acceptance of responsibility, but because the
22 e-mails that have been discussed previously bear on this issue.
23 They also bear on the issue whether the government's
24 recommendation of a one-level downward departure is appropriate
25 or not is an appropriate recommendation.

1 The defense counsel -- and I am not sure if it was
2 Mr. Noci to or Mr. Gelso -- I think it was Mr. Noci to who raised
3 a point that the defendant's belief initially was that he was
4 fighting terrorism through supplying these military items to
5 Mr. Korznikov -- I don't necessarily credit that remark. I'm
6 not sure -- I don't believe that's a credible remark. But it
7 is particularly not credible in light of what was said in the
8 e-mails I've discussed in the 5 K. motion. The fact that he
9 said in the e-mail that, quote, the United States Government
10 turned his stomach and that he continued -- he would continue
11 to sell weapons and ammunition.

12 It's at that point he was certainly well aware of the
13 fact he was not fighting terrorism by selling weapons, and yet
14 he makes that kind of remark. With respect to the disparity
15 factors that Mr. Gelso raised -- this is a discussion that we
16 actually had with counsel previously --

17 THE COURT: Let me ask you, what is there about this
18 case that would prompt such a remark that you alluded to?

19 MS. FAWCETT: By Mr. Komoroski?

20 THE COURT: Yeah.

21 MS. FAWCETT: That the government turns his stomach?

22 THE COURT: Yeah.

23 MS. FAWCETT: I believe that he felt that the
24 government should not --

25 THE COURT: The transactions in this case, what

1 purpose were they serving? Does the government know that? I
2 can't discern what purpose they were serving.

3 MS. FAWCETT: Well, you mean for the defendant or
4 generally?

5 THE COURT: Generally.

6 MS. FAWCETT: They were -- the agents could perhaps
7 address that remark better than I could. They are in the
8 courtroom and I suspect would be happy to respond to the
9 Court's inquiry if you would like them to.

10 THE COURT: In this case we had a very prominent
11 criminal lawyer in New York who was brought down and who is
12 serving 14 years in prison, as he should be, because of his
13 professional status. But we're familiar with that lawyer
14 because he appeared in this court on more than one occasion and
15 was an outstanding criminal lawyer as are the two criminal
16 lawyers representing the defendant in this case. I don't like
17 to say nice things about lawyers. But the point is -- could
18 you elaborate on that -- this defendant's role in that, if any?

19 MS. FAWCETT: Well, I can't state to the Court in all
20 honesty that the defendant's motive for supplying these
21 armaments to Mr. Korznikov was because he hated the government.
22 I suspect his motive was a profit motive and he didn't really
23 care if it impacted on national security or not. But he
24 certainly knew that he was not permitted to send these weapons
25 to Russia as he was sending them to Russia. He knew there was

1 a reason he was prohibited to do that. It impacts on national
2 security. Was his motive he deliberately wanted to do
3 something to undermine the U.S. government? I believe his
4 chief motive was a profit. But he certainly knew that was a
5 possibility and that it was illegal for him to do so. What
6 Korznikov was doing with the weapons when they got to Russia,
7 again, I'll turn to the agents. Do we know? They are
8 indicating we don't know. Does that address the Court's
9 question?

10 THE COURT: No, but that's all right.

11 MS. FAWCETT: Or as well as I can address the Court's
12 question. And then in conclusion, Your Honor, if I may, the
13 disparity factors raised by Mr. Gelso, I would suggest to the
14 Court we can't today based on what we know about those cases
15 determine that there is disparity between what happened to
16 those -- those defendants and what we are suggesting as an
17 appropriate sentence for the defendant in this case. It's
18 basically comparing apples and oranges. We don't know the
19 strength of the government's case against those defendants. We
20 don't know the extent of cooperation that may have been
21 provided by those defendants.

22 So basically we don't know if those defendants are
23 similarly situated to this defendant. And, of course, that is
24 the consideration the Court must make in determining whether
25 there is a disparity of treatment among defendants. For all

1 those factors and for the reasons that we set forth I believe
2 at length in our motion to the Court, we believe that the
3 sentence -- a sentence with the guideline range of 41 to 51
4 months is an appropriate sentence.

5 MR. NOCITO: Your Honor, if I may, just one point of
6 clarification, Your Honor, I don't think that I argued Mr.
7 Komoroski believed that he was fighting terrorism. I wanted to
8 point that out. Perhaps I didn't say this clearly as I should
9 have. What I intended to say I hope -- said Korznikov
10 convinced Mark that -- Korznikov was involved with Russian
11 special forces and it was they who were fighting terrorism.
12 That was the --

13 THE COURT: That was in the presentence report.
14 Anything else you want to respond to? Are you finished?

15 MS. FAWCETT: Yes, Your Honor.

16 THE COURT: Well, I understand that the defendant's
17 position because it was stated effectively in the defendant's
18 sentencing memorandum filed by his counsel, and I understand
19 the government's position. And, of course, it's a case in
20 which the defendant himself knows that punishment has to be
21 imposed. You just can't do what you did regardless of the
22 reason. I don't know why, and I still don't have an answer as
23 to why -- and maybe we can get an answer from Korznikov as to
24 why. I appreciate the government sometimes is limited in the
25 offer of a downward departure.

1 At least that's my experience with the government.
2 But we have a defendant who otherwise fits in our society as
3 can be demonstrated without dispute in some of the letters that
4 have been communicated to this Court as well as his history as
5 alluded to without any objection, personal history by the
6 government because they don't dispute his personal history.
7 It's a pretty clear case for a prosecutor in a case such as
8 this to recognize, as everybody in this room recognizes, that
9 the conduct is prohibited, there's a reason the law was passed
10 and the defendant himself -- why he didn't appreciate why that
11 law prevented him from doing what he did and why he allowed
12 himself to be persuaded to do what he did and in effect
13 destroyed his life, affected the life of his family and
14 affected the life supporting business.

15 I considered all of these factors, and I suppose I
16 will give some consideration to the arguments here. All right.
17 Pursuant to the Sentencing Reform Act of 1984, it is the
18 judgment of the Court that the defendant is committed to the
19 custody of the bureau of prisons to be imprisoned for a term of
20 32 months. The Court finds the defendant has the ability to
21 pay a fine, and it's ordered he pay to the clerk of United
22 States court sum of \$10,100 consisting of a special assessment
23 of a hundred dollars, which is due immediately and the fine of
24 \$10,000. And during the imprisonment the fine is payable every
25 three months in an amount after telephone allowance equal to 50

1 percent of the funds deposited into his inmate trust fund
2 account. In the event the fine is not paid in full prior to
3 the commencement of the supervised release, the defendant shall
4 as a condition of supervised release satisfy the amount due in
5 monthly installments of no less than \$200 to commence 30 days
6 after his release. When you are released, you will have to be
7 placed on supervised release for two years. Within 72 hours of
8 your release from custody of the bureau of prisons, you will
9 have to report in person to the probation office in the
10 district to which have been released. While on supervised
11 release, you will not commit another federal, state or local
12 crime and shall not possess a dangerous weapon.

13 The defendant shall comply with the standard
14 conditions that have been adopted by this Court and shall
15 comply with the following additional conditions. You have to
16 cooperate in the collection of a D.N.A. sample if that's not
17 already done. You will not incur new credit charges or open
18 additional lines of credit without approval of the probation
19 office unless the defendant is in compliance with the
20 installment scheduled for payments, and the defendant shall
21 provide to the probation officer access to any requested
22 financial information.

23 The court finds that the defendant poses a low risk
24 of substance abuse and, therefore, suspends any mandatory drug
25 testing. It's further ordered the defendant surrender at the

1 institution designated by the bureau of prisons before 2 p.m.
2 on the 19th day of August, 2010. And he's to commit the U.S.
3 Marshal's Office no later than three days prior to the above
4 date to be notified of placement of confinement. We would
5 recommend to the bureau that this defendant once they assess
6 his person belongs in a least restrictive environment, and I
7 think that will be their judgment. In doing so, that they give
8 consideration to the necessity that he maintain a relationship
9 with a very loving family. This sentence satisfies the
10 purposes set forth in 18 U.S. C. 3553 A. which have been
11 thoroughly discussed by defense counsel in the sentencing
12 memorandum.

13 It's just we arrived at slightly different
14 conclusions. I have to advise you of your right to appeal this
15 sentence to the United States Court of Appeals. If you are
16 unable to pay costs of appeal, then you may apply for leave to
17 appeal in forma pauperis. If approved, counsel will be
18 appointed for you and you will not be required to pay any
19 costs. With few exceptions, any notice of appeal must be filed
20 within 14 days after this sentence is imposed on you. And for
21 the benefit of your family I tell you 32 months is a long time
22 when you first hear it. But with the family's education we
23 know how fast 32 months can go by. If the defendant is in any
24 way intelligent, he won't waste his time and can take advantage
25 of the time that he has to spend incarcerated to benefit not

1 only himself but ultimately his family when that incarceration
2 is over. Thank you.

3 MS. FAWCETT: Your Honor, we will move for the
4 dismissal of the indictment.

5 THE COURT: All right. It's so ordered.

6 MR. GELSO: One moment, Your Honor.

7 MS. FAWCETT: Defense counsel pointed out to me that
8 the indictment applies to both the defendant and to the
9 company. We will move for dismissal of the indictment as it
10 relates to both the defendant and the company.

11 THE COURT: Do I have to do anything with that? No,
12 okay.

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Official Court Reporter

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Official Court Reporter
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Middle District of Pennsylvania
Scranton, PA 18503

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