

MEMORANDUM

TO: Counsel/Pro Se Parties in Criminal Cases
FROM: Judge John L. Kane
RE: Pretrial and Trial Procedures - CRIMINAL CASES

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I. GENERAL PROCEDURES

A. Applicable Rules

Those appearing in criminal cases in the District Court must know and follow:

- (1) The Federal Rules of Criminal Procedure;
- (2) The Federal Rules of Evidence;
- (3) The Local Rules of Practice of the United States District Court for the District of Colorado;
- (4) The Electronic Case Filing Procedures (Criminal Cases); and
- (5) These Practice Standards.

The Local Rules of Practice and Electronic Case Filing Procedures are available on the District of Colorado website at www.cod.uscourts.gov and from the Clerk's Office. These practice standards and my specific forms are located under my tab on the District of Colorado website at www.cod.uscourts.gov/JudicialOfficers/SeniorArticleIIIJudges/HonJohnLKane.aspx [hereinafter "my website"].

B. Communications with Chambers

1. Chambers staff cannot give legal advice or grant oral requests over the telephone. Please do not ask to speak directly with law clerks about pending matters unless previously authorized or invited to do so. If after fully and carefully reading these Practice Standards and the Local Rules of Practice, you still have a question about procedure, you may contact my chambers at 303-844-6118 or Kane_Chambers@cod.uscourts.gov.
2. *Ex parte* communications: Unless specifically authorized for scheduling or other purposes, neither counsel nor pro se litigants may communicate about a case by letter, email, or telephone to the court. All communications must be made in the form of a motion, brief, notice, or status report, and must be served on all opposing counsel and any pro se parties.
3. For information about courtroom technology, trial preparation, submission of trial exhibits, and courtroom protocol, please contact my courtroom deputy clerk, Bernique Abiakam, at Bernique_Abiakam@cod.uscourts.gov.
4. Parties are not to come to chambers unless their visit is authorized by my chambers in advance.

II. MOTIONS

A. Duty to Confer in Advance of Motion

While the local criminal rules do not include an analog to D.C.COLO.LCiv.R 7.1(a) that

imposes a duty to confer in advance of filing a motion, I expect parties and counsel in criminal cases to make every effort to do so. By this I mean that, before filing any motion, status report, statement, or other paper that includes a request for relief, the filing party shall have conferred or made a reasonable, good-faith effort to confer with opposing counsel to resolve the issue in full or in part. Parties are encouraged to discuss and agree upon collateral matters such as proposed briefing schedules, requests for hearing, sub-issues to which they may be able to stipulate, and other matters that can be resolved through the extension of mutual courtesies or other demonstration of goodwill. Filings shall include a statement describing counsel's efforts in this regard and the matters on which agreement was reached. Certification that a telephone call or email was directed to opposing counsel less than 24 hours before the paper was intended to be filed and "no response" was received is per se NOT a good-faith effort.

B. Format for Motions

1. Motions and all supporting arguments should be contained in a single document. Motions with separately filed briefs or memoranda are strongly discouraged.
2. It is not possible to predetermine the length of a good brief. Accordingly, I do not adhere to any prescribed page limits for briefs. Counsel are expected to exercise good judgment. Consider, however, that the longer it takes to make a point, the less likely it is to be understood, and I will disregard string citations and repetitive arguments. Any case, statute, or article cited in a brief as authority is accepted as certified by counsel's signature that such has been read and known not to have been overruled, modified, or amended. Furthermore, counsel should bear in mind that sarcastic, rude, or ungrammatical briefs are not persuasive and often counterproductive.
3. I prefer the body of the text and the footnotes to be in Times New Roman 12-point font. The page numbers of motions and briefs should correspond with those given by CM/ECF, i.e., the numbering should start with "1" and continue uninterrupted throughout the document.
4. Responses and replies shall identify by title and CM/ECF docket number the pleading or motion to which they relate.

C. Index of Attached Exhibits

1. Each filing with an exhibit should contain an index of the exhibit(s) that accompany it as the final page of the filing (i.e., after the Certificate of Service). Then, each exhibit should be attached to the actual filing in CM/ECF. This includes any declaration in support of the filing, even if the declaration has its own attachments. In the case of such declarations, the declaration should be a single exhibit to the filing in CM/ECF and each of the attachments to the declaration should be their own exhibits to the filing. For example, the Exhibit List on the last page of the filing would state:
Ex. 1: Decl. of _____, dated ____
Ex. 2: Att. 1 to Decl. of _____, Email from ____ to ____, dated ____
Ex. 3: Att. 2 to Decl. of _____,
2. Restricted exhibits may necessarily be filed as separate entries in CM/ECF.

3. **If a document has already been filed in the docket, the previous entry should be cited and the document should not be re-filed** unless there is a compelling reason for doing so.

D. Speedy Trial

1. Every motion filed shall include a statement concerning the status of, and the impact the motion may have, on the speedy trial clock.
2. Motions to exclude time from the speedy trial calculation filed by defense counsel must include a certification that counsel has received authorization from the defendant for the motion.

E. Motions for Extensions of Time

Motions for extension of time require a showing of good cause, which must be established with particularity. Any motion for extension of time shall be filed as far in advance of the deadline as possible, and no later than one business day before the date the filing would otherwise be due.

F. Motions to Continue

Motions to continue (including motions to vacate or reset) hearings and trials will be determined pursuant to *United States v. West*, 828 F.2d 1468, 1469–70 (10th Cir. 1987), unless a party seeks to continue a hearing or trial beyond or to the Speedy Trial Act deadlines, in which case it will be decided pursuant to the Speedy Trial Act. Motions to continue that implicate the Speedy Trial Act must include sufficient facts and procedural history of the case to support the findings necessary to support the continuance under *United States v. Toombs*, 574 F.3d 1262 (10th Cir. 2009).

Motions to continue or reset hearings and trials should be made without delay at the earliest opportunity. Stipulations for continuance are not effective unless and until approved by the court.

G. Motions *in Limine*

Motions *in limine* are discouraged when the motion is evidence-driven and cannot be resolved until evidence is presented at trial. If motions *in limine* are deemed necessary and not evidence-driven, they must be filed before the Trial Preparation Conference, as ordered by the court.

H. Proposed Orders

All proposed orders should be emailed to kane_chambers@cod.uscourts.gov in editable Word format. The email message should identify the case name and number in the subject line and refer to the underlying motion by CM/ECF document number.

I. Timing of Motions

Motions filed after 4 p.m. on the last business day of the week will be ruled on no sooner than the next business day.

III. IN-COURT PROCEEDINGS

A. Courtroom Protocol

1. Courtroom Decorum. Creating a courtroom where all litigants, witnesses, and counsel feel welcome and respected is of utmost importance to this Court. Courtesy and civility to and from one and all is expected. All parties should observe the following courtroom decorum:
 - a. Stand when the Judge enters or leaves the courtroom, when addressing the Court, and when the jury enters or leaves the courtroom;
 - b. Stand at the lectern when speaking, and communicate clearly and distinctly;
 - c. Request permission to approach the bench; and
 - d. Refer to all other persons by their surnames, prefaced by the individual's title (e.g., Dr., Agent, Officer, Mr. or Ms., etc.).

It will not normally be necessary for counsel to approach a witness on the stand. The courtroom deputy, upon request of counsel, will hand a witness an exhibit.

2. Oaths. Please note and advise all persons appearing with you in court, including co-counsel, paralegals, clients, witnesses, and spectators that oath taking is treated formally in my courtroom. The courtroom deputy is directed to administer an oath to a jury or witness **ONLY** when all other activity in the courtroom has ceased. Attorneys are directed to observe the administration of the oath and to stop all other activity.
3. Cell phones. Please place cell phones in "silent mode" or "off" in the courtroom.
4. Interpretation. If you have questions about the need for or scheduling of interpreters, please review the information on the Court's website at www.cod.uscourts.gov/CourtOperations/RulesProcedures/InterpreterInformation.aspx.

B. Record of Proceedings

1. The official record of all trials and proceedings will be taken by a court reporter. Before any courtroom proceeding, please provide the court reporter with your business card or other means of contacting you, as well as a glossary of unusual or technical terminology, difficult-to-spell names, and/or acronyms. Requests for realtime or daily or hourly copy should be communicated to the reporter as soon as practicable, no later than two weeks before the proceeding.

2. Transcripts of any court proceeding can be ordered directly from the court reporter sitting at the particular hearing. If you do not remember the reporter's name, consult the Minute Entry for that proceeding. Court reporters' contact information can be found at www.cod.uscourts.gov/AbouttheDistrict/ContactUs.aspx#report.

C. Exhibits

1. When to File Exhibit Lists. For motions hearings, exhibit lists shall be filed via CM/ECF **two business days before the hearing**. For trials, parties shall file a unified exhibit list via CM/ECF and email an editable Word version to Kane_Chambers@cod.uscourts.gov **no later than seven days before the Trial Preparation Conference**. These requirements apply to a defendant if he or she has identified exhibits for the hearing or trial.
2. Format of Exhibit List. Parties must use the form Exhibit List available on my website, indicating which exhibits are stipulated and which are not and the basis for any objections. Counsel shall stipulate to the admissibility of exhibits to the maximum extent possible. A failure to stipulate to authenticity of any particular exhibit must set forth specific reasons for the objection.
3. Marking Exhibits. Each party must pre-mark all exhibits that will be used or identified in a hearing or trial. Exhibits pre-marked or exchanged before a hearing or trial may not be admitted. The Government's exhibits should be marked with numbers starting at 1. The defendant's exhibits should be marked with numbers starting with where the Government's proposed exhibits leave off. For example, if the Government anticipates having 300 exhibits at trial, the defendant's exhibit numbers will start with 301. There is no need for defendants to seek to re-admit exhibits offered by the Government and admitted by the court. Once an exhibit is marked whether in a hearing or at trial, that number will be permanent and no new additional numbers should be used to mark it. Each document exhibit shall be paginated, including any attachments thereto.
4. Paper Exhibits. Paper copies of exhibits shall be submitted in 3-ring binders and shall be labeled with the following information: (i) caption, (ii) nature of proceeding, (iii) scheduled date and time, and (iv) "original" or "copy." Paper exhibits, including the set of original exhibits, shall bear extended tabs showing the number of the exhibit. If exhibits are not bound and labeled properly, the hearing or trial may be delayed or continued until they are.
5. Number of Sets of Exhibits.
 - a. Original Exhibits: At the start of every trial or evidentiary hearing, the parties shall submit a set of original exhibits (labeled as "original") to my courtroom deputy. The "original" set will be for the witness stand and will be the only set that goes to the jury room during deliberations in a jury trial.
 - b. Copies of Exhibits: In addition to the original exhibits, the parties shall provide three sets of paper copies and a digital copy as follows:

- i. The paper copies shall be submitted in the same format as the original exhibits. One set is for the opposing party, the other two are for the court. For trials, one court copy of the parties' proposed exhibits shall be delivered to my chambers (not the opposing party) no later than **seven days before the Trial Preparation Conference**. The original set and additional copies of the final exhibits may be brought to the courtroom the first morning of the trial, along with any exhibits needing to be replaced based on rulings from the Trial Preparation Conference.
- ii. The parties shall also submit their exhibits on a flash drive for the court reporter. If an exhibit cannot be presented in digital form on a flash drive, the party shall contact the court reporter to discuss an alternate format.

D. Timelines and Other Demonstrative Aids

1. In cases in which a sequence of events is relevant or helpful to deciding any issue presented, the parties shall prepare a stipulated demonstrative that sets out the timeline of these events. If any element of this timeline is disputed, the demonstrative should so indicate.
2. The parties are also encouraged to submit similar demonstrative aids for reference during the course of their presentations if such would assist the court or the jury.
3. The parties should provide three total copies of any demonstrative aid, unless it is prohibitively expensive or difficult to make copies of a particular demonstrative aid. Demonstrative aids will not be provided to the jury during its deliberations, unless otherwise ordered.

E. Witness Lists

1. When to File. For motions hearings, witness lists should be filed via CM/ECF **two business days before the hearing**. For trials, the parties shall file their final witness lists via CM/ECF **no later than seven days before the Trial Preparation Conference**. These requirements apply to a defendant if he or she has identified witnesses for the hearing or trial.
2. Format. The parties should use the form Witness List available on my website. It should list the witnesses to be called by each party in its case in chief and set forth the best estimate of the time required for that witness for direct examination. It should also include potential rebuttal witnesses. This witness list is counsel's representation, upon which opposing counsel may rely, that the witnesses listed will be present and available for testimony. The witness list should note any testimony that is expected to occur via video teleconferencing, but such testimony will not be permitted, unless a related motion is made and granted. The witness list must include witnesses whose testimony is to be presented by way of deposition.
3. Witness Sequestration. Upon motion, witnesses will be sequestered until a particular witness's testimony is complete. Each party may retain one advisory witness throughout the trial. If an expert witness's testimony is based in part on observations at trial, the need for the

witness's presence must be disclosed not later than the Trial Preparation Conference.

F. Depositions

1. Together with Federal Rule of Criminal Procedure 15, this practice standard governs the use of depositions in criminal proceedings.
2. At the beginning of a hearing or trial, a party shall deliver to the courtroom deputy the original transcripts of all depositions the party intends to or may use, whether for impeachment or otherwise.
3. For depositions to be used at a hearing, counsel shall exchange with each other their designations of anticipated deposition and videotape deposition testimony **at least seven days before the hearing**. Objections shall be filed **at least two business days before the hearing**. If objections are made, the offering party should provide the court with a notebook containing the deposition transcripts with tabs that identify the relevant testimony **at least two business days before the hearing**.
4. If the parties intend to offer deposition testimony in lieu of a live witness at trial, counsel shall exchange with each other their designations of anticipated deposition and video deposition testimony. After the original exchange, counsel shall notify opposing counsel of any counter-designated deposition testimony, exchange objections to all designated testimony, and make a good-faith attempt to resolve such objections. Objections to any portion of a proposed deposition, including a videotaped deposition, shall be filed **at least seven days before the Trial Preparation Conference**. Any objectionable portion of the deposition shall be identified with specificity, e.g., by page and line. The parties shall also submit the transcript(s) of the designated deposition testimony to my chambers at Kane_Chambers@cod.uscourts.gov before the Trial Preparation Conference. In the transcript(s), the Government's designations should be highlighted in yellow, defendant's designations should be highlighted in blue, and testimony that is the subject of an objection should be highlighted in red. I will make every effort to resolve objections at the Trial Preparation Conference to speed things along and to facilitate any necessary redaction.
5. For jury trials, parties shall provide a person to read the deposition answers.
6. For bench trials, depositions will not usually be read in open court. Instead, I will read them in chambers in any requested sequence. The offering party shall provide the relevant deposition transcript as an exhibit with its designated portions highlighted. If both parties seek to use portions of the same deposition transcript, they shall confer beforehand and the exhibit provided shall contain the Government's portions highlighted in yellow and the defendant's in blue.

G. Special Equipment (Audio/Video)

The court has audio-visual and other special equipment that may be used by the parties. Notify my courtroom deputy, Bernique Abiakam at Bernique_Abiakam@cod.uscourts.gov, no

later than **14 days before a hearing or trial** regarding use of such equipment or any request to bring your own equipment through security for use in the courtroom. You may schedule a time with Ms. Abiakam to visit the courtroom and run through your technology needs.

IV. TRIALS

A. Trial Preparation Conference

The parties will be directed to contact chambers to set the Trial Preparation Conference and trial dates. The court will issue an order confirming the dates and specifying deadlines for the tasks to be completed before the Conference. The Conference will be held approximately **3 to 10 days before trial. Counsel who will try the case must attend the Conference.**

B. Jury Instructions and Verdict Forms

1. I place great emphasis on the preparation of narrative instructions that clearly and accurately inform the jurors of the law that applies in a given case. Jury instructions and verdict forms will be submitted to the court, argued, revised, and approved **before** trial begins. This practice allows counsel to refer to the instructions throughout the case. In my experience, the repeated use of the instructions results in more efficient trials and informed decision-making by the jury.
2. The parties will jointly submit proposed jury instructions and verdict forms **at least 21 days before the Trial Preparation Conference**, or as otherwise directed in the order setting the Trial Preparation Conference. The parties shall consult and base their instructions on the “Sample Jury Instructions-Criminal” on my website. The jury instructions shall identify the source of the instruction and supporting authority, e.g., “Judge Kane’s Sample Instruction 2” or “§ 103, Fed. Jury Practice, O’Malley, Grenig, and Lee (5th ed.)” Whenever practicable and appropriate, the parties shall modify the Criminal Pattern Jury Instructions prepared by the Criminal Pattern Jury Instruction Committee of the United States Court of Appeals for the Tenth Circuit to the discrete issues in the case. The pattern instructions and updates may be found online at <https://www.ca10.uscourts.gov/form/criminal-pattern-jury-instructions>. Please refrain from using legalese where commonly used words are available (e.g., not “prior” or “subsequent” but “before” and “after”). And please use the names of the defendant(s).
3. To the maximum extent possible, the parties shall agree on one stipulated set of proposed jury instructions. The filed Jury Instructions shall include all of the parties’ stipulated, proposed, and counter-proposed instructions in a single, page-numbered document. **Do not submit jury instructions individually or as separate Word files.** Each instruction should be numbered (e.g., “Stipulated” or “Government’s [Defendant’s] Proposed” Instruction No. 1) for purposes of making a record at the Trial Preparation Conference. A party’s written objection to a proposed instruction should immediately follow the objected to instruction and accompanied by that party’s counter-proposed instruction, if any. A counter-proposed

instruction should be a redlined version of the opposing party's proposed instruction. For examples on how to submit the jury instructions, see Case Nos. 16-cr-00111-JLK, Doc. 81, and 16-cv-02327-JLK, Doc. 148. The parties are expected to work together to craft the instructions and should exchange proposals and attempt to work through objections well before the submission due date.

4. The parties shall submit their instructions and verdict forms via CM/ECF and email them in an editable Word format to Kane_Chambers@cod.uscourts.gov.
5. In addition to any record created at the Trial Preparation Conference or other supplemental jury instruction conference(s), counsel will be provided the opportunity to make a record of objections before final arguments and after the close of evidence. After being sworn in, each individual juror will also receive a notebook of instructions, which (unless otherwise ordered) will be compiled by my staff.

C. Trial Briefs

Trial briefs identifying issues and legal authority with which you wish me to be familiar before trial may be helpful, as may timelines or glossaries of names, technical terms, abbreviations, or acronyms. Trial briefs must be **submitted no later than seven days before the Trial Preparation Conference**.

D. Optional Exhibit Notebooks for Individual Jurors

There is technological equipment available in the courtroom for parties to utilize in presenting exhibits to the jury and the court. However, if the parties so choose, counsel may provide each juror with a notebook containing copies of the parties' key exhibits to reference in the courtroom during the trial. (Only the original set of exhibits will be available in the jury room during deliberations.)

1. If used, counsel should confer and provide one individual juror notebook for each juror that includes selected exhibits of each party.
2. Individual juror exhibit notebooks should **include only those exhibits previously admitted by stipulation or admitted by the court at the Trial Preparation Conference**. If additional key exhibits are admitted during the trial, the parties may provide the courtroom deputy with copies of these additional admitted exhibits to be placed in the individual juror exhibit notebooks.

E. Trial Schedule

Counsel will be present to deliver the exhibits and go over any last-minute items with the courtroom deputy at 8:30 a.m. on the first day of trial. The normal trial day begins at 9:00 a.m. and continues until 4:30 p.m. Lunch recess normally is from 12:00 to 1:15 p.m. We may continue beyond 4:30 p.m., but jurors have a right to rely on their being excused for the day no later than 5:00 p.m. For the convenience of everyone, additional recesses are scheduled for 10:15

to 10:30 a.m. and 3:15 to 3:30 p.m. If a recess is needed at any other time, make a request, and it will be granted.

F. Jury Selection

1. Voir Dire. I will conduct a *voir dire* examination. Counsel will have 30 minutes per side to conduct supplemental *voir dire*. I do not require counsel to submit *voir dire* questions to me in advance, but if they choose to do so, they should be submitted at least **two business days before the Trial Preparation Conference. No questions concerning jury nullification or agreement or disagreement with any applicable law contained in the instructions or to be offered will be permitted.**
2. Batson Challenges. Challenges pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986), shall be made and considered at the time challenges for cause are made, before the jury is sworn.
3. Note-taking and Questions. Jurors will be permitted to take notes during the trial and to submit questions for the court and counsel in writing. Copies of juror questions will be provided to counsel and a record made outside the presence of the jury before an answer is given.

V. PLEA AGREEMENTS

A. Right to Trial

All defendants have a Constitutional right to a speedy and public trial. For that reason, the failure to enter a guilty plea will have no impact on the sentence imposed. Under no circumstance will I reward a defendant for pleading guilty. Counsel are expected to inform their clients accordingly.

B. Treatment of Notice of Disposition

Any notice of disposition filed pursuant to D.C.COLO.LCrR 11.1(a) shall be considered a pretrial motion within the meaning of 18 U.S.C. § 3161(h)(1)(F) for the purpose of computing time under the Speedy Trial Act, 18 U.S.C. §§ 3161-74.

C. Change of Plea Hearing and Plea Documents

Upon the filing of a Notice of Disposition, I will set a change of plea hearing. In addition to providing my courtroom deputy with the signed original and one copy of the Statement by Defendant in Advance of Change of Plea and the Plea Agreement on the date of the hearing, the documents must be emailed to my chambers at Kane_Chambers@cod.uscourts.gov and furnished to the Probation Office **no less than seven days before the hearing.**

I will not accept Plea Agreements or Statements in Advance of Plea that are insufficiently

edited or tailored versions of the form documents. The defendants that appear in this Court are entitled to be treated as individuals and with dignity and respect. As a result, any plea documents that are submitted should be edited to be written in plain language with minimal legalese. They also must not contain any irrelevant information or unfilled blanks. The use of the forms as drafts is not prohibited, but each provision of each document must be particularized and any irrelevant parts must be deleted from the final document that is tendered to the Court.

If a defendant speaks but is unable to read and write in English proficiently, the documents must be read in full to the defendant. If a defendant does not speak English proficiently, the parties must submit to the Court an English version of the documents along with certified translations in the defendant's preferred language that are signed by the defendant. I will confirm with the defendant at the change-of-plea hearing that these requirements have been fulfilled and, in the event that they have not, will reject the documents and vacate the hearing.

D. Review of Plea Agreements

Accepting or rejecting a proposed plea bargain is entirely a matter of judicial discretion. Plea bargains are divided into two principal categories: sentence bargains and charge bargains. Bargains based on or presenting agreements as to length or terms of a sentence are subject entirely to judicial authority such that the involvement of both the prosecution and the defense in determining sentences is strictly advisory. While permitted by Federal Rule of Criminal Procedure 11(c)(1)(C), I will not accept a plea bargain based upon an agreed sentence or seeking to bind the court to a specific sentence or sentence range. I personally believe doing so would be a violation of my judicial oath. *See* 28 U.S.C. § 453.

A judge's discretion is more limited when accepting or rejecting a plea agreement based on the charges involved because deciding what charges to bring or dismiss falls within executive authority. Nevertheless, such decisions must be supported by expressed rational justifications related to the particular case and defendant.

In conformity with my review of all plea agreements, I will consider in detail those containing an appellate waiver and whether the individual facts of the case indicate that such a provision is in the public interest. Generally, I will not accept a plea agreement in which the prosecution has informed or suggested to the defendant that it will offer a less favorable plea bargain or will not engage in plea negotiations if the defendant files any pretrial motions. Accepting such plea agreements would, in my judgment, endorse the extortion of guilty pleas from defendants and thus constitute a violation of my oath. Of course, if a defendant has independently determined that his or her best course of action is to forego filing any pretrial motions, an advisement from the prosecution discouraging pretrial motions would not undermine the validity of a plea agreement in the same way.

I deem it essential and morally obligatory to consider all the criteria under 18 U.S.C. § 3553 (as described in Section VI below) before determining an appropriate sentence. It should be obvious that those factors are necessarily implicated in my decision of whether to accept or reject a proposed plea bargain. My general practice, therefore, is to incorporate the foregoing into my Federal Rule of Criminal Procedure 11(b)(1) advisement, conditionally accept the defendant's

plea if appropriate, and defer my acceptance or rejection of the plea agreement until after the prosecution and the defendant have provided sentencing statements and the Probation Office has submitted a presentence report.

VI. SENTENCING

Title 18, Section 3553 of the United States Criminal Code sets forth the sentencing criteria that must be considered in imposing a sentence that is sufficient but not greater than necessary. Counsel are certainly familiar with the complete list of factors, so I elaborate on only a few here.

First and foremost, in sentencing a defendant, I must gain a complete understanding of the nature and circumstances of the offense. Thus, I examine the following:

- (1) The facts of the offense in specific detail, including those related not only to the commission of the crime or crimes but to the planning and post-execution as well;
- (2) Whether the totality of the circumstances might indicate or suggest patterns, series, or continuity of unlawful behavior and damage or injury to others;
- (3) The characteristics of the defendant, including his or her mental and physical health, skills, education and occupational qualifications, capacity to learn and adapt, family history, and previous treatments and programs; and
- (4) The support available to the defendant from all sources, such as that provided by family, friends, and religious and social organizations, in addition to plans or living arrangements the defendant has after any period of confinement.

Second, pursuant to § 3553(a)(2), I also determine the need for the sentence imposed by evaluating:

- (1) The seriousness of the crime, including the effects on others, the need to promote respect for the law, and provide just and commensurate punishment;
- (2) What would deter the defendant from further criminal behavior;
- (3) How to protect the public when violence, deviance, or other predatory behavior is indicated; and
- (4) The opportunity to provide the defendant with needed education, vocational training, medical care, and other effective treatment programs.

While I must calculate and consider the applicable Guidelines range, *see Gall v. United States*, 552 U.S. 38, 49 (2007), my sentencing inquiry always extends to each and every applicable factor under 18 U.S.C. § 3553. Any analysis offered by the parties should as well. For

illustrations of my sentencing objectives, read *United States v. Worku*, No. 12-cr-346-JLK, 2014 WL 2197537 (D. Colo. May 27, 2014); *United States v. Jumaev*, No. 12-cr-00033-JLK, 2018 WL 3490886 (D. Colo. Jul. 18, 2018); and *United States v. Muhtorov*, 329 F.Supp.3d 1289 (D. Colo. 2018).

Regardless of whether a sentence is to be imposed after a plea agreement or trial, the filing of detailed and individually tailored sentencing statements is the bare minimum I expect from both the prosecution and the defendant. Case-specific reasons for recommended sentences must be stated with particularity. If I am not satisfied with the parties' sentencing statements or the presentence report, I may order supplemental reports or statements. Very infrequently, I have called witnesses or ordered examinations and reports by independent experts. Of course, full and timely notice is provided to counsel should this situation arise.

Upon request of either or both parties or on my own motion, witnesses can be called in an evidentiary hearing. With the court's permission, interested persons may be permitted to address the court without being called to testify under oath as witnesses. This latter group is afforded this opportunity to express opinions and consists of relatives, friends or professionals such as ministers, counselors or other therapists, and can also include victims of any offense committed by the defendant. In this court such a hearing will almost always be scheduled after the court receives the final Presentence Report and may be set on the same date in preface to the sentencing.

Before a sentence is imposed, I will provide both the prosecution and the defendant's counsel with the opportunity to address the court and offer arguments on what constitutes an appropriate and condign sentencing disposition. Finally, the defendant will have the opportunity to address the court as an exercise of his or her right of allocution.