## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

---000---

BEFORE THE HONORABLE MORRISON C. ENGLAND, JR., JUDGE

---000---

UNITED STATES OF AMERICA,

Plaintiff,

VS.

No. 2:06-cr-0035

LAUREN WEINER,

Defendant.

---000---

## REPORTER'S TRANSCRIPT

CHANGE OF PLEA

TUESDAY, MAY 30, 2006

---000---

Reported by: DIANE J. SHEPARD, CSR #6331, RPR

## 1 SACRAMENTO, CALIFORNIA 2 TUESDAY, MAY 30, 2006 3 ---000---THE CLERK: Calling criminal case 06-0035, United States versus Lauren Weiner. On for Change of Plea, Your 5 6 Honor. MR. LAPHAM: Morning again, Your Honor. Steve Lapham 7 for the United States. 8 MR. WEINER: Good morning, Your Honor. Jeff Weiner 9 10 on behalf of Lauren Weiner, who is present. 11 THE COURT: Good morning. 12 MR. WEINER: Your Honor, at this time we're prepared 13 to change our plea from not guilty to guilty pursuant to the 14 Plea Agreement and the Superseding Information, which has been 15 presented to Your Honor with a Statement of Facts attached to 16 the Plea Agreement. 17 THE COURT: With respect to that Statement of Facts, 18 I note that on line 8 and 9, it states "on the weekend November 18 to 20, 2006." 19 20 MR. LAPHAM: Yes, Your Honor. That should be 2005. THE COURT: All right. Thank you. 21 22 MR. WEINER: We agree, sir. 23 THE COURT: Would you make that interlineation? Or 24 do I have the original? 25 MR. LAPHAM: I believe you have the original.

```
1
                  THE COURT: All right. Let me get them to execute
 2
        that.
 3
                   (Pause in proceedings.)
                  MR. LAPHAM: Your Honor, both counsel have initialed
 5
        the correction.
 6
                   THE COURT: And the defendant as well?
 7
                  MR. WEINER: No, she did not, sir.
                  THE COURT: I would like to have her do it, too.
 8
 9
                   (Pause in proceedings.)
10
                  MR. WEINER: Your Honor, may the record reflect that
11
        the defendant has put initials at that spot as well?
                   THE COURT: Thank you. Let me ask, is there any
12
13
        relationship between the two of you?
14
                  MR. WEINER: Yes, sir. I am a cousin of the
15
        defendant.
16
                   THE COURT: And there will not be any issues
        regarding the ability to represent her competently and
17
18
        completely in this matter?
19
                  MR. WEINER: I certainly don't see any, sir.
20
                  THE COURT: Ms. Weiner, do you have any issues at
        this point in time?
21
2.2
                  THE DEFENDANT: No, sir.
                  THE COURT: I want to make certain we don't have an
23
24
        appellate issue on that come up in the future.
                  You have received a copy of the most current
25
```

Information and provided a copy to your client; is that correct?

MR. WEINER: Correct, sir.

2.2

THE COURT: Ms. Weiner, let me tell you at this time that you have the Constitutional Right to remain silent and, of course, to have counsel as you do here today.

Is it your intention today to waive prosecution by Indictment and enter your plea of guilty today pursuant to the Superseding Information that has just been handed to me?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Ms. Weiner, have you fully discussed the charges and your decision to waive Grand Jury Indictment in connection with this case with your attorney?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Are you fully satisfied with the advice and representation that you've been given in this case up to this point by your attorney?

THE DEFENDANT: Yes, I am, Your Honor.

THE COURT: The crime charged in the Superseding
Information is a felony offense. Before you can be charged
with a felony offense, you have a Constitutional Right to have
those matters presented to a Federal Grand Jury, and you could
not be charged with this offense unless the Grand Jury indicts
you; do you understand that?

THE DEFENDANT: I understand.

THE COURT: The Grand Jury is composed at least 16 and not more than 23 persons, and at least 12 of those grand jurors must find that there is probable cause to believe that you committed the crime before you can be indicted; do you understand that?

THE DEFENDANT: Yes, I do.

2.2

THE COURT: If the matters were presented to the Grand Jury, you might or might not be indicted; do you also understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: I have received a written Waiver of
Indictment that has been signed by the defendant and also by
counsel, and I have just executed it. But before I order that
it be filed, let me ask you, has anyone threatened you in any
way to force you to waive your right of indictment at this
time?

THE DEFENDANT: No, Your Honor.

THE COURT: Has anyone made any other promises to you other than what is going to be said in open court, if anything, to try to induce you to waive your right of Grand Jury?

THE DEFENDANT: No, Your Honor.

THE COURT: The Court finds that this defendant is fully competent and capable of waiving her right of indictment and finds that the Waiver of Indictment has been voluntarily, knowingly and intelligently made. The waiver will be ordered

1 filed and made a part of the records in this case. 2 Counsel, do you waive formal reading of the 3 Superseding Information at this time? 4 MR. WEINER: Yes, Your Honor. So waived. THE COURT: Thank you. I will just simply state at 5 6 this time that Ms. Weiner, you have been charged with a violation of Title 18, United States Code, Section 371 in this 7 Information; do you understand that? 8 9 THE DEFENDANT: Yes, I do, Your Honor. 10 THE COURT: And up to this point a plea of not quilty 11 has been previously entered, and if you are willing to proceed with a change of plea at this time as to that Information, 12 13 Ms. Weiner, will you please raise your right hand and take the 14 oath? 15 (Defendant sworn by the deputy clerk.) 16 THE DEFENDANT: Yes, I do. 17 THE COURT: Ms. Weiner, you have now been sworn to 18 tell the truth; do you understand that? 19 THE DEFENDANT: Yes, sir. 20 THE COURT: Anything that you say from now on to the questions that I ask you will be made under the penalty of 21 2.2 perjury; do you understand that?

THE COURT: If at any time you feel you need to speak to your attorney, either because of the question I've asked

THE DEFENDANT: Yes, I do, sir.

23

24

```
1
        you, or for any other reason, please let me know, and I will
 2
        you give you time to do so; do you understand?
 3
                  THE DEFENDANT: Yes, I do.
 4
                   THE COURT: Would you please state your full and
 5
        correct name for the record?
 6
                  THE DEFENDANT: Lauren Elizabeth Weiner.
                  THE COURT: Date of birth?
 7
                  THE DEFENDANT: November 26, 1985.
 8
 9
                  THE COURT: Your highest level of formal education?
10
                  THE DEFENDANT: College, sir.
11
                  THE COURT: And are you employed at this time at all?
12
                  THE DEFENDANT: I'm a student right now, sir.
                  THE COURT: All right. Have you ever been treated
13
14
        for any type of mental illness?
15
                  THE DEFENDANT: No, sir.
16
                  THE COURT: Have you before treated for an addiction
        to drugs or alcohol?
17
18
                  THE DEFENDANT: No, sir.
19
                  THE COURT: Are you presently under the influence of
20
        any drug, alcohol or medication?
21
                  THE DEFENDANT: No, sir.
2.2
                  THE COURT: Have you consumed any drug, alcohol or
        medication in the last 24 hours?
2.3
24
                  THE DEFENDANT: No, sir.
25
                  THE COURT: Do either counsel know of any reason why
```

```
1
        this defendant is not competent to enter a plea of quilty
 2
        today?
                  MR. WEINER: No, sir. No reason.
 3
 4
                  MR. LAPHAM: No, Your Honor.
 5
                  THE COURT: Are you fully satisfied, once again, with
 6
        all the advice and representation given to you in this case by
 7
        your attorney?
                  THE DEFENDANT: Yes, I am, sir.
 8
 9
                  THE COURT: And based upon the discussions that you
10
        had with your attorney, is that what led to the preparation of
11
        this written Plea Agreement that you've signed?
                  THE DEFENDANT: Yes, sir.
12
                  THE COURT: And will you be entering your plea today
13
14
        pursuant to the express terms of this Plea Agreement?
15
                  THE DEFENDANT: Yes, sir.
16
                  THE COURT: Let me say that again. Are you entering
        your plea of guilty today in accordance with the express terms
17
18
        contained in this written agreement?
19
                  THE DEFENDANT: Yes, I am.
20
                  THE COURT: And you entering your plea of guilty
        voluntarily?
21
2.2
                  THE DEFENDANT: Yes, I am.
23
                  THE COURT: And because you are in fact quilty of the
24
        crime?
25
                  THE DEFENDANT: Yes, I am.
```

THE COURT: May I have the terms of the agreement, please, Mr. Lapham?

2.2

MR. LAPHAM: Yes, Your Honor. The defendant will plead guilty to the single count in the Superseding Information which charges one count of conspiracy to -- conspiracy in violation of 18 U.S.C. 371. She agrees that the factual basis appended to the written Plea Agreement is true and accurate.

The parties have determined certain guideline ranges and calculations which collectively result in a guideline score, Offense Level of 29 and Criminal-History Category of VI.

Also, the defendant agrees to cooperate with the continuing investigation and prosecution of this case.

In return, the Government agrees to dismiss the charges contained in the Indictment against her at the time of Judgment and Sentencing, agrees to bring no further charges based on the factual basis contained in the Plea Agreement.

And the Government is not otherwise restricted in the sentence it can recommend for Ms. Weiner.

THE COURT: Just so I'm clear, you said it's an Offense Level of 29, a Criminal History of VI.

MR. LAPHAM: That's correct. That's because of the terrorism enhancement that applies.

THE COURT: I'm looking at the offense -- criminal history.

MR. WEINER: Your Honor, may I assist the Court in

1 that regard. My client has no criminal history whatsoever 2 until today. But because of the terrorism bump-up, it automatically becomes a VI. 3 THE COURT: That's fine. Are those the terms of your 4 5 Plea Agreement with the Government as you understand them? 6 THE DEFENDANT: Yes, sir. 7 THE COURT: Has anyone made any promises to you in any way to try to induce you to enter your plea of guilty 8 9 today? 10 THE DEFENDANT: No, sir. 11 THE COURT: Has anyone threatened you in any way to 12 try to force you to enter a plea of guilty today? 13 THE DEFENDANT: No, Your Honor. 14 THE COURT: Are you a citizen of the United States? THE DEFENDANT: Yes, I am. 15 16 THE COURT: Have you ever been convicted of a felony 17 before? 18 THE DEFENDANT: No, sir. 19 THE COURT: The offense to which you're offering to 20 plead guilty is a felony offense. If your plea is accepted, you will be found guilty of that offense, and that finding may 21 2.2 deprive you of valuable civil rights such as a right to vote, the right to serve on a jury, and the right to possess any kind 23

THE DEFENDANT: I understand, Your Honor.

of firearm; do you understand that?

24

1 THE COURT: Are you presently on probation or parole 2 for any other offenses? 3 THE DEFENDANT: No, sir. THE COURT: The maximum penalty provided by law for a 5 plea of guilty to one count of conspiracy in violation of 18 6 United States Code, Section 371, is five years imprisonment, a fine of up to \$250,000, a special assessment of \$100, and a 7 period of supervised release of up to two years; do you 8 9 understand that? 10 THE DEFENDANT: Yes, I do, sir. 11 THE COURT: If you violate any of the terms of your 12 supervised release, you could be sent back to prison for up to two additional years; do you understand that? 13 14 THE DEFENDANT: Yes, I do, sir. 15 THE COURT: If there has been an economic loss 16 suffered by a victim as a result of this criminal conduct, I'm going to order that you pay restitution unless I deem 17 18 otherwise; do you understand? 19 THE DEFENDANT: Yes, sir. 20 THE COURT: Have you and your attorney discussed the sentencing guidelines and how they may apply to your particular 21 2.2 case? THE DEFENDANT: Yes, sir. 23 24 THE COURT: Ad you understand that the Court will not 25 be able to determine the precise sentence that you will receive 1 until after the Presentence Report has been received?

THE COURT: And also I've heard from your attorney and also the Government's attorney in this matter; do you understand that?

THE DEFENDANT: I understand that, sir.

THE DEFENDANT: Yes.

1.3

2.2

THE COURT: Do you also understand that if the Government's agreed to make any recommendations concerning your sentencing, those are simply that, recommendations, and if I do not follow those recommendations when it comes to your sentencing, you will still be bound by the terms of your Plea Agreement and not able to withdraw your plea; do you understand that?

THE DEFENDANT: I understand, sir.

THE COURT: Do you also understand that once I determine what the guideline range will be for your case, I am now permitted to go higher or lower than what the actual guideline may call for?

THE DEFENDANT: I understand that, sir.

THE COURT: Do you also understand that if you are sentenced to Federal Prison, that you will not be released on parole?

THE DEFENDANT: Yes, sir, I understand.

THE COURT: Do you also understand that although the Government may have the right to appeal the sentence that's

imposed upon you, by the terms of your Plea Agreement you have waived, that means you have given up your right to collaterally attack either this plea or appeal from the sentence that will be imposed?

THE DEFENDANT: I understand, sir.

2.2

THE COURT: Are you satisfied, counsel, that there's been a voluntary, knowing and intelligent waiver of those rights of appeal and collateral attack?

MR. WEINER: I am so satisfied, sir.

THE COURT: You do have the right to continue to plead not guilty and go to jury trial; do you understand that?

THE DEFENDANT: Yes, I do understand.

THE COURT: Before I take your plea today, I need to make sure you understand all of your Constitutional Rights and are willing to give them all up.

I'm going to list all the rights for you. I want you to listen to them very carefully. At the end I'm going to ask you whether you understand those rights, and then whether you are willing to give them all up. Do you understand my procedure?

THE DEFENDANT: Yes.

THE COURT: You have the right to have a trial by jury. The right to be presumed innocent. The right to have the Government prove your guilt beyond a reasonable doubt. You have the right to have an attorney at all times, and if you

cannot afford one, to have one appointed for you at no cost to you. You have the right to present a defense to this charge. You have the right to see and hear all witnesses and evidence that will be presented against you and to cross-examine those witnesses. You have the right to use the power of this Court to bring in witnesses and evidence on your behalf in order for you to present a defense. And you also have the right to cross-examine any witnesses that are presented against you during trial. You have the right to remain silent, and you have the right not to have your silence or your decision not to present evidence at trial used against you.

Do you understand all of your Constitutional Rights?

THE DEFENDANT: Yes, I do, sir.

THE COURT: Are you willing to give up all of those rights today and enter your plea of guilty?

THE DEFENDANT: Yes, sir.

2.2

THE COURT: Will you please state each of the essential elements of the offense of conspiracy, so that I can be assured that this defendant understands each of them, please.

MR. LAPHAM: Yes, Your Honor.

If this case were to proceed so trial, the Government would be required to prove beyond a reasonable doubt:

One, that beginning in or about June of 2005 and ending on or about January 13, 2006, there was an agreement

between two or more persons to commit at least one of the crimes charged in the Information, namely arson, in violation of 18 USC, Section 844(f) or 844(i);

2.2

Two, the defendant became a member of the conspiracy knowing of at least one of its objectives and intending to help accomplish it;

And three, one of the members of the conspiracy performed at least one overt act for the purpose of carrying out the conspiracy.

THE COURT: Do you understand the elements of the offense of conspiracy?

THE DEFENDANT: Yes, I do, sir.

THE COURT: Mr. Lapham, will you please state the factual basis in this matter?

MR. LAPHAM: Yes, Your Honor.

Your Honor, the Government would prove beyond a reasonable doubt that at various times and at various locations, as more specifically set forth in the factual basis to the Plea Agreement, the defendant met with Eric McDavid and Zachary Jenson, and a confidential source working for the Government to discuss ways to protest and engage in activism.

These included plans to use explosives to destroy commercial and Government property. Specifically, they met in August of 2005 in Philadelphia. They also met on the weekend of November 18th through the 20th of 2005 in Foresthill,

California, where they further discussed plans to use explosives to carry out their agenda.

During that meeting, it was specifically discussed that the defendant would procure literature on how to create explosive materials. Thereafter, she acquired the <u>Poor Man's James Bond</u> and the <u>Survival Chemist</u> using her credit card. Both of those items are specifically used -- have formulas for creating explosives.

From January 8th through the 13th, 2006, the defendant maintained a temporary residence at a cabin in Dutch Flat, California, in which she carried on further conversations and discussions with Zachary Jenson and Eric McDavid regarding their plans.

During that time period, specifically on January 10th, 2006, the defendant travelled with McDavid, Jenson, and the confidential source to do reconnaissance on potential targets including the United States Forest Service Institute of Forest Genetics and other locations in the Sacramento area.

On January 11th she assisted in purchasing several items used to make destructive devices.

On January 12th she assisted in the initial stages of manufacturing those homemade devices.

And on January 13th she was arrested after purchasing additional items with which to make explosive devices.

THE COURT: Ms. Weiner, do you understand everything

2.2

that Mr. Lapham said in this factual basis?

2.2

THE DEFENDANT: Yes, I do, sir.

THE COURT: Do you agree with everything that was stated in the factual basis as being true?

THE DEFENDANT: Yes, sir.

THE COURT: How do you now plead to one count as set forth in the Superseding Information, which charges you with you a violation of 18 United States Code, Section 371, that is conspiracy, guilty or not guilty?

THE DEFENDANT: Guilty, sir.

THE COURT: It is the finding of this Court in the case of United States versus Lauren Weiner, that this defendant is fully competent and capable of entering an informed plea. The Court also finds that there is a factual basis for her plea, and that this defendant has made a voluntary, knowing and intelligent waiver of all of her Constitutional Rights. Her plea is accepted, and I now adjudge her guilty of that offense.

A written Presentence Report is to be prepared by the probation office to assist the Court in sentencing.

Ms. Weiner, you are going to be asked to give information for that Presentence Report. You may have your attorney present if you so desire.

At the time of your Judgment and Sentence, I will give you an opportunity to speak, as will your attorney, and also the attorney for the Government an opportunity to speak.

I'm setting this Judgment and Sentence for this matter on August 8th, 2006, at 8:30 a.m. in this courtroom.

Mr. Lapham, do you have anything else at this time?

MR. LAPHAM: No, Your Honor. I believe Mr. Weiner may.

MR. WEINER: Yes, Your Honor.

Your Honor, there are two matters that the Government has agreed with us on. And that is, my client has been released from shortly after the pretrial detention hearing. She has complied with all the terms and conditions of her pretrial release. We, of course, want and expect those conditions to continue to remain in full force and effect.

However, we would like the following modifications, which the Government does not object to: And that is that the defendant not only be permitted to be with her mother pursuant to the terms of the release, but also with her father, Jess, J-e-s-s, Weiner.

This is what the Magistrate had ordered, but the order that came down only mentioned the mother. So that is the first modification requested.

And the second one is --

THE COURT: Before you go any further, is that correct, that's what happened in the Magistrate court?

MR. LAPHAM: I believe so, Your Honor.

THE COURT: All right. I'll accept that.

2.2

1 MR. WEINER: Thank you, sir.

2.2

The second one is that the defendant, pursuant to agreement with the Government, has certain travel restrictions while she's on pretrial or now presentence release. We weren't sure which counties to add in at the time we entered into the agreement, but we would like to add a county called Dutchess County, D-u-t-c-h-e-s-s, County, to permit the defendant to travel to and from --

THE COURT: Why?

MR. WEINER: -- as well as the others?

THE COURT: Why?

MR. WEINER: Because she is taking courses in Dutchess County, or she would like to.

THE COURT: Where is she going to school now?

MR. WEINER: She goes to school in -- well, she lives in Westchester. Are you in Putnam County?

THE DEFENDANT: No. I live in Westchester, and I do take courses at SUNY Purchase College in Westchester, but there are classes that I would also like to take up in Dutchess.

THE COURT: All right. Go on.

 $$\operatorname{MR}.$$  WEINER: That's it, sir. And I just want to say one more thing.

I want to thank the prosecutors, Mr. Lapham and Ms. Endrizzi, and the agents, they have been extremely fair and reasonable and compassionate regarding the handling of this

very difficult matter.

2.2

THE COURT: All right. Thank you.

Mr. Lapham, with respect to the modification allowing the additional travel to the county, I'm not sure if this county is contiguous, or what are we talking about distance, and is it only for the purpose of attending school?

MR. LAPHAM: That's my understanding. That they are contiguous counties, and that she has to traverse through one to get to the other. We have no objection. Ms. Endrizzi can probably address that being from New York.

MS. ENDRIZZI: Yes, Your Honor. That would be an appropriate modification. The counties are not far from one another, and it is required to go through Putnam to get to Dutchess.

THE COURT: And am I correct that you're requesting this modification not just for the purposes of attending courses, but that it would be a complete allowance, if you will, to be in that county for any purpose, not just for school?

MR. WEINER: Yes. For any legal purpose. And the reason --

THE COURT: That would be understood.

MR. WEINER: Of course, sir.

In other words, if she eats or go backs to the library or something like that, I would hate that to be

construed as a violation. They are all in very close proximity to her home. And she's certainly proven that she can comply with all the terms and conditions.

THE COURT: Under normal circumstances, in a case such as this, most felony cases, obviously, one would be concerned about there being flight and/or continuing to involve oneself in criminal activity such that an immediate remand would be appropriate.

I have followed this case to a certain extent and do believe that -- my understanding is that this defendant has complied with all pretrial release.

Is there anyone from Pretrial here? No one that can say anything else. Otherwise, I would assume that if there were an issue, that someone would be here to inform the Court, but I've not received any information such as that.

So I will find in this somewhat unique circumstance that a continued release pending judgment and sentence would be appropriate, and I will order that you be released pending judgment and sentence on August 8th, 2006.

And I'm going to specifically order you at this time to return to this courtroom on August 8th, 2006, at 8:30 a.m. for judgment and sentencing.

Do you, first of all, do you understand the date and time that I've just told you to appear?

THE DEFENDANT: Yes, sir.

2.2

1 THE COURT: Do you agree to appear here on that date 2 and time? 3 THE DEFENDANT: Yes, sir. THE COURT: Do you understand that if you are not 5 here on that date and time that that may constitute a further 6 and separate offense for which I may impose additional periods 7 of incarceration? THE DEFENDANT: I understand that. 8 9 THE COURT: Now, with respect to the modifications 10 that have been asked for at this time, I'm going to order that 11 the release agreement at this time will allow for contact with 12 the father. 13 MR. WEINER: His name is Jess, J-e-s-s, Weiner. 14 THE COURT: And I will also expand the location that 15 this defendant may travel in to what county? 16 MR. WEINER: Dutchess County, D-u-t-c-h-e-s-s. 17 THE COURT: Dutchess County as well. In all other 18 respects, the pretrial release orders will remain in full force 19 and effect. 20 MR. WEINER: Thank you very much. 21 THE COURT: Thank you. 2.2 THE DEFENDANT: Thank you, sir. 2.3 MR. LAPHAM: Thank you, Your Honor. 24 THE COURT: We're going to take a five-minute recess. 25 Return at 10:20 a.m.

(End of transcript.) CERTIFICATION I, Diane J. Shepard, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. /s/ DIANE J. SHEPARD DIANE J. SHEPARD, CSR #6331, RPR Official Court Reporter United States District Court