

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,	)	
	)	Case No. 23-CR-78
Plaintiff,	)	Milwaukee, Wisconsin
	)	
vs.	)	December 15, 2023
	)	8:30 a.m.
JACK DALY,	)	
	)	
Defendant.	)	
	)	

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE JP STADTMUELLER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff

UNITED STATES OF AMERICA:

United States Department of
Justice
By: Kevin C Knight & Benjamin P
Taibleson
517 E Wisconsin Ave - Rm 530
Milwaukee, WI 53202
Ph: 414-297-1700
Kevin.knight@usdoj.gov

For the Defendant

JACK DALY:

(Present)

Foley & Lardner
By: Matthew Dean Krueger
777 E Wisconsin Ave
Milwaukee, WI 53202
Ph: 414-297-4987
Mkrueger@foley.com

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CONTINUED APPEARANCES:

McGuire Woods LLP
By: Jason Cowley & Roy Dixon, III
201 N Tryon St - Ste 3000
Charlotte, NC 28202
Ph: 704-343-2030
Jcowley@mcguirewoods.com

U.S. Probation Office: James Fetherston
U.S. Official Reporter: SUSAN ARMBRUSTER, RPR, RMR,
Transcript Orders: Susan_Armbruster@wied.uscourts.gov

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P R O C E E D I N G S

THE CLERK: The Court calls United States of America v. Jack Daly, Case No. 23-CR-78, for sentencing hearing. May I have the appearances beginning with the Government.

MR. KNIGHT: Good morning, Your Honor. Kevin Knight appears on behalf of the United States.

MR. TAIBLESON: Good morning, Your Honor. Benjamin Taibleson appears on behalf of the United States. With us is FBI Special Agent Eric Burns.

PROBATION AGENT: Good morning, Your Honor. Jennifer Garstka on behalf of the probation office.

MR. KRUEGER: Good morning, Your Honor. Matt Krueger on behalf of the defendant, Jack Daly. With me at counsel table are Jason Cowley and Roy Dixon of McGuire Woods.

Also in the courtroom today is Kay Daly, Mr. Daly's wife; his three children, Patrick, JR and Reagan Daly, who have come from Texas, Washington DC, New Jersey and North Carolina.

Also in the courtroom is Arianne Apperson and her fiance Javoin, who have come from Georgia, as well as Rick and Nell Erhardt, Jack's cousin, who have come from Georgia. Each of them also submitted a letter as well. Thank you.

THE COURT: Thank you. Good morning, counsel. And good morning to the FBI agent. Good morning to you, Ms. Garstka. And good morning to you, Mr. Daly.

Jack Daly back on June 8th of this year, you entered a

1 plea of guilty and were later formally adjudicated guilty of the
2 conduct charged in a single-count information, namely conspiracy
3 to commit offenses against the United States in violation of
4 Title 18 of the U.S.C. § 371.

5 We have now reached that stage in these proceedings
6 where it becomes the duty of the Court to address several
7 questions to both you and counsel.

8 First of all, Mr. Daly, have you had sufficient
9 opportunity to review the Revised Presentence Report as well as
10 the addendum to that report, both of which are dated
11 December 1st of this year?

12 DEFENDANT: Yes, Your Honor.

13 THE COURT: Thank you. Mr. Krueger, do you or your
14 client or your colleagues have any objection as to any of the
15 facts detailed in the numbered paragraphs of the Revised
16 Presentence Report?

17 MR. KRUEGER: Your Honor, we have logged a number of
18 objections that don't need resolution in advance of the 3553(a)
19 arguments, and we intend to address differences that we have
20 with the Government as to the nature of the offense or the
21 individual circumstances of the defendant in that portion of our
22 argument.

23 THE COURT: All right. Thank you. Likewise
24 Mr. Knight, Mr. Taibleson, have you had an opportunity to review
25 the December 1st Revised Presentence Report?

1 MR. KNIGHT: Yes, Your Honor.

2 THE COURT: And do either of you have any objection as
3 to any of the facts detailed in the numbered paragraphs of the
4 Revised Presentence Report?

5 MR. KNIGHT: Your Honor, similar to defense counsel,
6 we've logged some factual objections, none of which by our likes
7 require resolution by the Court in advance of imposing sentence.

8 THE COURT: All right. Thank you. That being the
9 case and the Court having no independent basis to challenge or
10 otherwise seek clarification of any of the facts detailed in the
11 numbered paragraphs of the Revised Presentence Report, I do
12 herewith adopt all of the facts.

13 I appreciate there have been objections, and I
14 understand the nature of the objections for the most part. Both
15 sides have made their positions very well known not only to the
16 presentence writer but to the Court in the abundance of
17 information that has come to the Court by way of reports,
18 letters of support and the like, much of which the Court will
19 later address at the appropriate time.

20 Having considered the Revised Presentence Report,
21 we're going to address a couple of preliminary matters. First
22 of all, Mr. Krueger submitted some additional letters together
23 with a motion under ECF filing 42. That motion will be granted.

24 Then yesterday a joint motion for a preliminary order
25 of forfeiture was filed together with a proposed order. And

1 likewise, that motion will also be granted. At the appropriate
2 time, Mr. Knight and Mr. Taibleson or Mr. Krueger, Mr. Cowley or
3 Mr. Dixon if you thought of the need to include the forfeiture
4 aspect of the case in the criminal judgment as opposed to a
5 separate order, I'll be happy to hear you further. The Court
6 has no position on the matter, and I leave it to the parties to
7 address as you see fit.

8 Moving forward to the Advisory Sentencing Guidelines,
9 the probation department has submitted the following metric to
10 the Court. It includes a Total Offense Level of 10, Criminal
11 History Category I, which in combination with the offense level
12 carries a guideline term of imprisonment of six to 12 months,
13 any term of imprisonment to be followed by a term of at least
14 one but not more than three years of supervised release, a fine
15 of not less than \$4,000 nor no more than \$40,000, restitution in
16 the amount of \$69,978.37.

17 As the Revised Presentence Report indicates at
18 paragraph 222, that amount has been paid. There is the further
19 matter of the \$100 special assessment and the forfeiture which
20 the Court just averted to which is also addressed in
21 paragraph 28 of the original underlying plea agreement.

22 As our beginning point this morning, Mr. Krueger, do
23 you and your colleagues and your client accept that guideline
24 metric as the probation department has submitted?

25 MR. KRUEGER: We do, Your Honor. The main issue of

1 dispute before the parties was the loss amount, and we believe
2 the PSR correctly determines it. So if you need further
3 comments on that point, we're happy to be heard; otherwise, we
4 agree with that guidelines range.

5 THE COURT: All right. Thank you. Mr. Knight,
6 Mr. Taibleson.

7 MR. KNIGHT: Yes, Your Honor. The Government objects
8 to the calculation of the loss amount here. As the Court knows
9 from the parties briefing submitted in advance of today's
10 hearing, the Government believes that the best way to calculate
11 the intended loss here is by virtue of a metric using the
12 solicitations the defendant sent during the charged conspiracy
13 and the amount of money that they asked for.

14 And I know the Court has had an opportunity to review
15 our pretty extensive briefing on the score, but I'm happy to
16 advance more argument if the Court has questions. But at
17 bottom, Judge, the concern that the Government has is that we
18 need to advance a loss amount figure that incorporates the
19 guidelines admonition that intended loss includes that loss
20 which is impossible or unlikely to occur.

21 That is the clear admonition from the Sentencing
22 Commission. And the defense's approach and the probation
23 officer's approach simply does not incorporate that principle in
24 any way that we can divine.

25 I think it is telling that the guidelines define

1 actual loss as the reasonably foreseeable pecuniary harm that is
2 at issue here. That sounds to my ear to be much more like the
3 defendant's approach, which as the Court knows takes a
4 retrospective look at the Draft PAC operations prior to the
5 charged conspiracy and says that based on that performance, the
6 Court should surmise what the intended loss here was. Not only
7 does that sound like actual loss not intended loss as those
8 terms are defined in the guidelines, it also is just not
9 consistent with common sense.

10 As we pointed out in our sentencing submissions,
11 Judge, the defense's position is this PAC was legitimate up
12 until July 22nd of 2017. I can think of no where else in the
13 law where we would look at a prior course of lawful conduct to
14 determine the intended loss during a fraudulent conspiracy.

15 Finally one last point, Judge. It belies common sense
16 to suggest that two lawyers with de minimis criminal history
17 decided to commit their first federal felony for the sake of
18 \$60,000. That is just not consistent with the evidence. It is
19 not consistent with the pecuniary gains Mr. Daly went on to
20 accrue, and it is inconsistent with the guidelines admonitions
21 about unlikely or impossible loss. Subject to Your Honor's
22 questions.

23 THE COURT: All right. Thank you. Mr. Krueger,
24 anything more you'd like to add on that subject?

25 MR. KRUEGER: Yes, Your Honor. The Government may be

1 disappointed that it wasn't able to provide evidence of a larger
2 loss amount after investing multiple years to charge a crime
3 nearly half a decade after it occurred, but that's what the law
4 requires here.

5 The case law from the Seventh Circuit is very clear
6 that intended loss is hinged off of how much a defendant
7 actually intended to impose for loss. That comes from *Yihao*,
8 Seventh Circuit case from 2016. And so it is the Government's
9 burden to adduce some sort of evidence of the defendant's actual
10 intent.

11 The Government approach is the very essence of
12 arbitrary. The Government's approach first resulted in a
13 request for \$8 million of intended loss. And then after seeing
14 Mr. Daly's submission changed its methodology to just over \$1
15 million. And its methodology is based off of the Government's
16 arbitrary selection of amounts asked for in particular donations
17 that bear no actual resemblance to what the defendant's
18 subjective intent or reasonable expectation would have been with
19 regard to what donations would have come back from that.

20 Then, the Government applies an absolutely arbitrary
21 notion of click rate not only to emails but also to direct mail
22 solicitations that have no hyperlink to click on at all. Clicks
23 are for an email which would take you to something that has no
24 bearing to necessarily whether somebody would, in fact, donate.

25 That's again the Government's burden to put forward

1 some sort of evidence that ties to subjective intent to the
2 defense. They haven't done so other than what my esteemed
3 colleagues have put forward of their views. And instead, we
4 have put forward an expert declaration from somebody who
5 actually works in political fundraising to explain that you
6 would not -- No person, let alone Mr. Daly, would expect that
7 every person who clicks through would donate \$500 or \$1,000 when
8 they work in the industry, and they know what they would
9 reasonably expect.

10 The point that the intended loss is even less than the
11 actual loss here is an indication that this is a very limited
12 offense. It involved just two solicitations in August and
13 September of 2017 after an otherwise lawful Draft PAC.

14 And so it's appropriate and would be an injustice to
15 take over a million dollars of loss to what is actually a very
16 discreet offense here. To the extent the Court believes that an
17 intended loss methodology would yield a larger amount, this is
18 exactly the sort of case in which there should be a downward
19 departure to use actual loss, which is an agreed-upon, known
20 reliable number to indicate what was the actual economic reality
21 of this offense. Thank you.

22 MR. KNIGHT: Your Honor, may I make a few very brief
23 points?

24 THE COURT: Sure.

25 MR. KNIGHT: I think first, it is worth noting that

1 even today we have not heard the defense reconcile their
2 position to the application note that says unlikely or
3 impossible loss is to be included in intended loss.

4 Second, we didn't change our methodology. We changed
5 the inputs into the methodology. It is still a function of the
6 amount of solicitations that were sent, the amount of money that
7 was asked for and the amount of people whose money was put at
8 risk.

9 And I use that last phrase the amount of money put at
10 risk advisably, Judge. As we cited in our brief, Seventh
11 Circuit *United States v. Tartareanu*, 884 F.3d 741. "An intended
12 loss calculation requires a determination of the amount of money
13 the defendants intended to place at risk."

14 As we cite in our memo, *United States v. Blake*, 965
15 F.3d 554, Seventh Circuit case, the Court determined that the
16 amount of money the defendants intended to put at risk
17 corresponded to the amount of money they asked for. That has
18 been our methodology from the beginning. It's been consistent,
19 and we think it is consistent with the guidelines application
20 note. Thank you, Your Honor.

21 THE COURT: All right. Thank you. Well, I certainly
22 appreciate the reality that the parties have put forth on this
23 issue. But at the end of the day, I believe the wiser exercise
24 of any sentencing judge is discretion, is to exercise discretion
25 consistent with Judge Gorsuch's analysis in the *Manatau* case,

1 647 F.3d 1048 at page 1055. And there are a lot of
2 complications that are brought to the floor in any analysis of
3 either parties' positions because the way the sentencing
4 guideline, including the application note, have been constructed
5 leave an awful lot of problems with what in the vernacular might
6 be best described as trying to put a square peg in a round hole.

7 And when judges are confronted with this sort of
8 phenomenon, it is not the first of Judge Gorsuch's analyses, but
9 it's the seventh and; that is, the matter of lenity. In other
10 words, to the extent that this defendant's liberty interests are
11 at stake, the rule of lenity more than suggests indeed it
12 compels the judge to take the wiser course.

13 This case is not like others. For example, had
14 Mr. Daly's Draft PAC included a pledge card, no money changing
15 hands but created a contractual obligation or the use of a
16 credit card allowing the PAC to deduct \$15 a month for a period
17 of a year, that presents an entirely different set of
18 circumstances.

19 The Government suggests that the defendants put each
20 of these prospective donors at risk. No, it is the other way
21 around. It's the donor that put themselves at risk by
22 subscribing or submitting a contribution. And accordingly, the
23 Court finds, particularly against the backdrop of the series of
24 cases that found their way into the parties' submissions with
25 respect to how these issues have been handled in other

1 jurisdictions, in particular the footnote found in a submission,
2 Document 16, footnote 7, from the defendant's memo. There's a
3 series of six cases cited, none of which appear to this Court to
4 have adopted the analysis that the Government is suggesting that
5 the Court follow here.

6 And I am not going to take the time this morning to go
7 through the rubric of each of those six cases. But if the
8 Government feels strongly about the probation department's
9 position, Judge Stadtmueller's position, the office of general
10 counsel at the probation department, the case should go to the
11 Seventh Circuit. That's why we have a circuit case law. Until
12 somebody appeals, we're left to do the best we can against the
13 authorities that we have.

14 And so on the basis of all of the submissions and they
15 can be dissected, sliced and diced many different ways, but it
16 does not avoid the harsh reality that the Government's analysis
17 is footed on trying to put a square peg in a round hole. And
18 against my 36 years as a sentencing Judge, I'm not going to
19 venture into a wickey thicket that will only lead to further
20 confusion as opposed to finite determination.

21 So the guideline construct that the probation
22 department has worked mightily hard to put together will be the
23 guidepost for any ultimate sentencing determination this
24 morning; that is, Total Offense Level 10; Criminal History
25 Category I; which calls for a guideline term of imprisonment of

1 six to 12 months; any term of imprisonment to be followed by a
2 term of at least one but not more than three years of supervised
3 release; a fine of not less than \$4,000 nor no more than
4 \$40,000; restitution in the amount of \$69,978.37, which the
5 Court has already noted has been paid; a special assessment of
6 \$100; and forfeiture of like amount namely \$69,978.37, which is
7 the subject of the order the Court earlier granted.

8 Having made that determination, Mr. Krueger, are there
9 any other objections to the sentencing guideline metric that is
10 before the Court?

11 MR. KRUEGER: No, Your Honor.

12 THE COURT: Thank you. Mr. Knight, Mr. Taibleson,
13 anything further on the guidelines?

14 MR. KNIGHT: No, Your Honor. Thank you.

15 THE COURT: Very well. Having made that series of
16 determinations, Mr. Krueger, do you or your colleagues,
17 Mr. Cowley or Mr. Dixon, or your client have any reason to
18 advance this morning as to why the Court ought not proceed today
19 with the imposition of sentence in this case?

20 MR. KRUEGER: No, Your Honor.

21 THE COURT: The Court has reviewed the extensive
22 filings in this case, including the professional reports from
23 the psychiatric social worker, the submissions from the
24 psychologist, the prison consultant, the retired assistant
25 director of the Bureau of Prisons and some 21 or 22 letters,

1 five of which came from the Daly family and another 16 from
2 others including several lawyers.

3 I must say at the outset, Mr. Daly, in dead
4 seriousness, whether it is your wife or your three kids or the
5 lawyers or others with whom you have worked so tirelessly over
6 the years, had you consulted with any one of them, we would not
7 be here in this courtroom today before those solicitations went
8 out in August and September of 2017. Mr. Krueger.

9 MR. KRUEGER: Thank you, Your Honor. Would you like
10 me to proceed in addressing the 3553(a) factors?

11 THE COURT: However you would like. It is you and
12 your client and your colleagues' hour. I've reviewed everything
13 that's been filed in writing, most of which I understand and
14 appreciate. When it comes to the Bureau of Prisons and the
15 comments from Janet Purdue and Philip Wise, I can tell you these
16 are matters best left for the Bureau of Prisons to address.

17 And since they have been filed as part of the public
18 record in this case, should the Court find itself constrained to
19 impose any term of incarceration, I will direct Ms. Garstka's
20 office to send those materials as well as Ms. Geller and
21 Ms. Zachary's reports to the Bureau of Prisons for their benefit
22 as part of the classification designation process. And the
23 judges are not in the business of dealing with medical issues.
24 I appreciate they are in the background in this case just as
25 they were in the background of this case during the relevant

1 time period that is 2015, 2016, 2017 through today. So I just
2 -- I appreciate your pulling all this together, but it is more
3 appropriate for those that will be overseeing Mr. Daly, whether
4 in the context of something other than a term of incarceration,
5 whether supervised release or the Bureau of Prisons. So keep
6 all of that in mind.

7 MR. KRUEGER: Thank you, Your Honor. I appreciate
8 that context. We appreciate the time that you've put into
9 reviewing materials. I certainly won't repeat it all and would
10 ask to use this time to put certain points in context.

11 Let me say at the outset that Mr. Daly does not submit
12 all those materials asking for sympathy or making excuses but
13 rather to put into context who Mr. Daly really is.

14 We're respectfully submitting to the Court that each
15 of the Section 3553(a) factors indicate that a sentence of
16 24 months of probation is sufficient but not greater than
17 necessary to serve the purposes of sentencing.

18 Your Honor, I want to frame my remarks by saying that
19 this case is about truth versus fiction. You admonished the
20 defendant already that his conduct in August and September of
21 2017 did involve twisting the truth in sending two
22 solicitations, the truth about Sheriff Clark's willingness to
23 run, and he has accepted responsibility for that by pleading to
24 a pre-indictment charge, to an information, to having already
25 paid restitution. And part of the submissions that we made to

1 you were to demonstrate that Mr. Daly's also taken seriously the
2 need to engage in rehabilitation, and he's doing that.

3 The sad irony of us being here today is that the
4 Government has now twisted the truth in trying to present a
5 picture of Mr. Daly that is a fiction, of the Draft PAC before
6 July is a fiction, about his business success, and even about
7 the victims in this case, and so I want to walk through those to
8 be clear on those points.

9 First, as to the nature of the Draft PAC. I think
10 from Your Honor's comments that you appreciate that before
11 July 22nd of 2017, that Mr. Daly operated the Draft PAC in an
12 entirely lawful, good faith, legitimate manner, and it is not
13 the scam PAC that the Government asks you to believe that it
14 was.

15 This is evident in the submissions. He reached out to
16 Sheriff Clark at the start and even before the Draft PAC was
17 started to ensure that Sheriff Clark was comfortable with their
18 intentions. He registered the Draft PAC with the FEC. He used
19 reputable third parties to assist with filings, even organized
20 the event at the 2017 CPAC that Clark himself attended,
21 coordinated to put forth billboards, commissioned a poll. And
22 so it's critical to understand that all the way until the
23 charged offense actually began, this was lawful conduct.

24 The Government's focus on conduct and solicitations
25 before July 22, 2017 are not a basis to impose a greater

1 sentence here. It doesn't qualify as relevant conduct. The
2 offense began on the day that Sheriff Clark announced he would
3 not run for Senate. That's the date in the information when the
4 conspiracy began. That's when the overt acts go forward. The
5 loss, the restitution forfeiture are all based on that post-July
6 22nd period, which as you noted, Your Honor, is only two
7 solicitations, August 2nd and September 2nd, and he takes
8 responsibility for those.

9 We provided a lot of context about the nature of
10 those, including the fact that Jack had a limited role in
11 creating the content that Nate Pendley his co-defendant, and
12 campaign inbox were also urging them. And so I won't go into
13 further detail about those unless you have questions.

14 The Government also presents a fiction with regard to
15 whether there was anything improper about the Draft PAC using
16 most of the donations that it received to identify other donors
17 or engage in other fundraising. The Government hasn't offered
18 any legal support, any expert report, and there's certainly
19 nothing from the primary regulator in the area, the FEC, that
20 indicates that it is in any way unlawful or improper for a Draft
21 PAC effort to put its focus on trying to identify and build a
22 donor base for a candidate.

23 In fact, that's absolutely consistent with how many
24 Draft PAC efforts on both sides of the aisle have operated.
25 Ready for Hilary PAC did this. The Draft Ben Carson PAC did

1 this. The Draft Ted Cruz PAC did this.

2 And we provided Your Honor with a declaration from
3 Emily Hoover, who analyzed the expenditures in this PAC with
4 Draft Ted Cruz and Draft Ben Carson and shows that this was not
5 unusual.

6 I've also provided to you the expert declaration by
7 Kevin Siefert, who works in digital fundraising, who similarly
8 explains that a Draft efforts focus on identifying and building
9 a house list is not uncommon.

10 As to the aspects of the offense involving the false
11 statements to the FEC. The Government also presents another
12 fiction suggesting that Jack tried to conceal an offense or a
13 scheme to perpetuate it for years on end as though there was
14 sort of a multiyear set of criminal conduct here.

15 Mr. Daly takes responsibility and admits that he made
16 a terrible decision in September 2017 to list a different
17 individual as the treasurer on the Draft PAC's FEC Report. He
18 did so mainly to avoid Sheriff Clark's ire and potential
19 retribution. But after that, Mr. Daly essentially let the Draft
20 PAC go dormant and let the paperwork in terms of who would be
21 the treasurer just be renewed year after year. We're not saying
22 that was a good decision. That was sloppy. It is a
23 manifestation of his hyper focus.

24 And so again, part of why we gave Your Honor these
25 expert evaluations of who Mr. Daly is is so that you can

1 understand that this wasn't an offense of multiple years of
2 scheming. It is partly a matter of Mr. Daly's Autism Spectrum
3 Disorder and his hyper focus.

4 As you consider the nature of this offense, I want to
5 offer a few points, and I hope that you don't take anything that
6 I am about to say as inconsistent with Mr. Daly's acceptance of
7 responsibility. Having served in and like Your Honor lead the
8 U.S. Attorney's Office, I submit to you that this is a very
9 aggressive prosecution. It comes dangerously close to and I'm
10 not saying it crossed a line, but it comes very close to core
11 First Amendment speech in that raising money in order to
12 encourage somebody to run for public office lies right at the
13 heart of the First Amendment.

14 It bears noting that aspects of the Government's
15 sentencing brief could lead one to suggest that they disagree
16 with the political viewpoints of Mr. Daly and called them
17 offensive. But surely, and I don't believe they are doing this,
18 but Mr. Daly's sentence should not be increased based on any
19 political viewpoint.

20 This case is also aggressive in that it involves a
21 falsity about the representations of what somebody else might do
22 in the future, whether they might run for office. Consider what
23 if Sheriff Clark in early 2018 had decided to change his mind
24 and run for Senate? Would we be here today? Should that vary
25 on whether there is a criminal case or not?

1 I think most importantly, the Government presents a
2 fiction in asking you to view this case as comparable to six
3 other particular cases that DOJ charged involving scam PACs.
4 These are the six cases they cite in their sentencing brief.
5 The truth of those cases is that they are far, far more
6 egregious than the conduct that Mr. Daly engaged in.

7 In each of those cases, the defendants obviously had
8 no intention of ever running a bona fide PAC and instead used
9 them as vehicles to simply embezzle money and put it in their
10 own pockets.

11 Each of those cases involved six figures or even seven
12 figures of loss compared to less than \$70,000 here. Each of
13 those cases involved multiple PACs, another indication of the
14 defendant's true intent. Let me just highlight one. *United*
15 *States v. Tierney* in the Southern District of New York. The
16 defendant there received a sentence of 24 months that the
17 Government had asked for; although, I understand their
18 recommendation will now be at the bottom of the guidelines range
19 of six months.

20 But in the *Tierney* case, the defendant created six
21 different PACs and transferred over \$400,000 to himself through
22 shell companies in a true fraud, and the Government is asking
23 you to view that case as equivalent to Mr. Daly who operated a
24 Draft PAC in a bona fide fashion until July after which he did,
25 as he's taken responsibility for, sent two false solicitations.

1 The Government also presents a fiction that Mr. Daly's
2 offense was motivated by greed and has lead to his success. The
3 truth is that Mr. Daly forwent many opportunities to make money
4 through this Draft PAC. He donated his time in administering it
5 when he could have charged money and received funds for that.
6 He could have charged the PAC for his list of donors.

7 The Government's claim that Mr. Daly's business
8 success came because of this PAC is not backed by any evidence
9 other than the mere correlation that he has been a successful
10 businessman after the PAC. But we have given you actual
11 evidence, through the expert declaration of Kevin Siefert, that
12 lays out the facts of the matter here.

13 Mr. Daly had over one million email addresses before
14 this Draft PAC effort began. He had business success afterwards
15 that had no causation from the Draft PAC effort. Kevin Siefert
16 explains that the additional emails that were gained through the
17 legitimate part of the Draft PAC would have had no more than a
18 minimal impact on the value of Mr. Daly's donor data.

19 If you look at the actual offense here, the two
20 solicitations in August and September 2017, Kevin Siefert tells
21 you they had no impact on the value of Mr. Daly's lists. The
22 point is, he was successful before and after the PAC but not
23 because of it. The Government's only real sort of evidentiary
24 suggestion is one witness' interview that references the notion
25 of a purple cow theory with regard to Sheriff Clark. Kevin

1 Siefert explains that theory also doesn't have a basis in
2 reality. Sheriff Clark was a known person for quite a while.
3 And if you look at the actual performance of the Draft PAC, it
4 wasn't unusual in the expert opinion of Mr. Siefert.

5 Perhaps what's most telling is that in the plea
6 agreement, the Government could have forfeited and reserved for
7 itself the right to forfeit gains that Mr. Daly had from the
8 value of the list that was increased because of the criminal
9 conduct. The Government has not done so because it cannot do
10 so. It cannot demonstrate that Mr. Daly's wealth or income was
11 impacted by the offense here.

12 The reality is for Jack politics are the labor of
13 love. He did this because he genuinely wanted to see -- He
14 created the Draft PAC because he genuinely wanted to see Sheriff
15 Clark run for office, and he's taken responsibility for the
16 terrible decisions that he made that were criminal in August and
17 September of 2017.

18 The Government's portrayal of the impact and victims
19 on this case is also another instance of aggressive overreach.
20 A significant part of their sentencing submission focuses on
21 victims' statements. But let's be clear about the facts here.
22 Mr. Daly has already paid restitution, just under \$70,000, for
23 the actual victims. This is an unusual white collar case in
24 that the money for restitution has been fully paid back, and he
25 feels terribly for those victims who did, in fact, send money in

1 response to false solicitations. He takes responsibility for
2 that.

3 The Government's characterization that Jack Daly is
4 somebody who is dangerous who preyed on vulnerable victims is
5 just beyond the pale. This was not a scheme that preyed on
6 elderly or vulnerable victims. Let me be really clear, Your
7 Honor. This wasn't in the briefing because this came after the
8 Government's submission.

9 Mr. Daly's donor data does not have dates of birth.
10 Mr. Daly's donor data would not allow him to be able to only
11 send solicitations to elderly or vulnerable people. His donor
12 list involved individuals who are likely to donate to
13 conservative causes. That has nothing to do with age or
14 vulnerability.

15 Here's what's especially galling about the
16 Government's narrative about victims is they put forward some
17 victims' statements from individuals who did not even donate in
18 response to the two solicitations at issue. The Government sent
19 just over 3600 requests for victim statements, 3600. It has put
20 forward just 14 responses in the PSR. For 12 of those 14, we
21 are able to identify who the donors were. And by our analysis,
22 ten of those didn't even donate money in response to the two
23 false solicitations. They had donated during the post-July
24 period but in response to other solicitations that aren't
25 alleged to be false here.

1 The Government's sentencing brief puts forward a
2 particular 302, an interview memorandum from a retired US Naval
3 Captain. And ask why is that one statement included out of just
4 the two exhibits included? I think it might be because they are
5 trying to paint a picture of this being, perhaps, a retired
6 Government official, perhaps, somebody who is living on a fixed
7 income to promote the notion of vulnerability.

8 But from a little bit of looking, we can see that the
9 individual in that 302 is somebody who donated over \$3 million
10 in the current campaign cycle, who has a home in Aspen as well
11 as Martha's Vineyard. This is not to sort of get into
12 evaluating the worth of victims. But what I'm asking the Court
13 to see is that the portrayal of this offense is something that
14 preyed on vulnerable people is simply a fiction.

15 In fact, the average donation size is less than \$50.
16 This isn't a case in which vulnerable people were truly
17 suffering financial hardships. But again, I want to stress that
18 Mr. Daly feels remorse and has made early efforts to pay
19 restitution fully.

20 I want to turn now to speak to the truth of who Jack
21 Daly is as a person. The Government has put in a lot of effort
22 to calling Mr. Daly various names, a grifter, a dangerous
23 fraudster, a proponent of shameless lies. I don't think the
24 Government has engaged in what was in the PSR about who Jack
25 Daly really is. I'm not sure who they are talking about. He is

1 a soldier. He's a civil servant. He's congressional staffer.
2 He's an employer of multiple people. He's a devoted husband and
3 father who for a long time was essentially the primary caregiver
4 and breadwinner for his family.

5 You've seen in the submissions how Mr. Daly endured a
6 terrible childhood. His father attempted to murder his mother.
7 He suffered physical abuse at the hands of his father. He was
8 neglected. He dropped out of high school as he suffered from
9 his significant Asperger's and other mental disorders. But Jack
10 Daly is somebody who then enlisted in the army; although, only
11 to then be brutally attacked and suffer injury, but then still
12 pulled himself up by his bootstraps, finished his GED, earned a
13 law degree, served as a civil servant and on the Hill.

14 Now, you can say that that means that Mr. Daly should
15 have known better and indeed, he should have of as to that
16 period in August and September of 2017. But for the Government
17 to pull out anecdotes from 25 years ago about a homeless person
18 or for the Government to use terms like four-time bankrupt
19 without addressing the realities of what Jack's life has been.
20 During that period of financial hardship, his wife had suffered
21 serious medical issues, was incapacitated and had giant medical
22 bills. That's the reality of who Jack Daly is, not the fiction
23 that the Government has presented to you.

24 I know and have prosecuted and you, Your Honor, have
25 seen many true fraudsters, people who prey on innocent

1 individuals and are looking for ways to take advantage to them,
2 and they make that generally their entire lifestyle. That is
3 not Jack Daly.

4 You've read the incredible support letters. I want to
5 point especially to the one by Carl Stephens at Exhibit E12. It
6 is an incredible story. Carl Stephens was violently attacked by
7 somebody with a hammer who knocked out his teeth and left him
8 unable to smile, unable to eat regularly. He was a total
9 stranger to Jack until Jack met him as he was a contractor on
10 Jack's house.

11 They became friends. And at some point, Jack took it
12 on himself voluntarily to say, I want to give your smile back
13 and paid nearly \$90,000 to facilitate him traveling to have
14 expert medical care to have facial reconstruction surgery.
15 That's the sort of man Jack Daly is.

16 Take it from his grand niece Kaylan Schild, not his
17 own direct child, but a more distant relative who says that
18 Jack's habitual altruism surpasses anyone I've encountered. You
19 noted that you've already read the other sentencing letters, and
20 they indicate who Jack actually is.

21 We're not asking for sympathy or excuses with regard
22 to his Autism nor to the Traumatic Stress Disorder that he has
23 suffered nor for the Depression and Anxiety, but they are part
24 of who he is. His brain has literally been changed by those
25 experiences, and he doesn't have the same ability as others

1 without that disorder, and it partly contributed to the offense
2 with his hyper focus, his obsessive passion for politics.
3 That's part of Jack, the truth of who he is.

4 What I hope that you can see is that as he has said to
5 you in his letter, that this offense has caused him to really
6 understand himself in a way that he's grateful for and is taking
7 steps towards rehabilitation in ways that Your Honor I think
8 counsel in favor of a sentence of probation.

9 Incarceration is not needed in this case and would, in
10 fact, impact Jack far more than most defendants given his
11 conditions as well as his physical -- the medication and his
12 physical conditions.

13 I want to turn to the purposes of sentencing. The
14 Government stresses the seriousness of the offense and the need
15 for deterrence. One thing should be very clear. There is no
16 need for special deterrence in this case or a need to protect
17 the public. Jack's offense occurred over five years ago in an
18 isolated period, and he's otherwise lived an exemplary life. He
19 will not re-offend. He comes to you without a criminal history
20 without even regulatory citations or things like that.

21 He's lost his law license because of this offense. As
22 a convicted felon, he will not be able to vote, which goes
23 straight to his very life passion. And for Jack not being able
24 to vote means much more than it might in the ordinary case. The
25 emotional strain this offense has taken on Jack and his family

1 combined with all the other consequences I just said certainly
2 provides sufficient deterrence, including deterrence for those
3 who are actually similarly situated to Jack.

4 That's why I again, I distinguished those other cases
5 that the Government cites where they want to fit Jack into a
6 square -- I am going to use your analogy, Your Honor. They are
7 going to fit Jack into a hole that just doesn't fit. If you use
8 those other six cases as the basis for sentencing here, you will
9 be promoting unwarranted disparities.

10 To avoid disparities, probation would be appropriate
11 here. In fact, we submitted to you at page 36 of our brief that
12 for defendants who are in the guidelines range that Jack is
13 found in with his sort of criminal history, a noncustodial
14 sentence is far more common, nearly 48 percent of defendants.
15 And so this is a situation where avoiding unwarranted
16 disparities supports a sentence of probation.

17 We're not asking for probation without any conditions.
18 We are asking that he be required to receive autism-specific
19 therapies and treatment for his complex PTSD. The Government,
20 I'm sure, will stress the need for general deterrence, and we
21 agree as far as that goes. But again, you need to sentence Jack
22 for the actual conduct.

23 This is not a case in which he ran a scam PAC. The
24 sentence should reflect the limited conduct that exists here.
25 My co-counsel, Mr. Cowley, wanted me to make sure that I bring

1 to the Court's attention that for a defendant like Jack Daly who
2 is in Zone A or B, he is in Zone B of the sentencing table, a
3 sentence other than a sentence of imprisonment is generally
4 appropriate. So again, that supports a sentence of probation in
5 this case.

6 You can see, Your Honor, from the individuals in the
7 courtroom and the letters that you read who the true Jack Daly
8 is. We're asking that you would impose a sentence based on that
9 truth of who Jack is and what this offense was. If you have any
10 questions, I'd be happy to address them.

11 THE COURT: Thank you, Mr. Krueger. Mr. Daly, the
12 Court has read more than one of your lengthy letters. If you
13 have anything additional you would like to add this morning, now
14 is your opportunity.

15 DEFENDANT: Yes. Your Honor, I don't have much to add
16 to the letter I wrote to the Court. I'm nervous, so I am going
17 to try to hold it together and keep my comments brief.

18 First, to the victims who were harmed as a result of
19 my offense. I'm sorry, truly, and I know having the money paid
20 back won't undue the harm.

21 Second, I want to express gratitude to the people in
22 my life who give it meaning, especially those who are here today
23 to show their support. I'm deeply sorry you had to do that and
24 more importantly for the disruption and stress this has caused
25 in your lives.

1 This case has given me clarity about so much, and Your
2 Honor, I'm committed to making meaningful change in my life
3 going forward. And Your Honor whatever the outcome today,
4 please know that I will continue to do the hard work to learn
5 from this experience, to learn from the poor decisions I've
6 made, and to ensure that they will never happen again. Thank
7 you.

8 THE COURT: Thank you, Mr. Daly. Mr. Knight,
9 Mr. Taibleson.

10 MR. KNIGHT: Thank you, Your Honor. Mr. Krueger is
11 right about one thing. This case is about truth versus fiction,
12 and the truth is that Jack Daly is a liar. Over and over and
13 over again in the PSR he lies. He lies to donors. He lies to
14 the politician he purports to support, and he lies to the FEC
15 over and over and over.

16 I want to specifically address a point Mr. Krueger
17 made because I think it's an important one. Mr. Krueger
18 suggested that the Government is inviting the Court to punish
19 Mr. Daly because of his political viewpoints. That is
20 ridiculous. That is not what the Government is doing. The
21 Government is asking the Court to impose a sentence that
22 comports with the Section 3553(a) factors.

23 In fact, it's worth noting the people that Jack Daly
24 hurt, the people that Jack Daly defrauded, the people that Jack
25 Daly disincentivised from future political participation are all

1 folks who share his political views. They are all folks who
2 wanted to support Sheriff Clark genuinely. The idea because
3 Jack Daly has certain political views he should be punished is
4 nonsensical, and it is inconsistent with the bare fact that he
5 hurt folks that share those views.

6 I want to also address because we just can't seem to
7 get this right, the nature of the Draft PAC. The defendant
8 suggested that the nature of the Draft PAC was entirely
9 legitimate up until July 22, 2017. The PSR recounts and
10 un rebutted facts from paragraphs 24 to 31 lie after lie after
11 lie that Mr. Daly told to donors separate and apart from his
12 representations about Sheriff Clark's willingness to run.

13 April 2nd, a donation of \$5,000, \$2,500 paid for
14 pursuing a TV ad. May 26th, we've already used over \$25,000 in
15 donor money for radio adds which were just aired, and it goes on
16 and on. As the Court knows the idea that this PAC was behaving
17 appropriately and not lying to donors up until July 22nd is just
18 belied by the facts. That's not what happened here.

19 I also think it's worth noting that we heard defense
20 counsel say two separate times that Mr. Daly is not here to
21 offer sympathy or to provide excuses. Candidly, that is not
22 consistent with the submissions that were sent to the Court.
23 Over and over again we see Mr. Daly attempt to pass the buck and
24 make excuses.

25 A few examples for the Court. There is no dispute

1 that over the course of the Draft PAC, Mr. Daly in the course of
2 three different transactions moved \$75,000 from the Draft PAC
3 accounts that he controlled to his own personal accounts.

4 We see Docket 19, pages 24-25. He doesn't recall the
5 circumstances of those transfers of \$75,000 to himself, but it's
6 likely they were inadvertent or otherwise had a legitimate
7 purpose.

8 Docket 31, paragraph 131. He says that it's likely a
9 refund corresponding to a donation he himself made to the PAC.
10 That is an especially galling representation. Mr. Daly is
11 saying that he transferred money from the PAC back to himself
12 and didn't tell the FEC because it was a refunded donation. Of
13 course, the other donors didn't get that refund until this case
14 was brought. Mr. Daly treated himself to one.

15 Docket 25 at page 16. These unreported transfers are
16 the product of sloppiness not a scheme. Of course, that is just
17 not consistent with the evidence. Some other excuses. There's
18 no dispute that during the pendency of the Draft PAC, Mr. Daly
19 researched the difference between conversion and theft.

20 Docket 19 at page 25. He claims that these searches
21 might have been prompted by concerns around the potential abuse
22 and financial exploitation of his mother who was afflicted with
23 Alzheimers. That representation is not credible. The PSR
24 recounts how the defendant lost contact with his mother around
25 2011, did not find her without the help of a private

1 investigator in 2019.

2 Of course, again he's searching for the difference
3 between conversion and theft during the pendency of this Draft
4 PAC in March of 2017. Similarly, there is no dispute that
5 Mr. Daly told Z.Z., the PAC's former functional intern, not to
6 contact the FEC.

7 Docket 19 at page 26. That's because Mr. Daly wanted
8 to obtain guidance from his FEC compliance guru. There is no
9 dispute that Z.Z. voiced his concerns to Mr. Daly, Mr. Daly paid
10 Z.Z. \$5,000.

11 Docket 19 at page 26. He claims this was a deposit
12 towards Z.Z.'s work on a proprietary database even though they
13 hadn't spoken in years, and there was absolutely no conversation
14 about the actual deal that would encompass the work on that
15 database.

16 There is no dispute that Mr. Daly and Mr. Pendley
17 tried to recruit a homeless man to run for office in the state
18 primary in North Carolina. But docket 21 the PSR at page 19,
19 the defense claims that's okay because this tactic is not
20 without precedence in American politics.

21 There is no dispute as I say, Judge, that over at
22 least eight rounds of solicitations, the defendant lied about
23 what he was going to do with donor's money. The defendant
24 claims that that's okay.

25 Docket 25, page 9. Because "Jack did not write that

1 solicitation, and this was an error made by others." Defense
2 counsel came here today twice and said he wasn't providing
3 excuses. His submissions say otherwise.

4 Judge, as we said in our submission, every single one
5 of the 3553(a) factors suggests a term of imprisonment is
6 appropriate here. This crime was calculated, willful,
7 premeditated. We've already referenced defendant's Google
8 searches for scam PACs relating to the sheriff, his Google
9 searches regarding theft. And I think it's especially telling,
10 Judge, it's recounted in the memo in our PSR, the August
11 exchange that defendant and his co-conspirator had with their
12 direct mail vendor Eberle.

13 During that exchange, defendant's co-conspirator had
14 to cajole and push the vendor to send out those solicitations.
15 And a specific part of their conversation was Mr. Pendley, the
16 co-conspirator, telling the direct mail vendor, no one is
17 covering it. No one has covered the sheriff's statement in July
18 that he's not going to run, so we can lie to those people and
19 get away with it. That's what they did. That is a
20 premeditated, willful crime involving others.

21 As I noted in the memo, Judge, this defendant knew
22 better. He played on his status as a lawyer citing his
23 experience on the Senate Judiciary Committee to these gullible
24 donors. He lead this conspiracy. He started the PAC. He
25 registered the PAC. He founded the website. He opened and

1 controlled the bank accounts, and reaped the financial reward.

2 As I say, Judge, he took many, many steps to conceal
3 his crimes. We noted in our memo September 1st, the day before
4 the September 2nd email solicitation that lied to donors. He
5 tells his associate to take his identifying phone number and
6 email address off the PAC's website so donors won't be able to
7 find who swindled them.

8 When he's called out by Sheriff Clark, he lies to
9 Sheriff Clark and said that Z.Z.'s running the PAC, not him. He
10 lies to the FEC for years using a fake email address that's
11 designed to look as if it's associated with Z.Z.. And then last
12 year when he's finally confronted by Z.Z. at law enforcement's
13 direction, he tells him not to talk to the FEC, and he pays him
14 \$5,000. That concealment, that leadership, that premeditation
15 all suggests this crime was aggravated.

16 I think it's worth noting to just highlight another
17 total discrepancy between how the parties view this case. We
18 heard Mr. Krueger say that because Mr. Daly doesn't have the
19 dates of birth of his victims, he somehow doesn't know that he's
20 targeting the elderly and the disabled.

21 That is flatly contradicted by literally the first
22 page of our sentencing memo wherein we see Mr. Pendley and
23 Mr. Daly talk about what fraudulent political fundraisers do.
24 They target little old ladies. Mr. Daly knew that was the
25 constituency that he was targeting, and Mr. Daly committed these

1 crimes anyway.

2 Mr. Daly also knew, consistent with that email, that
3 his crimes would have the effect of corroding our political
4 infrastructure, polluting our political ecosystem and thereby
5 deterring future political participation by the victims that
6 they've hurt. That's exactly what they wrote to each other.
7 Frauds their theirs leave less money for legitimate causes as
8 donors are rightfully suspicious once they've been burned. They
9 knew that. They were writing that to each other in February of
10 2017.

11 The idea that he's going to come into court today and
12 tell you he didn't know he was ripping off little old ladies
13 after he literally wrote or received an email from his
14 co-conspirator about how these types of frauds are ripping off
15 little old ladies is borderline nonsensical.

16 That combination of factors, Judge, the premeditation,
17 the leadership, the obstruction, the vulnerable victims, that
18 all counsels in favor of a sentence of imprisonment.

19 In terms of defendant's history and characteristics.
20 He's a lawyer as we've talked about. He played on the status as
21 a lawyer when it came time to defraud the victims.

22 We've heard that defendant had medical bills, and I
23 suppose that's true, but he also was making a very comfortable
24 salary as a lawyer from a very good law school who was working
25 prestigious jobs in the Senate Judiciary Committee.

1 In Ms. Daly's letter, she notes that Mr. Daly had
2 other opportunities that would have paid him more, but he wanted
3 to stay in politics. He was a far cry from a desperate
4 defendant committing crimes for pecuniary gain because he had no
5 other choice. He had plenty of choices.

6 It's also worth noting as the Court weighs Mr. Daly's
7 background and characteristics, that after he became quite
8 wealthy by virtue of the political fundraising that he's so
9 proud of, he bought a lavish 60-acre estate in the Virgin
10 Islands in what his best friend and co-conspirator described as
11 a boondoggle tax dodge.

12 Judge, I think it's -- The defense is right. We're
13 going to emphasize general deterrence here. That is not us
14 making that up. It is the FBI that has publically warned
15 wood-be donors that scam PACs are to use their phrase, "on the
16 rise".

17 In other district courts faced with other folks who
18 committed fraud on donors in a political context have similarly
19 emphasized general deterrence. I know the Court knows the six
20 prior scam PAC cases as well. But just briefly. *United States*
21 *v. Tierney*, T-i-e-r-n-e-y. Court agreed with the Government
22 incarceration is needed for deterrence as it's very hard to
23 detect this sort of crime. Those who would do this sort of
24 thing need to understand there are real consequences that follow
25 from that sort of conduct.

1 The *United States v. Rogers*, R-o-g-e-r-s. The court
2 emphasized the importance of general deterrence. The nation
3 faces another election cycle perhaps as vitriolic as the Nixon
4 years, and we need to have trust in those who are sending out
5 political messages and there's not much out there. There is a
6 need to deter others.

7 *United States v. Tunstall*, T-u-n-s-t-a-l-l.
8 Deterrence is a large factor here, and the district court
9 explains since it's easy picking out there. It is easy picking
10 out there. Mr. Daly knew it. He knew he was ripping off little
11 old ladies. And other people who are similarly inclined to do a
12 crime like this need to know that there will be consequences.

13 Of course that's true in any white collar crime.
14 Judge, it is especially true here. These crimes are especially
15 hard to detect, and they do require vigorous prosecution.

16 I think it is -- It is a large point of disagreement
17 between the Government and the defense regarding just how
18 seriously we should weigh those victims' statements. I take
19 them extremely seriously. I know the defense says that in their
20 records, they are able to tie in particular donations to
21 particular solicitations. But those folks who donated who we
22 quoted in our memo, they donated after July 22nd. They gave
23 Jack Daly money after receiving solicitations that said Sheriff
24 Clark was going to run, and Jack Daly took that money and
25 benefitted himself.

1 I think it's worth addressing just briefly this
2 dispute about just how much this Draft PAC meant to Mr. Daly. I
3 think it's worth noting that we have a statement from one of his
4 chief lieutenants, J.S. in the PSR who explains in a candid and
5 understandable way that this was a moment where there was money
6 to be made. Mr. Daly took his million donors, pushed that data
7 through the Draft PAC, sent those donors Draft PAC solicitations
8 and thereby increased the value of that user information.

9 Now, I don't disagree with Mr. Siefert. I think his
10 word is transient. That doesn't last forever, but it helped to
11 snowball. It helped to explain how Mr. Daly went from being
12 bankrupt multiple times to sitting in the Virgin Islands and
13 making over \$40 million. It is a piece of the story and
14 counsels in favor of a serious sentence.

15 I'm struck, Judge. I want to return to some of the
16 submissions that the defendant made regarding the culpability
17 here. I think we heard this one in court today too. In the
18 memo, defense insists that, "The idea for solicitation in
19 September originated with Campaign Inbox, not this defendant or
20 Mr. Pendley." That's Docket, 25 footnote 9. What are we
21 talking about?

22 This defendant was -- initiated that email
23 conversation. This defendant pushed out personal copy that
24 Mr. Pendley wrote. The fact that someone in a Campaign Inbox
25 also thought a solicitation would make sense is not a defense.

1 It is not a reason not to impose a serious sentence here.

2 Defense suggests that Mr. Daly's continuous lies to
3 the FEC reflected inertia rather than an on-going scheme. I
4 think the quote from today was the Government wants you to
5 believe as though there were a multiyear set of criminal
6 conduct. That's literally what Mr. Daly has pled guilty to.

7 Mr. Daly has pled guilty to a year-long criminal
8 conspiracy to lie to the FEC and to defraud donors. So the idea
9 that somehow it's inaccurate to suggest that there's a
10 multi-year course of criminal conduct, that's literally the
11 offense of conviction. That is beyond dispute at this point,
12 and any suggestion to the contrary should just be flatly
13 rejected, Judge.

14 Some other submissions that I want to highlight to the
15 Court because I think they suggest -- They underscore the
16 disagreement between the parties again. In the memo the
17 defendant writes, This is not a case in which individuals are
18 defrauded of their life savings." That is page 17 of the
19 sentencing memo.

20 Well, the victims explained, even though Mr. Daly
21 could not, that while their donations might have been small,
22 that was "not the point." That's 149 of the PSR. This is not
23 how we expect people to behave.

24 Another 96-year old victim explained that while the
25 \$100 he personally donated, "Might not seem significant. It was

1 a large amount to him." That was money he could have otherwise
2 used for food, medical bills. The victim explained these
3 conartists should be punished. They scammed many hard-working
4 people instead of using their education to help others.

5 There is a disagreement between the parties as to how
6 to reference the other scam PAC cases and what weight they
7 should carry here.

8 In our memo, we acknowledged those frauds were more
9 hamfisted. They were more obvious. They were perpetuated by
10 non lawyers. Mr. Daly is more sophisticated. Mr. Daly knew
11 that if he raised \$3 million or \$1.6 million and transferred the
12 entire amount of money to his personal account, we would be on
13 to him pretty quickly. That is not what he did. Mr. Daly ran
14 the scam PAC and lied to donors, lied to the FEC, and lied to
15 Sheriff Clark in a way that was designed to enrich himself but
16 not trip additional law enforcement wires.

17 So are those cases different? They are. But the
18 sentencing concerns identified by those district judges should
19 carry weight here. I think -- I just want to briefly
20 acknowledge the defendant's submissions regarding his mental and
21 physical problems. I think it is worth noting. When he was
22 interviewed by probation, the defendant, "reported he is in fair
23 physical health."

24 In advance of sentencing we've heard about a litany of
25 maladies including PTSD, Overactive Bladder Syndrome, cold

1 sensitivity, Tinnitus, jaw pain, angina. Perhaps the most
2 incredulous representation comes in the submission from
3 Dr. Geller who writes that Mr. Daly, "cannot stand bright
4 sunlight." That's an unusual infliction for someone who bought
5 a giant estate in the Virgin Islands.

6 And at bottom, Judge, those physical problems such as
7 they are are not grounds for a probationary sentence.

8 As to the more recent Autism Spectrum Disorder, I
9 think it is worth noting that as the Court said, that's a
10 concern for BOP. Judge at bottom, the takeaway quote from our
11 memo is that this defendant knew what he was doing, he knew it
12 was wrong, he did it anyway. And sentencing him to a period of
13 probation to be served at the estate in the Virgin Islands he
14 bought after this fraud is not fair, just or reasonable.
15 Subject to Your Honor's questions.

16 THE COURT: All right. Thank you, Mr. Knight.

17 MR. KRUEGER: Your Honor, may I be heard briefly?

18 THE COURT: Certainly.

19 MR. KRUEGER: Thank you, Your Honor. I don't want to
20 address most of what the Government said because it has been
21 thoroughly briefed, issues of the \$75,000, the correspondence it
22 has to a donation he had previously made, the internet searches.
23 But what I want to especially focus on is this issue of the
24 defendant's wealth or his estate in the Virgin Islands.

25 Mr. Knight just acknowledged that the other scam PAC

1 cases they cite are different where there were funds directly
2 that go to the defendant in those cases, and the Government
3 agrees that's not what happened here.

4 This is not a case in which Mr. Daly personally
5 enriched himself in that there's no evidence of that other than
6 what just the lawyer argument has been presented to you. Kevin
7 Siefert gives you actual evidence that Mr. Daly's success is not
8 attributable to the offense here. Imposing a sentence on him
9 here for his wealth would be absolutely unjust.

10 Similarly, the references to say his home in the
11 Virgin Islands is not a basis on which to impose this higher
12 sentence. I don't even want to suggest this but to the extent
13 the Court is considering something other than probation such as
14 home confinement, his wife Kay has a home now in Florida, and
15 there can be other arraignments to be made. But the notion that
16 how nice the defendant's house is should influence what his
17 sentence is is just preposterous and lawless.

18 I am troubled that the Government is suggesting
19 Mr. Daly has sort of I think incredulous when it described his
20 physical conditions such as Overactive Bladder Syndrome. These
21 are real things. It is troubling that the Government would
22 suggest that they are somehow fabricated.

23 So I want to just underscore again the reality we
24 presented. Mr. Daly takes responsibility for what he did and
25 yes, the FEC reports did continue to be presented falsely, but

1 you have no evidence from the Government that this was part of
2 an ongoing scheming or intentionality other than manifestation
3 of Jack's very real disorganization and hyper focus on other
4 things.

5 Again, the other scam PAC cases strongly counsel in
6 favor here of making a difference from them and imposing a
7 sentence of probation. Thank you.

8 THE COURT: All right. Thank you, Mr. Krueger. The
9 Court staff earlier circulated a series of conditions of
10 supervised release. They are 13 in number. Mr. Krueger, have
11 you had a chance to discuss those with your client?

12 MR. KRUEGER: Yes, Your Honor.

13 THE COURT: Any concerns or suggestions?

14 MR. KRUEGER: No, Your Honor.

15 THE COURT: Similarly, Mr. Knight, Mr. Taibleson, have
16 you reviewed those proposed conditions?

17 MR. KNIGHT: Yes, Your Honor.

18 THE COURT: Again, any concerns or suggestions?

19 MR. KNIGHT: No, Your Honor. Thank you.

20 THE COURT: Well, Mr. Daly, I appreciate at the outset
21 that this morning is the first time that you and I have seen one
22 another in person. Obviously, the Court has read a lot about
23 you and an awful lot about the underlying facts in this case to
24 determine ultimately what ought to be an appropriate, fair, just
25 and reasonable sentence; that is, one that is sufficient but not

1 greater than necessary to achieve the goals of sentencing.

2 And as Mr. Krueger and his colleagues may have related
3 to you along the way, the Judge before whom you appear this
4 morning is one of those rare people who has had an awful lot of
5 experience not only as a lawyer, not only with the federal court
6 system, but more pointedly a sentencing Judge.

7 Today you are the 2484 defendant that Judge
8 Stadtmueller has sentenced. There are in each case an awful lot
9 of competing considerations, whether it's your status as a
10 lawyer, the nature of the offense. And when it comes to
11 lawyers, unfortunately you are not the first, and I have no
12 doubt you will not be the last lawyer that Judge Stadtmueller
13 has sentenced.

14 Indeed just a couple of weeks ago today in this very
15 courtroom, I had another lawyer who was sentenced for fraud.
16 Four years custody of the Bureau of Prisons. Before that, I had
17 two other lawyers a couple of years ago both of whom were
18 sentenced for wire fraud, one a couple of years, one about three
19 years.

20 And the point I want to make in all of this is that
21 each individual offender's sentencing determinations in this
22 branch of the court are done on an individual basis. You are
23 not before one of those "cookie cutter judges". Each case and
24 each offender and each victim and each set of core facts are
25 addressed individually.

1 And at the outset, let me further tell you I take no
2 personal pride or joy out of having to sentence any offender.
3 It is part of the job, and there are obviously other parts of
4 the task that I undertake virtually everyday are more inviting
5 and more fulfilling than having to pass judgment on the matter
6 of what ought to be as I said moments ago a fair, just,
7 reasonable sentence, one that is sufficient but not greater than
8 necessary to achieve the goals of sentencing.

9 In this particular case, the Court has the benefit of
10 an awful lot of information, much of which is certainly relevant
11 to your well being but not as relevant to what ought to be the
12 core considerations that the Court needs to address in
13 determining this ultimate question.

14 Obviously, the matter of politics in these United
15 States has come under an assault that incapsulates the entire
16 genre of what our entire democracy is all about. Unfortunately,
17 it didn't start with Jack Daly, and it's not going to end with
18 Jack Daly or the core facts of this or the other Draft PAC
19 criminal prosecutions.

20 But what is important to understand is the hard
21 reality that politics in these United States has become solely
22 driven by that commodity that each of us use in our everyday
23 life, and that's money and influence, and it is the life blood
24 of politics.

25 Harkening back to your days as a staffer whether it is

1 in the House or the Senate, it was far different back then. It
2 was far different from Judge Stadtmueller when I came through
3 the process first to be nominated and confirmed as US Attorney
4 not once but twice, and then to achieve the ultimate for any
5 lawyer, and that's an appointment to a federal court.

6 Again, everything was different back in 1987 prior to
7 the singular event that totally changed the entire nomination
8 confirmation process not only for supreme court justices but the
9 entire federal judiciary. That's the confirmation hearing for
10 one Robert Bork. Fortunately, Judge Stadtmueller came through
11 that process prior to the Bork hearings. I was nominated on
12 March 3rd. My confirmation hearing was on April 28th. It was
13 actually moved up two days not moved back, and I was confirmed
14 on the very same day that my nomination was reported out of the
15 Senate Judiciary Committee.

16 Unheard of again not because of Judge Stadtmueller but
17 because Senator Robert Byrd had a matter he deemed equally
18 important and got his colleagues to waive the 24-hour rule for
19 confirmations.

20 But once again, everything from that point forward has
21 changed. We've had judicial vacancies both in the district
22 court and in the Seventh Circuit from Wisconsin that have gone
23 unfilled for years. In fact, we currently have a district court
24 vacancy that is now soon to be at its fourth anniversary, the
25 longest vacancy currently in the country. And we could go on

1 for hours to talk about what's going on, whether it is in the
2 halls of Congress, whether it is impeachments, whether
3 republican or democrat, the intransigence with respect to
4 nominations, including military appointments. The
5 disfunctionality is beyond the pale, literally beyond the pale.

6 And so when it comes to cases like this one, it's very
7 easy to package what occurred in the underpinnings of this case
8 with the gross unadulterated disfunctionality of our entire
9 political process, whether at the national level, whether at the
10 state level. And you can bring to the table the local level
11 whether it is book bans in student libraries, it's just
12 unparalleled.

13 And so when cases like this come along after I took a
14 look at the two solicitations that are the subject of this
15 prosecution, there needs to be some whole sale, and I underscore
16 the word whole sale changes in the Federal Election Commissions'
17 approach to these Draft Political Action Committees.

18 To the unsophisticated, despite protestations to the
19 contrary, neither of these solicitations truly, truly captures
20 the PAC that one David Clark is truly not yet a candidate. And
21 there should be on the front page of any solicitation a direct
22 quote from the candidate within a day or two of the solicitation
23 outlining exactly what his or her position is.

24 I appreciate they cannot know who you are soliciting
25 from, but certainly those who are be contacted need to

1 understand in full Kodak color as it were exactly where the
2 candidate stands. And so there's plenty of grist in the mill
3 here for lack of attentiveness to detail, including the Federal
4 Election Commission.

5 I appreciate also the fact on a personal level, you
6 may have had the altruistic view of trying to cultivate and
7 capture and fulfill your own strident interest in conservative
8 politics. I have no issue with that anymore than I would have
9 an issue with those on the other side of the aisle trying to
10 accomplish the same purpose.

11 What I do find interesting here beyond your personal
12 contact with David Clark and this underscores that the level of
13 legitimacy at the outset was certainly there chapter and verse.
14 I have no quarrel with anything that occurred prior to that
15 faithful day in July 2017 when David Clark told a radio host
16 that he was not going to run for the office of US Senate.

17 Unfortunately, it would have been much more preferable
18 had he communicated that to you and Mr. Pendley directly before
19 announcing it publically. And the Federal Election Commission
20 in its rule-making authority could have had in place a simple
21 requirement that although you may not be precluded from
22 continuing with your work in an attempt to draft Mr. Clark or
23 any candidate to run, you do have an obligation to report to
24 those whom you are soliciting the fact that the candidate has
25 chosen not to run.

1 But that doesn't preclude you from including that
2 phrase and declination to run to continue to solicit funds
3 anymore than any of the current candidates who have withdrawn
4 from the 2024 presidential race. They can continue to raise
5 money to pay off their campaign debt, but they have to disclose
6 it, and that's what didn't occur here. And not only did it not
7 occur here because it wasn't required I understand that, but
8 this case crosses the line with affirmative actions that tended
9 to mask, disguise, call it what you will, the true facts of what
10 occurred here and what had not occurred here.

11 And those facts go well beyond the fact that your
12 \$2,500 contribution will pay for a TV add. I don't read that
13 phrase as suggesting that if you give \$2,500, I will use it
14 personally for a TV add for David Clark. It's simply an outline
15 of what money is being spent for or will be spent for.

16 But the line was crossed as against the backdrop of
17 your calling as a lawyer against the backdrop of your years of
18 experience in fundraising, indeed incredibly successful. In
19 fact, against the backdrop other than your profound interest in
20 conservative politics why particularly in today's world you
21 would even choose to become involved in political fundraising.
22 Because as one wag mentioned recently, politics has become as
23 dirty as the job of a chimney sweep or a coal miner, and that is
24 not very becoming to individuals who look to be successful in a
25 career to be caught up in what this wag has suggested is dirty,

1 dirty, dirty, politics. And it is very sad that that's what
2 everything has been relegated to not in 2017 during this period,
3 but certainly in 2023 and that which immediately preceded it and
4 that which will follow next year.

5 Then, there is the additional foment if you will to
6 try to make this work by suggesting that these solicitations in
7 July or August and September of 2017 were based on script and
8 materials that have been pre-prepared. Obviously, changes in
9 political solicitations can change on a dime particularly in the
10 days of the electronic world and high-speed photocopy machines,
11 prepaid postage, automated envelopes, et cetera, et cetera.

12 And so there was an opportunity to make change.
13 Indeed there were changes, but not the sort of changes that
14 excuse the conduct that is at the core of this case, namely
15 change the treasurer and the whole machination associated with
16 that. Whether to protect you personally in your otherwise
17 vibrant clientele or to protect you from the wrath of one David
18 Clark, it really doesn't matter. But what it does relate to is
19 the simple fact that ultimately it provided you with an
20 opportunity to forget about trying to recoup the lousy \$6,000
21 that had been expended or protect oneself, you would better
22 protect yourself having disassociated and terminated the entire
23 Draft effort as soon as you learned Mr. Clark's decision.

24 But as I often say, we can't put the genie back in the
25 bottle or turn back the hands on the clock of mother time. All

1 of these factors weigh against particularly an individual with
2 your level of experience, your level of success what occurred
3 with respect to the copy with respect to the solicitations.

4 I appreciate the fact there may have been a ray of
5 hope that Sheriff Clark would have run when he announced on
6 August 31st he had resigned as the Sheriff of Milwaukee County,
7 that he might reconsider. But there again instead of calling
8 David Clark, you probably knew what the answer was. I ain't
9 reconsidering. I told you once, I'm not going to tell you
10 again.

11 But it didn't happen that way, and so you forged ahead
12 despite the red flag from Cali about I don't think we should
13 send this out, but you forged ahead. And fortunately for you
14 unlike these other six cases, the amount of money that was
15 generated from those two solicitations wasn't what perhaps you
16 thought it might ultimately be, and it affects your sentencing
17 guideline calculations.

18 And to that extent, you ought to consider yourself
19 very, very, very fortunate that all of this came to an end when
20 it did. Because as you now know from your own research and your
21 consultation with counsel, this case could have been much, much
22 more significant in terms of exposure when it came both to
23 restitution, whether it is a term of imprisonment, forfeiture,
24 fine, the entire genre. So from that standpoint you ought to
25 consider yourself fortunate that law enforcement jumped in when

1 they did because it could have been an awful lot worse.

2 One of the things that neither the Government nor
3 Mr. Krueger and his colleagues have not addressed is the core
4 principles that underlie the Sentencing Reform Act of 1984, and
5 those two core principles are uniformity and proportionality in
6 sentencing.

7 When Congress adopted the guideline approach to
8 sentencing in our federal courts back in 1984 making those
9 guidelines applicable to conduct occurring on or after
10 November 1st of 1987, most folks have totally forgotten about
11 the fact that when these guidelines were first promulgated, they
12 were mandatory. In other words, on a day like today whether it
13 is a sentence of 30 to 36 months or 41 months or six months to a
14 year or ten months to 18 months, the Court was cabined, barring
15 exceptional circumstances, to imposing a sentence that comported
16 with the requirements of the guidelines as applicable to the
17 offender and his or her conduct.

18 But as a result of the US Supreme Court decision in
19 *United States v. Booker* back in January of 2005, some soon to be
20 20 years ago or 19 years ago, the Supreme Court struck down the
21 mandatory requirement because it intruded upon the independence
22 of the judiciary. But at the same time, the Supreme Court
23 underscored those two core principles that underlie the
24 Sentencing Reform Act of 1984, uniformity as well at
25 proportionately.

1 In other words, a like offender with the same offense
2 conduct, the same facts, whether mitigating or aggravating,
3 should nearly as possible mirror the sentence that that offender
4 might receive in Brooklyn or Miami or San Francisco or Salt Lake
5 City or Minneapolis or Milwaukee.

6 And one of the problems that any judge, including
7 Judge Stadtmueller, has today when sentences are cited like I
8 cited sentences handed down to lawyers in this court recently
9 and those involving scam PACs, we don't have in any of the
10 cases, including those that I cited this morning, all of the
11 facts that went into the sentencing determination. And so no
12 one should take whether it is this sentence this morning or next
13 weeks sentence with respect to Mr. Pendley any reasonable
14 interpretation that the sentence imposed today will be exactly
15 the same next week or next month or next year.

16 At the same time, the guidelines themselves as you
17 know from this very case, in fact, you got an advantage of a
18 two-level reduction for having no criminal history points. That
19 became effective back as of November 1st. That wouldn't have
20 applied three years ago or ten years ago. And so the matter of
21 sentencing while we strive to ensure that it is uniform and
22 proportional does not necessarily mean that it's going to be
23 virtually identical in any given case when comparisons are
24 called for or made.

25 We've talked a lot about politics and how serious this

1 sort of conduct has become in the parlance of today's political
2 world. It's also important to keep in mind the balance of those
3 sentencing factors that are addressed in Title 18 § 3553(a)(2);
4 that is, a sentence that promotes respect for the law as an
5 institution in our society while at the same time affording
6 adequate deterrence, and I have little doubt about the fact as
7 Mr. Krueger and perhaps even Mr. Knight would acknowledge in a
8 moment of candor, deterrence is perhaps less applicable in your
9 case to you personally as opposed to society generally.

10 And there is a difference. And while precious,
11 precious, precious few cases get any media attention these days,
12 they do get attention in the halls of Congress as between
13 elected representatives and their staffs, as they get attention
14 by members of the Sentencing Commission, the law enforcement
15 community as well as anecdotally among those who engage in
16 similar activity in this case, political fundraising.

17 And I have little doubt that along life's path you
18 personally will make some significant contributions in your
19 approach to this line of work as you interact, whether it is
20 with a municipality or fundraising or a political candidate or a
21 unit of government or a private foundation to ensure that
22 collectively those who engage in any sort of activity do a much
23 better job in acquainting those from whom they solicit funds
24 with exactly what they are about, what their goals are, how the
25 money will be spent because like politics itself, fundraising

1 has become an incredibly expensive, expensive proposition.

2 And while algorithms might be better equipped to help
3 those like yourself identify prospective contributors, we're a
4 long way from capturing those who genuinely would benefit with a
5 more informed pallet of guideposts on what this is all about.

6 And so there's much work to be done in this area,
7 whether by Jack Daly or others like him. Only time will tell.
8 It's also important that whatever sentence the Court imposes
9 this morning also take into account the right of the public to
10 be protected. And while each and every recipient of these
11 solicitations has license to unsubscribe, to throw mail in the
12 trash and not respond, there still are particularly among a
13 segment of the population who may be whether because of age or
14 other infirmities unfamiliar or unknowing of the relative risk.

15 When I looked over these mailings, I can understand --
16 or solicitations I should say -- why they may have been sent to
17 people in Wisconsin. But with me personally, there's a
18 significant disconnect about why somebody running for the US
19 Senate in Wisconsin would expect to receive anything by way of
20 significant contributions from individuals, not major PACs, to
21 contribute when they live in another state where they may also
22 have candidates running.

23 And so there's been no attempt, at least in this case,
24 to define at least geographically what the sample was like; that
25 is, how many of these contacts were in Wisconsin, whether email

1 or snail mail, whether other states they were in, whether they
2 lived abroad, whether they were in the military. None of those
3 markers are captured. And frankly, they are not relevant. But
4 anecdotally, they are interesting if only to understand why one
5 might use a mailing list of a million names not knowing where
6 the individuals may be particularly with email.

7 Finally, whatever sentence the Court imposes must
8 provide for just punishment. And to be sure at the end of the
9 day, there is ample factual support whether in the Government's
10 version of the offense or in the defense acknowledgement of the
11 core of the Government's version of the offense. I appreciate
12 there are nuances on both sides of the aisle.

13 But let me make one thing very clear and; that is,
14 Judge Stadtmueller's sentence today is on the basis of what
15 occurred in August and September of 2017. There may be relevant
16 underpinnings, whether it is the core of your business or your
17 interactions such as they were with the candidate, but none of
18 that drives the ultimate sentence of the Court. What does drive
19 the ultimate sentence is the loss figure that the Court has
20 adopted. The Seventh Circuit will have an opportunity to
21 revisit that if the Government elects to appeal or if you elect
22 to appeal, that's certainly your right and your prerogative.

23 But I want everyone to understand that I did not take
24 into account and I do not take into account in the ultimate
25 sentence of the Court any of the conduct except to acknowledge

1 that this entire endeavor was predicated upon the acquiescence
2 of the candidate. This is not a fraud scheme woven out of whole
3 cloth.

4 Mr. Clark may have proven himself nettlesome to deal
5 with to put it charitably, but ultimately he didn't until the
6 end of July take steps to disavow himself whether out of a
7 desire to keep his name in the media or his own adulation. I
8 guess that's ultimately beside the point. Ultimately, he made a
9 change, and you chose to look the other way, and so we are now
10 at a point of the Court determining what ought to be an
11 appropriate, fair, just and reasonable sentence.

12 I reviewed all of the written submissions. I listened
13 attentively to the comments that Mr. Krueger made today, that
14 you made today, that Mr. Knight made today. I've reviewed all
15 of the letters the professionals, including Mr. Siefert, who in
16 his own right is a true professional as are the medical and
17 prison advocates. But ultimately, it is the core facts of this
18 case that drive the Court's sentence.

19 And I have determined in the last hour that the only
20 fair, just, and reasonable sentence in this case is a sentence
21 of four months custody of the Bureau of Prisons to be followed
22 by a two-year term of supervised release subject to each of the
23 13 conditions that the Court earlier circulated to which there
24 were no objections or modifications sought.

25 I am also constrained on the totality of the facts and

1 circumstances in this case to impose a fine within the guideline
2 range because a fine is appropriate again against the backdrop
3 of the core facts of the case that include both the aggravating
4 and mitigating factors that the Court has been considering.

5 And with respect to the confinement portion of the
6 Court's sentence, I will continue the bond that you are now
7 released under with a reporting date to the facility designated
8 by the Bureau of Prisons with a reporting date of on or after
9 February the 1st of 2024, which is a Thursday.

10 Your reporting date will be provided to you either by
11 your Pretrial Services officer, the US Marshal Service or the
12 Federal Bureau of Prisons directly. And the fact that the Court
13 has set February 1st should not necessarily be taken by you as
14 meaning that is the day. It is on or after.

15 And Mr. Krueger, if you and your colleagues have a
16 recommendation as to a place of confinement, I'll be happy to
17 include a recommendation along those lines appreciating the fact
18 that ultimately it is an executive branch decision both as to
19 Mr. Daly's classification as well as place of confinement. And
20 in the matter of classification as well as place of confinement,
21 again I reiterate what I said at the outset of the hearing and;
22 that is, to the extent that the records that have been submitted
23 to the probation department are germane and relevant,
24 Ms. Garstka's office should ensure that those are transmitted to
25 the Bureau of Prisons immediately for their consideration in the

1 classification placement process. And Mr. Krueger, to the
2 extent that you or Mr. Daly have additional medical records that
3 may prove helpful to the Bureau of Prisons, they should be
4 submitted as well.

5 So for all of those reasons, this now becomes the
6 formal sentence of the Court. Jack Daly on June 8th of 2023,
7 you entered a plea of guilty and were adjudged guilty as to a
8 single-count information charging you with conspiracy to commit
9 an offense against the United States in violation of Section 371
10 Title 18 of the United States Code.

11 The Court having asked the defendant why judgment
12 should not now be pronounced and pursuant to the Sentencing
13 Reform Act of 1984 for the reasons previously stated, it is the
14 judgment of the Court that you, Jack Daly, be committed to the
15 placement of the Federal Bureau of Prisons for a term of four
16 months with a reporting day of on or after February 1st of 2024.

17 The Court further determines that Mr. Daly has the
18 financial ability to pay a fine and accordingly orders a fine in
19 the amount of \$20,000. The fine is due and payable within two
20 weeks of today's date. There will be no interest on the fine;
21 however, the Court is also obliged to impose the mandatory \$100
22 special assessment.

23 In addition pursuant to the mandatory Victims
24 Restitution Act of 1996, you are to pay restitution in the
25 amount of \$69,978.37 jointly and severally with the coactor,

1 Mr. Nathaniel Pendley. The Court acknowledges that that amount
2 has already been fully paid and is on deposit with the Clerk of
3 the Court.

4 In accordance with the Court's earlier determination
5 following release from the custodial portion of the Court's
6 sentence, Mr. Daly will be placed on supervised release for a
7 term of two years subject to each of the 13 conditions that the
8 Court earlier circulated to which there were no objections or
9 modifications sought. Keeping in mind that at the time of
10 Mr. Daly's release from the custodial portion of the Court's
11 sentence, those conditions do remain subject to further review
12 and reevaluation in accordance with Seventh Circuit case
13 authority.

14 Having accepted your plea of guilty and having imposed
15 what the Court believed to be an appropriate, fair, just and
16 reasonable sentence, to the extent that Mr. Daly has limited
17 ability to appeal any sentence in this case, I now advise him
18 that should he elect to appeal, any notice of appeal must be
19 filed within 14 days of the docketing of the judgment and
20 commitment order; otherwise, he will have effectively waived any
21 right of appeal.

22 Mr. Krueger, as you are aware pursuant to the
23 teachings of the US Supreme Court in *Roe v. Flores-Ortega*
24 decided in February of 2000, you have an obligation to confer
25 with Mr. Daly as to the merit of any appeal and be guided by any

1 request that he may make of you in that regard.

2 In the event he elects to forego such an appeal, I
3 would ask as his counsel you formally notify the Court, whether
4 by pleading or letter, indicating that you have discussed with
5 your client his right of appeal, and that he has elected to
6 forego such an appeal. And should the later be the case, I
7 would also ask that on whatever form of communication you use
8 with the Court, you include a signature line for Mr. Daly to
9 serve as an acknowledgement of having been advised of his right
10 of appeal, and that he has elected to forego such an appeal.

11 Mr. Krueger, do you have any recommendations as to
12 place of confinement?

13 MR. KRUEGER: Thank you, Your Honor. My understanding
14 is that for the defendant in Zone B, a custodial sentence can be
15 satisfied by community confinement in a Residential Reentry
16 Center. And so if the Court were willing, we would recommend
17 placement at a Residential Reentry Center in southern Florida.
18 If the Court insists upon designation to FCI facility, our
19 request would be a designation to FCI Pensacola in Florida.

20 THE COURT: All right. The choice between a community
21 center and FCI Pensacola, that is a matter that is going to be
22 left strictly up to the Bureau of Prisons. It may be driven
23 solely on the basis of availability of space at either type of
24 facility. You've made your recommendation, and I'm going to
25 leave it up to the Bureau of Prisons as to which to accept or

1 reject. The Government is free to submit its comments to the
2 Bureau of Prisons at well just as you are allowed to submit the
3 medical records. In other words, the entirety of this is an
4 executive branch decision. The Court stands in recess for five
5 minutes.

6 MR. KRUEGER: Your Honor, may I be heard for a quick
7 second?

8 THE COURT: Certainly.

9 MR. KRUEGER: Apologies, Your Honor. On the issue of
10 appeal, I think you noted it but in case not I just want the
11 record to be sure that the Court is aware that there was an
12 appeal waiver provision in the plea agreement, and so we will
13 take that into account in advising Mr. Daly, and I think that is
14 important.

15 THE COURT: My advice was somewhat circumspect because
16 there are at least three or four Seventh Circuit cases which
17 have permitted an appeal that was outside the waiver. I don't
18 have the cases in front of me. I don't know whether the facts
19 of any potential appeal here would reach beyond the waiver, and
20 so the wiser course is to advise a defendant of his or her right
21 of appeal. It may or may not be a viable appeal. That's for
22 others to determine.

23 MR. KRUEGER: Thank you, Your Honor.

24 THE COURT: Mr. Knight, anything further?

25 MR. KNIGHT: No, Your Honor. Thank you.

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THE COURT: The Court stands in recess.

BAILIFF: All rise.

(Whereupon proceeding was concluded.)

C E R T I F I C A T E

I, SUSAN ARMBRUSTER, RPR, RMR, Official Court Reporter for the United States District Court for the Eastern District of Wisconsin, do hereby certify that the foregoing pages are a true and accurate transcription of my original machine shorthand notes taken in the aforementioned matter to the best of my skill and ability.

Signed and Certified December 15, 2023.

/s/Susan Armbruster

Susan Armbruster

Susan Armbruster, RPR, RMR
United States Official Reporter
517 E Wisconsin Ave., Rm 200A,
Milwaukee, WI 53202
Susan_Armbruster@wied.uscourts.gov