

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CASE NO. 21-cr-00034-WJM

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. MICHAEL SHAWN STEWART, and
2. BRYANT EDWIN SEWALL

Defendants.

**DEFENDANT STEWART'S
MOTION FOR NON-GUIDELINE SENTENCE
AND SENTENCING STATEMENT**

In May 2024, a jury convicted Michael Stewart of fourteen counts of wire fraud and one count of conspiracy to commit the same. The weeks-long trial involved extensive testimony from largely wealthy people who invested in high-risk foreign exchange trading through Mr. Stewart's companies, Mediatrix and Blue Isle; many of these investors testified that they thought they were making profits on their investments but ended up with nearly nothing. Mr. Stewart spent years building businesses he hoped would allow him to retire; instead, investors lost millions and Mr. Stewart is now a convicted felon. In the five years since the closure of Mediatrix and Blue Isle in 2019, Mr. Stewart and investors have been wrapped in civil litigation to account for these losses; he has always maintained that he had no intent to defraud anyone and did not commit criminal conduct.¹ However, a jury

¹ As this Court is aware, Mr. Stewart was convicted after jury trial and maintains his right to appeal both the findings of the jury and his sentence in this case. Nothing argued in this filing should be construed as an admission of guilt, as Mr. Stewart maintains that the jury verdict in his case was in error.

of twelve persons disagreed, and on November 14, 2024, Mr. Stewart will be sentenced by this Court consistent with that jury's verdict for fifteen felonies.

The Government requests that this Court imprison Mr. Stewart for 30 years, essentially seeking that he spend the rest of his life behind bars. That sentencing request is not justified by nearly any measure. While true that the Sentencing Guidelines suggest a sentence of life imprisonment, the guideline section that attempts to codify culpability for fraud cases is not based on empirical data and should not be used as a reasonable starting point for sentencing here. Further, imposing a sentence of 30 years represents an unwarranted disparity with other similarly situated defendants nationally and in Colorado, but even more troubling, a shocking disparity with the 12-month sentence of imprisonment imposed on Mr. Stewart's cooperating co-conspirator, Michael Young. The Government cannot justify a thirty-fold difference in sentence between these two defendants, and the Court should decline to impose their draconian request. Instead, the Court should impose a sentence of 60 months of imprisonment with three years of supervised release to follow. This sentence reflects an appropriate difference between Mr. Stewart and the mouthpiece of his organization, Mr. Young, while balancing the need to punish and provide both general and specific deterrence. A five-year prison sentence is the appropriate sentence for this man and this conduct.

Procedural History

On February 4, 2021, the Government filed an indictment in this case charging Mr. Stewart and his co-defendant Bryant Sewall with 14 counts of wire fraud in violation of 18 U.S.C. § 1343, and one count of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 371. Doc. 1.

After several years of litigation, Mr. Stewart exercised his right to a jury trial beginning in April 2024. Doc. 270. On May 17, 2024, following a 14-day jury trial, Mr. Stewart was found guilty of 14 counts of wire fraud and one count of conspiracy to commit the same. Doc. 315. He is currently set for a sentencing hearing on November 14, 2024. Doc. 317.

Guidelines and Positions of the Parties

a) *The Sentencing Guidelines*

The sentencing guidelines as calculated by the U.S. Probation Office is codified in the chart below; as noted, Mr. Stewart has objected to the application of specific offense enhancements in his Objections to the Presentence Report (Doc. 386) but concedes that even if his objections are granted, the total offense level is likely 43.

Sentencing Enhancement Applied in PSR	Guideline	Applicable Increase	Defendant’s Objection (See Doc. 386)
Base Offense Level	2B1.1(a)	7	
Loss between \$65M and \$150M	2B1.1(b)(1)(M)	24	
Substantial Financial Hardship to more than 25 victims	2B1.1(b)(2)(A)	+6	5-25 victims suffered substantial financial hardship; + 4
Committed outside United States or sophisticated means	2B1.1(b)(10)	+2	
Organizer/Leader	3B1.1(a)	+4	
Abuse of Position of Trust	3B1.1	+2	
Obstruction of Justice	3C1.1	+2	no obstruction, no enhancement should apply

As Mr. Stewart garners no criminal history points, he is in Category I; nonetheless, the guideline range for an offense level 43 is life in prison. As argued *infra*, the guidelines of 2B1.1 are inherently flawed, and this court should significantly vary from its calculation.

b) *Positions of the Parties*

The Government, in its Sentencing Statement filed in June 2024, has indicated that it intends to seek a sentence of 30 years of imprisonment for Mr. Stewart. Doc. 328. The U.S. Probation Office has followed suit, adopting the Government's sentencing recommendation just as it did in their entire recitation of the facts. See Doc. 386. Mr. Stewart is seeking a sentence of 60 months of imprisonment, with three years of supervised release to follow.

Section 2B1.1's measures of culpability are flawed,
and this Court should significantly vary.

This Court can – and should – consider when a guideline is not based on empirical data or fails to properly capture distinctions in culpability. This is particularly true when a guideline reflects “unsound judgment,” and thus does not adequately capture the statutory sentencing considerations of 18 U.S.C. § 3553(a). *United States v. Rita*, 551 U.S. 338, 357 (2007); *see also Kimbrough v. United States*, 552 U.S. 85, 101-102 (2007). As outlined above, the guideline range here is primarily driven by a huge increase in offense level due to the amount of loss, undisputed to be between \$65 million and \$150 million. But the fraud guidelines were not based on empirical data from the start; the original Sentencing Commission excluded from its initial analysis fifty percent of the total data – excluding every sentence in which a judge imposed a sentence of probation.² The Commission admitted that its goal was to encourage prison sentences in white collar

² James E. Felman, *The Need to Reform the Federal Sentencing Guidelines for High-Loss Economic Crimes*, 23 FED. SENT'G REP. 138, 138 (2010); U.S. SENT'G GUIDELINES MANUAL ch. 1, pt. A (U.S. SENT'G COMM'N 2009) (recognizing that while the Commission generally anchored its Guidelines in empirical data, it departed from the empirical data in crafting guidelines for economic crimes); Stephen Breyer, *The Federal Sentencing Guidelines and the Key Compromises Upon Which They Rest*, 17 HOFSTRA L. REV. 1, 7, 23 (1988).

cases, explaining that “the definite prospect of prison, though the term is short, will act as a significant deterrent to many of these crimes, particularly when compared with the status quo where probation, not prison, is the norm.” USSG, Ch. 1, intro., pt. 4(d) (1987).

Subsequent amendments to the guidelines have only further deviated from empirical data, creating unjustified increases in offense level without supporting data. Today’s guidelines are the product of a series of amendments that have increased the “loss table” of §2B1.1 such that the recommended sentences of today are orders of magnitude greater than the same sentence for the same crime when the guidelines were first promulgated. In 1989, four levels were added for a loss amount over \$20 million; though the Commission claimed those changes were “to provide additional deterrence and better reflect seriousness of the conduct,”³ the Commissioner of the Sentencing Commission at that time later indicated that the increase was for political reasons, not because of Congressional mandate.⁴ Similarly, in 2001, the Commission added another five levels for loss, stating it was responding to comments by the Department of Justice (DOJ) and the Criminal Law Committee (CLC) of the Judicial Conference that fraud was under-punished relative to offenses of “similar seriousness;”⁵ this note appears to refer to commentary by DOJ and CLC officials at the Commission’s Economic Crimes Symposium in 2000 comparing the fraud guidelines to the drug guidelines (which themselves are based on proportion to statutory minimums, not empirical data).⁶

³ USSG, App. C, Amend. 154 (Nov. 1, 1989).

⁴ Jeffery S. Parker & Michael K. Block, *The Sentencing Commission, P.M. (Post-Mistretta): Sunshine or Sunset?*, 27 Am. Crim. L. Rev. 289, 318-320 (1989)

⁵ See USSG, App. C, Amend. 617 (Nov. 1, 2001)

⁶ U.S. Sent’g Comm’n, Symposium on Federal Sentencing Policy for Economic Crimes and New Technology Offenses 54 (2000); transcript available <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/economic-crimes/20001012-symposium/ePlenaryIII.pdf>

The explanations offered by the Commission for the increased sentencing enhancements for loss in the guidelines are deficient and inaccurate. In both instances above, the Commission amended the guideline not in the exercise of its institutional role as an independent expert body, but instead based on unsupported signals. As a result, the fraud sentencing guidelines are nearly unrecognizable from its origins: under the 1987 guidelines, Mr. Stewart’s suggested imprisonment range would have been 57 to 71 months;⁷ today, the same conduct results in a suggestion of life imprisonment.

Other offense level enhancements within 2B1.1 suffer similar shortcomings. Ten of the levels used to calculate Mr. Stewart’s guideline range – a difference from a guideline of 135-168 to a guideline of life -- come from specific offense characteristics in § 2B1.1 (6 levels for number of victims, 2 levels for sophisticated means), and a 2-level adjustment from Chapter Three for abuse of a position of trust. These factors are “closely correlated” with each other and with loss. See Frank O. Bowman III, *Sentencing High-Loss Corporate Insider Frauds After Booker*, 20 Fed. Sent. R. 167, 170, 2008 WL 2201039, at 6 (Feb. 2008). “In effect, what the Guidelines have done over time is to tease out many of the factors for which loss served as a rough proxy and to give them independent weight in the offense-level calculus.” *Id.* “The result is that many factors for which loss was already a proxy not only have been given independent weight but also impose disproportionate increases in prison time because they add offense levels on top

(last accessed 10/30/2024). Notably, both DOJ and CLC officials decried the idea of comparing the drug and economic crime guidelines.

⁷ In the 1987 Guidelines, fraud offenses were covered by 2F1.1. That guideline would have calculated Mr. Stewart’s offense level with a base offense level of 6, with increases for amount of loss over \$5M (+11) and more than minimal planning/multiple victims (+2). Assuming the enhancements under Chapter 3 for abuse of position of trust (+2) and organizer/leader (+4) also applied, Mr. Stewart would have a total offense level of 25, resulting in a guideline range of 57 to 71 months.

of those already imposed for loss itself and do so at the top of the sentencing table where sentencing ranges are wide. . . Any case involving a corporate officer and a multimillion-dollar fraud will almost always trigger application of multiple offense-level enhancements that have the effect of punishing the defendant over and over for the same basic thing – conducting a big fraud in a corporate setting.” *Id.* at *7. See also Samuel W. Buell, *Overlapping Jurisdictions, Overlapping Crimes: Reforming Punishment of Financial Reporting Fraud*, 28 *Cardozo L. Rev.* 1611, 1648- 49 (2007) (factors such as sophisticated means and large number of victims “double-count because they are captured by other enhancements or by the loss calculation.”)

In light of these deep-rooted issues with §2B1.1, federal courts frequently vary from those guidelines. In 2023, more than 44% of defendants sentenced nationally under § 2B1.1 received a sentence below the sentencing guidelines, with less than 38% receiving a within-guideline sentence.⁸ In Colorado, those numbers are even higher: a full 50% of fraud defendants sentenced in the District of Colorado in 2023 received sentences below the guidelines.⁹

Comparison with other guideline sections further highlights the absurdity of §2B1.1. The guideline range (with Mr. Stewart’s criminal history category of I) for robbing a bank of any amount over \$9.5 million and discharging a firearm is 188 to 235 months; for voluntary manslaughter is 87 to 108 months; for a forced sexual act with a child

⁸ United States Sentencing Commission, *Sentences Imposed Relative to the Guideline Range for Economic Offense Cases, Fiscal Year 2023*. Available online at <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2023/TableE7.pdf> (last accessed 10/30/2024).

⁹ United States Sentencing Commission, *Sentences Imposed Relative to the Guideline Range by Type of Crime, Fiscal Year 2023*. Available online at <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2023/co23.pdf> (last accessed 10/30/2024).

between ages 12 and 16 is 188 to 235 months; and aggravated assault with a firearm and serious bodily injury 51 to 63 months. And yet: based on the guidance of the guidelines, Mr. Stewart should receive a higher sentence than any of the violent crimes above, based on calculations that are not – and never have been – based on actual data. These differences demonstrate that the guidelines in this context are not an appropriate measure of culpability, and the Court should disregard them and vary downward to the proposed sentence.

Who is Michael Stewart?

A cursory review of this case may have given the Court the impression that Michael Stewart has lived a life of ease, one that culminated in wealth and privilege. That impression would be gravely mistaken. Mr. Stewart is a man who has worked hard to rise above his difficult childhood and chronic medical conditions to build a life with a loving wife and strong family. At points in his life, he was a wealthy man; now, he is near-destitute, with nearly every significant asset he owns restrained by civil forfeiture proceedings and facing a likely prison sentence that will eliminate his ability to earn any income. Mr. Stewart is not conniving, evil, nor devious; rather, he is a man with many regrets, overwhelmed by the events of the past eight years and facing lifelong consequences for investor losses he never intended.

Mr. Stewart was raised in a poor household by an abusive father who beat him regularly. His father worked as an artist; when times were lean – which was often – he would have violent outbursts and hit Mr. Stewart with a horse whip or beat him with his fists. A young Mr. Stewart sought to leave home as soon as possible; after high school he attended college for a couple of years before dropping out to join the U.S. Marine

Corps at age 20. He served his country for more than two years until an honorable discharge following injury.

After the Marines, Mr. Stewart attended the University of Arizona but was forced to drop out in 1987 following a devastating motorcycle accident. He was struck head on by a drunk driver and suffered debilitating injuries to his pelvis, legs, skull, and back; the injuries stemming from this accident still affect him today.

In 1989, Mr. Stewart married Victoria Senescall. Mr. Stewart and Victoria have been married for 35 years and share three children: Aaron (age 34), Cierra (age 32), and Kathlene (age 30). His family is his entire world; his daughter Kathlene describes him as the “anchor of our family, providing us with stability and support;” many of Mr. Stewart’s friends and family have submitted letters to the Court describing his dedication to his family, strong sense of community and service, and generous spirit.¹⁰

Mr. Stewart has spent his life working to build businesses to support his family. He has worked as an air traffic controller, he has sold software, and he has worked in the oil industry. But trading – and specifically foreign exchange – was something he was passionate about and he felt good about; long before the algorithmic trading at issue in this case, Mr. Stewart excelled at trading the “old fashioned” way by phone. By the time of the creation of Mediatrix and Blue Isle in 2015, Mr. Stewart went back to operating businesses and mostly left the trading to the algorithms and his business partner, Bryant Sewall – and marketing for investors to his other partner, Michael Young.

¹⁰ Ms. Stewart’s letter, along with many others, are anticipated to be included in the addendum to the Presentence Report to be filed before Mr. Stewart’s sentencing hearing.

Mr. Stewart maintains that Mediatrix and Blue Isle were never created to be tools of fraud. Rather, Mr. Stewart trusted representatives from Blue Isle's prime broker, Equiti, to fix ongoing issues with the execution of their trading platform and believed that the businesses (and trading) would be successful for both the owners of Blue Isle and those who invested in it. Ultimately, however, most investors in Mediatrix lost all their money. And now, of course, Mr. Stewart has as well: once a millionaire, now nearly every asset he had has been either seized or frozen by court order related to a parallel civil proceeding. Undersigned counsel was appointed to Mr. Stewart's case after he demonstrated he no longer had the assets to retain a lawyer independently.

Now, more than five years after the closure of Mediatrix and more than three years since his indictment, Mr. Stewart's circumstances have continued to decline. Nearly all liquid assets he had at the time of Mediatrix and Blue Isle have been seized. Both the house he lives in and the truck he drives are currently subject to forfeiture litigation. He currently works as a construction contractor, in an effort to provide some money to his family before he is likely to serve a significant term of imprisonment. Since May 2024, he has been on home detention that limits his movement outside of his home; save for one incident in September 2023,¹¹ he has remained in full compliance with court-ordered terms of release for more than three years despite the stress of trial weighing on him.

¹¹ In August 2023, Mr. Stewart requested this Court allow him to leave Arizona to attend his daughter's September 4 wedding in Nevada; that motion was ultimately denied. Docs. 351, 360. Mr. Stewart did not violate the terms of his pretrial release by attempting to go to the wedding; however, he was discovered to be intoxicated in Arizona the day before the wedding was scheduled, an obvious attempt to cope with the crushing disappointment of missing his child's wedding. Since that time, he has abstained from alcohol and continued to abide by all conditions of pretrial release.

A sentence of 30 years reflects an unwarranted sentencing disparity.

The Government's sentencing position is reflective of an astounding, unwarranted sentencing disparity between Mr. Stewart and other similarly situated defendants, both related to this case and otherwise. Here, the Government makes strenuous attempts to ensure Mr. Stewart dies in prison, just months after seeking a mere 12 months in prison for his co-conspirator, Mr. Young, the "mouthpiece" of the entire conspiracy. The Government's position is unreasonable and absurd; as demonstrated below, Courts around the country regularly ignore the wild, inconsistent requests by the Government and impose sentences both well-below their ridiculously punitive requests and well-below the sentences recommended by the sentencing guidelines.

a) The Government's requested sentence is an unwarranted sentencing disparity with Michael Young.

[Michael Young] was the mouthpiece for a \$129 million dollar off-shore fraud scheme from which he and his partners pocketed approximately \$40 million.... Although the scheme targeted many individuals of high net worth, [Mr. Young] also personally recruited working class people to invest in the scheme...[Mr. Young] affirmatively misrepresented to very investor he spoke with that Mediatrix as a company dated back to 2013 (a lie) and had operated since then with no investor losses (also a lie)...[E]ven though [Mr. Young] knew enough to know that there were serious problems with this "world class" forex trading program, he kept using his considerable talents as a salesman to prop up the fraudulent enterprise that was his sole source of income.

Government's Sentencing Statement, *United States v. Michael Young*, 20cr00349-REB, Doc. 40.

The strong words above were made by the Government in seeking a sentence of a meager 12 months of imprisonment for Mr. Young, an unindicted co-conspirator in the Mediatrix scheme and the face of the entire organization. It is true that Mr. Young became a cooperating witness for the Government and testified on their behalf against Mr. Stewart

and Mr. Sewall at jury trial. Certainly, that cooperation justifies some sentencing disparity between Mr. Young and his co-conspirators.

But the sentence the Government is seeking for Mr. Stewart is literally *30 times longer* than that which they sought (and received) for Mr. Young. That disparity is wildly unwarranted, even when considering Mr. Young's cooperation, because as the Government themselves admitted in open court – they believe they would have gotten convictions against Mr. Stewart and Mr. Sewall *even without Mr. Young's testimony*.¹² Mr. Young was an important witness, but not critical or necessary for a conviction. His role as a cooperator was not needed by the Government, so they cannot rely on Mr. Young's assistance to the Government to justify their vastly disparate sentencing requests.

Nor can the Government justify the disparate requests by arguing that Mr. Young was not part of the Mediatrix conspiracy. No, as the Government has repeatedly argued, Mr. Young's "betrayal of trust" is "not just about a lie to the SEC." Exhibit A at 29. As they stated at Mr. Young's sentencing hearing: "Mr. Young could have been sitting in Judge Martinez's courtroom charged with the **very same fraud as his defendants**, because he made statements that were material to that fraud: these statements about Mediatrix's founding, and about whether or not it ever had any monthly losses." Exhibit A at 25-26. (emphasis added). To be clear: the Government chose not to charge Mr. Young with fraud or conspiracy, even though they openly admit he was a critical piece of it. Rather than charging him as to the facts and filing a motion for cooperation, the Government instead offered Mr. Young the incredible opportunity to plead guilty to a violation of 18 U.S.C. § 1001, a charge of lying to the Government that carried a five-year statutory maximum and

¹² See Exhibit A, Transcript of Michael Young's Sentencing Hearing, at 23-24.

a guideline range of six to twelve months. 20-cr-00349-RBJ at 1, 40. While it is not the role of undersigned counsel or this Court to inquire as to why such an offer would be made to an charged co-conspirator, who the Government admits was a non-critical witness, this Court may question the hypocrisy inherent in the hugely disparate sentencing requests for the guy who ran the business (Stewart) and the guy who directly recruited investors and sold Mediatrix to them (Young).

The Government's disparate sentencing request for Mr. Stewart becomes even more stark when comparing the roles Mr. Young and Mr. Stewart had in the conspiracy, because Mr. Young played just as important of a role – if not *the critical role* – in the Mediatrix scheme. The vast majority of investors were sold on Mediatrix through Mr. Young, who used his religious background and slick charm to not only recruit the high-net-worth investors but also targeted working-class people and friends from his church. As the Government argued at Mr. Young's sentencing hearing:

Those victims, some were financially devastated. Some trusted Mr. Young because of that charity, because of his outward religiosity. They were inspired by it, and they wouldn't have invested in this without – without his involvement. **He's a but-for cause of millions of dollars of losses.**

Exhibit A at 26 (emphasis added).

Certainly the overly generous plea offer was not made because of Mr. Young's full acceptance of responsibility – after all, the Government took great pains to point out to Mr. Young's sentencing court that “[t]here has been some limited acceptance of responsibility here, Your Honor, but it's not total.....there has been no expression of remorse for all of these victims....he acknowledges the crime, but hasn't fully grappled with it, and still refuses to fully accept responsibility.” Exhibit A at 28, 32. While Mr. Stewart may face a higher sentence because he exercised his right to trial and was not a

cooperator, his sentence should not be 30 times higher than his co-conspirator who pleaded guilty but “refuse[d]” to take responsibility for his role.

This Court must, under federal statute, consider the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct. 18 U.S.C. 3553(a)(6). Here, the Government seeks to induce the Court to impose a 30-year sentence on Mr. Stewart after seeking a one-year sentence for his co-conspirator who was the “but-for cause” of investor losses. Both defendants are religious family men, neither have any criminal history, both profited equally in the scheme, with Mr. Young having just as important a role as Mr. Stewart. While some disparity between the sentences of the two defendants may be justified, a thirty-fold difference is flatly unreasonable. In contrast, the sentencing request here – for a 60-month prison sentence, five times that imposed on Mr. Young – is a reasonable balance of the differences in position of the two defendants, including Mr. Stewart’s exercise of his trial right and Mr. Young’s (apparently unnecessary) cooperation with the Government.

b) The Government’s requested sentence is an unwarranted sentencing disparity with other similarly-situated defendants.

The sentence the Government seeks is nothing short of outrageous, particularly in comparison to other fraud defendants with no criminal history. The Government seeks a sentence for Mr. Stewart higher than that imposed on Sam Bankman-Fried, who orchestrated one of the largest financial frauds in American history, with a loss of more than \$8 billion, and who received a sentence of 300 months. *See United States v. Bankman-Fried, 22cr0573* (S. D. N.Y). They seek a sentence almost triple of that imposed on Elizabeth Holmes, who built a company based on lies about the product, technology, and outlook to investors to the tune of between \$700 million and \$800 million in losses;

Ms. Holmes received a sentence of 135 months. See *United States v. Holmes*, 5:18cr0258 (N.D. California). Nothing about this case or about Mr. Stewart warrants a sentence above these larger-scale and far-reaching offenses.

And, the requested sentence would be an astounding disparity with other fraud cases within the District of Colorado. Geoffrey Lunn, a defendant who offered a purported high-yield investment program that was represented to be “100% guaranteed,” operated offshore bank accounts, defrauded at least 72 investors and spent \$1 million of investor money on sex worker escorts received a below-guideline sentence of 54 months of imprisonment; his co-defendant, Jamie Bebe, went pro se at his sentencing and received a sentence of 108 months of imprisonment. See 14-cr-161-REB. Similarly, Kenneth Brewington, a defendant who went to trial and was convicted of wire fraud, money laundering, and conspiracy to the tune of over \$3 million, was sentenced to 70 months of imprisonment (later reduced to 57 months at resentencing after appeal). See 15-cr-0073-PAB. From a review of fraud offenses in the District of Colorado in the past decade, it appears that the longest sentence imposed – and not subject to later resentencing after appeal¹³ - was 120 months for a defendant who exercised his right to trial and still received a below guideline sentence from District Judge Brooke Jackson. See *United States v. Coddington*, 15-cr-383-RBJ.

Mr. Stewart’s decision to go to trial cannot justify the incredible sentence requested by the Government when compared to other cases. Nor can the high loss in this case, because loss is a highly imperfect measure of the seriousness of an offense. See *United*

¹³ Based on counsel’s research, the longest sentence imposed for fraud offenses in the District of Colorado in the past 10 years was 168 months by District Judge Arguello in *United States vs. Thomas Evans* (11cr0481-WJM); after multiple successful appeals, this Court ultimately sentenced him to 10 months in prison. 11cr0418-WJM at 217.

States v. Adelson, 441 F. Supp. 2d 506, 509 (S.D.N.Y. 2006) (criticizing “the inordinate emphasis that the Sentencing Guidelines place in fraud on the amount of actual or intended financial loss” without any explanation of “why it is appropriate to accord such huge weight to [this] factor[]”). The amount of loss is often “a kind of accident” and thus “a relatively weak indicator of [] moral seriousness . . . or the need for deterrence.” See *United States v. Emmenegger*, 329 F. Supp. 2d 416, 427-28 (S.D.N.Y. 2004). Defendants rarely set out to defraud others of a specific amount of money; rather, the amount of loss is dependent on the security procedures in place and the point in time when the fraud happens to be detected. *Id.* Here, the loss calculation is driven by the money invested into Blue Isle and Mediatrix, not the money that Mr. Stewart or his co-conspirators personally gained. That high number doesn’t make him more culpable than other fraud defendants with similar conduct and fewer millions in loss; that distinction matters for restitution, rather than culpability.

A sentence of 60 months of imprisonment is appropriate here.

18 U.S.C. § 3553(a)(2) requires the Court to consider the need for the sentence imposed:

- (A) To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) To afford adequate deterrence to criminal conduct;
- (C) To protect the public from further crimes of the defendant; and
- (D) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner...

Mr. Stewart agrees that incarceration is appropriate here. He recognizes the scale of the impact of financial losses for dozens of Mediatrix and Blue Isle investors. But a sentence of 30 years – for all practical purposes, a sentence during which he will die in

prison -- is far greater than necessary to accomplish the goals of sentencing. As a person with literally no jail or prison experience, a sentence of 60 months will severely punish him and deter him from future crimes. The Government points out that a 30-year sentence is a “significant variance” down from the life sentence recommended at an offense level 43, but cannot deny that the two sentences have no meaningful difference to a 60-year-old man with significant medical issues. Furthermore, they cannot explain why three decades in prison is *necessary*, when this court must, under the parsimony clause of 18 U.S.C. § 3553(a), impose the lowest sentence available to meet the statutory sentencing goals.

a) *Deterrence is important in white collar cases, and 60 months is sufficient to accomplish that goal.*

The Government goes to great lengths to argue for a decades-long sentence because general deterrence is “paramount.”. Doc. 328 at 26. If general deterrence were the goal, then the headline-grabbing cases cited above would have been the better vehicle. Moreover, the science simply doesn’t support the argument that lengthy prison is necessary for specific or general deterrence. In May of 2016, the National Institute of Justice – a division of the same Department of Justice that employs the prosecutors in this case – released a publication on deterrence, attached as Exhibit B. This DOJ department reported scientific studies on several key truths about deterrence:

- The certainty of being caught is a vastly more powerful deterrent than punishment.
- Police deter crime by increasing the perception that criminals will be caught and punished.
- Increasing the severity of punishment does little to deter crime.

Exhibit B at 1. The Government’s doggedness in pursuing a conviction against Mr. Stewart is message enough: those suspected of fraud will be prosecuted. And, to the

extent prison time is necessary, the requested five-year sentence for a man who has never stepped foot in a jail cell is sufficient to scare any would-be white collar criminal. In contrast, the Government cannot articulate why the draconian sentence they are seeking is necessary – particularly when study after study demonstrates that “there is no decisive evidence to support the conclusion that harsh sentences actually have a general and specific deterrent effect on potential white-collar offenders.”¹⁴

In terms of specific deterrence: Mr. Stewart is highly unlikely to recidivate. He is a 60-year-old man, facing a prison sentence for the first time in his life. The actions he took which landed him in this situation are not ones likely repeated: the humiliation, threat to and burden on his family life, and the guilt he feels for investor losses have changed him – and a five-year prison sentence will only add to that deterrence. Statistics support his low likelihood of recidivism: Economic crime offenders have the lowest rearrest rate across all federal offenders,¹⁵ and older offenders (those over 50) have a recidivism rate less than half that of their younger counterparts.¹⁶ The reality is that Mr. Stewart will never again have the opportunity nor the ability to commit fraud. He will serve a significant prison sentence, then will be subject to strong financial constraints related to his conditions of his supervised release. These guardrails are sufficient to deter any future thought of fraudulent conduct, as additional prison time would almost certainly follow any violation.

¹⁴ Zvi D. Gabbay, *Exploring the Limits of the Restorative Justice Paradigm: Restorative Justice and White Collar Crime*, 8 Cardozo J. Conflict Resol. 421, 448-49 (2007).

¹⁵ United States Sentencing Commission, *The Past Predicts the Future: Criminal History and Recidivism of Federal Offenders* (March 2017). Available online at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170309_Recidivism-CH.pdf#page=12 (last accessed 10/30/2024).

¹⁶ United States Sentencing Commission, *Older Offenders in the Federal System* (July 2022). Available online at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220726_Older-Offenders.pdf (last accessed 10/30/2024).

- b) *Mr. Stewart has serious medical concerns that will make his incarceration more punitive than it would for the average person.*

Mike Stewart suffered several serious injuries early in his life, including a 1985 weightlifting accident that fractured a vertebra in his neck, and a 1987 motorcycle accident that fractured his femur, pelvis, arms, toes, skull, and back. The result has been a lifetime of management of the pain that stems from these injuries. Mr. Stewart has been treated with morphine for pain for more than 30 years, taking a form of morphine at least five times every day. Doc. 376 at 84. He also suffers from kidney stones, a duodenal ulcer, and renal (kidney) failure. In short: at 60 years old, Michael Stewart has always received – and will always require – a high level of medical care.

To be clear: he will not get this high-level care in the Bureau of Prisons. As the past several years of the COVID-19 pandemic has demonstrated, the Bureau of Prisons (BOP) is ill-equipped to handle even basic medical needs. In fact, the BOP doesn't even meet its own standards for quality of medical care,¹⁷ much less care for a high-pain, high-needs defendant like Mr. Stewart. In March 2022, the Office of the Inspector General (OIG) published an audit of the health care contracts at three BOP prisons, including two medical facilities and one standard-care facility; the audit found the BOP's contractor did not provide the specialty care required by their own contract, nor did the BOP have an adequate method of tracking off-site medical providers.¹⁸

Courts around the nation have found that the BOP cannot care for those with high

¹⁷ Pavlo, Walter, *Federal Bureau of Prisons' Medical Care Falls Short Of Its Own Policy*, Forbes.com, April 19, 2022, accessible at <https://www.forbes.com/sites/walterpavlo/2022/04/19/federal-bureau-of-prisons-medical-care-falls-short-of-its-own-policy/?sh=41b66f355eab> (last accessed 10/30/2024).

¹⁸ Department of Justice, Office of the Inspector General, *Audit of Federal Bureau of Prisons Comprehensive Medical Services Contracts Awarded to the University of Massachusetts Medical School*, March 17, 2022, accessible at <https://oig.justice.gov/sites/default/files/reports/22-052.pdf> (last accessed 10/30/2024).

medical needs, despite the Government's continued insistence that the BOP will provide adequate care. The horror stories are rampant: the BOP ignored open, pus-filled wounds of an Illinois defendant for over a year, and never took him to a single post-surgery appointment;¹⁹ finding "the BOP has displayed a striking lack of responsiveness to symptoms that carry potentially life-threatening significance," a New Mexico District Court ordered compassionate release for a man who had elevated hormone levels indicating prostate cancer for four years, whom the BOP never once took to recommended oncology appointments.²⁰ In the past three years alone, District Courts have time and time again ordered compassionate release for defendants because the BOP did not provide adequate medical care, even in non-life-threatening scenarios.²¹

The Court need not wait for a motion for compassionate release to see the writing on the wall: the BOP cannot, and will not, adequately care for Mr. Stewart's medical needs. Undersigned counsel can speak to this issue through professional experience. In

¹⁹ *United States v. Lopez*, 2023 U.S. Dist. LEXIS 28288 at 10-11 (N.D. Illinois 2023).

²⁰ *United States v. Belin*, 2023 U.S. Dist. LEXIS 99019 at 15 (District of New Mexico 2023).

²¹ *See, e.g., United States v. English*, No. 219CR20164TGBEAS1, 2022 U.S. Dist. LEXIS 230553, 2022 WL 17853361, at 5 (E.D. Mich. Dec. 22, 2022) ("even if it is not clear that English's medical conditions alone are life-threatening, the record here demonstrates that the mismanagement of these conditions creates extraordinary and compelling circumstances warranting compassionate release"); *United States v. Burr*, No. 1:15-CR-362-1, 2022 U.S. Dist. LEXIS 216371, 2022 WL 17357233, at 6 (M.D.N.C. Dec. 1, 2022) ("Inadequate medical care may be a relevant factor in finding extraordinary and compelling reasons under § 3582(c)(1)(A)."); *United States v. Edwards*, No. CR 03-234 (JDB), 2022 U.S. Dist. LEXIS 129167, 2022 WL 2866703, at 5 (D.D.C. July 21, 2022) ("persistent inadequate medical care can constitute an extraordinary and compelling reason warranting sentence reduction if the defendant's medical needs require release"); *United States v. Derentz*, 608 F. Supp. 3d 189, 193 (E.D. Pa. 2022) ("Courts have also found that . . . delays in treatment, may qualify as an extraordinary and compelling reason for compassionate release."); *see also United States v. Verasawmi*, No. CR 17-254 (FLW), 2022 U.S. Dist. LEXIS 125856, 2022 WL 2763518, at 7 (D.N.J. July 15, 2022); *United States v. Roman*, No. 2:14-CR-43, 2021 U.S. Dist. LEXIS 138299, 2021 WL 3173351, at 4 (S.D. Ohio July 26, 2021), *aff'd*, No. 21-3718, 2022 U.S. App. LEXIS 606, 2022 WL 363866 (6th Cir. Jan. 7, 2022); *United States v. Almontes*, No. 3:05-CR-58 (SRU), 2020 U.S. Dist. LEXIS 62524, 2020 WL 1812713, at 6 (D. Conn. Apr. 9, 2020); *United States v. Beck*, 425 F. Supp. 3d 573, 580-81 (M.D.N.C. 2019).

late 2022, undersigned counsel urged a District Court judge to consider the high medical needs of a client in her 60s, with no criminal history and a fraud-related offense, who had serious cardiovascular issues; despite counsel's request for a non-custodial sentence, the Court imposed prison, deferring to the Government's promise of adequate care. Ms. Debra Campbell died less than 60 days into her prison sentence at FMC Carswell, a BOP medical facility.²²

Mr. Stewart will be spending at least five years in a setting where his medical needs will not be met. This circumstance makes any prison term for a medically vulnerable person a particularly harsh punishment, compared with healthy defendants who don't face the same risks. Here, that overlay of substandard medical care will make Mr. Stewart's prison sentence particularly grueling, if not life-threatening; his sentence need not extend to the 30 years the Government is seeking for Mr. Stewart to be adequately punished.

* * *

Ultimately, Congress requires this Court to impose the lowest sentence necessary to punish, deter, protect the public, and provide correctional treatment. The Government's sentencing request far exceeds what is necessary to meet those requirements, and is in shocking disparity with similar offenders both in this case and across the country. For Michael Stewart, this court should impose a sentence of 60 months with three years of supervised release; this sentence meets the goals of sentencing while additional prison time serves only to punish and is greater than necessary.

Other Sentencing Notices and Requests

²² See *United States v. Debra Campbell*, 22cr00113-CMA-GPG.

a) *Given likely appeal, Mr. Stewart is unlikely to exercise his right to allocute.*

Mr. Stewart is aware that pursuant to Federal Rule of Criminal Procedure 32(i)(4)(A)(ii), he has a statutory right to address the court directly on his own behalf at his sentencing. However, statements in allocution can be used to against a defendant and are not subject to the constitutional protections of the Fifth Amendment. *United States v. De La Paz*, 698 F.2d. 695, 697 (5th Circuit 1983), *United States v. Fleming*, 849 F.2d 568, 569 (11th Cir. 1988). Given Mr. Stewart's intention to appeal his sentence, he respectfully notifies this Court of his intention to invoke his Fifth Amendment right and remain silent at his sentencing hearing.

b) *Mr. Stewart seeks a recommendation for a designation at FCI Phoenix.*

Mr. Stewart will request that this Court recommend that he be designated to FCI Phoenix, assuming that facility is commensurate with his security designation. Designation to this facility will allow Mr. Stewart to have the support of his Arizona-based family during this difficult period of incarceration.

c) *Mr. Stewart requests that he be allowed to self-surrender to his designated facility.*

The counts of conviction in this case do not trigger the mandatory remand provisions of 18 U.S.C. § 3143(a)(2). Accordingly, after Mr. Stewart's jury trial in May 2024, this Court found by clear and convincing evidence that Mr. Stewart is not likely to flee or pose a danger to any other person or the community and released him with a condition of home confinement. Doc. 309.

Neither of those circumstances have changed. No one has ever argued that Mr. Stewart is a danger to the community, because there is simply no evidence to support that assertion. And, in terms of flight: Mr. Stewart has known for months that the

Government would be seeking what amounts to a life sentence for him, and the Court has made clear in minute orders that imprisonment is likely. Docs, 328, 354. And yet Mr. Stewart has not fled, nor (outside of one aberrant circumstance) has he violated the stringent terms of his release. This Court should allow Mr. Stewart to self-surrender to the facility to which he is designated within 14 days of designation.

Respectfully submitted,

VIRGINIA L. GRADY
Federal Public Defender

s/ Mary V. Butterton
MARY V. BUTTERTON
Assistant Federal Public Defender
633 17th Street, Suite 1000
Denver, CO 80202
Telephone: (303) 294-7002
FAX: (303) 294-1192
Mary_Butterton@fd.org
Attorney for Defendant Stewart

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2024, I filed the foregoing ***Defendant Stewart's Motion for Non-Guideline Sentence and Sentencing Statement*** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following email addresses and counsel of record:

Anna Edgar, Assistant United States Attorney
Email: Anna.Edgar@usdoj.gov

Bryan Fields, Assistant United States Attorney
Email: bryan.fields3@usdoj.gov

William Gillespie, Assistant United States Attorney
Email: william.gillespie@usdoj.gov

I hereby certify that I have mailed or served the document or paper to the following participant in the manner (mail, hand-delivery, etc.) indicated next to the participant's name:

Michael Stewart (via U.S. mail)

s/ Mary V. Butterton
MARY V. BUTTERTON
Assistant Federal Public Defender
633 17th Street, Suite 1000
Denver, CO 80202
Telephone: (303) 294-7002
FAX: (303) 294-1192
Mary.Butterton@fd.org
Attorney for Defendant Stewart

Exhibit A

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Criminal Action No. 20-cr-349-RBJ

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL YOUNG,

Defendant.

REPORTER'S TRANSCRIPT

Sentencing Hearing

Proceedings before the HONORABLE R. BROOKE JACKSON,
Judge, United States District Court for the District of
Colorado, commencing on the 11th day of June, 2024, in Courtroom
A902, United States Courthouse, Denver, Colorado.

APPEARANCES

For the Plaintiff:
ANNA K. EDGAR and BRYAN D. FIELDS, United States Attorney's
Office, 1801 California Street, Suite 1600, Denver, CO 80202

For the Defendant:
BRIAN R. LEEDY and FREDRIC M. WINOCUR, Ridley McGreevy & Winocur
PC, 303 16th Street, Suite 200, Denver, CO 80202

Reported by KEVIN P. CARLIN, RMR, CRR, 901 19th Street, Room
A259, Denver, CO 80294, (303)335-2358

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1 P R O C E E D I N G S

2 (Proceedings commenced at 12:58 p.m.)

3 THE COURT: This is United States versus Michael
4 Young, 20-cr-349, set for sentencing this afternoon.
5 Appearances, please.

6 MR. FIELDS: Good afternoon, Your Honor. Brian Fields
7 for the United States, and I am joined by my co-counsel, Anna
8 Edgar.

9 MS. EDGAR: Good afternoon.

10 MR. LEEDY: Good afternoon, Your Honor. Brian Leedy
11 and Fred Winocur. We're here on behalf of Mr. Young.

12 THE COURT: Thank you. So, I will listen to your
13 arguments, of course, but I have read your papers. And that
14 took some time, because I read all 38 of your letters. Those of
15 you in the back who are here who wrote letters on behalf of the
16 defendant, I read every one. But I'm going to tell you about
17 some things that I think about cases like this, and then we will
18 focus on this particular case.

19 I've been presiding over criminal cases now for 26
20 years. And during that time, I have fairly consistently
21 believed and said that I think those who steal from
22 sophisticated investors, that is those who commit white collar
23 theft, should not be treated differently by the Courts than the
24 guy out on the street that commits theft. I don't think that's
25 fair.

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1 Secondly, however, I also think that people who assist
2 the Government in prosecuting even more culpable defendants
3 deserve credit for that. And it is my understanding that
4 Mr. Young has done precisely that.

5 And finally, I believe that all lawyers, including
6 defense lawyers, including defendants, should honor what they
7 agreed to in a plea agreement. What I'm talking about there is
8 the statement in the plea agreement in this case, and I will
9 quote, the defendant agrees that a sentence within the guideline
10 range of ten to 16 months is reasonable, and the defendant
11 agrees not to argue for or request a sentence below that range,
12 close quote.

13 And yet, Mr. Leedy, you came in initially with a
14 request for just probation. And then you withdrew that and
15 requested six months. And when it is your turn to speak, I
16 would like to have you explain how and why you could do that,
17 given what you agreed to in writing.

18 All right. With those preliminary remarks, Mr. Leedy,
19 you may make your argument.

20 MR. LEEDY: Thank you, Your Honor. I will start with
21 the initial request that the Court just commented on, and the
22 basis for that. Your Honor, for offense levels within zone B of
23 the sentencing table, alternatives are provided for service of
24 the sentence range established under the guidelines. This is
25 referenced in paragraph 76, 77, and 83 of the presentence

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1 report. That explains that in part, since the applicable
2 guideline range is in zone B of the sentencing table, the Court
3 can impose probation with the condition or combination of
4 conditions requiring intermittent confinement, community
5 confinement, or home detention as provided under 5C1.1(e).

6 THE COURT: Yes. But you didn't listen when I quoted
7 from the plea agreement. It said, the defendant agrees that a
8 sentence within the guideline range of ten to 16 months is
9 reasonable, and the defendant agrees not to argue for or request
10 a sentence below that range. That didn't talk about probation.
11 That talked about ten to 16 months incarceration. We both know
12 that.

13 MR. LEEDY: Your Honor, the guideline range changed
14 after the zero-point offender amendment.

15 THE COURT: It changed to six to 12.

16 MR. LEEDY: Correct. And we are requesting six
17 months. And my initial request, based on 5C1.1 and those
18 paragraphs I just mentioned in the presentence report, explains
19 why exactly that six-month sentence of home confinement and
20 probation would have been in the guideline range. Now, what
21 happened since that request was made is we conferred with the
22 Government. They obviously had concerns, and we withdrew that
23 initial request which was within the guideline range, and
24 supplemented that with our current request.

25 THE COURT: If you hadn't withdrawn it, Mr. Leedy, I

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1 would be quite disappointed in you. I'm still somewhat
2 disappointed, but I would be very disappointed if you hadn't
3 done that, because you went back on what you said.

4 MR. LEEDY: And, Your Honor, I believe the provisions
5 that are referenced in the presentence report in 5C1.1 permit
6 that exact type of sentence, which allows for alternatives for
7 zone B offenders.

8 THE COURT: Yes, it does, but that's not the point.
9 The point is in the plea agreement you agreed to something, and
10 then you asked me to do something differently, even though you
11 agreed you wouldn't do that. You agreed to ten to 16 months
12 imprisonment. Now, that was when the guideline was ten to
13 whatever. Now it's six to 12. I think you can rationalize that
14 what you intended was you agree to a sentence within the
15 guidelines, but you can't rationalize asking me for probation.
16 You cannot do that.

17 MR. LEEDY: And, Your Honor, that -- and I will tell
18 you the difference between how the guideline was calculated when
19 we first drafted the plea agreement about four years ago and
20 since the zero-point offender amendment. Initially, that ten-
21 to 16-month range was in zone C of the guidelines, and that
22 would not have allowed for a sentence of probation with home
23 detention to substitute for the low end.

24 THE COURT: Yeah. You just told me that before. I
25 heard you. But specifically it says you agree to an

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1 imprisonment sentence. Ten to -- ten to 16 months.

2 MR. LEEDY: And, Your Honor, chapter five --

3 THE COURT: It doesn't say what the guideline allows
4 in terms of probation. It says ten to 16 months. That's what
5 you agreed to.

6 MR. LEEDY: That is what we agreed to before the
7 guideline range changed, Your Honor, and the zone within that
8 guideline range zone B has always been a factor that the Court
9 would consider as part of the guidelines.

10 THE COURT: I'm disappointed that you're not admitting
11 that you just made a mistake. That would have been a much
12 better way to approach me, at least.

13 MR. LEEDY: Well, Your Honor, I honestly think the
14 reading of 5C1.1 as indicated in paragraph 77 and 83 of the
15 presentence report is an accurate one. However, the Court knows
16 what we filed and what we've supplemented with, and that was
17 after conferring with the Government. And that is our request
18 as it stands now. Would the Court like any further explanation
19 on the positions that we've taken?

20 THE COURT: No. Just go ahead and make your argument.

21 MR. LEEDY: Thank you, Your Honor. Your Honor, with
22 regard to the nature and circumstances of this offense, the plea
23 that Mr. Young has entered pertained to the statements he made
24 during a March 2019 SEC deposition in which he was asked the
25 first time that Mediatrix Capital in any format raised funds

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1 from an investor. At that point his response was the first
2 quarter of 2016. The accurate answer would have been 2015, and
3 to the tune of \$500,000. And that omission and statement was
4 untruthful when it was made, and it was material to what the SEC
5 was investigating at that time, because they were looking at
6 prior history of Mediatrix with regard to funds solicited, and
7 also track record of how the fund actually performed.

8 What occurred during the Government's investigation in
9 this case is that Mr. Young's partners, Mr. Stewart and Sewall,
10 actively tried to prevent Mr. Young from learning the full
11 extent of what was going on with Mediatrix and the fraud that
12 was occurring. The Court has statements to that effect. These
13 are contained within the presentence report. Where, for
14 example, in October of 2017, there were communications between
15 Mr. Young's partners that were actively preventing him from
16 learning what was going on at Mediatrix to the extent they were
17 saying Mr. Young should not be poking around in operations, that
18 Mr. Young was not the boss, that his CEO title was ridiculous,
19 and that as the marketing guy, he needed to stay in the realm of
20 marketing and exercise of client management.

21 During his work with his partners, Your Honor,
22 Mr. Young was provided false information that he then repeated
23 to investors and potential investors that came to Mediatrix.
24 Mr. Young was not aware that the representations of Mr. Stewart
25 and Mr. Sewall were false at the time when he related those to

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1 investors, and they actively prevented Mr. Young from knowing
2 what was going on at Mediatrrix.

3 Mr. Young has since testified in the trial against
4 Mr. Stewart and Mr. Sewall. He testified truthfully. He
5 testified over multiple days, and he testified about four years
6 after he entered the plea in the instant case. The Government's
7 theory in that case incorporated the fact that Mr. Young was
8 kept from the facts of how the fund was performing, and
9 information was kept from Mr. Young by Mr. Stewart and
10 Mr. Sewall as to this specific performance of the FOREX trading
11 that was the subject of Mediatrrix Capital.

12 Mr. Young appears before the Court with his first
13 criminal conviction. He's 52. He has an elderly father that
14 lives in Colorado. His mother passed away in 2021 while this
15 case was pending. And he has a close relationship with both his
16 father and brother. He's married to Maria Young, and they have
17 six children between the ages of two and 13, and he is the sole
18 provider for his family at this point.

19 Since the case began, Your Honor, he has gone from
20 working for DoorDash to Neuro-X, which is a company that
21 engineers medical devices, to DualDraw, which works with indoor
22 air filtration equipment, and has supported his family in
23 whatever way he can since this case came about and since the SEC
24 deposition.

25 Mr. Young's personal characteristics also include a

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1 lifelong work of volunteering. He has worked for various
2 volunteer organizations over the last 20 years, including a food
3 bank in Centennial, Colorado, the Knights of Columbus, Guardian
4 Group, which deals with combating human trafficking, a child
5 orphanage in Puerto Rico, Mountain View Detention Center through
6 their youth ministry program, the Cathedral of the Immaculate
7 Conception, along with the Fellowship of Christian Athletes and
8 Porter Hospice, where he helps care for elderly and aging
9 patients.

10 Your Honor, the instant offense occurred quite a few
11 years ago. And since that time, Mr. Young has waited for his
12 sentencing in order to comply with the cooperation elements of
13 his plea agreement, which he has done at this point. The case
14 against Mr. Stewart and Mr. Sewall had been delayed because it
15 was obviously a long case that took a lot of time, and I'm sure
16 involved quite a bit of discovery. That case finally went to
17 trial very recently, where Mr. Young testified.

18 Over the last four years, Mr. Young has been on
19 pretrial release in compliance with his cooperation agreement,
20 in compliance with his bond, and working hard to support his
21 family in vocations that differed greatly from what he was
22 involved with in Mediatrix Capital.

23 Here, Your Honor, we believe the appropriate sentence
24 is six months imprisonment, followed by one year of supervision.
25 The probation department's recommendation is a sentence of

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1 probation, which could be up to five years, but it's four years,
2 and they requested 150 hours of community service. We have
3 requested 75 hours community service, Your Honor, and that is
4 based on the one year of supervision that Mr. Young would have
5 if he's sentenced to supervised release after a sentence of
6 imprisonment.

7 Your Honor, I've explained this briefly, but the advice
8 of the sentencing guidelines established a sentencing range of
9 six to 12 months. I won't go back into the zones that are
10 contemplated in that sentencing range. The fact that we're in
11 zone B we discussed that already, but we believe at this point
12 based on the duration of the case that Mr. Young has been
13 involved with, his cooperation with the Government -- and his
14 cooperation with the Government, the Court should consider where
15 within that range Mr. Young should be sentenced.

16 And I believe the factors militate towards the low end
17 of that guideline range based on, A, his cooperation, which is
18 not typically the type of cooperation that happens in a criminal
19 offense in federal court. It's a rare case where an individual
20 actually ends up testifying as a cooperator in a criminal case.
21 The vast majority of cases that involve cooperation end up with
22 pleas from every defendant. However, in this case, that did not
23 happen. Mr. Young fulfilled his cooperation agreement by
24 testifying over multiple days during a weeks-long criminal
25 trial, in addition to preparing with the Government before that

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1 trial with trial preparation meetings that were necessary to
2 prepare him for his testimony.

3 Here, we believe that Mr. Young's testimony was helpful
4 to the Government, and although this is not a case where there
5 is a substantial assistance departure, the Court can consider
6 that cooperation within the range established by the guidelines
7 without departing from it. And we believe that cooperation,
8 again, suits a low end of the guideline sentence, as does the
9 reasons that Mr. Young has been compliant with his supervision
10 for the last almost four years in this case, and has continued
11 cooperation with the Government to this point.

12 Your Honor, as I've stated briefly, and this is in part
13 in response to the Government's sentencing pleading, Mr. Young's
14 plea here involves a false statement during an SEC deposition
15 that was material to their investigation at that point where he
16 omitted investor funds being brought to Mediatrix in 2015, and
17 he testified that they were brought to Mediatrix for the first
18 time in 2016.

19 Again, the theory of prosecution at trial included that
20 Mr. Young was an individual that was kept in the dark about the
21 operations of Mediatrix, and he was kept in the dark by his
22 partners, and that was an affirmative act on their part to keep
23 him from knowing how the investments were performing. He then
24 repeated what he was told by his partners to investors at that
25 point. That obviously resulted in an extremely substantial loss

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1 to those investors.

2 Mr. Young is before the Court for his 1,001 plea in the
3 conduct involving that. Based on the guideline range here,
4 Mr. Young's lack of criminal history, his history of good works,
5 and his financial obligations to his family, we believe that a
6 six-month sentence of imprisonment is appropriate, as well as
7 the fine recommended by probation, which is \$4,000. Your Honor,
8 with regard to what the guidelines say about considerations for
9 imposition of a fine, the Government has asked for the maximum
10 fine under the guidelines, which is 40,000. We would ask for
11 the minimum, which is 4,000.

12 Here, the Court could consider Mr. Young's ability to
13 pay. He is the sole provider for his wife and six children at
14 this point, and the Court has information about his finances.
15 The Court also knows that there is a pending SEC criminal action
16 that has frozen Mr. Young's assets. And that is ongoing, and
17 that will result in either trial or settlement if Mr. Young is
18 able to accomplish that. And that is actually one of the 5E1.2
19 factors that the Court can consider, specifically a civil
20 obligation arising from conduct.

21 Additionally, the expected costs to the Government, we
22 believe, Your Honor, should militate in favor of a lower fine
23 than the maximum fine recommended by the Government. Here, we
24 are recommending a sentence of imprisonment of six months and a
25 4,000-dollar fine will address the factors under 3553(a), but

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1 also that are in the guidelines as well.

2 In short, Your Honor, Mr. Young appears before the
3 Court for conduct narrowed by his plea of guilty with regard to
4 his statements to the SEC during a 2019 deposition. He has
5 fully cooperated with the Government to satisfy the terms of his
6 plea agreement. And that cooperation took a long period of
7 time, during which Mr. Young was subject to supervision and also
8 continued cooperation when asked by the Government. He then was
9 required to testify, which is a level of cooperation that the
10 Court does not always see when there are cooperation agreements,
11 but --

12 THE COURT: You've already gone over that. You don't
13 have to repeat it.

14 MR. LEEDY: Understood, Your Honor. With that, Your
15 Honor, I would ask the Court to impose the sentence that we
16 requested, six months imprisonment followed by one year of
17 supervised release.

18 THE COURT: Do you and your client have any objection
19 to any of the terms of supervised release, mandatory, special,
20 or otherwise, except your request for fewer community service
21 hours?

22 MR. LEEDY: We have no objection to any of the
23 conditions recommended.

24 THE COURT: All right. Now, all you people that came
25 in the back, I don't know which side of this you're necessarily

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1 on. I'm assuming many of you or most of you, maybe all of you
2 are supportive of the defendant. But it's possible, at least,
3 some of these investors who lost tons of money might be here. I
4 don't know. Would anybody who is in the back wish to step up to
5 the lectern and say anything about this case? If so, you may do
6 it now. Okay. All you have to do is come forward, stand at the
7 lectern, tell us your name, and say what you'd like to say.

8 MR. BAKER: Thank you, Your Honor. My name is Mike
9 Baker, and I am also a victim of this case. I'm also a lifelong
10 friend of Mr. Young's for the last 36 years.

11 THE COURT: You're a victim in the sense that you lost
12 money in this scheme?

13 MR. BAKER: Correct. So, I was -- with my history,
14 relationship with Mr. Young, I was made aware of the work that
15 they were performing. And he brought myself, not through
16 solicitation, but through my own questioning for what was going
17 on, and some other family members and friends. And the thing
18 that I feel strongly about, knowing his character for the last
19 35 years and the person he is and the family man he is and the
20 man of Christ he is and the amount of time he gives to people in
21 lesser situations, I know -- I'm a hundred percent certain that
22 there was no ill intent on his part, because why would he bring
23 his best friend into something that he thought would be a duping
24 or something that was to rob people of their earnings for his
25 benefit?

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1 THE COURT: Mr. Baker, one thing that I was a little
2 curious about, but I think the Government probably can answer
3 this, is why there wasn't any request for restitution in this
4 case. You lost a bunch of money, but nobody is being ordered to
5 pay it back to you?

6 MR. BAKER: That's up to the Court to decide; correct?

7 THE COURT: Well, it hasn't been requested of the
8 Court. That's why I'm puzzled. No one has asked for any
9 restitution. Courts don't typically order restitution if nobody
10 requests it.

11 MR. BAKER: Yeah. I don't know what to say to that.

12 THE COURT: Okay.

13 MR. BAKER: Thank you.

14 THE COURT: Thank you, Mr. Baker. Anybody else? Yes,
15 sir.

16 MR. PRATHER: Thank you, Your Honor. My name is Dan
17 Prather. I am also a friend of Mike's since about, I think
18 eighth grade.

19 THE COURT: Dan, did you say Prather?

20 MR. PRATHER: Yes, sir.

21 THE COURT: Thank you, sir.

22 MR. PRATHER: Mike and I have been friends for a very
23 long time. I was not involved in the investments at all. I'm
24 just here more of as a character reference. I also had the
25 pleasure of working with Mike, and as his supervisor and boss,

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1 the integrity that he demonstrated working with me was
2 aboveboard always, and it was a joy to be able to work with him
3 and to be able to trust somebody like Mike, who has been a
4 friend forever. And he showed what kind of person he is, both
5 as a friend and as an employee, and just nothing bad to say
6 about Mike. And I just wanted to give a character reference and
7 know that I appreciate Mike, and it would -- I would also argue
8 for him to have the minimum sentence that's on the board.

9 THE COURT: All right. Thank you. I must say that if
10 I were in trouble, I would be fortunate and honored to have
11 friends like you and like Mr. Baker come to court on my behalf.
12 I will say that.

13 MR. PRATHER: Thank you, Your Honor.

14 MR. McADAM: Your Honor, I'm Gary McAdam. I live in
15 Highlands Ranch, Colorado. I'm 73 years old. I met Michael
16 seven years ago. And I met him seven years ago at my office
17 when he was presenting Mediatrix to a potential group of
18 investors. I did become an investor in the fund, and so I got
19 to know Michael through that process. I did about five months
20 of due diligence on Michael.

21 It happened that a brother-in-law of mine had known
22 Michael for about 20 years, so I got to get insights from that
23 brother-in-law as to the character that Michael had possessed
24 for the 20 years leading up to my meeting. I had a son who
25 happened to know Michael. He knew him for eight or nine years

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1 previous to that meeting, and had nothing but good things to say
2 about Michael.

3 Once I invested in the fund, when Michael was in
4 Colorado, I would meet with Michael about once a month over
5 lunch, and we would talk about all sorts of things: his wife,
6 his children, his religious beliefs. And throughout all the
7 conversations that I had with him, everything was always
8 conducted properly, Your Honor.

9 Once the news came out that Mediatix was being shut
10 down, I was one of those people who went, wow. Did I misjudge
11 who he is, or did I judge him properly? And so I talked to a
12 friend of mine who had also invested in Mediatix, possibly
13 because I did, and I said, I will take the time to get together
14 with Michael.

15 Over the last four years, I probably met with Michael a
16 hundred times face-to-face. I've probably talked to him on the
17 phone over 400 times. He is a wonderful human being. He is not
18 at all like his partners, Your Honor. He's just an absolutely
19 wonderful human being. He's got wonderful children. They serve
20 as altar servers at the church. Michael plays music, praise and
21 worship music. He's involved in community service. He's helped
22 with sex trafficking. He's helped with people who were part of
23 hospice. He helps with the food bank. And when I sit with him
24 at Panera Bread, we sit at a table where even if elderly people
25 walk to a door and they can't open the door, he hops up to help

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1 them.

2 So, if you're looking for someone with good qualities,
3 I think he has outstanding qualities. I am honored to call him
4 my friend, and I'd like you to know that his plea -- obviously
5 you're going to have to decide on that, but if you were to ask
6 me, based on what I know of him over the last four years, I
7 would ask for as much leniency as you can give, Your Honor.
8 Thank you.

9 THE COURT: All right. Thank you. Anybody else?

10 MR. SMABY: Good afternoon, Your Honor. My name is
11 Matt Smaby. I live in Centennial, Colorado. I've gotten to
12 know Michael well going on now for about ten years, most
13 recently over the last three years. What I will say this, is I
14 have gotten to know Michael in a much deeper way, and I find him
15 to be one of the most virtuous men I know. I work in the
16 business community here in Denver, and my reputation is very
17 important for my livelihood. I without any reservation have and
18 would continue to make representations or make introductions of
19 Michael for advice, wisdom, and whatever needs there might be of
20 my clients.

21 He has been somebody that has been faithful to honor
22 his word and all of those things. And I would be without right
23 sitting back there, not saying that. In the business community,
24 where he has worked before, where he has had the knowledge and
25 the expertise, he gives freely, and I am grateful to call him a

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1 friend and confidant. So, thank you.

2 THE COURT: All right. Thank you.

3 MR. FARDULIS: Your Honor, my name is Scott Fardulis.
4 I live in Berthoud, Colorado. I am the same age as Mr. Young.
5 I'm 52. I've got a wife and three kids. As I think about the
6 priorities of life, I admire Mr. Young for what he values most
7 importantly, and that's his faith. I cannot think of someone in
8 my life that is more upstanding and reputable. God, spouse,
9 children. Those are his priorities.

10 I don't attend the same church as Mr. Young. He's
11 invited me to attend church with him. I have enjoyed that
12 experience. I see him standing up there and singing with all of
13 his heart, honoring the Lord, and I find him someone that
14 under-promises and over-delivers in every single category. I
15 meet with Michael on a weekly basis just as friends, and in a
16 situation where we get to talk about life and talk about what's
17 most important. We dream together. We make plans together. We
18 talk about the future.

19 And every single category that we discuss has to do
20 with things that are honorable, serving other people. So, it
21 would be my request as well that as you consider the sentence
22 that you have for Mr. Young that you would take into
23 consideration all the good will that would be missed should he
24 not be able to continue doing what he makes today his
25 priorities. Faith, family, that's what's most important. Thank

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1 you very much.

2 THE COURT: All right. Thank you. All right. Here
3 is one more. I didn't see you sitting there. You can pull that
4 down to you.

5 MR. JEFFORDS: Hello, Your Honor. My name is Gary
6 Jeffords. I am 59 years old, and I live with my wife in the
7 back, and we have three children in Centennial, Colorado. I met
8 Michael probably about three and a half years ago through Saint
9 Thomas Moore. He, as everyone has said, he sings in the group
10 there. We ended up having coffee together in Panera, and I was
11 a character witness also. That's in the files here, I'm sure,
12 with more information. I just wanted to say that first coffee
13 with Michael, the first thing -- I sat down with him, the first
14 thing he said, he started explaining to me the case that he was
15 going through.

16 He just wanted to be totally clear on the friendship
17 that we started to build three, three and a half years ago, and
18 have all the information on the table. So, I honor that. I
19 honor the fact that that's the first thing he told me. He said,
20 Gary, this is what I'm going through. That's all I have. Thank
21 you.

22 THE COURT: Thank you. All right. Thank you all for
23 coming. It's not easy to stand up in front of an audience of
24 any kind and speak. It's probably even harder to stand up in a
25 court before a federal judge and speak. That takes a lot of

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1 courage, and I appreciate those who spoke. And those who just
2 came, I appreciate you too.

3 Now, Mr. Young, would you like to make a statement
4 today?

5 THE DEFENDANT: Yes. Your Honor, first of all, I'd
6 like to apologize to the Court for my conduct, which I take full
7 responsibility for. There is not a single day that goes by that
8 I don't sit in this and think about this. I'd also like to
9 assure the Court that I will not find myself in this situation
10 again. And then I accept any sentence that the Court imposes on
11 me. Thank you.

12 THE COURT: Thank you, Mr. Young.

13 THE DEFENDANT: You're welcome.

14 THE COURT: All right. Has everybody who is on the
15 defendant's side of this had an opportunity to be heard that
16 wants to be heard? Mr. Fields, you're next.

17 MR. FIELDS: Thank you, Your Honor. Fraud cases are
18 tough, because there's always a paradox mixed in. Oftentimes
19 you're dealing with professionals who in every other aspect of
20 their life are good, upstanding citizens, who are trying to do
21 the right thing. But here in federal court, we're here because
22 generally those good people made very, very bad decisions, and
23 so that's the paradox. It's how do you sort of weigh and
24 balance those two?

25 So, there's no doubt that this is a tough case. I will

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1 start with the observation that the Government has met with
2 Mr. Young multiple times for the past six months. So, I've
3 gotten to know him pretty well, and I think I can safely tell
4 the Court that based on those meetings, everything that was said
5 up here at the lectern and everything that was said in those
6 letters appears to be generally true. Nothing he did is
7 inconsistent with those letters. At least as I've gotten to
8 know him --

9 THE COURT: So, you're telling me, Mr. Fields, that he
10 didn't intend to defraud the investors?

11 MR. FIELDS: No. I will get to that, Your Honor.
12 That's the bad decision that we're -- that I'm going to be
13 focusing on.

14 THE COURT: Well, that's -- he pled guilty to lying to
15 the SEC. But underlying all of that is this massive fraud that
16 occurred, and Mr. Leedy at least was saying he didn't know about
17 the fraud part because his co-investors, or co-partners, I
18 should say, kept that from him. You're going to tell me
19 something different than that?

20 MR. FIELDS: Very different than that, Your Honor. In
21 fact, actually, that -- I will just get right to that. So, the
22 Government was very disappointed to see the sentencing
23 statement. That was inconsistent with the Mr. Young that we had
24 gotten to know, and we consider it to be inconsistent with the
25 plea agreement. Mr. Young --

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1 THE COURT: Well, it was inconsistent with the plea
2 agreement, but I will say this: Mr. Young didn't write those
3 papers. His lawyer did.

4 MR. FIELDS: No, Your Honor. But they are acting on
5 his behalf.

6 THE COURT: Yes, they are.

7 MR. FIELDS: And I think it is safe to say that they
8 wouldn't file something without his approval, and at least his
9 endorsement.

10 THE COURT: Before we get to that, tell me about his
11 testimony in the other case. I assume you prosecuted that case?

12 MR. FIELDS: Yes, Your Honor.

13 THE COURT: Was it truthful?

14 MR. FIELDS: Yes.

15 THE COURT: Was it helpful?

16 MR. FIELDS: Yes.

17 THE COURT: He testified for many hours, as I
18 understand it?

19 MR. FIELDS: Over the course of three days. So, I
20 would say approximately ten hours of testimony.

21 THE COURT: So, he did what he committed to do for you
22 in that case?

23 MR. FIELDS: He did, Your Honor.

24 THE COURT: Do you believe you would have gotten
25 convictions without his testimony?

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1 MR. FIELDS: Yes. But it would have required more
2 effort.

3 THE COURT: His testimony at least assisted in your
4 getting those convictions?

5 MR. FIELDS: Yes, Your Honor. So, on that, all of
6 that, the defendant -- well, let's start with the fraud. Let's
7 start with the bad decision that the defendant made. Because
8 the defendant can be a good person in every other aspect of his
9 life, but here, he was tempted by greed. He gave into that
10 temptation, and he made the bad decision not just to lie to the
11 SEC, but to countless investors.

12 So, the lie that's in the plea agreement is that the
13 defendant told the SEC, I did not get money for Mediatrix
14 Capital before 2016. That was untrue, and the defendant knew
15 it. He knew that, because he had partnered with Michael
16 Stewart, who had previously been sanctioned by the Commodities
17 Futures Trading Commission for engaging in fraud, something the
18 defendant knew, and that should have given him pause.

19 The two of them solicited about \$500,000 from various
20 investors, and burned through it with spectacular losses. He
21 knew that Stewart was losing money in 2015, but throughout the
22 period of the fraud that his partners committed, Mr. Young,
23 knowing that that wasn't true, would repeat and tell every
24 investor who testified at the trial and countless others that
25 Mediatrix had been in existence from 2013, it wasn't some new

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1 fancy startup, and it had never had a month of losses. Never.
2 Which gave investors enormous confidence, because some of the
3 other claims that they were making would have been hard to
4 believe otherwise.

5 THE COURT: Did he admit that to you in your
6 preparation sessions?

7 MR. FIELDS: Your Honor, I -- the terms of our plea
8 agreement prevent me from using any information he provided in
9 our preparation sessions against him at sentencing. So, I don't
10 want to get into that too much, but I can say that he did tell
11 us during those preparation sessions and at trial the facts that
12 are known in the plea agreement, which is that he lied to the
13 SEC, that this statement that Mediatrix had been founded since
14 2013 was false, and that they had in fact lost investor money in
15 2015.

16 THE COURT: I respect your need to not talk much about
17 your preparation sessions, but the trial itself was a public
18 forum. Did he testify about that at trial?

19 MR. FIELDS: He did, Your Honor.

20 THE COURT: And he admitted that he had lied to
21 investors?

22 MR. FIELDS: His testimony during the trial was that
23 those statements were not true. So, Mr. Young knew enough.
24 Now, in this case, the plea agreement here, Your Honor, you will
25 see in a lot of these plea agreements, this one is like pretty

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1 unique. Mr. Young could have been sitting in Judge Martinez's
2 courtroom charged with the very same fraud as his defendants,
3 because he made statements that were material to that fraud:
4 these statements about Mediatrix's founding, and about whether
5 or not it had ever had any monthly losses.

6 He received substantial consideration from the getgo
7 simply by the terms of this plea agreement by being allowed to
8 plead to simply lying to the SEC, and getting this benefit that
9 he would have a sentence between ten and 16 months.

10 The Government had originally contemplated this range
11 of ten to 16 months, Your Honor, and our recommendation of 12
12 months actually reflects the fact that, you know, it's at the
13 top of the new guideline range, but it's at the sort of bottom
14 of what we had contemplated. And some of that is a testament to
15 the defendant's substantial cooperation, which we can't deny.
16 But he should not get any more benefit than that, Your Honor.

17 So, the dispute here is should he get six months or 12
18 months? So, we spent a lot of time with Mr. Young these past
19 couple months. We've also spent a lot of time with the victims
20 in this case, Your Honor. Those victims, some were financially
21 devastated. Some trusted Mr. Young because of that charity,
22 because of his outward religiosity. They were inspired by it,
23 and they wouldn't have invested in this without -- without his
24 involvement. He's a but-for cause of millions of dollars of
25 losses.

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1 THE COURT: Why is there no request for restitution?

2 MR. FIELDS: Well, as a technical legal matter here,
3 Your Honor, the victim is the SEC. And so the SEC as a
4 government agency wouldn't be entitled to restitution, but one
5 of the things the Government considered in the plea agreement
6 here, Your Honor, was reached after a lot of careful
7 consideration, because we're dealing with a 129 million-dollar
8 fraud scheme that defrauded dozens of investors of all
9 backgrounds across the United States and the world. The impact
10 of the scheme was devastating.

11 THE COURT: Let me ask you this: From what I'm
12 hearing from the defense counsel and in the papers, they want
13 the lowest possible fine, because essentially Mr. Young has had
14 to take low-level jobs like DoorDash to support his family. But
15 what I'm reading into here is that he received millions of
16 dollars himself. He purchased a 3 million-dollar house, and he
17 is contesting the SEC's efforts to use the house for restitution
18 to victims.

19 What is the truth of his financial situation, to the
20 extent you know it?

21 MR. FIELDS: To the extent we know it, it's consistent
22 with paragraph 69 of the PSR. The defendant has a net worth of
23 over \$4 million. And it is somewhat galling to the Government,
24 and it's among the reasons we're recommending a 12-month prison
25 sentence instead of, you know, agreeing with the six months.

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1 There has been some limited acceptance of responsibility here,
2 Your Honor, but it is not total.

3 The defendant continues -- he can take whatever
4 position he wants in the civil proceedings, but there has been
5 no expression of remorse for all of these victims. As far as
6 the Government can tell, the defendant has never made really
7 active efforts to provide for restitution to these victims, and
8 he knows full well, even if he was lied to sometimes by his
9 partners, it was a fraud. It was a fraud, and he profited from
10 it.

11 He's living in this mansion in Greenwood Village that
12 is built on fraud proceeds. He's never fully grappled with
13 that. He's taking loans from his friends, even though he has
14 well over \$80,000 in the bank, to pay his legal fees. He's
15 continuing to sort of solicit money for himself, and all of that
16 is -- I think goes on the side of the ledger, which is why the
17 Government is asking for 12 months of imprisonment here.

18 There has been some acceptance of responsibility here,
19 but the defendant has a long way to go. And a 12-month sentence
20 would reinforce respect for the law, would reinforce the serious
21 nature of this crime, to the extent the defendant doesn't fully
22 recognize it and grapple with it, and make sure that he -- next
23 time he thinks about using his considerable, considerable skills
24 as a salesperson to engage in something that he should not, that
25 he pauses, and he has second thoughts about that.

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1 This crime, even some of the victims -- even those who
2 were wealthy, Your Honor, who had the money to lose, it
3 devastates them in other ways, because again, they were dealing
4 with someone that they trusted. This was supposed to be a
5 pillar of the community, someone who feared God and went to
6 church and devoted their life to charity. And he would sit
7 there, and he would tell them straight-faced, this company has
8 never lost money, when he knew that that wasn't true. And he
9 took their money.

10 They know that, and that betrayal of trust, Your Honor,
11 is something that can't be measured in dollars. That's a
12 betrayal that people live with forever that impacts their future
13 relationships with businesspeople, with others that they know.
14 It's corrosive to markets. It's corrosive to communities. All
15 of that is something that the Court -- we would urge the Court
16 to consider when it's imposing sentences here, because it's not
17 just about the money. It's not just about a lie to the SEC.

18 And now I come to the SEC. The defendant -- again,
19 another reason for the 12 months here is there is a tendency for
20 the defendant to minimize even what is his otherwise less
21 culpable role in this scheme. So, the defendant did not have
22 full insight into the entire fraud, but he certainly knew enough
23 here, Your Honor, and he continues to minimize that.

24 So, in his original pleading he talked about how, you
25 know, the SEC, this isn't really that serious of a crime. He

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1 doubts the fact that even after he had gotten a subpoena from
2 the SEC, and even after the SEC is asking him really pointed
3 questions about some of the more outlandish claims related to
4 this, you know, so called world class foreign exchange trading
5 program that's never had losses and has returns of, you know,
6 70 percent per year, even after that, he continued to solicit
7 money from investors to the tune of several million dollars.

8 THE COURT: Are you saying he did it after the SEC
9 became involved in questioning him?

10 MR. FIELDS: Yes. Yes, Your Honor. So, the defendant
11 finally did the right thing and cooperated, but it was late.
12 And as the Government pointed out in its sentencing papers, he
13 did that basically when all the variables for calculating his
14 self-interest had started to turn against him. He had the
15 opportunity early on to be fully forthcoming to the SEC and say,
16 look, actually, we lost money in 2015.

17 And if the SEC had known that, they may have been able
18 to take action even earlier and stop at least some of those
19 investors from losing money. He didn't think about that at the
20 time, Your Honor. He was more interested in his sort of
21 personal -- his personal wealth. This was his sole source of
22 income at the time.

23 And often in white collar cases there can be this sense
24 of rationalization; right? I'm doing all these great things in
25 the community. I finally -- you know, I'm with this company,

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1 and I deserve all of this, and a tendency to sort of look the
2 other way. And that's what happened here, Your Honor, with
3 lasting harm to all of these victims.

4 So, this is a complicated case. You have to balance,
5 you know, all these friendships, all the charity, everything,
6 all the good the defendant has done against this very, very bad
7 decision. In the Government's view, 12 months here at the low
8 range of what we sort of contemplated really does get at the
9 3553(a) factors, and is consistent with everything else.

10 So, he knew enough to know better. He's incredibly
11 intelligent, but he made these conscious decisions to line his
12 own pockets with millions of dollars. He hasn't expressed very
13 much remorse for any of these victims. And so deterrence,
14 general deterrence, definitely, but also specific deterrence,
15 the need to promote respect for the law, and just the
16 seriousness of this crime all weigh in favor of the recommended
17 sentence of 12 months, and a fine at the high end of the
18 guidelines, Your Honor.

19 THE COURT: In the plea agreement, the parties thought
20 that the guideline was going to be ten to 18.

21 MR. FIELDS: Ten to 16, Your Honor.

22 THE COURT: Ten to 16. And the Government recommended
23 12. So, right more or less in the middle, just below the
24 middle. But it turns out that the guideline was recalculated,
25 and now it's six to 12. Why doesn't the Government stick with

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1 its position that it should be somewhere in the middle of the
2 guideline range instead of now going right to the top of it?

3 MR. FIELDS: I think, Your Honor, the guidelines are
4 an important consideration, and the Government takes them into
5 account, but they are not the end of the analysis. And I think
6 regardless of what the range had been, whether it was ten to 16
7 or now it's six to 12, 12 months is a sentence that incorporates
8 all of the statutory 3553(a) factors the Court has to consider.

9 The Government, after the guideline range was
10 recalculated, seriously considered, like, should it still be in
11 the middle of the range? Right? How much weight are we going
12 to give to the guidelines? And we give them some weight, but
13 the most weight in this case, Your Honor, goes towards the
14 dozens of victims who lost millions of dollars in a scheme for
15 which the defendant continues to live in a mansion in Greenwood
16 Village without any consideration for any of them, without, you
17 know, agreeing to try to make that financial part of it right.
18 All under circumstances where he acknowledges the crime, but
19 hasn't fully grappled with it, and still refuses to fully accept
20 responsibility.

21 THE COURT: Interesting, isn't it, that a couple of
22 the victims have testified here today in his support, even
23 though they lost their money?

24 MR. FIELDS: Yes, Your Honor. The defendant can have
25 that effect on people.

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1 (Laughter)

2 MR. FIELDS: He is a gifted salesperson. He comes
3 across as a really good person, and I can actually -- the sample
4 that you saw today wouldn't be sort of misrepresentative, like,
5 among other victims; right? There are some who have nothing but
6 forgiveness in their hearts. They are also people of faith who
7 understand that good people make bad decisions, and they believe
8 that the defendant is going to come back from this and continue
9 to be a good member of the community.

10 And that might all be true, Your Honor, but it's one
11 factor among the many the Court has to consider. The harm to
12 the markets, the harm to all the other victims who are
13 devastated -- the United States mentions one victim in
14 particular who testified at the trial. He was a flooring
15 manager at a big box retailer.

16 THE COURT: He was what?

17 MR. FIELDS: He was a manager at a big box retailer
18 that did flooring. Floor and decor; right? So, you know, a
19 respectable middle class position. So respected this defendant,
20 and so respected his faith and all of the outward signs of his
21 success, that he emptied half of his retirement account,
22 invested in the scheme, and lost it all. Those are the -- some
23 of the people who invested in the scheme are like that person.

24 Mr. Young has not even in his statement today expressed
25 any remorse for all of these people who lost that money. And

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1 that is a huge consideration, Your Honor. Twelve months is a
2 sentence that incorporates all of his good qualities, all of his
3 cooperation, but also reflects the damage that he's done to
4 people's sense of trust, to the markets, his disrespect for the
5 law, and that will promote general deterrence. So, a sentence
6 of 12 months, not one in the middle of the new range, is one
7 that is appropriate. Unless the Court has any further
8 questions?

9 THE COURT: No. Thank you. Probation?

10 MS. JOHNSON: Good afternoon, Your Honor. For reasons
11 stated in my recommendation, I would still recommend a sentence
12 of four years probation with the fine -- I wouldn't oppose,
13 based on the amount of money that's accessible to Mr. Young,
14 wouldn't oppose a higher fine. It does seem that he has the
15 ability to pay. And then the 150 hours of community service.

16 THE COURT: Well, unless I made a mistake, your
17 recommendation was four years of probation and a 4,000-dollar
18 fine.

19 MS. JOHNSON: Correct.

20 THE COURT: That's the smallest fine.

21 MS. JOHNSON: Yes. And I'm just letting the Court
22 know that we wouldn't oppose, and I don't believe there's a
23 reason that he wouldn't be able to pay a higher fine if the
24 Court ordered that.

25 THE COURT: And you've recommended 150 community

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1 service hours, and the defendant wants that cut in half. What
2 is your position?

3 MS. JOHNSON: I would still recommend the 150 hours.
4 Whether he gets supervised release or probation, I think that
5 the 150 hours is appropriate.

6 THE COURT: Thank you.

7 MS. JOHNSON: Thank you.

8 THE COURT: Anything else anybody else wants to say
9 now that they've heard the other arguments?

10 MR. LEEDY: One moment, Your Honor. Thank you, Your
11 Honor. We have nothing further.

12 THE COURT: A couple more questions. Many times in
13 these cases, usually the defense requests a sentence of 12
14 months plus one day. I've heard that time and again. And so
15 that people understand what that means, if you get the plus one
16 day, you are eligible for good time credit, whereas otherwise,
17 you're not.

18 So, my question is, has anybody given any thought to
19 that, and would that require an upward variance in this case?

20 MR. FIELDS: Thank you, Your Honor. I did give that
21 some thought, and I approached the lectern with some pause
22 because I am afraid that asking for the extra day could be
23 construed as a breach of our plea agreement. Realizing as a
24 practical matter that 12 years and one day is shorter than 12
25 months, 12 months and a day in the abstract I think would be

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1 consistent with the 3553(a) factors, and assuming that the
2 defense would not oppose such a sentence or construe it as a
3 breach of the plea agreement given its practical implications,
4 the Government would not oppose such a sentence.

5 THE COURT: And is it a variance or not? As a
6 practical matter, it's a variance down, but as a technical
7 matter, it's a one-day variance up.

8 MR. FIELDS: And so I think erring on probably like
9 the more formalistic side of the law, I would probably construe
10 it as a variance. At least as it sits there on the judgment it
11 would look like a variance, but one that all the parties would
12 understand was actually an act of mercy.

13 THE COURT: Mr. Leedy, do you have anything to say
14 about that?

15 MR. LEEDY: Your Honor, I think that analysis is
16 right. I think the one day would make it an upward variance,
17 but I understand what the Court would be trying to achieve,
18 which is effectuate the reduction for good time credit. The
19 other option to do with that is just anticipate the good time
20 credit being what we all know it to be, which is approximately
21 two months in a sentence, and impose a sentence with that
22 consideration in mind.

23 THE COURT: Would you consider that to be a violation
24 of the Government's plea agreement?

25 MR. LEEDY: Well, the Court's imposition of the

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1 sentence is not a violation of the Government's plea agreement.

2 THE COURT: But Mr. Fields is worried about that.

3 MR. LEEDY: I don't believe he's requested that or
4 strayed outside the plea agreement.

5 THE COURT: All right. Thank you for your arguments
6 and comments, and I certainly appreciate all the people that
7 came. It is a tough case. People ask me sometimes over my
8 career, what are the hardest cases to sentence? And certainly
9 the answer for me is vehicular homicide. I won't go into the
10 reasons, but you have, quote, innocent people who made a tragic
11 mistake causing the death of somebody, usually in an automobile,
12 and you typically will see full courtrooms with half the side
13 mad as can be because they lost their loved one, and the other
14 half urging the Court not to make it worse by putting the person
15 in prison.

16 But cases like this really are not easy either, because
17 we are dealing with somebody that all of you have told me and
18 the Government has told me is an upstounding -- upstanding
19 member of the community. And in every other aspect of his life,
20 apparently has been charitable, a man of faith, all the things
21 we've heard today and I've read about.

22 But by the same token, as I also said at the beginning
23 of this hearing, I worry that Courts shouldn't be giving the
24 white collar criminal who can afford the Mr. Leedys and
25 Mr. Winocurs of the world as their lawyers a better shake than

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1 we give your common everyday thief represented by Mr. Leedy's
2 former employer, the public defender, who is engaged in some
3 form of street crime.

4 I at least have tried to be fair in that respect over
5 the years. But it's not easy, because people like Mr. Young,
6 who have otherwise led a very spotless life, are not the type of
7 people that ordinarily we expect to see in prison.

8 In this case, Mr. Young has pled guilty to the crime of
9 making a false statement. Under the law, the Court could
10 sentence him to not more than, but up to five years in prison,
11 that's what the statute provides; not more than but up to
12 \$250,000 in fines in addition to prison; up to three years of
13 supervised release, that's like parole; and a nominal 100-dollar
14 fee that every case has.

15 The facts in very brief summary as stated in the plea
16 agreement are these: Between 2015 and 2019, Mr. Young and two
17 partners owned and operated a company they called Mediatrix
18 Capital, Inc. They provided documents to potential investors in
19 which they claimed that Mediatrix was an industry-leading
20 trading adviser for foreign currency FX spot and FX options,
21 that their trading team was composed of some of the best and
22 most respected strategists in the industry, and that their
23 business model had made consistent superior profits for their
24 clients.

25 In 2015, Mediatrix, through the defendant, induced at

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1 least seven investors to invest more than \$500,000 in the
2 foreign exchange market, but all or at least the vast majority
3 of those investors' funds were lost by the end of 2015 due to
4 two -- due to poor trading results.

5 In 2019, after this has been going on for four years,
6 Mr. Young was subpoenaed by the SEC to testify under oath during
7 the SEC's investigation of the company. Before testifying, he
8 was warned that knowing and willful false testimony could result
9 in imprisonment and fines. Nevertheless, in response to an SEC
10 representative's question as to when Mediatrix Capital first
11 raised funds from an investor, Mr. Young said that it was in the
12 first quarter of 2016. That answer was false, and was known by
13 the defendant to be false when made, and it was material to the
14 SEC investigation.

15 Those facts that I have just summarized come right out
16 of the plea agreement, to which both sides, obviously including
17 Mr. Young, agreed. The underlying facts beyond those stipulated
18 facts were as discussed in part by Mr. Fields, and are of course
19 very well known to him due to his involvement not just in this
20 case, but in the case against Mr. Stewart and the other partner.

21 And as Mr. Fields said, there are things that Mr. Young
22 to this day has not confessed to, or has not specifically shown
23 remorse for that are troubling to the Government and to the
24 Court. There are investors who have been seriously injured, and
25 I know that two of the investors and probably many of them

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1 either have or would have stood before this Court and said, we
2 don't think Mr. Young is the kind of person that would do that.
3 We don't think he's dishonest. We have no bone to pick with
4 him. He's our friend. He's a man of faith, and all those
5 things that we heard. But the fact is that he really was part
6 of this conspiracy, this scheme, and that's why he's in federal
7 court with a felony on his record now.

8 In terms of what the Courts consider in determining a
9 sentence, it's frankly fairly subjective in many respects. One
10 thing we consider is the federal sentencing guidelines. You've
11 heard references to the guidelines today. The parties always
12 estimate -- calculate and estimate what they think the
13 applicable guidelines will be in a particular case, and that
14 includes the probation office, but calculating the guidelines is
15 something of a work of art.

16 When I went to judge school, there was an expert back
17 in DC on the calculation of guidelines. And his explanation of
18 how it works literally went over the head of -- heads of all
19 these new judges like me. There's a manual this thick that
20 tells us how to calculate the guidelines in a particular case.
21 We all do our best. In this case, the original calculation was
22 ten to 16 months.

23 Now, what is a guideline? A guideline is just that.
24 It is an advice to the judge. It's not binding on the Court.
25 The not more than five years is binding on me, but the

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1 guidelines are not. But we are expected to know the guideline,
2 to consider the guideline, and unless there's a good reason to
3 depart from or vary from the guideline, to sentence within the
4 guideline range in most cases. Really in all cases.

5 So, that's a factor, and that's the six to 12 months
6 that the parties have been talking about. It is not unusual for
7 the defense to recommend the bottom of the guidelines, here six
8 months, for the Government to recommend the top of the
9 guidelines, here 12 months. I see that a lot in court. And
10 they both explain their reasons for those recommendations.

11 But we consider more than just the guidelines. The
12 nature and circumstances of the offense, obvious. And here,
13 according to what I've read and learned, Mr. Young used his very
14 admirable religious and charitable background to gain the trust
15 of the victims who invested in this fraud. I don't really know
16 how much of the money that Mr. Young ended up with himself. The
17 documents in the files say that he personally took at least
18 7.9 million, but I don't know if that's correct or not.

19 But it does seem clear to me that he profited
20 handsomely from the fraud, even if he was not as intimately
21 knowledgeable of the fraudulent intent and the details as the
22 partners. In other words, looking at this in terms of the
23 seriousness of the offense and thinking about the investors who
24 lost large amounts of their money, it's a serious, big deal.

25 History and characteristics of the defendant. That's

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1 where the defendant shines, and that's where all of you have
2 communicated with the Court. He has no criminal history. That
3 is not something we see very often, folks, here in federal
4 court. Even in state court, you don't see defendants very often
5 that come before you on a very first offense, and certainly not
6 people of his age. The Government took that into account in
7 deciding what the plea bargain would be. I get that. But I
8 consider that to be a point obviously in Mr. Young's favor.

9 His personal history. I learned more about his
10 personal history by reading 47 pages of your letters than I
11 usually know in a case. And all of those convinced me that with
12 the exception of this issue here, his personal history has been
13 stellar, and he has many, many supportive friends. So, I not
14 only read every letter, and I did, but I take those into
15 account.

16 We are required to consider the need for the sentence,
17 and that involves things such as promotion of respect for the
18 law. Mr. Young did not demonstrate his typical respect for the
19 law in this particular case, particularly where under oath he
20 gave false testimony to the SEC.

21 Punishment. There has to be a certain amount of
22 punishment factored into a sentence.

23 Deterrence. In every case, we hope that our sentence
24 will deter the defendant and others from committing similar
25 crimes. In this case, I don't have any expectation at all that

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1 Mr. Young is going to commit another crime like this. I would
2 be dumbfounded. But general deterrence, Mr. Fields was talking
3 about general deterrence, means the word gets around. The U.S.
4 Attorney's Office often issues a press release, whatever.
5 People hear about a case. They hear about the sentence. And
6 hopefully, that deters anybody who might be thinking of doing
7 something like this from doing it. That's a factor.

8 Community safety. That usually is in terms of violent
9 behavior. In this case, it's financial safety, but not a major
10 factor in community safety in this particular case.

11 Rehabilitation. Not a factor.

12 We are commended and commanded to avoid unwarranted
13 disparities in our sentencings. We shouldn't be sentencing one
14 man for one amount of time and another man for another amount of
15 time if they did the same thing. That's where the guidelines
16 come back into the equation, because the guidelines are based on
17 thousands and thousands of sentences that judges have given in
18 certain kinds of cases, all compiled into a guideline of what
19 the range typically would be to avoid unwarranted sentencing
20 disparities.

21 Restitution to victims is often a factor. It's not
22 specifically a factor in this case. I'm going to assume that it
23 might be a factor in the other criminal case involving Stewart
24 and the partner.

25 Finally, I take into consideration the recommendations

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1 of people that have something to say. And I try to be as open
2 as I can to anybody of interest, to let them say their piece or
3 write their opinions and letters.

4 The Government, as you know, is recommending 12 months
5 and a 40,000-dollar fine. One year of supervised release.
6 Mr. Fields explained the reasons. I don't have to repeat that.

7 The defendant initially recommended probation, but
8 withdrew that recommendation, and now recommends the bottom of
9 the guidelines, a six-month prison sentence. And Mr. Leedy has
10 summarized his reasons for that.

11 Probation has always believed that this is a probation
12 case. I don't agree with probation, but that's what they have
13 said, and they have stuck to it. And I respect our probation
14 office. It's a fabulous office, but that's why I'm sitting here
15 and they're sitting there. I just have to make up my own mind
16 on things. It means no disrespect whatsoever to anyone in the
17 probation office.

18 I'm going to sentence Mr. Young to prison. He deserves
19 to go to prison. The investors deserve that the Court not just
20 do a slap on the wrist. And I'm going to sentence him to 12
21 months, but add the one day. That gives him the opportunity to
22 get credit against the sentence for time -- good time, and I'm
23 sure he will get that credit, because he will be a model inmate.
24 And I think something in the range of eight months net is
25 reasonable in the circumstances.

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1 One year of supervised release. I'm going to adopt the
2 terms and recommendations for mandatory and standard and special
3 conditions of supervised release. There is no objection to any
4 of that except for the number of hours of community service.
5 I'm going to split the difference there and ask for and order
6 that he perform 100 hours of community service.

7 I will fine him \$4,000, which is the lowest fine within
8 the guidelines. I am mindful of the fact that though he might
9 have reaped handsomely from this, he's got a family to support.
10 Apparently he is a defendant in a civil case. I think 4,000
11 compensates the Government adequately in the circumstances.

12 One hundred-dollar special assessment fee.

13 Mr. Young is entitled to appeal to the Court of
14 Appeals. He has to do that within 14 days of the entry of the
15 Court's judgment, or he will lose that opportunity, if he wishes
16 to appeal.

17 The Court will recommend placement here in Colorado so
18 that he can be as close as possible to his family and friends.
19 Does anyone object to allowing him to self report?

20 MR. FIELDS: No objection.

21 THE COURT: What that means, folks, is that instead of
22 having the marshal come in and put him in cuffs and lead him
23 out, he can walk out of here with the rest of you, but he will
24 get a letter from the Bureau of Prisons, and that will explain
25 to him where and when to report, and he should do that. If he

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1 doesn't do that, he will be back here this time in cuffs, but I
2 have no concern that he is a flight risk. I have no concern
3 that he's a risk of harming anybody, and I'd like to see him be
4 able to walk out and report on his own terms.

5 Is there anything else today?

6 MR. FIELDS: One minor housekeeping point, Your Honor.
7 The defendant's sentencing submission was submitted under
8 restriction. In the Government's view, there's no reason to
9 restrict it. I know that some victims would like to see his
10 sentencing statement. So, we would ask that it be published.

11 MR. LEEDY: Your Honor, the brief in support of
12 restriction I think is due in two days, and we were planning to
13 file that. The reason for the restriction is that it referenced
14 cooperation, which is typically something we don't like to see
15 public if an individual is reporting for a prison sentence, or
16 otherwise, quite frankly.

17 THE COURT: Would you gentlemen be willing to
18 compromise and have the sentencing statement redacted to
19 eliminate the cooperation piece made public?

20 MR. FIELDS: Your Honor, I think that's an adequate
21 compromise.

22 MR. LEEDY: We can do that, Your Honor.

23 THE COURT: All right. Done. Anything else?

24 MS. JOHNSON: Your Honor, would you order the interest
25 be waived on the fine, and due and payable immediately?

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1 THE COURT: Yes. Thank you, folks. That will
2 conclude the hearing. Good day.

3 (Proceedings concluded at 2:15 p.m.)
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REPORTER'S CERTIFICATE

I, KEVIN P. CARLIN, Official Court Reporter for the United States District Court for the District of Colorado, a Registered Merit Reporter and Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the proceedings contained herein at the time and place aforementioned and that the foregoing pages constitute a full, true, and correct transcript.

Dated this 25th day of June, 2024.



Kevin P. Carlin, RMR, CRR
Official Court Reporter

Exhibit B



NATIONAL INSTITUTE OF JUSTICE

FIVE THINGS ABOUT

DETERRENCE



Deter would-be criminals by using scientific evidence about human behavior and perceptions about the costs, risks and rewards of crime.

1. The **certainty of being caught is a vastly more powerful deterrent than the punishment.**

Research shows clearly that the chance of being caught is a vastly more effective deterrent than even draconian punishment.

2. Sending an individual convicted of a crime to prison isn't a very effective way to deter crime.

Prisons are good for punishing criminals and keeping them off the street, but prison sentences (particularly long sentences) are unlikely to deter future crime. Prisons actually may have the opposite effect: Inmates learn more effective crime strategies from each other, and time spent in prison may desensitize many to the threat of future imprisonment.

See "Understanding the Relationship Between Sentencing and Deterrence" for additional discussion on prison as an ineffective deterrent.

3. Police deter crime by increasing the perception that criminals will be caught and punished.

The police deter crime when they do things that strengthen a criminal's perception of the certainty of being caught. Strategies that use the police as "sentinels," such as hot spots policing, are particularly effective. A criminal's behavior is more likely to be influenced by seeing a police officer with handcuffs and a radio than by a new law increasing penalties.

4. Increasing the severity of punishment does little to deter crime.

Laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes.

More severe punishments do not "chasten" individuals convicted of crimes, and prisons may exacerbate recidivism.

See "Understanding the Relationship Between Sentencing and Deterrence" for additional discussion on the severity of punishment.

5. There is no proof that the death penalty deters criminals.

According to the National Academy of Sciences, "Research on the deterrent effect of capital punishment is uninformative about whether capital punishment increases, decreases, or has no effect on homicide rates."

In his 2013 essay, "Deterrence in the Twenty-First Century," Daniel S. Nagin succinctly summarized the current state of theory and empirical knowledge about deterrence. The information in this publication is drawn from Nagin's essay with additional context provided by NIJ and is presented here to help those who make policies and laws that are based on science.

Source: Daniel S. Nagin, "Deterrence in the Twenty-First Century," in *Crime and Justice: A Review of Research*, vol. 42: Crime and Justice in America: 1975-2025, ed. Michael Tonry, Chicago: University of Chicago Press, 2013.¹

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Five Things About Deterrence

NIJ's "Five Things About Deterrence" summarizes a large body of research related to deterrence of crime into five points. Two of the five things relate to the impact of sentencing on deterrence — "Sending an individual convicted of a crime to prison isn't a very effective way to deter crime" and "Increasing the severity of punishment does little to deter crime." Those are simple assertions, but the issues of punishment and deterrence are far more complex. This addendum to the original "Five Things" provides additional context and evidence regarding those two statements.

It is important to note that while the assertion in the original "Five Things" focused only on the impact of sentencing on deterring the commission of future crimes, a prison sentence serves two primary purposes: punishment and incapacitation. Those two purposes combined are a linchpin of United States sentencing policy, and those who oversee sentencing or are involved in the development of sentencing policy should always keep that in mind.

"Sending an individual convicted of a crime to prison isn't a very effective way to deter crime."

Prison is an important option for incapacitating and punishing those who commit crimes, but the data show long prison sentences do little to deter people from committing future crimes.

Viewing the findings of research on severity effects in their totality, there is evidence suggesting that short sentences may be a deterrent. However, a consistent finding is that increases in already lengthy sentences produce at best a very modest deterrent effect.

A very small fraction of individuals who commit crimes — about 2 to 5 percent — are responsible for 50 percent or more of crimes.² Locking up these individuals when they are young and early in their criminal careers could be an effective strategy to preventing crime if we could identify who they are. The problem is: we can't. We have tried to identify the young people most likely to commit crimes in the future, but the science shows we can't do it effectively.

It is important to recognize that many of these individuals who offend at higher rates may already be incarcerated because they put themselves at risk of apprehension so much more frequently than individuals who offend at lower rates.

"Increasing the severity of punishment does little to deter crime."

To clarify the relationship between the severity of punishment and the deterrence of future crimes, you need to understand:

- The lack of any "chastening" effect from prison sentences,
- That prisons may exacerbate recidivism,
- The different impacts of the certainty versus the severity of punishment on deterrence, and
- That individuals grow out of criminal activity as they age.

More severe punishments do not "chasten" individuals convicted of crimes.

Some policymakers and practitioners believe that increasing the severity of the prison experience enhances the "chastening" effect, thereby making individuals

Deterrence and Incapacitation

There is an important distinction between deterrence and incapacitation. Individuals behind bars cannot commit additional crime — this is incarceration as incapacitation. Before someone commits a crime, he or she may fear incarceration and thus refrain from committing future crimes — this is incarceration as deterrence.

convicted of an offense less likely to commit crimes in the future. In fact, scientists have found no evidence for the chastening effect.

Prisons may exacerbate recidivism.

Research has found evidence that prison can exacerbate, not reduce, recidivism. Prisons themselves may be schools for learning to commit crimes. In 2009, Nagin, Cullen and Jonson published a review of evidence on the effect of imprisonment on reoffending.³ The review included a sizable number of studies, including data from outside the U.S. The researchers concluded:

"... compared to non-custodial sanctions, incarceration has a null or mildly criminogenic impact on future criminal involvement. We caution that this assessment is not sufficiently firm to guide policy, with the exception that it calls into question wild claims that imprisonment has strong specific deterrent effects."

Certainty has a greater impact on deterrence than severity of punishment.

Severity refers to the length of a sentence. Studies show that for most individuals convicted of a crime, short to moderate prison sentences may be a deterrent but longer prison terms produce only a limited deterrent effect. In addition, the crime prevention benefit falls far short of the social and economic costs.

Certainty refers to the likelihood of being caught and punished for the commission of a crime. Research underscores the more significant role that *certainty* plays in deterrence than severity — it is the certainty of being caught that deters a person from committing crime, not the fear of being punished or the severity of the punishment. Effective policing that leads to swift and certain (but not necessarily severe) sanctions is a better deterrent than the threat of incarceration. In addition, there is no evidence that the deterrent effect increases when the likelihood of conviction increases. Nor is there any evidence that the deterrent effect increases when the likelihood of imprisonment increases.

A person's age is a powerful factor in deterring crime.

Even those individuals who commit crimes at the highest rates begin to change their criminal behavior as they age. The data show a steep decline at about age 35.⁴ A more severe (i.e., lengthy) prison sentence for convicted individuals who are naturally aging out of crime does achieve the goal of punishment and incapacitation. But that incapacitation is a costly way to deter future crimes by aging individuals who already are less likely to commit those crimes by virtue of age.

1. "Five Things About Deterrence" is available at <https://ncjrs.gov/pdffiles1/nij/247350.pdf>.

2. Mulvey, Edward P., *Highlights from Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders*, Juvenile Justice Fact Sheet, Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, March 2011, NCJ 230971. Available at <https://www.ncjrs.gov/pdffiles1/ojdp/230971.pdf>.

3. Nagin, Daniel S., Francis T. Cullen and Cheryl Lero Johnson, "Imprisonment and Reoffending," *Crime and Justice: A Review of Research*, vol. 38, ed. Michael Tonry, Chicago: University of Chicago Press, 2009: 115-200.

4. Sampson, Robert J., John H. Laub and E.P. Eggleston, "On the Robustness and Validity of Groups," *Journal of Quantitative Criminology* 20 (1) (2004): 37-42.