Supplemental Readings on § 3553(a) Factors

Judicial Application of § 3553(a) Factors

The casebook contains one excerpt from a case applying the factors appearing in 18 U.S.C. § 3553(a), which federal judges must consider when imposing a sentence. This supplement contains excerpts from two very different cases. As you are reading these excerpts, consider how broadly the judges have construed the 3553(a) factors. You will see that these excerpts contain some discussion of the United States Sentencing Guidelines, including offense level calculations and criminal history categories. You are not expected to understand those discussions at this point. Consider returning to these excerpts after we have covered the federal Guidelines system.

United States v. Doe
323 F. Supp. 3d 368 (E.D.N.Y. 2018)

WEINSTEIN, J.

On June 12, 2014, John Doe ("Doe" or "defendant"), a 29-year-old naturalized American citizen-whose name is withheld so that he can assist American authorities while minimizing risks to self and family-boarded a flight from John F. Kennedy International Airport ("JFK") to Turkey. Eventually he made his way into ISIS controlled territory in Syria. Between June and November 2014, he served ISIS in an administrative role. But, he was present in at least one battle, he received military training, he carried firearms, and he was introduced to explosive belts used to blow up civilians.

Despite his expectations of an Islamic utopia, the reality that he encountered was not like what he envisaged. Doe was unprepared for the unrestrained brutality of ISIS. He felt betrayed by the group's false representations of his Muslim faith. In October 2014, while in Syria, defendant sent an email message to the Federal Bureau of Investigation ("FBI") identifying himself and offering assistance to the United States government. He sought FBI help in returning home to New York.

Doe escaped from ISIS. He found his way to Turkey and into United States custody.

Defendant then began four years of full cooperation with United States law enforcement. At a time when the inner workings of ISIS were not well understood in the United States, he provided valuable, detailed information on ISIS's activities. He also helped deter others from joining ISIS and similar terrorist groups.

Doe was charged with providing material support to a foreign terrorist organization, 18 U.S.C. § 2339B, and receiving military-type training from a foreign terrorist organization, 18 U.S.C. § 2339D. He pled guilty on November 26, 2014. And he was sentenced on June 28, 2018.

Defendant's good personal history and the dangerous nature of his conduct present the court with a variety of sentencing issues: (1) the need to address the seriousness of his terrorism-related crimes, punishing and specifically deterring him, and generally deterring others; (2) the historical and contemporary context of citizens who travel abroad to aid foreign enemies of this and other countries; and (3) the legal requirements that a court evaluate defendant's individual circumstances, risk of recidivism, potential for rehabilitation, and culpability when crafting a sentence.

Above all, the court must consider how best to protect the public.

It should avoid needlessly destroying a defendant, but do what it can to encourage him to live a life within the law. *Cf. United States v. C.R.* , 792 F.Supp.2d 343, 511 (E.D.N.Y. 2011), *vacated and remanded sub nom. United States v. Reingold*, 731 F.3d 204 (2d Cir. 2013) ("Excessive and unnecessary imposition of suffering and destruction of opportunity for a constructive life as a youngster constitutes cruel and unusual punishment.") (citing David Gray, *Punishment as Suffering*, 63 VAND. L.REV. 1619, 1692-93 (2010)).

***

III. Sentencing Guidelines and Statutory Sentencing Requirements

A. Guideline Calculation

Defendant's charges are grouped for guideline calculation purposes. The base offense level is 26. [Presentence Report (PSR)] at ¶ 19. Twelve levels were added because the offense involved terrorism and two levels were added because the defendant's conduct supported the commission of violent acts. *Id.* at ¶¶ 20-21. The offense level was reduced by three for acceptance of responsibility and timely notification of guilty plea. *Id.* at ¶¶ 26-27. The total adjusted offense level is 37.

Despite his lack of criminal history, defendant's criminal history category is VI. Section 3A1.4(b) of the Guidelines applies because the offense "involved, or was intended to promote, a federal crime of terrorism." U.S.S.G. § 3A1.4 & comment n. 1; *see* 18 U.S.C. § 2332b(g)(5); *United States v. Awan*, 607 F.3d 306, 317 (2d Cir. 2010) (finding that a person may commit an offense involving a federal crime of terrorism "even if influencing or retaliating against government is not his personal motivation.").

The imprisonment range under the Guidelines is 360 months to life. ***

B. Statutory Sentence

At the time of defendant's arrest and guilty plea, a charge of providing material support to a foreign terrorist organization had a maximum prison term of 15 years. *See* 18 U.S.C. § 2339B. A charge of receiving military-type training from a foreign terrorist organization has a mandatory prison term of ten years. 18 U.S.C. § 2339D. Defendant faces a total statutory maximum prison term of 25 years.

Because defendant's combined statutory maximum sentence is 25 years, the defendant's restricted imprisonment range under the Guidelines is 300 months. Absent a 5K motion from the government, the defendant would be facing a mandatory minimum of ten years in prison. *See* 18 U.S.C. § 2339D.

C. 5K1.1 Letter

On June 8, 2018, the government submitted a motion, pursuant to Section 5K1.1 of the Guidelines and 18 U.S.C. § 3553(e), informing the court of the substantial assistance provided by the defendant. The government's 5K1.1 letter permits the court to depart from the statutory minimum sentence and Guidelines range.

***

V. 18 U.S.C. § 3553(a) Considerations

A sentence must "consider all of the § 3553(a) factors ... [and] make an individualized assessment based on the facts presented." *Gall v. United States*, 552 U.S. 38, 50, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007) ; *see also* 18 U.S.C. § 3553(a) (the court is instructed to consider the traditional sentencing factors of retribution, deterrence, rehabilitation, and public safety, as well as the "nature and circumstances of the offense" and the "characteristics of the defendant"). Defendant's unusual and complicated personal history makes his sentencing especially difficult and requires the court to consider myriad vectors.

A. Nature of the Offense and Characteristics of the Defendant

There is no doubt that defendant committed a serious offense. In June 2014, Doe left his home in America to travel overseas and join the "most brutal [terrorist] organization in the world." Hr'g Tr. 15:24-17:4, June 27, 2018; *cf.* Tanisha M. Fazal, *Religionist Rebels & the Sovereignty of the Divine*, 147 DAEDALUS: J. AM. ACAD. OF ARTS & SCI. 25, 33 (2018) ("Religionist rebels['] ... aims are often without limit, their means are frequently brutal, and attempts at negotiation may be futile."). He remained with ISIS for four months. There he received military training and was present in at least one battle.

The seriousness of defendant's offense must be weighed against his extraordinary cooperation with law enforcement over the past four years. *** The government reports that defendant's cooperation has been critical in several ISIS-related prosecutions and has supported numerous investigations and counterterrorism measures by the United States and its allies. Defendant's cooperation has come at significant risk to his own and his family's safety, a danger that he will continue to face.

In addition to providing material support to United States' ongoing counterterrorism efforts, Doe has shown a willingness to speak openly about his experience in ISIS in order to educate the public about the terrorist group and counter ISIS's false messages.*** He has worked with the government to deter others from joining terrorist groups, including participating in the intervention of a young man in Brooklyn who was on the verge of accepting jihadism.

Defendant's background and unconventional narrative warrant consideration. *** He is a 29-year-old naturalized American citizen with no criminal history. He grew up in a supportive, middle-class family in Brooklyn where he enjoyed a stable childhood typical of many American adolescents.

The death of his sister and her unborn child changed the course of defendant's life. He responded by adopting a renewed commitment to his faith with increasingly violent religious views. At a particularly vulnerable time, he immersed himself in the internet, falling prey to terrorist propaganda and eventually finding himself drifting towards radicalization. *Cf.* Jaime M. Freilich, *Section 230's Liability Shield in the Age of*

Online Terrorist Recruitment, 83 BROOK. L. REV. 675, 675 (2018) ("ISIS [social media] propaganda is crafted not just to stir the hearts of potential recruits but also to boost the organization's ghastly brand.") (internal quotations omitted); Alan Feuer, *One Brooklyn Man's Lonely Journey to Jihad*, NY TIMES, Jan. 4, 2018 ("Young and lost in modern America ... [he] took to the internet, immersing himself in religious videos and ultimately embracing the Islamic State.") (internal quotations omitted). Doe's decision to travel to Syria was primarily motivated by a desire to live in a utopian Islamic environment, rather than a desire to commit violence on the group's behalf. He was immediately disillusioned with the group and escaped after just four months in ISIS camps, surrendering to United States authorities and beginning a four-year period of cooperation.

Since his release from prison, defendant appears to be on a path towards reintegration: living with his parents in Staten Island, reestablishing his good relationships with his siblings, graduating from a City College with a finance degree, working for a neighbor as an electrician, and dreaming of settling down one day soon and starting a family of his own. ***

B. Deterrence

General and specific deterrence play a large part in the court's considerations, particularly given the increasingly common nature of terrorism-related crimes. *See* [Alexander Meleagrou-Hitchens et al., *The Travelers: American Jihadists in Syria and Iraq*, THE GEORGE WASHINGTON UNIVERSITY PROGRAM ON EXTREMISM at 12, 79 (Feb. 2018)] ("Since 2011, at least 50 Americans have been arrested for attempting to join IS[IS] overseas, with at least 30 more attempting to join other jihadist groups ... [and] there have been 22 jihadist attacks in the U.S."). The sentence imposed must not only provide adequate deterrence for the defendant, but for others with similar urges.

The court has the responsibility for designing a sentence that encourages cooperation with law enforcement. The sentence must not be so harsh that it discourages the defendant or other former extremists from coming forward and assisting the government in the future. *See* Sentencing Transcript, *United States v. Vinas*, 08-CR-0823 at 22 ("[D]eterrence can be a double-edged sword and the Court is mindful that just as sentencing should be designed to deter criminal behavior, it should also avoid deterring cooperation."); Adam Goldstein, *Former terrorist, and Prize Witness, Struggles to Make Ends Meet*, NY TIMES, Mar. 6, 2018 ("Cooperators are critical because you need an insider's views . . . It's almost essential at terrorism trials. There's only so much you can obtain and use from overseas. The government . . . has to live up to its obligations: cooperation is a two-way street.") (internal quotations omitted).

C. Risk of Recidivism

The court has given serious consideration and weight to defendant's risk of recidivism, as well as to the possibility that defendant may be a "quisling," a loyal soldier of the enemy who is lying in wait, prepared to commit a violent act on behalf of ISIS or another terrorist organization when called upon to do so.

Assurances have been sought that the defendant will not fall back into his former pattern. Two experts provided insight into the various factors in the defendant's history that suggest that he is not likely to reoffend. Noting the lack of data on terrorist recidivism rates, the experts stressed that any prediction of a former extremist's likelihood for recidivism is highly individualized and should be assessed on a case-by-case basis. Hughes Report at 8-9; Hr'g Tr. 20:15-21:4, June 27, 2018; see also Nicole Hong, *Terrorists' Lives After Jail in Focus,* WALL STREET J., Apr. 25, 2018 ("[W]ith limited data on recidivism for terrorism-related crimes, experts say the current system is inadequate in assessing how much of a risk these defendants pose.").

Mr. Hughes [Deputy Director of George Washington University's Program on Extremism and one of the defendant's expert witnesses on his risk of recidivism] pointed to several factors that mitigated defendant's risk of recidivism: (1) his desire to live an Islamic utopia was what apparently drove him to joining ISIS; (2) his decision to voluntarily leave the terrorist organization and turn himself in to law enforcement; (3) his significant cooperation with the government; and (4) his participation in speaking to a young man who appeared to be going down the same dangerous path as Doe had, and his willingness to speak publicly with academics, journalists, and researchers about his experiences. *See* Hughes Report at 1-2; Hr'g Tr. 11:3-23, June 27, 2018. ***

Expert Hughes included an assessment of defendant's current attitudes towards jihadism in his report, concluding that: "Doe now appears to have rejected the zealous idealism that drove him to leave his home in the first place. As he told me, 'All the [expletive] I've been through, I don't care anymore. America is my home.' " Hughes Report at 1.

While no one can ever be sure, the court believes that defendant has recognized the severity of his crimes and is not likely to move towards violent extremist behavior. No evidence has been presented that Doe has acted violently or expressed an intention to commit a violent act or otherwise support a foreign terrorist organization since his return to the United States. He appeared credible and forthright at sentencing about his intention to leave his radical past behind and his desire to live a normal life. The support he is currently receiving from his family will be critical in defendant's long-term reintegration. *See* Raafia Raees Khan & Feriha Peracha, *Deradicalization, Rehabilitating, and Reintegrating Violent Extremists*, 238 U.S. INST. OF PEACE 1, 4 (Nov. 2017) ("Familial involvement in the [deradicalization] process has consistently proven a determinant factor in a person's overall progress. Individuals whose families visited frequently tended to adapt more quickly to their reintegrated alternative lifestyles (typically within one to three years) than those with limited familial support.").

D. Rehabilitation

A weighty consideration is whether defendant's rehabilitation requires further incarceration. A lengthy prison sentence increases the risk that defendant will become embittered and regresses into radical beliefs. The prison system can be a breeding ground for radicalization. Islamic extremists often use "prisons to recruit new followers, reinforce the commitment of existing extremists and to network and exchange ideas with like-minded individuals." James Brandon, *The Danger of Prison Radicalization in the West*, 12 COMBATING TERRORISM CTR. SENTINEL 1, 1 (Dec. 2009); *see also* Hughes Report at 8. We see this danger regularly not only with Islamic extremists, but with white supremacists, gang members, and others. *See, e.g.*, SpearIt, *Spectacular or Specious? A Critical Review of the Spectacular Few: Prisoner Radicalization and the Evolving Terrorist Threat*, 39 T. MARSHALL L. REV. 225, 230 (2014).

The United States has yet to develop a unified strategy to address the problem of prison radicalization; there are few deradicalization programs or initiatives in place that are targeted to rehabilitate extremists and help them reenter society as lawful individuals. *See, e.g.*, Hr'g Tr. 27:21-30:3, June 27, 2018; Jessica Donati, *NYPD Analyst and Islamist He Tracked Are a Team Now*, THE WALL STREET J., Apr. 27, 2018 ("The U.S. lags behind its European counterparts in [counter-terrorism strategies], as it still lacks a targeted program to rehabilitate extremists and has no formal reintegration program, as dozens of convicts are set to be released in the next few years."). Other countries have addressed this problem by adopting policies that separate radicalized inmates from the general population. *See, e.g.*, Adam Nossiter, *France Toughens Stance in Combating Radicals in Prisons and School*, NY TIMES, Feb. 23, 2018 ("[P]erhaps the greatest menace is in the country's prisons, and it is there that the government of President Emmanuel Macron [of France] is concentrating its fire with the changes announced on Friday aimed at isolating hundreds of radicalized inmates.").

Further incarceration will inhibit defendant's reentry into lawful life and could encourage defendant to re-engage with violent extremism. Rehabilitation will more likely be achieved through a long term of supervised release, where he will be closely monitored by the Probation Department and can continue his cooperation with the United States government.

VI. Sentence

Defendant is sentenced to time served of almost two years, and ten years of supervised release. No fine is imposed because of his inability to pay one. A $200 special assessment is imposed.

The sentence balances the serious nature of defendant's crime with his unique personal story, including his substantial assistance to law enforcement for the past four years. Further imprisonment will not serve any legitimate penological goal; neither retribution, rehabilitation, deterrence, nor recidivism justify sentencing defendant to an additional term of incarceration. He has already served 21 months in prison, in addition to his almost two years of close supervision by Pretrial Services while released on bail. A longer term of incarceration risks stirring up defendant's feeling of persecution and inhibiting his ability to become a lawful and productive member of society.

The sentence imposed is in the best interest of the public's safety. Based on his individual characteristics, *** and expert testimony, *** Doe's background does not reveal a substantial risk of recidivating. General and specific deterrence are satisfied by the sentence imposed.

Supervised release is subject to the mandatory conditions listed in U.S.S.G. § 5D1.3(a) and standard conditions in U.S.S.G. § 5D1.3(c). Additional special conditions have been imposed. *See* U.S.S.G. § 5D1.3(d).

Defendant shall cooperate with the Probation Department's Computer and Internet Monitoring program, including allowing Probation to monitor and limit all of his electronic devices. *See* Prob. Ltr. at 1. He shall report to the Probation Department any and all electronic devices that he uses in his employment or at home. *See id*. A financial disclosure condition and a search condition are imposed. Probation Department may enter defendant's home and place of employment without notice.

Doe is not permitted to associate with any individuals involved in any radical extremist groups, including ISIS, or any other criminal enterprise, or to frequent any location where these groups meet, unless under the direction of the government. *See id.* at 1-2. Nor shall defendant access any website affiliated with any radical extremist group, or any other criminal group, unless in connection with his cooperation.

Probation is required to report to this court every six months on defendant's compliance. If he does anything that leads to suspicion that he may be involved in any terrorism-related crimes or other crimes, Probation is to report to this court, the United States Attorney's Office for the Eastern District of New York, and the FBI immediately. Defendant shall cooperate in any investigation that follows.

Defendant shall be placed in the Probation Department's low-intensity unit after two years if he demonstrates substantial grounds for believing he is rehabilitated. Probation may apply for termination of supervised release on behalf of the defendant after five years. Defendant may apply for termination at any time.

VII. Conclusion

Careful consideration has been given to the Sentencing Guidelines to ensure a sentence that is "sufficient, but not greater than necessary" under 18 U.S.C. § 3553(a).

Notes

1. The judge weighs the seriousness of the offense against the value of the defendant’s extraordinary cooperation with law enforcement and his personal history. Is this approach consistent with § 3553(a)?
2. The judge also weights the importance of deterrence against the risk of deterring people from turning themselves in and cooperating with law enforcement. Is this approach consistent with § 3553(a)?
3. How should the court think about the risk of recidivism? The relevant factor is the need “to protect the public from further crimes of the defendant.” When thinking about protecting the public, should the acceptable level of risk depend on the seriousness of the offense?
4. Consider how the court’s discussion of rehabilitation and the risks of prison might apply to other defendants. Does this argument prove too much? Read 18 U.S.C. §3582(a). That section requires that the court recognize that “imprisonment is not an appropriate means of promoting correction and rehabilitation.” Should the court have omitted any discussion of rehabilitation from its consideration of the defendant’s prison sentence or is this discussion acceptable because it considers potential *negative*, rather than positive, effects of imprisonment on the defendant?

United States v. Ciccolini

750 F. Supp. 2d 850 (N.D. Ohio, 2010)

GWIN, J.

With this sentencing opinion, the Court seeks to provide a thorough explanation of its sentence of Defendant Samuel R. Ciccolini.

I. Factual Findings

This case presents the Court with a very unusual set of facts. On July 13, 2010, the United States filed an information charging Defendant Samuel Ciccolini with one count of structuring bank transactions to evade reporting requirements in violation of 31 U.S.C. § 5324(a)(3) and one count of making a false income tax return in violation of 26 U.S.C. § 7206(1). *** On July 23, 2010, the Defendant pled guilty to both counts. *** On October 20, 2010, Defendant Ciccolini appeared before this Court for sentencing.

Defendant Ciccolini is an ordained Catholic priest. Although assisting with a parish, he has spent most of his working efforts in social welfare programming. He was formerly the Executive Director of the Interval Brotherhood Home, a residential drug and rehabilitation center, located in Akron, Ohio. The Defendant founded the Interval Brotherhood Home in 1970 and has remained closely involved in its operation. Ciccolini was also the president of the S.R. Ciccolini, Interval Brotherhood Home Foundation, Inc. He started the Foundation in 1988 to primarily raise funds to support the Interval Brotherhood Home. The Foundation is funded primarily from contributions, fund-raising activities, and state grants. Throughout its existence, Ciccolini played a major role in its fund-raising efforts. Prior to the filing of these charges, Defendant Ciccolini retained nearly sole and exclusive control over both the Interval Brotherhood Home and its supporting Foundation.

Over time, the Interval Brotherhood Home became a very successful charity. It employs more than eighty full and part-time employees to provide treatment services to as many sixty-four men and women on a daily basis. With a 2010 budget of $4.7 million, the Interval Brotherhood Home receives its base funding from the Summit County Mental Health Board. Despite this public source of funding for ongoing operations, Ciccolini and the Foundation sought, and then hoarded, huge amounts of donations. The Foundation has completely paid all costs associated with its purchase and improvement of the Home's facilities and has liquid assets of $13.6 million, almost enough to totally fund the charity for three years even if all state support stopped and no additional donations were received.

The conduct underlying the charged offenses occurred during 2003 and 2004. From April 2003 to June 2003, the Defendant deposited $1,038,680 in cash into his bank accounts in 139 separate transactions of less than $10,000. The Defendant admitted that he structured the transactions to evade bank reporting requirements. 31 U.S.C. § 5324(a)(3). When asked where the money came from, the Defendant claims that he held more than a million dollars in cash in his room at the Immaculate Conception Church Rectory and that he only decided to deposit this money in 2003 because he was worried that changes to the appearance of U.S. currency would somehow diminish the value of his cash savings. Ciccolini also does not explain why he kept over $1 million in cash in his room during a time when he had other bank and investment accounts with millions of dollars. Nor could the Defendant explain why he structured the transactions to avoid the reporting requirements. Similarly, the

Defendant is unable to explain where this large sum of cash came from, other than implausibly claiming he accumulated it through interest and savings.

On April 15, 2004, the Defendant submitted a false U.S. income tax return. Specifically, Ciccolini stated that his personal income for 2003 was $101,064, whereas his total income for that year was at least $508,126. After an investigation by the Internal Revenue Service, it was determined that the Defendant had under-reported his taxable income from 2002 through 2005 by $945,635 and that he owed $292,136 in unpaid taxes. 26 U.S.C. § 7206(1). On May 11, 2010, the Defendant provided the government with a cashier's check, payable to the Internal Revenue Service, in the amount of $292,136 as payment of back-taxes.

On October 6, 2010 — approximately three weeks before his sentencing — United States Probations received a letter from Timothy J. Killian, President of the Interval Brotherhood Home Foundation. The letter stated that in July 2008, Defendant Ciccolini admitted to the Interval Brotherhood Home that he was under federal criminal investigation and that he had also embezzled $1,288,683 from the Foundation between 2000 and 2007. The letter, and later investigation by Probations, showed that Ciccolini embezzled funds that had been gifted to the Interval Brotherhood Home. Local contractors would donate their services to Interval Brotherhood Home, performing needed repair or construction work for no charge. Ciccolini then recorded an entry into the books of the Foundation, indicating that the Foundation paid the contractors for their services. Ciccolini would then draw a check on Foundation funds — usually made payable to a financial institution — and then would convert that check into cash. Some of the funds from these checks were deposited directly into his bank accounts, but Ciccolini also retained a significant portion as cash. After admitting this scheme to the Foundation, Ciccolini repaid the Foundation the $1,288,683.

After learning that Ciccolini had admitted embezzling Foundation funds and that he had also singly accumulated more than $5 million in a sole-directed trust, the Probations Department conducted a further investigation of Ciccolini's finances. The Probation Department investigation revealed that Defendant Ciccolini possessed significant assets — far outstripping any sums he may have accumulated through legitimate means. At the time of his sentencing, Ciccolini owned a Charles Schwab trust account with $5.2 million — mostly in cash — and separately held $385,973 in deposits at FirstMerit Bank. Bank records show Ciccolini opened the Charles Schwab account in 2008 and that most of the deposits into this account were made in the form of cash, cashier's checks, or as wire transfers from other bank accounts. The Schwab trust account had only limited equities, although it included shares of First-Energy stock. It primarily held various municipal bonds, cash equivalents, and government bonds with only limited income flows. At the time of his sentencing, Ciccolini held over $5,590,313 in cash, stocks, and bonds, even after repaying $1,288,683 to the Foundation and after having paid $292,136 in back-taxes earlier in 2010.

The Defendant's holdings at the time of the offense conduct in 2003 and 2004 are less clear, although bank records indicate that his FirstMerit bank account had more than $2 million and we also know Ciccolini had more than $1.1 million cash in his room at the rectory — money he used to illegally structure the financial transactions. In 2008, Ciccolini opened the Schwab trust account, and an analysis of the funding of that account indicates that most of the $5 million was accumulated by 2004. To fund the Schwab account in 2008, in June 2008, Ciccolini transferred $586,144 of cash and

$420,000 of stocks from another account. He followed this in July 2008 with a cash deposits of nearly $750,000 and in August with another cash transfer of $734,000 from another account. That September he then transferred an additional $1.2 million cash together with $1.9 million of stock and bonds. He followed these in November 2008 with a cashier check deposit of $252,000. Finally, in December 2008, he transferred $1.65 million of municipal bonds together with an additional $178,000 cash to the account. Apart from one equity holding, the overwhelming majority of the transfers to the Schwab account were conservative money or bond accounts that did not accumulate significant interest.

Defendant Ciccolini's vast wealth is impossible to legitimately explain. Ciccolini grew up in very modest circumstances— his father, a music teacher, died when Ciccolini was fourteen years old. His mother first worked as a housekeeper before working as a technician. He had six siblings. Ciccolini entered the seminary at 18, was ordained in 1969 and by 1986 he was only earning an after-tax income of only $25,700. Presumptively, he earned even less before as a young parish priest. Even assuming that Ciccolini earned the same 1986 salary from 1970 to 1986, he would have received only about $1.2 million in after-tax income from 1970 to 2004 and would only have received after-tax income of about $1.5 million through 2009. Moreover, the Defendant made his own significant charitable donations, especially to the Interval Brotherhood Home Foundation. Through 2004, the Defendant donated about $670,000 of his salary to the Interval Brotherhood Home and by the end of 2007, his donations reached almost $900,000. A rough calculation reveals that after these donations, at best, the Defendant could have legally accumulated a few hundred thousand dollars of earnings over his entire lifetime.

Ciccolini also says that he received gifts and bequests, which he claims help explain his current assets. Ciccolini identifies only approximately $75,000 in gifts that he received before 1999. In all, the Defendant claims to have received about $830,000 in gifts over the course of his tenure at Interval Brotherhood Home, with a total value of gifts through 2004 of about $230,000. In addition, the Defendant also received from his mother as an inheritance now worth approximately $576,000. Included in this inheritance are a $230,000 life insurance policy, and a home worth $101,000. The inheritance also includes 6,232 shares of FirstEnergy, worth approximately $218,000 at the time of the transfer and worth $245,000 at the time of sentencing.

The Court is not, however, persuaded that the inherited assets were all legitimately acquired. Rather, the Court believes that the funds used to make these purchases were also embezzled by Ciccolini — the only plausible explanation why a mother with six children would leave all her assets to the one child without children of his own and who obviously has no need for the bequest. Most likely, these purchases were made as a means of laundering funds that the Defendant embezzled from the Interval Brotherhood Home Foundation. However, for the purposes of these calculations, the Court gives Ciccolini the benefit of the doubt and will count all of these assets as legitimate.

An approximate calculation of the Defendant Ciccolini's legitimate after-tax earnings and inheritance to the time of sentencing totals about $1,506,000. By the end of 2003, his total legitimate earnings and inheritance totaled about $1,336,000. These figure fall far short of the $5,590,313 in liquid assets that Ciccolini accumulated by the time of his sentencing. Thus, even under the Court's generous calculations, it is quite clear that Ciccolini is unable to legitimately account for about $4,500,000.

***

III. Analysis

A. Guidelines Range Calculation

The Court begins by calculating Defendant Ciceolini's sentence under the 2009 advisory sentencing guidelines. The Court has compared the 2003 and 2004 editions of the sentencing guidelines and finds that they produce the same offense level computation.

On the first count — structuring financial transactions in violation of 31 U.S.C. § 5324(a)(3) — the Court looks to § 2S1.3. U.S.S.G. § 2S1.3. The Court finds that the funds used in this specific offense were the proceeds of criminal activity. Accordingly, under § 2B1.1 sixteen levels are added to the base level of six, resulting in a base offense level of twenty-two. U.S.S.G. § 2B1.1.

***

The Court also finds that the Defendant obstructed justice and should therefore receive a two-level increase in his offense level under § 3C1.1. U.S.S.G. § 3C1.1. During his plea colloquy, the Defendant testified that none of the money deposited was stolen or otherwise the product of illegal conduct. However, the Court finds that most — if not all — of the deposited money was in fact embezzled from the Interval Brotherhood Home. Under the sentencing guidelines, providing "materially false information to a judge" is obstruction of justice. U.S.S.G. § 3C1.1, Comment 4(f). The Court, therefore, increases the Defendant's base offense level two points. The Defendant's final adjusted offense level for this offense is twenty-four.

On the second count — making false tax returns under 26 U.S.C. § 7206(1) — the Court finds that the base offense level is eighteen. U.S.S.G. § 2T4.1(G). Additionally, because the unreported income derives from criminal activity, the Court finds that a two-level enhancement applies under § 2Tl.l(b)(l). 1 U.S.S.G. § 2Tl.l(b)(l). Thus, the Defendant's final adjusted offense level for the tax offense is twenty.

Under § 3D1.4, the Court finds that the combined adjusted offense level is twenty-six *** [and] the final combined adjusted offense level is twenty-six.

Since the Defendant has no criminal history category points, his criminal history category is I. An offense level of twenty-six and a criminal history category of I yields a suggested guidelines range of sixty-three to seventy-eight months imprisonment. The Court finds that there are no grounds for a departure from this calculation, because the offense conduct here falls within the heartland of those offenses envisioned by the Sentencing Commission when drafting the Guidelines.

B. 3553(a) Factors and Payment of Restitution

The Court must next consider the factors set forth in 18 U.S.C. § 3553(a) and must offer a reasoned explanation for its final sentence. Under 18 U.S.C. 3553(a), the Court must consider: the nature and circumstances of the offense and the history and characteristics of the defendant; the kinds of sentences available; the applicable advisory

Guidelines range; relevant policy statements by the Sentencing Commission; the need to avoid unwarranted sentencing disparities; and the need to provide restitution to victims. 18 U.S.C. § 3553(a); *United States v. Cousins*, 469 F.3d 572, 576 (6th Cir.2006) (emphasis added). After considering these factors, the Court must impose a sentence that takes into account the statutory purposes in § 3553(a)(2), specifically, the need for the sentence to: (A) reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) afford adequate deterrence to criminal conduct; (C) protect the public from further crimes of the defendant; and (D) provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. 18 U.S.C. § 3553(a)(2).

In considering the nature and circumstances of the offense, the Court finds that the Defendant was the founder and executive director of Interval Brotherhood Home and Foundation. The Interval Brotherhood Home is a not-for-profit corporation that provides drug and alcohol treatment to local, residents. The Defendant had nearly sole and exclusive control over the finances of the Interval Brotherhood Home and Foundation until 2008 and used that position to embezzle funds. The Defendant used a relatively elaborate scheme to falsely record invoices from people who made donations to the Foundation and then take that money for his own purposes. He often stored that money as cash in his room at the rectory. He also used the embezzled funds in the 2003 structured financial transactions.

Before the offense conduct, the Defendant's after-tax income and gifts, minus the donations he made, was about $760,000. At the time of his sentencing, his after-tax income and gifts, minus the donations he made is approximately $930,000. The Defendant also received an inheritance from his mother worth about $576,000. In all, the Defendant can currently account for about $1.5 million in legitimate funds through 2010 and can account for approximately $1.3 million in legitimate funds through 2004. Yet, these accounted-for funds fall far short of the $5,590,313 currently held by the Defendant. The Court finds that the Defendant embezzled at least $4.5 million from the Interval Brotherhood Home beyond the $1,288,683 that he already confessed to stealing.

With regard to Defendant Ciccolini's personal characteristics, he is sixty-eight years old and is an ordained priest. He entered seminary in 1960, when he was eighteen, and was ordained in 1969. Despite his financial crimes, he has given great service to the Akron community. He has no prior criminal convictions. He has a relatively serious heart condition, painful dental conditions, and is a smoker with the accompanying health conditions. He has no substance abuse problems. Despite the large amount of wealth he has accumulated, Defendant Ciccolini lives simply with no significant purchases, no vacations, and no untoward expenditures. The Court does find that the Defendant might suffer from a potentially undiagnosed psychological disorder that may have led him to hoard such large sums of cash in his room.

The Court considers the applicable guidelines range and the various sentences now available. As previously noted, the Court finds that the applicable Guidelines-recommended range is sixty-three to seventy-eight month's imprisonment. The Court may also order a fine of up to $250,000 on the structuring count and up to $100,000 on the tax fraud count. 18 U.S.C. § 3571; 26 U.S.C. § 7206(1). The Court may also order supervised release of not less than one year, but not more than five years. 18 U.S.C. §§ 3661(a)(l-8) & (c)(1). The Court may also order an award of restitution, per 18 U.S.C. §

3663, to the victims of the offense conduct. The Court notes that the Defendant has already paid the Internal Revenue Service $292,136 in back-taxes and has repaid the Interval Brotherhood Home the $1,288,683 he admits to embezzling.

The Court also considers the need to avoid unwanted sentencing disparities. However, it is generally difficult, given the dearth of information available, to determine whether a particular sentence may create a disparity. Nonetheless, the Court considers this factor. The Court also considers any relevant policy statements or guidance issued by the Sentencing Commission.

The Court also considers the need to provide restitution to the victims of the offense and the statutory purposes listed in § 3553(a)(2). In this case, these two particular considerations are closely related. As described in § 3553(a)(2), the Court essentially serves four purposes in sentencing: (1) deterring others from similar conduct; (2) deterring the offender from reoccurrence of the conduct; (3) rehabilitating and incapacitating the offender; and finally (4) imposing society's retribution for conduct that violates the law.

The Court finds relative to individual deterrence, that there is little likelihood that the Defendant will re-offend in a similar manner. Similarly, relative to incapacitation, the Court finds that there is little to suggest that rehabilitation is an important consideration. Relevant to both, the Defendant has been removed from the position of trust at the Interval Brotherhood Home and Foundation and the post-release supervision should prevent future reoccurrence of the same or similar conduct.

The Court finds that general deterrence is a more difficult consideration here. Requiring individuals to truthfully report their income is crucial to the continued operation of our government. The funding of public programs depends upon continued tax revenues and sufficiently severe punishments must be meted out to deter individuals from misstating their income on tax returns. Similar considerations apply with regard to the bank structuring offense.

In crafting a punishment that will most adequately deter similar conduct by other individuals in the future, the Court is influenced by the writings of Nobel Prize winning economist Gary Becker. In his seminal article on crime and punishment, Professor Becker recommends more emphasis on fines — and less on incarceration — for many white-collar or financial offenses. Becker theorizes that in financial crimes the incarceration of the specific offender is less important than providing a disincentive to future offenders through financial penalties. The Court generally agrees with these propositions and finds them persuasive here. *See United States v. Turner*, 998 F.2d 534, 535 (7th Cir.1993) (agreeing with Becker's theory that fines are often an effective means of increasing deterrence). With Becker's theory in mind, the Court finds that imposing a financial penalty in the current ease, rather than prison time, will adequately deter future financial crime.

Related to using a financial penalty to serve as a general deterrent is the need to impose restitution to the victims of the offense. In reality, the Interval Brotherhood Home and its supporting foundation are the true victims of this offense. The Defendant attempts to paint the offense conduct — structuring financial transactions and tax evasion — as entirely separate from the embezzling of millions of dollars from the Interval Brotherhood Home. Likely, Ciccolini saw the Foundation as being rich in surplus funds — funds he could largely attribute to his own efforts — and he felt that stealing a fraction of the total surplus was acceptable. Despite the fact that Ciccolini's theft did not impact the Interval Brotherhood Home's programming, the money taken remains the Foundation's property. The Court finds that the offense conduct associated with the structured financial transaction charge and with the tax charge was an attempt by the Defendant to hide the enormous sums of money that he was embezzling. In this regard, this case looks quite similar to a money laundering situation where the defendant is laundering money as a means of concealing the underlying criminal activity that produced the laundered money. The Foundation is the ultimate victim of the Defendant's scheme to defraud and embezzle, and the charged offense conduct is merely one component of that greater illegal scheme.

*** Thus, as part of its sentence, the Court orders that the Defendant pay restitution to the Interval Brotherhood Home Foundation in the sum of $3,500,000. Although this is a cautious estimate and likely understates the amount embezzled, the sum is a significant portion of the money that was embezzled by the time the offense conduct occurred in 2003 and 2004. *** The charged offense conduct here was designed to conceal and support the broader scheme of embezzlement and can fairly be viewed as part of the same offense conduct.

The Court finds that imposing a restitution order serves the dual purpose of general deterrence under § 3553(a)(2) — *i.e.*, imposing a monetary fine for a financial crime — and also serves the purpose of providing restitution to the victims of the offense conduct under 18 U.S.C. § 3553(a)(7). Thus, the Court views a significant fine together with a restitution order, rather than prison time, as the most effective and just punishment in this case.

IV. Conclusion

After a thorough consideration of the parties' arguments, the advisory guidelines range, and the other relevant 18 U.S.C. § 3553(a) factors, the Court choose to fashion a non-guidelines sentence. The Court finds that a sentence of one day imprisonment, a fine of $350,000, and a restitution order of $3,500,000 reflects the seriousness of the offense, promotes respect for the law, provides just punishment for the offense, affords adequate deterrence to criminal conduct, and protects the public from further crimes of the Defendant. See 18 U.S.C. § 3553(a)(2). The Court also orders a three-year term of supervised release and a special assessment of $200.

Notes

1. What does the court say about the seriousness of the offense, the need to promote respect for the law, and the need for just punishment?
2. The court addresses specific deterrence and rehabilitation very briefly. Why does the court think that the punishment need not achieve these goals?
3. The court addresses general deterrence by appealing to Gary Becker's academic writing, which argued that fines should be preferred over incarceration in the context of white-collar and financial crimes because of the disincentive they provide. What do you think of this argument?

Arguing § 3553(a) Factors at Sentencing

Reading reported cases on sentencings only gives you a partial picture of the way the § 3553(a) factors are applied in cases. The final supplemental reading is from the sentencing hearing of Sam Bankman-Fried (SBF). SBF founded the cryptocurrency exchange FTX and was convicted of two counts of wire fraud, 18 U.S.C. § 1343, two counts of conspiracy to commit wire fraud, *id.* § 1349, securities fraud, *id.* § 371, conspiracy to commit securities fraud, *id.*, and a money laundering conspiracy, *id.* § 1956(h), for actions he committed as CEO of FTX. One prominent allegation in the indictment was that he transferred customer deposits at FTX to another company he ran, Alameda Capital, where he used that money to make risky investments. As a result of these transfers, FTX did not have the money to cover sudden, large customer withdrawals and went bankrupt. As you read, please attend to the arguments the attorneys are making and how they align (or not) with the § 3553(a) factors.

United States v. Bankman-Fried
22-cr-00673 (S.D.N.Y. Mar. 28, 2024) ECF 426.

[Prior to hearing argument, the court determined the recommended sentence under the U.S. Sentencing Guidelines. The court found that the final offense level was 43, the criminal history category was I, and so the Guidelines range was life in prison. That would exceed the statutory maximum – 110 years, i.e., the maximum for all counts served consecutively – so the statutory maximum was the guidelines range.]

MR. MUKASEY [Defense Counsel]: Thank you, your Honor. Judge, I just want to preface my remarks today by saying that I don't want anything that I say today to be taken as disrespect for the jury service or the verdict that they returned. Obviously, we disagree with the verdict, we're going to appeal the verdict, but nothing we say here today should be taken as any disrespect for the jury's hard work.

And with respect to the victims, those that are here, those that are not here, we've read the victim impact statements. We have listened to the comments today. We think we understand the intensity of the pain of the victims and we understand with sort of crystal clarity that people have suffered financially, emotionally, and otherwise, and everyone at the defense table's sympathies are with the victims, and I truly mean that down to my core.

I also appreciate, Judge, that my team is young and Mr. Thornhill did not live through the prior proceedings with most of the people who are here in the well of the courtroom, but I am confident that we have a very strong hold on the record and also a keen appreciation of the atmospherics, if you will.

So I want to start out, Judge, by talking a little bit about the nature and seriousness of the offense here. The government points in their brief to some truly vile defendants. They point to James Nicholson, who looked widows in the eye and stole their life savings at the same time. They talk about Carl Greenwood, who was recently sentenced by Judge Ramos, who referred to his victims as "marks" and "idiots." They referred to Bernie Madoff, who looked Holocaust survivors in the eye and took their money.

These defendants are what I would consider stone cold financial assassins. They targeted innocent people; they trained their sights on vulnerable victims. That level of depravity and cruelty and blameworthiness is nowhere that I saw in the testimony in this case, it's nowhere that I saw in the materials that I reviewed in this case, and it's nowhere in Sam's history as a person, which I'll talk about in a minute, because I don't think it's anywhere in Sam's heart.

Sam is on the opposite end of the culpability scale that they talk about for fraud crimes. He's not the defendant who looks someone in the eye while he took money out of their pocket. And I submit there's nothing in this case, Judge, that shows that Sam wanted to personally inflict pain or hurt or harm on anyone in any way.

It's the bottom line about the nature and seriousness of the offense. It's obviously a serious offense, but Sam was not a ruthless financial serial killer who set out every morning to hurt people. There was nothing predatory or rapacious or venal or mercenary or exploitive about his conduct, and that's, as I'm going to get into, because Sam Bankman-Fried doesn't make decisions with malice in his heart, he makes decisions with math in his head.

What I mean by that, Judge, is it's necessary to understand who he is as a person. Obviously, when you want to find out who someone is as a person, you start out with their mom. I'm mindful of his mother's observation that any effort to understand Sam truly, which is what I think we have to do here today, and any chance of truthfully understanding him through the lens of sort of normal behavior and motivation is probably going to end up misunderstanding Sam.

I think that's exactly what happened here. The real Sam Bankman-Fried, the real person, his real motivations were misapprehended and misunderstood, and I suspect that that happened because it's pretty easy to slot people into kind of an old-fashioned familiar story. And in this case, the old-fashioned familiar story of the arrogant, greedy swindler who thought he could get away with fleecing the hard earned money of innocent people and use it to satisfy his own hedonistic pleasures, if you punctuate that with a supposedly sensational lust for power and you top it off with a bankruptcy, well, that makes it all look really bad and you got yourself a pretty good story.

The only problem is, I would submit, it's sort of a crock. The perception is not the reality here. There's a radical difference between the public persona that I just described and the real person. Maybe the best evidence of that is that Sam never scurried away with billions of dollars in a Swiss bank account or under his mattress or in his personal pockets, and I think he's firm in his belief that he may well have been able to solve what he viewed as a black swan liquidity crisis. He didn't flee; he stayed until the end. He tried to help John Ray, he was rebuffed. He tried to help the bankruptcy team, he was rebuffed. He tried to do whatever he could, he offered to give more, and I'm sure he'll tell you more about how much it means to him that people get repaid.

If you ask anybody who really knows Sam, not the dehumanized one-size-fits-all trial caricature of Sam, but anybody who really knows Sam, they'll say he's not a greedy, power-hungry feign. There's no one I've come across who truly knows him who says this tragedy came about because he was greedy or covetous or materialistic or mean or nasty or voracious.

Really, he's an awkward math nerd. He thinks in probabilities about everything. He speaks in expected value calculations. He loves video games and veganism, and he's compassionate to animals and children. And he has a tireless work ethic. Even on his legal matters, he has a tireless work ethic and a completely, and I don't say this lightly, a completely off-the-charts, mind-blowing intellect.

A lot has been made in the popular media about how Sam loves puzzles. I mention that because Sam himself is sort of a beautiful puzzle. He's at once hyperrational, but not cold or robotic. He's super focused on some things, but completely absent minded about other things. He can parse words better than a Talmudic scholar, but he can completely misread the surroundings. He can concentrate like a laser beam but also be fidgeting at 100 miles an hour. He was a billionaire, but completely unconcerned about material possessions.

And I submit that's not an image that he crafted in 2019 or 2020 to try to sell FTX. The letters that I've seen are unanimous that from a very young age, Sam wanted to do good in the world. In middle school, when most people are thinking about, you know, peanut butter sandwiches and baseball games, he was thinking about his ethical obligations to the global population. In high school, he dedicated himself to the idea that each of us has a strong obligation to alleviate suffering in the world. In college, he spent a whole bunch of time helping animals. And his first job on Wall Street has been well documented. He gave away his earnings to charity, a charity that was working on disease prevention in Africa. That's as a young man. That's about, I think, through age 21. My point here is a simple one: Sam's devotion to others predated Alameda, it predated FTX. It was not a cocktail party affectation that he took on when he became a billionaire. It's the truth.

Another truth about Sam is that even though he started two legit successful crypto firms, he never even set out to be the king of crypto. He never sought out the fancy apartment or boasted the private jet. He was out there to have the largest positive impact in the world.

Now, I want to be clear, that's not to be taken at all as an ends justified means argument. That's by no means what happened here. That would do more harm than good to the altruistic movement and that would defeat the positive purpose. So this was not an ends justify the means run.

I think you can see the bona fide nature, Judge, of his dedication to philanthropy, the integrity of his commitment in giving not in the people that the government put up at trial to sort of make him look vain and image conscious like Tom Brady and Steph Curry and Katy Perry. You see who's actually standing by Sam now, it's not those people. The people standing by him now are the scientists, the humanitarians, the global health providers, the people who saw closeup that he was committed and passionate and steadfast, even at a young age. And even now that he's broke and ruined and has no more to give, they're still standing up to his commitment to giving. And I hope that tells the Court that it was not pretension or artifice or posing. Sam Bankman-Fried made a real authentic commitment to doing good, and his commitment to doing good made other people commit to doing good.

I'm just going to point real quick to exhibit A24 to our main brief, the letter written by someone who left their career as a trader on Wall Street to work for the FTX Foundation. He said: "If it weren't for Sam, I would certainly be working a comfortable job on Wall Street and thinking that the best way I could make a difference in the world was to write a check every December. My time at the FTX Foundation has left me with the conviction that the unconventional thinking can transform the way that we discover new medicines, and now I don't expect that I'll ever go back to working as a trader. Sam believed I could do more good than I could believe. I'm glad that he did. I trusted him on that. I'm grateful. His impact on my life has pushed me to raise my sights higher than they were before." To me, that's an extraordinary statement, Judge, about Sam and the amazing impact he has had, he continues to have, and he will have in the future if given the chance.

To me, it's also sort of the tip of the iceberg because, as we've submitted, Sam's done a whole lot of things that people who just want to sit around and be rich and fat and happy don't do, like organizing conferences on head trauma, like vaccine delivery, and digital mental health discussions. That's not what you do if you're just happy being rich. And if people still think that Sam's commitment to lifting people up and helping people out is a sham, I'm told that he has been tutoring people with no fanfare at the MDC for high school diplomas, you don't do that to hone your image, you do that to help.

I'm going to submit, Judge, that Sam possesses this generosity of spirit, this compassion, this empathy because he knows the other side all too well from his own life. He knows quite well what it's like to be in pain, to be misunderstood, to come across as unlikeable, to practice making eye contact the right way, to be unsure of his emotions, to have a hard time making connections. Sam's always been socially uncomfortable. He's experienced bouts of depression. His mother says there's a terrific sadness at his core, and that's been a constant presence in his life.

Years ago, before anybody would claim that Sam had ulterior motives or was trying to craft an image, he wrote in a journal that he doesn't feel pleasure or happiness, that he feels an aching hole in his brain where happiness should be. I find that crushing. The truth is, though, his own happiness has always been subordinated to the happiness of those less fortunate in the world.

And this person, my client, who people may think lives to take for himself, actually lives to give to others. And I think the person that best ties this together is his brother. His brother comes the closest to solving this beautiful puzzle that is Sam Bankman-Fried. His brother says: Sam would be uncomfortable giving me a hug, but I know he would give me a kidney if I needed it. I think that's extraordinary.

Sam is an incredibly kindhearted and generous person who may not always demonstrate all the social norms, but is giving and selfless beyond most norms.

Those are the personal history and characteristics of Samuel Bankman-Fried.

I want to address a comment your Honor made this morning. He made it in the context of the obstruction enhancement. I think it goes to specific deterrence, which has to be a concern here.

We addressed the government's specific deterrence argument as unfounded alarmism, but I know the Court probably shares this specific deterrence concern based on the bail issues, for example. Let me say this. Sam has lost everything. Losing the people in your life and being publicly shamed by the entire globe, to me, seems like enough deterrence. On top of that, he has probably been in the worst federal jail in the country for the past seven months. And while the government says a significant prison term is necessary to deter him from future crimes, a significant prison term, I say this. Every day in prison is significant. Every night in a four-by-four iron box is significant. Every strip search, every 4 a.m. wakeup call, every time you have to use the bathroom in front of your cellmate, that's significant. Every time you can't get your medication, it's significant. So Sam certainly doesn't need more time to feel the significance of prison as a deterrent. And even the PSR, and I think I have made my feelings known about the

PSR, even the PSR doesn't seem to suggest that Sam is going to commit more crimes. So I submit this prosecution has achieved specific deterrence.

I don't propose to lecture the Court at all about the concept and theories behind general deterrence. We cited in our papers studies that show increasing the severity of punishment does quite little to deter crime, but I've always thought anecdotally, with respect to general deterrence, if you're the kind of person that's not going to want to go to federal prison and is beaten and abused and understood and taken advantage of, you are going to be deterred by the idea of going for a day or a week or a month, or a year. That's who general deterrence speaks to.

I also understand, Judge, there has to be a perception that justice is done and people get their just deserts. I'm mindful of comments that I know you have made that when you impose a sentence, it should be a sentence that the average person in the street, knowing what happened, would accept as fair and reasonable and sensible and wouldn't want to make them rise up and say the system is crazy.

I know this is a different kind of case that I'm about to talk about, but I'm reminded of the case of Stefan Irving. I think probably you, me, and Dan Gitner are the only people who remember Stefan Irving, but Stefan Irving was a pediatrician who was a recidivist child sexual predator convicted in the state, then rearrested for traveling, by the feds, to Mexico to sexually assault prepubescent boys. To make matters worse, he had been the pediatrician at a New York school district, so God knows what else he had been up to.

I know it's a different kind of case, and I know Irving was a bit of an older guy, but I respectfully submit that if you're judging by the average person in the street, no reasonable person would say that Sam is even half as dangerous or irredeemable or incorrigible or as bad as Stefan Irving, who got 21 years.

But, obviously, I have no idea what it's like to impose sentence on another person, and I know you've obviously been doing it for a long time. I think I read somewhere that you said that the longer you sit up there, the harder it gets. That's probably because people have the power to change. You just don't know.

People overcome. Judge Underhill has written about it. There is a lot of work about it. It doesn't take a decade. I'm asking the Court not to destroy the prime of this complicated, brilliant, gentle, complex, kind young man's life. Don't deprive him of the opportunity to meet a partner or have a baby or work at a charity or teach kids or use his beautiful mind. If the government thinks he's greedy, sentence him to work hard and give it all away. Victims want their money back, and they should get it, all of it.

I'll close with this. I read that a few years ago Judge Koeltl wrote an article about Judge Weinfeld, and I gather Judge Koeltl clerked for Judge Weinfeld. He said that Judge Weinfeld sort of had a policy that he would sentence white-collar defendants to some term of imprisonment because he thought that was necessary for deterrence. But there was one defendant in a white-collar case before Judge Weinfeld who had led a life that the judge thought was characterized by acts of quiet charity, long before it was in that defendant's interest to do so. Judge Weinfeld did not sentence him to prison. He broke his policy. Apparently, Judge Weinfeld said that the bread that that defendant had spread on the waters had now returned to him.

In the same vein, Judge, we hope that one can't be as kindhearted as Sam has been without receiving a harvest of kindheartedness in return. His life is hanging in the balance here.

We ask that you sentence Sam today, Judge, with an open mind and a compassionate heart.

[Statement by SBF omitted]

MR. ROOS [Prosecution]: Yes, your Honor. Samuel Bankman-Fried stole over $8 billion in customer money, as your Honor found earlier today, and I emphasize stole because it was not a liquidity crisis or an act of mismanagement or poor oversight from the top. It was the theft of billions of dollars from customers spread all over the world. It was not a bloodless financial loss on paper. It was a loss, as the victim-impact statements note, that affected people significantly in their lives and caused extreme emotional and personal damage.

And since the government submitted its submission, there have been, I think, at least 100 additional victim letters that have been filed. Since we didn't have a chance to comment on all of those in our sentencing submission, I want to identify a few things in them for the Court's attention that I think exemplify the harm in this case.

One of those harms is the financial harm and the defendant says, you know, there is an untold story. The financial harm was immediate. It was a theft. There was suddenly no money. And over and over, the victim-impact statements make clear that they lost their life savings, they were financially damaged, they didn't know how they could go on with their lives financially, and they have not been made whole.

What really stuck out to me was what these statements also say about the emotional toll to the victims here. I was struck by not just how life-altering the defendant's crimes and fraud were to these individuals, but how it affected so many different types of people in different walks of life.

To give your Honor three examples, we have Fabrizio Cossutta, who lives in Portugal. The day before FTX declared bankruptcy, his daughter was born. He wrote to the Court about – on the special day of his daughter's birth, he was marred by the ominous specter of financial instability. His losses, in his words, have been severe and enduring, casting a shadow over his family's financial security and his daughter's future. It caused stress. It caused anxiety. It strained the bonds of his family.

That's not just an act of mismanagement. It's not a process that's playing out. It's a real harm to the victims. Take someone in the middle of their life. Your Honor received a letter from a victim, age 23, who lives in Morocco. He is the oldest of a family of five. His father suffers from physical and mental problems, leaving the father unable to care for the family. The eldest son is the victim. That responsibility, in his words, falls heavily on his shoulders. And he was trying for years to balance caring and providing for his family, while also going to school in order to, to use his words, secure a better life for his family and his own future. So he kept money on FTX not to make a wild investment or to loan it out to the defendant, but for the security of it, and the fraud has set him back. It's compromised his education, it's compromised his family security, and it has caused emotional distress that he wrote about in his letter.

One more. A couple in the later stages of their life, both in their late sixties, they invested their life savings, Sneh Patel and her husband. They lost sleep. They were embarrassed and ashamed for being what they described as gullible, depressed. They had to work to support themselves. They had to return back to work after they retired.

They suffered physically as a result. They are uncertain whether they will have to work for the rest of their lives.

Mr. Mukasey said this crime is different than the other crimes described in the government's sentencing submission because Mr. Bankman-Fried did not look people in the eyes as he was stealing their money. I disagree. It's because nowadays a defendant can look people in the eyes through Twitter, through social media, through the Internet. And that's exactly what happened here. He told them their money was safe. He said trust me. He put himself in the forefront and he caused these people losses. It's not the result of a process or an unwinding or a liquidity crisis. It caused immediate harm and that's attributable to his fraud.

The second point I want to make, as your Honor considers the sentence here, it's not just about the $8 billion fraud on customers. As your Honor found, the defendant took $1.7 billion from investors based on lies. Those investments are now worthless. A billion-dollar fraud from investors alone would necessitate a large prison sentence. Some of the other cases outlined in the government's submission were just crimes on investors and for less than a billion dollars and resulted in a sentence of 40 or more years.

The defendant obtained over a billion dollars from lenders based on false documents and lies and those loans were not repaid. Two of the lenders went bankrupt. The companies were destroyed. Their employees lost their jobs. And this too would have been a basis for the Court to impose a severe sentence on its own.

The evidence also showed at trial that the defendant committed the largest election crime in United States history. He paid a massive bribe, one of the largest individual bribes in United States history. He lied to banks. He unlawfully transmitted money. He interfered, as your Honor found, with the bankruptcy collection, asset collection process. He obstructed justice. He committed perjury.

It's hard to understand in some ways how a person could be responsible for all of these significant crimes in such a relative short amount of time. The criminality here, it's massive in scale. It was pervasive in all aspects of the business. This was not, as was suggested, a great business that had a problem at the end. This was a business that was pervaded with criminality throughout, and it was all destructive, and the sentence, we submit, has to reflect that.

Then the final point I want to make, your Honor, is the danger that the defendant poses and the risks that he will commit crimes again in the future. Our submission outlines good reasons to believe the defendant could commit crimes again: The number of crimes he committed, the commission of criminality while on pretrial release, the efforts he took to rehabilitate and rebrand his image, his own writings reveal a plan to relaunch FTX or something similar, to change his image, to revive his story.

The Court is, of course, aware of the defendant's false statements during the commission of the crimes, after the commission of the crimes, post-bankruptcy, and then on the witness stand. And then of course you have the defendant's cost-benefit philosophy that would allow him to justify doing like this again in the future.

And Mr. Mukasey said, this the not a defendant who acts with malice. He acts with mathematics. While the line sounds good, it's troubling because what it says is that if Mr. Bankman-Fried thought the mathematics would justify it, he would do it again.

Now, I don't want to repeat everything we have written, but I do want to point out the following about what we heard today and what was in some of the reply briefs.

The replies point to general statements about the typical low risk of recidivism. They note that Mr. Bankman-Fried has said he screwed up. And today, of course, we heard Mr. Bankman-Fried talk about mismanagement, a painful few weeks, that he made a mistake.

What we did not hear is accepting responsibility for lying, for stealing, or for fraud. He recognizes errors were made. He does not recognize, though, that they were because of wrongs he committed. He didn't swear off doing it again. As a matter of fact, I was struck at the end by the comments that there is an opportunity here, that there is an opportunity that someone, maybe his former coworkers, maybe someone else, could relaunch FTX, or something of an equivalent and, without the mismanagement or the liquidity crisis, things could work out. And that, I submit, tells the Court exactly where things could have. We cannot see into the future.

But the defendant's statements today express not one of acceptance of responsibility but one of recognizing errors that, had they not been committed, could have let him get away with it for longer, so a sentence here is necessary of at least 40 years to ensure that the defendant cannot do it again.

One final comment.

Mr. Mukasey, in his writings and today, asserted that the government has painted Mr. Bankman-Fried as a villain or a monster, and never once have we said that. That's attacking a straw man. And at the same time they have said that the defendant is virtuous, that people who really know him know he doesn't mean these types of things.

I'm reminded by something that the author Diana Henriques wrote about a similar argument that was made by Bernie Madoff. I think these words apply here. He is not inhumanely monstrous. He is monstrously human. He was greedy to use people's money and advance his own ambition, arrogantly sure of his capacity to pull it off, smugly dismissive of the skeptics, the critics, the rule of law, and his victims.

And the fact that Mr. Bankman-Fried spent the money on investments, rather than sports cars, or whatever you might expect for someone classically greedy, does not make him not greedy or does not express a motive of greed. The fact that he had ambitions that seem altruistic does not make him not ambitious, is not a motive for doing these things.

The defendant is not a monster, but he is someone who committed gravely serious crimes that affected hundreds of thousands or more people in indescribable ways. There is a real possibility that, given the opportunity, he would consider doing it again.

So justice and all of the other 3553(a) factors require a sentence of 40 to 50 years. Thank you.

THE COURT [Kaplan, J.]: Thank you, Mr. Roos. I have, of course, considered the sentencing guidelines and the 3553 factors. I want to make some comments before I get to the actual sentence about things that, to me, are salient. Much that was said, a good deal of it on paper rather than here this morning, about the defendant's background is undisputed. He had an exceptionally privileged background. He was raised by loving and devoted parents. He had every advantage that they could confer on him. Went to the best private schools. He went to MIT. He is extremely smart. And he suffers from autism, which is a condition that affects different afflicted persons very differently frequently. He, I gather, is what one would call a very high-achieving autistic person, which means, among other things, that he's capable of huge accomplishments, and he has frequently asocial awkwardness and a way of interacting with people that's unusual and sometimes off-putting. I take that all as a given.

After school he went to Jane Street, a very successful investment firm, where he was extremely successful, made a lot of money, gave a lot of it away. I remember testimony at trial that I think is relevant here. I frankly don't remember whether it was the defendant's testimony or someone else's. But I remember learning, I think, that the people at Jane Street were encouraged to play quantitative games, bets to analyze options in terms of expected value, about which I am going to have something to say later, and Samuel Bankman-Fried was all the way in on that.

He has been exceptionally ambitious and aware of his talents through his entire life, as far as I can see.

Ms. Ellison testified he was very ambitious. He talked about wanting Alameda and eventually FTX to be successful and to end up being huge companies that did a wide variety of things. He was also very interested in politics and talked about wanting to use his money to have influence on politics. He said at one point he thought there was a 5 percent chance he would become president some day.

The behavior in this case demonstrates brilliantly the accuracy of that testimony. Mr. Roos talked about the biggest political financial crime in history, I think that's the way you put it, but something like that. And indeed Mr. Bankman-Fried did that too, in addition to destroying FTX. And he did it because he wanted to be a hugely, hugely politically influential person in this country.

And lest anyone think that his attention was devoted all to the left end of the spectrum, it wasn't. I don't know how the numbers worked out in terms of contributions on each side, but he set up a vehicle for making political donations to the right through straws that wouldn't come back to him. But the goal was just the same as the donations the other way. It was influence for Samuel Bankman-Fried.

Some of this at one point might have been attributed to his having presented himself as the good guy all in favor of appropriate regulation of the crypto industry which, in the United States, relatively speaking, was unregulated, at least in the way that the securities industry and the commodities futures industry are regulated. In my judgment, that was an act, and he admitted it, ultimately.

Shortly after the bankruptcy, I believe on November 16 or 15, he was interviewed by a reporter named Kelsey Piper, whom he knew well and with whom he had talked before. And in the course of a much longer conversation Ms. Piper said to Mr. Bankman-Fried: You said a lot of stuff about how you wanted to make regulations, just good ones. Was that pretty much just PR too?

> "THE DEFENDANT: There is no one really out there making sure good things happen and bad things don't. Usually, there is only one toggle: Do more or do less. Yeah. Just PR. Fuck regulators. They make everything worse. They don't protect the customers at all."

The goal was power and influence.

We mentioned a moment ago, and Mr. Roos certainly did, and appropriately so, expected value and how -- I think Mr. Mukasey did as well, how this is an individual who was a math nerd who looked at decisions in terms of math, expected value. You might say cost-benefit analysis, but that's not their terminology.

I am going to read you something else that Caroline Ellison said:

> "Q. During your time working with the defendant, how, if at all, did he describe his approach to risk taking?
> "A. He described himself as truly risk neutral, meaning that most people are risk averse, meaning that they would rather not take a risk if they don't have to, or they try to avoid risks. But he said that he was totally comfortable taking a risk as long as he thought it was a positive EV, EV meaning expected value.
> "Q. What do you mean by positive EV?
> "A. EV stands for expected value, so that was a term that we used a lot when talking about trading. So, yeah, positive EV just means that sort of, on average, you expect it to pay off well, even if maybe there are lots of cases where you will end up with zero, or you'll end up losing lots of money, because there are like some cases where you make a lot of money.
> "Q. Did the defendant ever give any example to describe his approach to risk taking?
> "A. Yeah. He talked about being willing to take large coin flips, like a coin flip where if it comes up tails you might lose $10 million. But if it comes up heads, you make slightly more than $10 million.
> "Q. Did he ever give other coin-flip examples?
> "A. Yeah. I guess he also talked about this in the context of thinking about what was good for the world, saying that he would be happy to flip a coin if it came up tails and the world was destroyed. As long as if it came up heads, the world would be like more than twice as good."

In other words, a man willing to flip a coin as to the continued existence of life and civilization on earth, if the chances were imperceptively greater that it would come out without that catastrophic outcome, that's really a leitmotif in my judgment of this entire case.

Mr. Bankman-Fried knew for a protracted period that Alameda was spending large sums of FTX customer funds on risky investments, political contributions, Bahamas real estate, and other things in circumstances in which FTX was seriously exposed to downside of market deterioration, loan calls, and other risks. He knew that FTX customer funds were not to be used for those purposes, they were not his to use, and that his use of them was not only wrong. It was flatly inconsistent with the image of safety and security that he vigorously and endlessly portrayed for himself and his company to the world and to prospective investors and customers. He was betting on expected value.

In the head of this mathematical wizard, his own counsel tells us, in substance, that he was viewing the cost of getting caught, discounted by probability or improbability, against the gain of getting away without getting caught, given the probabilities. That was the game. It started at least as early as Jane Street and it continued to the very end. It's his nature. And you don't have to take my word for it — everybody has said that.

So that's one point I think appropriate to make.

Another thing that I think is important in this equation are the protestations of sorrow about the losses to and the disruptions of customers that were caused. Mr. Bankman-Fried, no doubt, very well advised and appropriately so, says, "mistakes were made." I think one of his pithier expressions was, "I fucked up," but never a word of remorse for the commission of terrible crimes.

Now, Mr. Bankman-Fried has the right to put the government to its proof, to plead not guilty, go to trial, and see if the government can prove his guilt beyond a reasonable doubt. I don't hold that against him. I want to be very clear about that. Everybody's got that right. But, at the end of the day, I keep coming back to Ms. Ellison's testimony that I read to you a few minutes ago. He knew it was wrong, he knew it was criminal, he regrets he made a very bad bet about the likelihood of getting caught, but he's not going to admit anything, as is his right.

A word about specific deterrence.

There is absolutely no doubt that Mr. Bankman-Fried's name right now is pretty much mud around the world, but one of the things he is is persistent, and another of the things he is is a great marketing guy. Mr. Roos is right that the outlines of Sam Bankman-Fried's revised version of his story are clear to everybody as we sit here. The same skills and drive that had him, even after his arrest, pitching his story to a huge number of media people — and he had every right to do that, we had a big discussion of that in the bail context — demonstrates that he knows how to do it and the will is there. The mistakes were made, other people are to blame, the bankruptcy people screwed up, this lawyer had a conflict of interest, that lawyer the other thing. It doesn't take much of an imagination to see the outlines of the campaign. I certainly am not prescient, I make no such claim. But there is a risk that this man will be in a position to do something very bad in the future, and it's not negligible risk, not a negligible risk at all. So, in part, my sentence will be for the purpose of disabling him, to the extent that can appropriately be done, for a significant period of time.

We had some talk about general deterrence. Mr. Mukasey is a very fine defense lawyer. I think it is fair to say I've seen him on both sides of the bar for his entire career, and I've heard these arguments about general deterrence probably deployed by him against and in favor of defendants, but I can't swear to that. I've certainly heard a lot of good lawyers deploy those arguments both ways. But the argument just isn't all that persuasive. I appreciate that part of the premise of substantial punishment for the purpose of general deterrence makes assumptions about the mental processes by which people decide to commit crimes that are, for many crimes and many people, just not sensible assumptions. The assumptions maybe have more validity in white collar cases where people, I think more often than we can give credit for, think about the risk of getting caught and what getting caught means before embarking on criminal behavior of certain kinds, but that's ultimately not here or there for me. What's here or there for me, Mr. Mukasey already alluded to.

At the end of the day, the criminal justice system in this country or any country can enjoy the support of the population, which is essential to its functioning in more ways than I could describe, only if on the whole people think it works fairly that guilty people get their just deserts, that innocent people aren't wrongly convicted, and that they can get their arms around the case as they hear about it -- say, "well, I might have decided that a little differently, but it sounds reasonable, it sounds fair." That's what we depend on. If that's not happening, we're back to trial by combat, folks, or something like it. And so, the judgment has to adequately reflect the seriousness of the crime, and this was a very serious crime.

Naturally, folks, I have misplaced a piece of paper that I need, so bear with me while I find it. The defendant will rise for the imposition of sentence, please.

As I said at the beginning, I've considered all of the 3553 factors, the Sentencing Reform Act, the sentencing guidelines, the presentence report, and the enormously voluminous submissions of the lawyers, not just voluminous, but good submissions. I know that the probation department has recommended a sentence of 105 years and the government a sentence of 40 to 50 years.

I've concluded that the sentences recommended by the probation department and the government would be substantially greater than is necessary to serve the purposes of the Sentencing Reform Act. Nobody should misunderstand, I'm not saying that the defendant didn't commit very serious crimes, I am not diminishing in any way the enormous harm that he did, the brazenness of his actions, his exceptional flexibility with the truth, his apparent lack of any real remorse, and the need to deter others engaging in comparable behavior.

I also want to add one further thought. I did not think it a fruitful use of time to spell out every time I thought Mr. Bankman-Fried testified willfully and knowingly falsely at trial. There are more than the ones I've articulated, but that suffices.

And when he wasn't outright lying, he was often evasive, hairsplitting, dodging questions and trying to get the prosecutor to reword questions in ways that he could answer in ways he thought less harmful than a truthful answer to the question that was posed would have been. I've been doing this job for close to 30 years. I've never seen a performance quite like that. All of that said, I am not going to impose a sentence of 40 years, let alone 105 years.

It is the judgment of this Court, Mr. Bankman-Fried, that you be committed to the custody of the Attorney General of the United States for a term of imprisonment of 240 months on each of Counts One through Four, and Count Seven. The terms on Counts One, Two, and Seven shall be served concurrently with each other. The term on each of Counts Three and Four shall be served concurrently with each other. The first 180 months of the terms on each of Counts Three and Four shall be served concurrently with the terms on Counts One, Two, and Seven. The balance of 60 months on the terms of each of Counts Three and Four shall be served consecutively to the terms on Counts One, Two, and Seven. It is further adjudged that you be committed to the custody of the Attorney General of the United States for a term of imprisonment of 60 months on each of Counts Five and Six. The terms on Counts Five and Six shall be served concurrently with each other, consecutively to those on Counts One, Two, and Seven, and concurrently with the 60-month portions of the terms on Counts One, Two, and Seven, and concurrently with the 60-month portions on the terms on Counts Three and Four that are to be served consecutively to the terms on Counts One, Two, and Seven. The foregoing results in an aggregate term of imprisonment of 300 months.

You thereafter shall serve a term of three years on supervised release, and you shall pay the mandatory assessment of $700.

The term of supervised release shall be subject to the mandatory, the standard, and the special conditions set forth at pages 56 to 58 of the presentence report, which you indicated you have read.

. . .

It is further adjudged, Mr. Bankman-Fried, that you forfeit to the United States the sum of $11,020,000,000, including the specific property identified in the preliminary order of forfeiture that I will be signing today, all on the terms and conditions there set forth. I decline to order restitution due to the complexity of the case and the number of victims. I instead grant the government's motion to authorize the United States to compensate victims with finally forfeited assets through a recognition process as restitution would be impractical in this case.

I strongly recommend to the Bureau of Prisons that defendant be designated initially to a medium security facility or any lower security institution the BOP considers appropriate, and I do so for two reasons. First, I have no reason to believe that the defendant would initiate any act of violence against another prisoner or any BOP staff, and he therefore does not require the close confinement of a maximum facility institution that, in part, is designed to prevent such acts. Second, defendant's notoriety. His association with vast wealth — regardless of his present and actual financial resources — and his autism and social awkwardness are likely to make him more than usually vulnerable to misconduct by other inmates in the environment of a maximum security facility. I further recommend that the designated facility be as close to the San Francisco Bay area as possible for the purpose of facilitating family visitation.