

1 drugs that came from -- I like to say a disadvantaged
2 background.

3 He is now forging his own life and his own family, and he
4 doesn't want his children to feel the pain or suffer the life
5 that he had as a child, and he wants nothing -- wants his
6 children not to feel an ounce of that pain.

7 And I think that a short sentence, Judge, and we're asking
8 for a year and a day, allows him to pay his debt for this case
9 and acceptance of responsibility for this case but also allows
10 him to go back to his family and continue to be that supportive
11 person that he can be and he has been for them.

12 I think that he has touched a lot of people's lives in
13 positive ways, notwithstanding what this Court has said earlier
14 about other conduct. I believe that he has done a lot to help
15 people who are going to go to that gang lifestyle that were
16 maybe close to how he was as a teenager. He's trying to get
17 them away from that. I think that's a very positive thing.

18 I think in terms of when we think of rehabilitation and
19 risk of recidivism under 3553(a), I think he does not pose a
20 risk of recidivism, of coming back into a gang or selling drugs
21 or carrying a firearm. Those days are behind him. I think now
22 all he wants to do is be a father and be a good family man and
23 provide for his family.

24 For those reasons, Your Honor, we're requesting a year and
25 a day.

1 **THE COURT:** Okay. Before I hear from Mr. Kelly, why
2 don't we take about a 15-minute break so I can give Stacy a
3 little break here, and we'll pick back up at 11 o'clock.

4 Noel, maybe it is best to let everybody stay on the phone.
5 Just leave it open.

6 Okay. I'll see you in about 10 minutes, 12 minutes.

7 (A recess was had at 10:46 a.m.)

8 (The following proceedings were held in open court
9 beginning at 11:01 a.m., reported as follows:)

10 **THE COURT:** You can be seated.

11 Okay. We're back on the record in United States versus
12 Kash Lee Kelly, Cause Number 2:15-CR-72. I've heard from
13 Mr. Adams.

14 Now, Mr. Kelly, is there anything that you wish to say on
15 your own behalf before I sentence you, sir?

16 **THE DEFENDANT:** Yes, sir.

17 You know, everybody told me to write something to say to
18 you, and I couldn't. I'm like, I'm just going to speak.

19 Your Honor, I didn't have a dad. I'm going to start
20 there. I didn't have a dad, and the one that should have been
21 my dad abused the hell out of me because I was black. The
22 world wanted me to be somebody different. I was not supposed
23 to be who I am today. If I was to go by the way my life went,
24 I should have been in prison or dead a long time ago. I didn't
25 become that person. I didn't let the things and circumstances

1 of life determine what course I was going to take. I made the
2 best decisions that I could with the knowledge that I had at
3 the time.

4 When I became a Latin King, I was a kid. I didn't know
5 that I wasn't supposed to be. I didn't have a family. I
6 didn't have nobody looking out for me. I had them looking out
7 for me, so I became a Latin King. And as soon as I knew
8 better, which was two years after I became a Latin King, I
9 didn't want to be a Latin King anymore. I left it. I became a
10 dad.

11 And when I became a dad, that started my real change. I
12 wanted more for my kids, so I started getting more for my kids.
13 I started working. I didn't know what I was doing being a dad.
14 I didn't have one. The only thing that I knew is that I didn't
15 want to be like the one that I had, the stepdad. I didn't want
16 to be the one that hit his kids. I didn't want my kids to feel
17 hurt.

18 But I still lived in the hood. So when hard times fell, I
19 knew that I could sell weed, and I'm sorry. I'm sorry that I
20 didn't know better; but when I did learn better, when I got
21 arrested for that, prior to this, I left that alone. I didn't
22 sell weed even when hard times fell. I went to pantries. I
23 got public aid. I did the right thing.

24 I became a really good dad. I'm not a good man; I got
25 flaws. But I'm a really good dad. I'm sorry for everything

1 that has gotten me to be here when I was a kid. That's who is
2 on this paper is a kid. The person that's being lied about in
3 them statements is a kid, not a man; a kid from over a decade
4 ago, not a man. Not me. That's not who I am. Who I am is who
5 you have read about.

6 I made a mistake. I made a mistake in standing up for
7 what I believe in. I took a picture in a place that I probably
8 shouldn't have taken a picture. It was wrong for me to take
9 that picture, but it was not wrong for me to be there. I did
10 not do anything wrong to get there. I did not lie about where
11 I was going.

12 Okay. Pertaining to this case, I have not been that
13 person in so long, so long. I have been a good dad and then
14 even a good member of society. I have put my life at risk in
15 this case. I have put my life at risk. People -- if you read
16 the other messages, I've gotten threats, death threats. I've
17 gotten -- things happened to me. People came to my job where I
18 worked at at ABC because of this case, where I still back law
19 enforcement, where I still encourage people to stand up in
20 their community, "If you see something, say something."

21 I've done all I could to become better, all that I could.
22 I'm not perfect. I will make more mistakes throughout life
23 after I get out of jail if I go to jail. I'm going to --
24 everyone is going to make more mistakes. I'm not perfect. I
25 will never be perfect until I meet the One that made me. But

1 I'm sorry for my flaws. I apologize.

2 Please don't stop me from being the one thing that I am
3 good at, the one thing that I don't have a flaw in. I'm a dad.
4 I'm a really, really good dad. And I've raised my kids since
5 the day they came out of the womb, all of them. I have been
6 there. And even kids that I didn't make, I'm a father to them.

7 This is about justice. I'm all for justice. I preach
8 justice. Justice needs to be served for the kid that I was. I
9 was wrong. I'm not asking to be let off the hook. I'm asking
10 for mercy. If at all possible, let me go home to my kids on
11 home monitoring where I will complete that proudly and come
12 back before you and the next time you see me you'll be proud.
13 Let me be a dad. Let me be a dad. I won't do nothing wrong.
14 I won't leave my home. I won't leave anywhere.

15 But if I go to jail, the same kid that was created because
16 of fatherlessness or a bad father, you might be sitting in that
17 same seat looking at one of my kids one day because I wasn't
18 there to tell them not to do the things that I did or to
19 protect them from the things that they're going to learn about
20 that I should be there to protect them from, that I have
21 protected them from. They are A and B honor roll students, and
22 they are good kids. I am there. I help with their homework.
23 I do it. Their mom wasn't there. I was there. I have been
24 there.

25 I'm just asking for your mercy. That's it.

1 **THE COURT:** Okay. Thank you, Mr. Kelly.

2 Mr. Nozick, what's the government's position here?

3 **MR. NOZICK:** Your Honor, we have handled, as you
4 know, a large number of sentencings; some simple, some not. We
5 have handled some tricky ones. This is an extremely tricky one
6 and extremely unusual one.

7 I have focused on the negative up until now, and we are
8 talking about the actions in Washington and talking about the
9 actions, you know, about acceptance of responsibility.

10 I'd like to talk about the positive for a little bit
11 because there is a lot of positive, and I do think the
12 positives outweigh the negatives at this point.

13 Mr. Kelly, as you know, is the only individual in this
14 Indictment who is not charged with racketeering conspiracy. He
15 is in a drug conspiracy. As you know, or perhaps not, but I
16 believe you do, we need to show stuff on behalf -- in order to
17 be in the RICO, we would have to show criminal conduct in the
18 Latin Kings within the -- membership and criminal conduct
19 within the past five years prior to the Indictment. He was out
20 of the Latin Kings for at least five years prior to the
21 Indictment, and that's why he's not charged with racketeering
22 conspiracy.

23 So when he says "I left the Kings," that is, to our
24 knowledge, correct; and we do not have anything to show within
25 five years, and we did not seek an Indictment charging him with

1 a racketeering conspiracy.

2 However, he was still involved with drug dealing in the
3 five-year period up to that, selling to the Latin Kings, and
4 that is why he is in the drug conspiracy. But as opposed to
5 others where there are allegations of violence, there are not.
6 There's some allegations that this Court struck, but this
7 defendant is differently situated than the individuals who are
8 only in the racketeering conspiracy.

9 And I understand the frustration. Wait, a guy leaves the
10 Latin Kings and gets out and they still end up charged in some
11 conspiracy, whether it's the RICO or drug conspiracy. I can
12 understand the frustration there, Judge. He's not the first
13 defendant who has been charged after they have, for the most
14 part, gotten their lives together.

15 Certainly, it is bad that he was still selling drugs to
16 the Latin Kings. I'm not minimizing that, but he had, at least
17 in part, renounced the life. He certainly renounced the gang
18 life; and when we would ask about him to earlier cooperators,
19 they'd say: Not Kash. He's on that God stuff now. He's on
20 that God thing now. He's going to church, but he still slings
21 some dope, you know. And that's why he's in the drug
22 conspiracy.

23 Turning next to his cooperation in this case. Judge,
24 normally we don't talk about it, but the Court has mentioned
25 the 5K and also defense witnesses have mentioned cooperation

1 and Mr. Kelly has mentioned his cooperation. He pled early on,
2 an early plea, especially someone who is, sort of, an old
3 school guy. He is older than some of the other defendants. He
4 had been -- he had a vast amount of knowledge of the Latin
5 Kings. A plea such as Mr. Kelly's got a lot of other people to
6 plea, I believe, and he gets credit for that.

7 He also had a lot of information not just on the Latin
8 Kings but that we used in other gang investigations and other
9 shootings; and he was, I believe, completely sincere and
10 truthful in his cooperation. He told us what he knew. He
11 didn't try and make things up. We didn't catch him in any
12 lies. He was easy to deal with, if you will, and that's it.

13 I have Chris Gootee here, if necessary.

14 **THE COURT:** Had he been called to testify in the
15 Jeremiah Farmer trial, what would he have testified to? You
16 made a reference to that.

17 **MR. NOZICK:** Correct, Judge. I listed him as a
18 witness. A lot of the Latin Kings that we charged didn't have
19 that much knowledge of Farmer since Farmer was locked up for a
20 period of time prior to the Indictment. So some of the younger
21 guys didn't know Farmer. They knew of him, knew he was a King.

22 Whereas, Mr. Kelly had been in the Kings at some of the
23 same time with Mr. Farmer and had knowledge of Farmer's violent
24 activities for the Latin Kings, carrying a weapon, violence,
25 unpredictable nature.

1 As I sit here today, Judge, I can't remember more
2 specifics. If you want to hear from Mr. Kelly, he could flesh
3 it out, but he had good information on him. He was listed as a
4 witness. We didn't call him through no fault of Mr. Kelly's.
5 I believe he would have made a fine witness. At some point,
6 less is more in these cases and evidence is cumulative. And
7 that was sort of a volatile trial, as you know, with
8 Mr. Farmer's erratic behavior, and cutting it short might have
9 been best. But I strongly believe that Kash Kelly would have
10 been seen as truthful, and he would have been helpful in the
11 trial.

12 There's also other investigations that he helped us in,
13 and we've done the 5K motion for him, which I believe is fair
14 for six levels.

15 Now, I think equally important, perhaps even more
16 important, are 3553 factors prior to the Washington matter,
17 what he did while out on bond prior to Washington.

18 Mr. Kelly had a large -- or has a large social media
19 following. He had been involved in, you know, religious stuff
20 before; and at some point in time, Task Force Officer Gootee
21 called to my attention a Facebook live video. And I believe
22 this is the same one that had been referenced, perhaps, by
23 Mr. Russo. There was a Facebook live video, and this is all
24 during the rioting over George Floyd and the violence towards
25 police, burning of our cities, an extremely volatile time.

1 And my attention was called to a Facebook live video.
2 Mr. Kelly is sitting in a car. He has a white undershirt on,
3 and he goes on Facebook live. And I don't know if the Court or
4 defense has had a chance to see it. I know Mr. Kelly has, of
5 course, and knows which one I'm referring to. And it was
6 extremely compelling. A number of agents and I watched it, and
7 the message was fantastic. And both the defendant and
8 Mr. Russo has talked about the message.

9 It was one of nonviolence, stop gang violence, stop gun
10 violence; do not be violent towards the police; there's a way
11 to protest peacefully; the police are not our enemy even if
12 they are sometimes the ones that act in a manner that is
13 unjustified; the police are not our enemy and stop violence
14 towards them.

15 So, in addition, he said things against the "stop the
16 snitching movement." As you know, there's a lot of pressure
17 out there in certain neighborhoods not to cooperate with the
18 police. So there's a stop the snitching movement where people
19 put on websites and social media the names of people who
20 cooperated; and, certainly, those people, I'm sure at least
21 some of them, have been the subject of violence and the victims
22 of violence. And there's intense pressure, as you know, not to
23 cooperate, and people are scared to cooperate. And people are
24 scared of violence, and they somehow think that they are doing
25 something wrong or immoral.

1 And Mr. Kelly has, as he mentioned, talked about the "see
2 something, say something," or whatever the movements on the
3 other side are. Mr. Kelly came out in a way that would be
4 difficult for a police officer to say or it wouldn't resonate
5 if an officer said it, wouldn't resonate when a politician said
6 it. But Mr. Kelly, who grew up in that environment and was a
7 gang member, saying, "You need to cooperate with the police
8 when you know something" and, you know, saying things such as
9 "Black lives need to matter even when it's not a police officer
10 shooting someone" -- and I'm not trying to be political here or
11 take stances, but he was saying commonsensical things; that if
12 someone is shot in your neighborhood and you're a witness,
13 you're not helping the victim, you're not helping the victim's
14 family, you're not helping society by not cooperating with the
15 police; and if you believe that black lives matter, then you
16 should be helping solve murders in your neighborhood.

17 Without being political, that is a commonsensical thing,
18 and preaching against gun violence and against gang membership
19 is an inherent good that I think we could all believe in across
20 all sides of the political spectrum.

21 So I believe -- seeing these videos, I believe -- I know
22 Mr. Kelly has a large number of followers, tons and tons and
23 tons of comments, some people got on board early with religious
24 stuff, some people who got on board later. I believe Mr. Kelly
25 wants to and can and could and did make some difference. And I

1 believe, at least at that period of time, he was a voice of
2 reason during an extremely volatile time. So I think there's a
3 lot of good that he has done, and I think that that should be
4 considered in the 3553.

5 I don't think I need to bang the drum on how seriously --
6 or bang the drum anymore, if you will, on how seriously I see
7 the actions in Washington. He made statements saying it was
8 justified. I'm not going to argue about that. The Court has
9 seen the criminal complaint. I'm not going to argue about
10 that. I've made my point about how I see that; and, certainly,
11 the U.S. Attorney's Office in Washington D. C. has made their
12 point on how they see that, and he has already lost the points
13 for acceptance of responsibility.

14 I'm open to questions, but those are the government's
15 arguments. I apologize if I have been long-winded, but there's
16 a lot to, sort of, let marinate here. There's a lot of
17 different things going on, and I believe this is an extremely,
18 extremely difficult one.

19 I will tell you that he was my witness and he was my
20 cooperator. He, from the start, was extremely pleasant to deal
21 with. He is articulate. He is smart. I believe he can do
22 good in this world, and I really, really wish that he didn't
23 get wrapped up in what he got wrapped up in Washington. Today
24 would have been a much, much easier date. I don't want to
25 argue with him or with you about how it was. I wish it didn't

1 happen. Our jobs would be a lot easier. It was extremely poor
2 judgment, in my opinion.

3 That is it, Judge. We made our second sentencing
4 recommendation. As you know, these go all the way up the line
5 to the U.S. Attorney or Acting U.S. Attorney. The government
6 has requested 87 months. This Court has a lot of information
7 before it, and I know this Court wants to get it right. And I
8 know this Court spends a lot of time preparing for these
9 sentencings, and I have faith that you will fashion a just
10 sentence.

11 **THE COURT:** All right.

12 Mr. Adams, did you want to say anything -- I will give you
13 guys just one last chance because Mr. Nozick went on at length.

14 I will give you the last and final word, Mr. Nozick.

15 Did you want to say anything else, Mr. Adams?

16 **MR. ADAMS:** May I have one moment with Mr. Kelly?

17 **THE COURT:** Yeah, sure.

18 (Discussion held off the record between counsel and the
19 defendant.)

20 **MR. ADAMS:** Judge, Mr. Kelly would like to address
21 the Court if that's okay.

22 **THE COURT:** Sure. I will hear from you again,
23 Mr. Kelly.

24 **THE DEFENDANT:** First, thank you. I appreciate that.
25 Your Honor, like I said, man, I apologize. I apologize

1 that I even have to be here. Because of my actions, everybody
2 here is put in this situation. I apologize. I know your job
3 is difficult. You have to look at people every day, I'm
4 assuming, and give out sentences, and I know that's difficult.
5 I apologize that I have to be a person that you have to cast a
6 sentence on.

7 I might be a fool for asking, but I'm going to for the
8 sake of my children. I'm asking to go home. The longest home
9 monitoring or jail incarceration at home -- I don't know how to
10 interpret it or how to say it -- in the history of America
11 would be fine with me. I wouldn't mind sitting at home because
12 I can provide for them. I will be able to provide for my
13 children sitting at home. I will be able to make sure they are
14 okay. I will be able to make sure they are safe. I will be
15 able to talk to them when they go through something, to be
16 there. I will be able to be a father.

17 And all the things that happened last year, the 2020 with
18 the riots and what made me make the videos and all those
19 things, I want the world better for my kids. That's why I do
20 what I do. I make stupid decisions sometimes, yes. I'm sorry.
21 I try not to. And I will do my best, I guarantee you, to not
22 ever make a bad decision again that will lead me to be here.

23 But, Judge, it's not going to benefit anybody for me to be
24 away. It's gonna take money away from people that work for me
25 to be incarcerated. It's going to put my children at risk of

1 me being a liar to them because I tell them to have faith in
2 the justice system, have faith in God. It's going to work out.
3 The system is not out to get you. They are not out to get me.
4 They're not going to understand even though I get it.

5 I get whatever sentence you're going to give me today is
6 just. I believe that because I've looked you up before all of
7 this. I know that you are a just man. I know you are not
8 going to do anything that's not put on you by God. God is in
9 control of this. You are the tool the same way I was the tool
10 in 2020 to bring people together.

11 So what I'm asking -- I know he's asking for one year and
12 one day. I know they're asking for what they're asking for,
13 but the ultimate decision maker is you. I'm asking to go home.
14 If that doesn't happen, I understand, and thank you. But I
15 just got to ask for the sake of my children.

16 **THE COURT:** I understand.

17 There was one other question that I had that I meant to
18 ask you before you yielded the floor, Mr. Nozick.

19 **MR. NOZICK:** Yes, Your Honor.

20 **THE COURT:** There seems to have been a disconnect in
21 this case as it relates to Mr. Kelly that I -- I know he pled
22 guilty and admitted to a certain quantity of cocaine, but at
23 his plea hearing -- I remember this because I take notes during
24 the plea hearing so that three years later when I'm sentencing
25 somebody I have -- if it is important to me.

1 And at the plea hearing, I think, he was pretty adamant
2 that his only involvement was in selling marijuana, and that
3 has sort of come out here today as well.

4 Can you comment on that from your perspective.

5 **MR. NOZICK:** I can, Judge. If I could take a minute
6 and look at the plea transcript because we did -- Mr. Lanter
7 handled it with me here. And we did sort of go back and forth
8 a number of times.

9 Let me -- could you give me two minutes here?

10 **THE COURT:** Of course. I actually didn't have a
11 chance to review it. I was just going off of my notes.

12 **MR. NOZICK:** Judge, do you have a copy of the
13 transcript?

14 **THE COURT:** I don't. Not at my ready reference.

15 **MR. NOZICK:** Okay. Judge, if it's agreeable with
16 defense, I'm going to mark some sections of the transcript for
17 you, or I can just read it, whatever the Court prefers.

18 **THE COURT:** Sure. Why don't you just read it for me.

19 **MR. NOZICK:** So he starts out where he pleads to a
20 lesser-included charge with a lesser quantity. Instead of
21 10-year min. man., it's a five. He says that: I joined the
22 Latin Kings in 2006. I joined the organization. At that time,
23 I had seen them sell cocaine and marijuana, and I sold
24 marijuana, along with them.

25 You flesh out with him membership in the Kings, how he is

1 initiated.

2 You ask him: Now, at some point did you -- this is on
3 page 21, line 16 -- at some point did you then start getting
4 involved with these other Latin Kings in selling marijuana and
5 cocaine?

6 Answer: Yeah, I sold marijuana.

7 Question -- this is the Court -- how about cocaine?

8 Answer: I was more of a user of cocaine. I bought it
9 from them and knew that they sold it.

10 Question: So how often were you selling with the Kings?

11 Answer: From '06 to '09 for sure I was selling marijuana.

12 You keep fleshing that out, who is supplying him. He --
13 it is all public record. He mentions a man named Hugo, who I
14 believe to be Hugo Gill. He was not indicted in this case.

15 He gets into his marijuana-selling history, which I don't
16 need to flesh out. You talk quantities of marijuana with him,
17 quarter pound to a pound like every two weeks or a week.

18 You ask him again -- this is the top of page 25, Judge --
19 Okay. Now, the Indictment, again, talks in terms, and your
20 plea agreement talks in terms of cocaine as well, but you said
21 a few times today that it was just marijuana. Is that what you
22 maintain?

23 Answer: I'm under oath, so I don't want to lie. I didn't
24 sell cocaine. I was around while they sold cocaine, and I did
25 cocaine. As a conspiracy, like, I did know they --

1 Question -- line eight -- did you assist them at all in
2 their sale of cocaine?

3 Answer: Like, yeah, I would buy it, and I would bring
4 people to buy it or I would tell them if somebody needed it.

5 So that, Judge, is part of dealing in cocaine
6 transactions, bringing buyers. So he is close with the higher
7 suppliers. When you bring them buyers, you are part of the
8 cocaine sales; and if you are telling them about customers that
9 need it, you are facilitating their drug transaction. And, you
10 know, that is part of the cocaine conspiracy.

11 Furthermore, Judge, we don't need to discuss *Pinkerton*
12 liability, but, clearly, when someone is posting up, they are
13 facilitating cocaine sales. By posting up, I mean being armed
14 in the neighborhood, looking out for police, rival drug
15 dealers, rival gang members. And this isn't a situation where
16 we're talking about just a rank-and-file soldier who never sees
17 more than a gram of any drugs and he's hit with the whole
18 weight of the conspiracy.

19 This is someone who, if you are playing the role of
20 Enforcer or Inca, you have knowledge of the drug trade that is
21 going on; and when you are setting up buyers with sellers of
22 cocaine -- even if he doesn't touch the cocaine, Judge, when
23 you are setting up buyers and sellers, you're part of the
24 conspiracy with cocaine and not just marijuana, and that is why
25 he agreed in the plea agreement to that quantity, Judge.

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4 people to buy it or I would tell them if somebody needed it.

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21 going on; and when you are setting up buyers with sellers of
22 cocaine -- even if he doesn't touch the cocaine, Judge, when
23 you are setting up buyers and sellers, you're part of the
24 conspiracy with cocaine and not just marijuana, and that is why
25 he agreed in the plea agreement to that quantity, Judge.

1 Now, if this Court wants to hear more about -- if there
2 are people who told us, you know, that he did also sell
3 cocaine, I would have to go dig that up on a break. I wasn't
4 foreseeing it since we agreed to the quantity.

5 Does that address the Court's question?

6 THE COURT: It does.

7 MR. NOZICK: Thank you, Judge.

8 THE COURT: Did you want to respond to that,
9 Mr. Adams?

10 MR. ADAMS: No, Your Honor. I mean, it was agreed to
11 in the plea. Just with respect to the plea colloquy, Judge, on
12 page 25, after the government --

13 THE COURT: Mr. Adams, can I get you into the
14 microphone there.

15 MR. ADAMS: I'm sorry, Judge.

16 As it relates to page 25 of the plea agreement, the
17 government did recite line -- yeah, I would buy it -- this is
18 Mr. Kelly speaking: Yeah, I would buy it. I would bring
19 people to buy it, and I would tell them if somebody needed it.

20 And the Court's response was: This is weak.

21 And then Mr. Lanter responded about how Mr. Kelly assisted
22 in the sale of cocaine and that he indicated he would bring
23 buyers to other members of the Latin Kings, and that's where
24 the quantity came from, Your Honor.

25 THE COURT: Okay. All right.

1 Mr. Kelly, in any sentencing, there's a lot of things I
2 have to take into consideration when I sentence people, and
3 these are all laid out in the federal sentencing statute. And
4 the starting point is always the United States Sentencing
5 Guidelines. That's the starting point, and that's why we went
6 through that exercise of trying to arrive at what is the
7 appropriate sentencing guidelines range in this case. So
8 that's the starting point.

9 And I think I have -- I know you disagree. I appreciate
10 that, but I feel like we have properly computed the sentencing
11 guidelines in this case. And that's one factor that I have to
12 take into account when I sentence people, what does Congress,
13 through the Sentencing Commission, believe is an appropriate
14 sentence given all the facts and circumstances of the case.

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** The guidelines in this case recommend a
17 sentence of 14 years in prison. That's what the guidelines
18 recommend, 168 months in prison. That's certainly something I
19 have to take into account.

20 But, of course, there's a whole host of other factors that
21 I also have to take into account that are set out in the
22 sentencing statute. I have to look at the nature and
23 circumstances of the offense. In other words, what did you do,
24 what was the conduct that brought you here? That's no
25 surprise, of course. I have to look at the nature of your

1 offense.

2 But I also have to look at your personal history and
3 characteristics. That's just as important of a factor when I
4 sentence people. And Mr. Nozick has sort of touched on this,
5 that I sort of approach this as a holistic approach. And I try
6 to do that, and I try to be meticulous in my approach to
7 sentencing because the stakes are so very high for people.

8 Under this first factor -- first you look at the
9 guidelines, then you look at what you did, and then I look at
10 who you are as a person. And then when I arrive at a sentence,
11 I hopefully will impose a sentence that's going to reflect the
12 seriousness of the offense, it's going to promote respect for
13 the law, will provide just punishment.

14 I have to be concerned with deterrence of criminal
15 activity. There's specific deterrence, that is, trying to get
16 you from committing additional crimes. I have very low
17 concerns about specific deterrence in this case. We'll talk
18 about this in a minute. You've had a seed change in your life
19 in how you approach life and the manner in which you do that,
20 so I have very little concern about specific deterrence in this
21 case.

22 But I also have to be concerned with general deterrence,
23 sending a message to the community that, hey, if you are going
24 to join a gang and sling a bunch of dope and engage in crazy
25 behavior, there's going to be a consequence to that so that

1 other people will hear that and hopefully get the message that
2 it's not a good idea to be engaging in that kind of behavior.

3 Another important consideration, and this is something
4 that none of the lawyers have touched upon, but I think is
5 really important, and that's the need to avoid unwarranted
6 sentencing disparity among similarly situated defendants.
7 That's an important factor because, as you might imagine, in a
8 case like this, I think there's 38 or 40 defendants in this
9 case. And then there was probably 6 or 10 others that kind of
10 were related, weren't charged in this case but were sentenced
11 in conjunction with this giant Latin King conspiracy.

12 And you're on the very end of this. I have sentenced, I
13 think, I don't know, probably 45 people at this point. And I
14 keep a running total of this. You know, I keep a spreadsheet
15 and -- because I can't possibly remember all of this. And so I
16 try to go back and look at, you know, how did I treat other
17 defendants because I want there to be a fairness vis-a-vis one
18 another. And not just actual fairness but the perception that
19 it's fair, you know, that if you're -- you know, pick a name.
20 If you're Francisco Gamez and you are sitting in federal prison
21 right now serving a 115-month prison sentence, you know,
22 there's a sense that you have to treat people fairly vis-a-vis
23 one another. I will talk about that in a second here. But
24 that's another factor that I have to take into account, the
25 need to avoid unwarranted disparity.

1 It is important to reflect, it's unwarranted sentencing
2 disparity. Everybody is an individual. Everybody gets my
3 specific and unique consideration because they are specific and
4 unique. No two people are alike. So you have to bring an
5 individualized approach to sentencing, but you have to do it
6 through a larger prism of, you know, what did you do with other
7 people. So that's a factor I have to take into account.

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** And surely you understand that.

10 **THE DEFENDANT:** I do.

11 **THE COURT:** So, ultimately, my goal is to take into
12 account all of these varying factors, many of which conflict
13 with one another, and try to balance them out, aggravating
14 versus mitigating factors, and try to arrive at a sentence that
15 makes sense and that's a fair sentence and do it with a goal of
16 arriving at a sentence that is sufficient but not greater than
17 necessary to achieve the goals of sentencing. So that's what
18 I'll do in this case, like I do every other day when I sit
19 here.

20 As you might imagine, this is an extremely challenging
21 case for the Court because it's not very often that I get
22 somebody who has fundamentally done a 180 in life and has
23 really, really changed the dynamic of their life, and so that
24 presents one challenge.

25 So there's a lot of things to point at here. Let's talk

1 about the offense, first of all. You're a member of the Latin
2 Kings. These are some of the most violent people you would
3 ever want to meet. I can't imagine -- I have sat here for the
4 last decade, pretty much, and handled a couple hundred of these
5 gang cases, Imperial Gangsters with a death penalty trial; we
6 had the Latin Counts -- or the Latin Dragons. I had the
7 Two-Six Nation, the Latin Kings. Each one of these involved,
8 you know, somewhere between 20 and 50 defendants. I have had a
9 lot of experience dealing with this. Boy, has it been eye
10 opening to me --

11 THE DEFENDANT: Yes, sir.

12 THE COURT: -- what goes on in these neighborhoods
13 and just how inconsequential life is. These people are just
14 shooting at each other for no good reason other than they are
15 wearing the wrong hat or they look at somebody the wrong way or
16 they flash a gang sign that's opposite the one they belong to,
17 and so these gangs are super violent. You know that. I'm not
18 here to lecture you. You understand that better than I do.

19 So, you know, you made the decision -- and we'll talk
20 about the context in which you made the decision. You are a
21 kid. I understand that. But, nonetheless, you make the
22 decision. You join the Latin Kings, and you engage in a series
23 of behavior to include arming yourself, selling drugs,
24 assisting, at the very least, in the sale of large quantities
25 of cocaine, selling marijuana yourself, furthering the

1 interests of the gang, playing an aggravating role in the sense
2 that you must have been respected to rise within the ranks of
3 the gang. That doesn't surprise me given how smart you are
4 and, obviously, how put together you are. It's not surprising
5 to me that you would have risen in the ranks of the gang.

6 I've learned that people get routinely beat into the gang.
7 If they want to be in the Latin Kings and in their good graces,
8 they submit themselves to a vicious beating in order to have
9 the honor to be a member of the Latin Kings. I don't even -- I
10 can't even conceive of that concept.

11 **THE DEFENDANT:** It's stupid.

12 **THE COURT:** But I know that that happens. Surely you
13 participated in either being beat into the gang or
14 participating in seeing other people treated that way. So I
15 don't have to go on at length here to say it's a serious
16 offense.

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** You join a Latin King conspiracy and then
19 a drug conspiracy of this breadth. It's a very serious
20 offense.

21 You know, I don't have much evidence in front of me of you
22 specifically engaging in violent acts on behalf of the Latin
23 Kings. As we talked about earlier, there's some hints to it,
24 but I'm not putting any weight on it because I operate on
25 evidence, not on supposition; and so, you know, this isn't a

1 case -- believe me, I have had Latin Kings in here and other
2 gang members. If they are shooting people and harming people
3 in that regard, they are going away because that's just beyond
4 the pavement.

5 **THE DEFENDANT:** I agree.

6 **THE COURT:** So that's not this case.

7 So let's talk about your criminal history. Your criminal
8 history is -- you know, it's modest. I think it's overstated,
9 frankly. The criminal history III is overstated, candidly.
10 It's by virtue of two juvenile adjudications that were joined
11 together. They were adjudicated at the same time, but you got
12 points for these separate incidents when you're 16 years old.
13 I think it's fundamentally unfair that the guidelines even
14 point juvenile adjudications into criminal history. I just
15 don't think that's the way it should work.

16 You do have one conviction of -- I hate to say not
17 particularly serious -- of a felony offense of a handgun, no
18 permit, dealing with some incident in a laundromat. I do know
19 that, you know, you were acquitted on a couple of cases -- I
20 found interesting -- with some dispute you must have had with
21 one of your half brothers who goes by the name of J.S. There's
22 a reference in paragraphs 54 and 55. But you were found not
23 guilty on those offenses, so I'm not going to put particular
24 weight on it.

25 You seem perplexed when I'm referencing that.

1 **MR. NOZICK:** Your Honor, when you say "goes by the
2 name of," it is probably a juvenile and they are using the
3 initials J.S., I imagine.

4 **THE COURT:** What did I say?

5 **MR. NOZICK:** You said "goes by the name of J.S." It
6 is probably a juvenile sibling with initials J.S.

7 **THE COURT:** The initials being J.S. just to protect
8 the person's identity.

9 But, in any event, there must have been some altercation,
10 some family dispute, back in 2013 and 2014. But they were
11 joined together for the trial, and the defendant was found not
12 guilty. I don't know what happened in that incident, but it
13 doesn't sound like a particularly positive incident, let's be
14 real about it.

15 **THE DEFENDANT:** No, it wasn't.

16 **THE COURT:** So I just make note of that.

17 So let's talk about your personal and family history,
18 which is just, you know -- on the one hand, it's terrible, but
19 it's also typical of what I have seen over the last couple of
20 decades doing this.

21 You are born in 1988. Although the presentence report --
22 by the way, there's a typo. It says the defendant was born in
23 1998. He was actually born in 1988. His dad was murdered when
24 he was three years old. He was raised in a very, very tough
25 neighborhood under very difficult circumstances.

1 His mother -- I hate talking disparagingly about parents,
2 but it doesn't seem like his mom did right by him in the sense
3 of she's a serious drug addict and has serious personal
4 problems. She married some fella who became the defendant's
5 stepdad who was, if you believe the presentence report, and I
6 do, was very abusive and treated the defendant in just an
7 awful, awful way, as the defendant alluded to here today.

8 He and his siblings were left abandoned much of the time.
9 He watched his grandfather get run over by a car; saw his
10 grandmother OD. Saw lots of gang shootings in the
11 neighborhood. And so to call this turbulent is an
12 understatement. But, on the other hand, sadly, it's fairly
13 typical of what I have seen in this area and in these cases.

14 The defendant has a serious substance -- or did have a
15 serious substance abuse problem as well. This is all reflected
16 in paragraphs 78 through 82 of the presentence report. That's
17 certainly an aggravating -- some can say it's a mitigating
18 factor, but in the context of this case, I think it's probably
19 aggravating.

20 The defendant appears to have made efforts to be employed
21 along the way. I know he had this job at ABC Cellular that he
22 referenced and some other employment in an effort to make ends
23 meet.

24 He has seven kids.

25 **THE DEFENDANT:** Eight.

1 **THE COURT:** Three of whom were born during the
2 pendency of this case, I believe.

3 **THE DEFENDANT:** I have eight children, 12 that I take
4 care of.

5 **THE COURT:** You had one recently with the new lady.

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** So we're talking about a -- wow, a
8 challenging, challenging set of circumstances, to say the
9 least.

10 So, you know, those are all things that I point to that I
11 think are important and, in many ways, I think, looking at this
12 from a totality of the circumstances, mitigate the offense. It
13 also seems clear the defendant, as Mr. Nozick pointed out,
14 withdrew his participation in the Kings. That's why he wasn't
15 included in the racketeering conspiracy. But he did maintain
16 his contacts with those folks along the way.

17 But it's also true to say that according to the
18 presentence report there's no criminal contacts from 2009, as
19 Mr. Adams points out, all the way until he was arrested in this
20 case.

21 Then we need to talk about his cooperation. You know, the
22 defendant -- people cooperate. That's dangerous business. I
23 have said this a million times. This isn't some child's play
24 here. When people cooperate against the Latin Kings and other
25 gangs, there's real consequences to that and that's why I think

1 they need to be richly rewarded for doing that because they do
2 it at great risk to themselves and to their families.

3 And from the proffer from the government, it does appear
4 that the defendant has been fully cooperative from the
5 beginning and that he stood ready to testify against a very
6 challenging defendant who did some -- was convicted of doing
7 some just heinous, heinous acts in the murder of two elderly
8 gentlemen. This defendant stood ready to testify. For
9 whatever reason, the government made a strategic decision to
10 not call him. I'm not at all second-guessing that, but I do
11 certainly think that the defendant is entitled to significant
12 consideration for that.

13 And certainly his early cooperation in the case spurred on
14 the pleas of many other people. So those are all things that I
15 have certainly taken into account and I will take into account.

16 I can't announce the sentence without talking about what
17 happened recently. You don't like to hear it, Mr. Kelly, but I
18 just find it as such an affront to the democratic process; and
19 maybe you just see it differently. We had an election -- this
20 isn't a political comment at all. You could hold a gun to my
21 head; you're not going to get my political beliefs.

22 **THE DEFENDANT:** I understand.

23 **THE COURT:** But I just tell you, we hold an election,
24 you count the votes, and the winner wins and the loser shakes
25 their hand and then you go to the next election. Nobody stole

1 an election, okay. None of that happened. And so -- and I
2 don't know whether you -- maybe you don't even believe that,
3 and that's fine. I'm not holding you accountable for
4 everything -- every action of everybody who was there.

5 If you would have asked me permission to go to Washington,
6 I would have said, Go for it. Go and March peacefully and do
7 the right thing. You have a constitutional right to state your
8 beliefs and to carry a flag and good for you.

9 But when you go inside the Capitol while the democratic
10 process is actually occurring, while they're actually counting
11 the electoral votes for the peaceful transfer of power in this
12 country, that is so fundamentally wrong. It's just wrong.
13 Period. Full stop. And I support your -- a hundred percent
14 support your right to protest, your right to be heard. Nobody
15 challenges that.

16 But when I see somebody inside the rotunda with a big
17 smile on their face and the arm around one of our Founding
18 Fathers, a statue, to say it's a bridge too far doesn't quite
19 capture it.

20 **THE DEFENDANT:** You are right.

21 **THE COURT:** You with me?

22 **THE DEFENDANT:** You are right.

23 **THE COURT:** It's not right what happened there. It's
24 just not right. So that's all I need to say about that.

25 Listen, the last thing I want to talk about are these

1 letters that I have gotten, which I can't even believe it. I
2 mean, it's so overwhelming. I have been here 18 years doing
3 this, and I was in this line of work for 15 years before that.
4 Never seen anything like this.

5 I've received letters -- what's interesting about them is
6 they -- I have read every one very closely and taken, I think,
7 good notes on them. And some of them have a religious and
8 spiritual bent to them. Others have maybe more of a political
9 bent to them. But almost uniformly they speak just incredibly
10 to your character. Now, they're not all positive, and I will
11 talk about that in a minute, but the overwhelming majority of
12 them are incredibly positive.

13 I mean, I received letters from -- I hate to use the term
14 "old ladies," but older women, people in their 70s. It's
15 talking about how you have personally changed their life. You
16 know, it really alludes me.

17 Ms. Fox, she's a bus driver on Long Island, a grandmother
18 of four. She found you on Facebook and just thinks you are the
19 cat's meow. Thinks everything you have done is super positive,
20 and I'm sure it is.

21 Ms. MacDonald wrote me from somewhere in Minnesota, and
22 then Ms. Blakely -- these are all older ladies -- from Idaho
23 Falls, Idaho. She said you're the future Martin Luther King.
24 That's a quote.

25 Ms. Tellier from Johnston, Rhode Island, she is a

1 65-year-old grandmother. She's a huge fan of the Streetlights
2 Unity Movement that you have founded.

3 Ms. Caldwell from Phoenix; Ms. Ruggles from Barrington,
4 Illinois. She is a 77-year-old woman.

5 On and on it goes. You have done something to resonate
6 through your social media following, and it's to be commended.
7 I don't know how else to say it. It's to be commended.

8 And the message is a positive one. You speak to the
9 importance of unity and loving people and respect for law
10 enforcement and authority and institutions, et cetera. And so
11 I have taken those all into account.

12 Now, I would be remiss if I said they were all positive
13 because they're not. I got a letter somehow -- and I take this
14 with a grain of salt, believe me, but somehow or another,
15 Ms. Conklin's mom and you --

16 **THE DEFENDANT:** Oh, God.

17 **THE COURT:** -- don't see eye to eye. I don't know
18 what's at issue here. She might have an axe to grind, I don't
19 know.

20 **THE DEFENDANT:** A big one.

21 **THE COURT:** But she has told me some things in this
22 letter that are a little bit troubling, frankly.

23 And there were a couple of others that viewed you as, sort
24 of, a charlatan. Those are in the minority for sure, but it's
25 fair to certainly point those out.

1 So I say all of this stuff to let you know that I've done
2 a lot of reading and arrive at a judgment in this case, as best
3 I can, trying to weigh all of these aggravating and mitigating
4 factors -- one other thing that I would be remiss. I'm sorry.
5 I have so much paper in front of me.

6 You know, I don't want you to take this that I'm taking
7 out some personal animus against you, but I wasn't pleased to
8 see my picture on your Facebook feed.

9 **THE DEFENDANT:** I apologize. I didn't mean it in a
10 bad way.

11 **THE COURT:** That alarmed me.

12 **THE DEFENDANT:** I apologize, Your Honor. I didn't --

13 **THE COURT:** I don't need to say anything more about
14 that, but I view that as unfair.

15 And I know a lot of these people who wrote to me they did
16 it because you have asked them to. For the Facebook -- I think
17 this is from Facebook or Instagram, one of them -- where you
18 wrote to your followers back in 2020, Judge Phil Simon. Here
19 is his address. He's the judge of my case. He's a fair judge.
20 He was kind to me when I stood before him. If you would like
21 to write a letter, here is the address. And it must have got a
22 lot of traction because there's 228 people who commented on it
23 and people who shared it. So, undoubtedly, that's what
24 prompted many of the letters that I received. I don't need to
25 say anything more about that.

1 So let me formally state the sentence that I have arrived
2 at, and then I will give counsel one final chance to make any
3 final comments.

4 It is the judgment of the Court, pursuant to Title 18,
5 United States Code, Section 3551 and 3553, it's the judgment of
6 the Court that the defendant is hereby committed to the custody
7 of the Bureau of Prisons for a term of 48 months. He'll then
8 be placed on five years of supervised release.

9 Within 72 hours of being released from the custody of the
10 Bureau of Prisons, he'll have to report in person to the
11 nearest probation office for this district between the hours of
12 8 a.m. and 4:30 p.m. While he's on supervision, he'll have to
13 comply with the following conditions.

14 Mr. Adams, I don't believe you have been in front of me,
15 but let me just tell you what my practice is. But I can only
16 do this with your permission. What I would like to do in
17 reference to the presentence report is simply incorporate the
18 conditions of supervision that were proposed -- or the ones
19 that I think are appropriate that are set out in the
20 presentence report. And what I would like to do is just
21 reference them by number and incorporate the language of the
22 condition and the reasoning behind each one of these conditions
23 into my comments here today.

24 Do you have any objection to that procedure?

25 **MR. ADAMS:** No objection. No objection, Your Honor.

1 **THE COURT:** We are on page 19 of the presentence
2 report. It is Document 2536. I will give the four mandatory
3 conditions of supervision as well as the following
4 discretionary conditions: Number 1, Number 2, Number 3,
5 Number 4, Number 5, Number 6, Number 7, Number 8, Number 9,
6 Number 10, Number 11, and Number 12.

7 I earlier announced -- I misspoke when I said a five-year
8 term of supervision. It is my intention to give a three-year
9 term of supervision. Even though there's a mandatory minimum,
10 the government has filed a motion that would relieve me from
11 that. So it's a three-year term of supervision upon the
12 defendant's release from incarceration.

13 The sentencing that I have just given is -- well, it's
14 substantially below what the sentencing guidelines recommend.
15 I have given a sentence that I have given trying to take into
16 account and balance all of the aggravating and mitigating
17 factors, and something that I didn't touch upon was -- in any
18 granular detail -- was all of the other sentencings that I
19 imposed in this case in an effort to try to arrive at -- avoid
20 unwarranted disparity.

21 So, Counsel, do either of you know of any reasons why the
22 sentence should not be imposed as stated?

23 Mr. Adams?

24 **MR. ADAMS:** No, Your Honor.

25 **THE COURT:** Mr. Nozick?

1 **MR. NOZICK:** No, Your Honor, but I have a brief
2 comment before we wrap up, but nothing at this point.

3 **THE COURT:** Let me just ask this: Have I taken all
4 of your principal arguments in aggravation and mitigation into
5 account today?

6 Mr. Adams?

7 **MR. ADAMS:** Yes, Your Honor.

8 **THE COURT:** Mr. Nozick?

9 **MR. NOZICK:** Yes, Your Honor.

10 **THE COURT:** Does either side need any further
11 elaboration as to the sentence that I just announced?

12 **MR. ADAMS:** No, Your Honor.

13 **MR. NOZICK:** No, Your Honor.

14 **THE COURT:** All right. I do order the sentence
15 imposed as stated.

16 What did you want to say, Mr. Nozick?

17 **MR. NOZICK:** Judge, just briefly. This Court
18 mentioned in passing your photo being up online, you know, and
19 mention of you. As you know, my -- or you may not know -- on
20 the same websites, they put stuff up about who the prosecutor
21 was, which is fine. There's been nothing threatening. And
22 Mr. Russo said keep it civil. My photo wasn't up there.
23 Perhaps, I'm not as photogenic as you.

24 However, there was some sort of troubling talk about
25 defense counsel. There was a lot of blaming defense counsel

1 that there was a -- that he forgot to put in the motion that he
2 was going to D.C. and not just Texas. And certainly no one --
3 certainly not Mr. Kelly or Mr. Russo was seeking any revenge,
4 but there was a fair amount of blaming Mr. Adams. And in the
5 comments there was some stuff that was troubling, like someone
6 ought to do something about that lawyer, et cetera.

7 I have passed that information on. I want to make clear,
8 Judge, to everyone, that I've been watching this case closely,
9 and there's nothing Mr. Adams did which at all negatively
10 affected the sentence. If the motion said he could travel to
11 Texas and Washington and he got charged for what he did and did
12 what he did at the Capitol, the sentence would be the same,
13 Judge.

14 **THE COURT:** None of it would have changed.

15 **MR. NOZICK:** Of course it wouldn't. I want to make
16 clear to whoever is listening that the wrong person is being
17 blamed. It wasn't Mr. Adams that took the actions at the
18 Capitol, and the defendant isn't receiving extra time for
19 whether the motion mentioned D.C. or just Texas. Obviously,
20 being out of district is a violation, but it was the actions
21 and getting charged that is playing a role in determining the
22 sentence. And I don't want there to be any misperception out
23 there that a miscommunication or an error by Mr. Adams caused
24 any additional sentencing.

25 Because, as I said, it's a volatile time. Of course,

1 Mr. Kelly and Mr. Russo are respectful and urging respect. You
2 can't control who is reading these things and, sort of, the
3 tangent that they go off on. And I just want to make clear
4 that regardless of the motion we would have asked for losing
5 acceptance and there's nothing that Mr. Adams did which
6 adversely affected the sentence.

7 THE COURT: You want to say anything about that,
8 Mr. Adams?

9 MR. ADAMS: Thank you to the government. But also I
10 would not like anyone who made comments, that Mr. Kelly is not
11 in control of, to affect him negatively.

12 THE COURT: I mean, I can assure you that -- well, I
13 have already stated this on the record.

14 MR. ADAMS: Yes, Your Honor.

15 THE COURT: I don't think I need to repeat it. It's
16 not so much the travel to Washington that matters; it's what
17 happened in Washington. In any event, I do order the sentence
18 imposed as stated.

19 Mr. Kelly, you have heard the judgment of the Court
20 imposing sentence upon you. Pursuant to Rule 32(j) of the
21 Federal Rules of Criminal Procedure, I advise you that you can
22 appeal your conviction in this case if you think your guilty
23 plea was somehow unlawful or involuntary or if there was some
24 other defect in the proceeding not waived by your guilty plea.
25 Ordinarily, you would also have a right to appeal your

1 sentence under certain circumstances if you think it was
2 contrary to law.

3 Now, a defendant can waive their right to appeal as part
4 of a plea agreement. You did enter into an agreement where you
5 waived your right to appeal. Those waivers are generally
6 enforceable; but if you think for whatever reason the waiver in
7 this case is not enforceable, you have to present that theory
8 to the Court of Appeals by filing a notice of appeal within 14
9 days of the judgment being entered in your case.

10 And if you want to file an appeal but you are unable to
11 pay for the costs of the appeal, you may apply for leave to
12 appeal *in forma pauperis*, which means you can pursue an appeal
13 at no cost to you.

14 Mr. Adams, I remind you of your duty to perfect the appeal
15 should your client wish you to do so.

16 Do you want me to make any recommendations as to placement
17 for Mr. Kelly?

18 **MR. ADAMS:** Yes, Your Honor. Thank you. The
19 government will handle that placement.

20 **THE COURT:** I won't say anything. Mr. Nozick will
21 take care of that.

22 **MR. ADAMS:** Thank you, Judge.

23 **THE COURT:** There were no other counts to dismiss
24 there; is that right, Mr. Nozick?

25 **MR. NOZICK:** Correct, your Honor.

