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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
CASE NO. 06-20373-CRIMINAL-LENARD

UNITED STATES OF AMERICA, Miami, Florida  
Plaintiff, November 20, 2009  
vs. 10:09 a.m. to 4:26 p.m.  
NARSEAL BATISTE,  
Defendant. Pages 1 to 152

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SENTENCING HEARING  
BEFORE THE HONORABLE JOAN A. LENARD,  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: JACQUELINE M. ARANGO, ESQ., and  
RICHARD D. GREGORIE, ESQ.  
ASSISTANT UNITED STATES ATTORNEYS  
99 Northeast Fourth Street  
Miami, Florida 33132

FOR THE DEFENDANT ANA MARIA JHONES, ESQ.  
NARSEAL BATISTE: 300 SEVILLE AVENUE, SUITE 210  
Coral Gables, Florida 33134

US PROBATION: ^ Ric Garcia ^ all caps?

REPORTED BY: LISA EDWARDS, CRR, RMR  
Official Court Reporter  
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1 THE COURT: Good morning. You may be seated.  
2 United States of America versus Narseal  
3 Batiste, Case No. 06-20373.

4 Good morning, counsel and Probation.  
5 State your appearances, please, for the  
6 record.

7 MS. ARANGO: Good morning, your Honor.  
8 Jackie Arango and Richard Gregorie on behalf  
9 of the United States.

10 THE COURT: Good morning.

11 MS. JHONES: Good morning, your Honor.  
12 Ana Jhones on behalf of Narseal Batiste, who  
13 is present.

14 THE COURT: Good morning.

15 THE PROBATION OFFICER: Good morning, your  
16 Honor.

17 Ric Garcia with Probation.

18 THE COURT: Good morning.

19 We are here on the continuation of the  
20 sentencing hearing for Narseal Batiste after the joint  
21 hearing that was held this past Tuesday on joint  
22 issues.

23 First of all, I want to announce that the  
24 motion for new trial is denied, and I will be entering  
25 a written order for that denial.

1           And I want to supplement my findings on the  
2 issues presented to the Court on Tuesday and find that  
3 Narseal Batiste is accountable for the acts of his  
4 co-conspirators, that they were in furtherance of the  
5 jointly undertaken criminal activity and were  
6 reasonably foreseeable in connection with that criminal  
7 activity.

8           The Defendant filed objections to the revised  
9 advisory presentence investigation report. Actually,  
10 they were filed before the revision.

11           Are there outstanding objections remaining?

12           MS. JHONES: Your Honor, as a matter of  
13 factual objections, there are a few. I think I could  
14 get through them rather quickly.

15           And then, as far as a legal objection, I think  
16 that the only one -- well, actually, there's two legal  
17 objections, one that I'm going to qualify.

18           But I think the one that has to be -- the one  
19 legal objection, I guess, that is different here with  
20 respect to Mr. Batiste is whether or not the  
21 recommendation by Probation that -- because, as to  
22 Count 4, there is no guideline for seditious  
23 conspiracy, of which Mr. Batiste was convicted on  
24 Count 4, that -- the Court is to utilize the most  
25 analogous guideline.

1           And Probation has recommended that that  
2 guideline be the treason guideline under 2M1.1. And  
3 there is a legal objection as to that.

4           THE COURT: Okay.

5           MS. JHONES: Whatever the Court's pleasure is.  
6 I could go through the factual objections --

7           THE COURT: Whichever way you want to present  
8 it, Ms. Jhones.

9           MS. JHONES: Your Honor, in my pleading,  
10 Docket Entry 1446, I have filed the following  
11 objections:

12           With respect to, your Honor -- on Page 3 of  
13 the pleading, the first objection -- factual objection  
14 pertains to Page 5 -- I'm sorry.

15           The first objection, which is, again, a  
16 technical objection, is Page 4, where they list the  
17 aliases that have been used by Mr. Batiste.

18           THE COURT: You're talking about Page 4 of the  
19 report. Correct?

20           MS. JHONES: Of the PSI. Yes.

21           THE COURT: Okay.

22           MS. JHONES: At the bottom, they have the  
23 aliases that Mr. Batiste has used. One of the aliases  
24 that is mentioned in there is Maxwell Batiste.

25           To my knowledge, Mr. Batiste has never used

1 the alias -- his brother's alias. That's -- that is  
2 the objection lodged as to that.

3 MS. ARANGO: Judge, that alias was not one of  
4 the aliases he used in connection with this case.

5 However, I would just note that the probation  
6 officer's response illuminates why they used that  
7 alias.

8 It states that that alias was noted as  
9 attributed to him by authorities in Chicago, Illinois,  
10 in 1993, when he was arrested and subsequently  
11 convicted for criminal damage to property, which  
12 information is now reflected in the Defendant's NCIC  
13 record.

14 So we would just rely on that. It's there as  
15 a result of his NCIC record.

16 MS. JHONES: Your Honor, I apologize. I  
17 haven't gotten a copy of the addendum.

18 I'm sorry, Mr. Garcia. Would you happen to  
19 have an extra copy?

20 THE COURT: You haven't seen the addendum?

21 MS. JHONES: I have not, unfortunately.

22 THE COURT: Okay.

23 MS. JHONES: He may have e-mailed it to me and  
24 I did not receive it. May I --

25 THE COURT: This is the second addendum.

1 Right?

2 MS. JHONES: The second. Yes.

3 THE COURT: Why don't we take a few minutes so  
4 you can review that and go over that with your client.

5 MS. JHONES: Okay.

6 THE COURT: So we'll take ten minutes. Will  
7 that be enough time?

8 MS. JHONES: That would be fine. Thank you.

9 THE COURT: We'll take a ten-minute recess.

10 (Thereupon a recess was taken, after which the  
11 following proceedings were had:)

12 MS. JHONES: Thank you for the time.

13 THE COURT: We're back on United States of  
14 America versus Narseal Batiste, Case No. 06-20373.

15 Counsel, state your appearances, please, once  
16 more for the record, as well as Probation.

17 MS. ARANGO: Jackie Arango on behalf of the  
18 United States. Dick Gregorie is also here as well,  
19 your Honor.

20 MS. JHONES: Ana Jhones and Bernadette Armand  
21 on behalf of Narseal Batiste, who is present.

22 THE PROBATION OFFICER: Ric Garcia with  
23 Probation, your Honor.

24 THE COURT: Mr. Batiste, have you now had an  
25 opportunity to read the second addendum to the revised

1 advisory presentence investigation report?

2 THE DEFENDANT: Yes, I have, your Honor.

3 THE COURT: And have you discussed the second  
4 addendum to the revised advisory presentence  
5 investigation report with your attorney?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And, Ms. Jhones, you've now had an  
8 opportunity to read the second addendum. Correct?

9 MS. JHONES: Yes, your Honor. Thank you.

10 THE COURT: Okay. You may proceed.

11 MS. JHONES: Thank you.

12 Your Honor, starting where we left off, with  
13 respect to the issue of the alias, the only thing I  
14 could add, your Honor, is that it appears -- I would  
15 respectfully request that -- and, again, it's truly an  
16 insignificant issue.

17 But just for purposes of accuracy, if you look  
18 at Page 74, which is the information, as I understand  
19 it -- and Mr. Garcia may correct me if I'm wrong -- the  
20 incident that was made reference to in the addendum,  
21 there is no indication -- as I understand it, there's  
22 no indication in Paragraph 74 regarding the  
23 circumstances of that one arrest in 1993 that indicate  
24 that Mr. Batiste used an alias.

25 Apparently, that came up in an NCIC.

1           And my response to that, your Honor, which I'm  
2 sure the Court has heard on many occasions -- the NCIC  
3 is not -- NCIC historically has inaccurate information.

4           And, again, I have -- it's not an issue that I  
5 want to beat to death. I've just never seen anywhere  
6 where Mr. Batiste has utilized an alias, other than the  
7 ones that are mentioned that I believe are correct,  
8 Brother Naz and the other ones that are mentioned  
9 there, but not his brother.

10           And, again, it's not something that I want to  
11 spend an awful lot of time on.

12           THE COURT: Mr. Garcia, do you have the court  
13 records from that offense in '93 in Chicago?

14           THE PROBATION OFFICER: Yes, your Honor.

15           THE COURT: And do the court records  
16 themselves indicate the alias?

17           THE PROBATION OFFICER: Yes. The arrest  
18 report reflects the alias.

19           THE COURT: Do you want to see that,  
20 Ms. Jhones?

21           MS. JHONES: Sure.

22           THE PROBATION OFFICER: (Tenders document to  
23 counsel.)

24           MS. JHONES: Your Honor, I withdraw that  
25 objection.

1 THE COURT: Okay.

2 MS. JHONES: The next objection is on  
3 Paragraph 3, which deals with the characterization, if  
4 you will, of Mr. Batiste -- knowledge attributed to  
5 Mr. Batiste during the time period of as early as  
6 November of 2005 and continuing through June of 2006  
7 that, in essence, Mr. Batiste and, indeed, his  
8 Co-Defendants had agreed to provide themselves and work  
9 under the direction and control of Al-Qaeda.

10 The objection that I have lodged, as the Court  
11 knows, having gone through the evidence in this case on  
12 three separate occasions -- the issue of Al-Qaeda, the  
13 issue of Al-Qaeda, and, specifically, the issue of  
14 Al-Qaeda became something that was clear January 28th  
15 of 2006, not in December, not in November, not prior to  
16 that.

17 And, specifically, Mr. Batiste said on  
18 March 16th of 2006, "I didn't know that you were with  
19 Al-Qaeda."

20 And so -- and then, of course, we have the  
21 March 26th conversation as well as the March 10th  
22 conversation regarding, you know, "I don't want to be  
23 under the direction and control of Al-Qaeda."

24 I understand -- well, let me just clear it up.

25 Objection No. 1: I believe that this

1 paragraph is misleading in that it attributes knowledge  
2 of Al-Qaeda as an organization as the organization that  
3 Mr. Batiste was dealing with vis-a-vis Informant No. 1  
4 and Informant No. 2.

5 The evidence in October, the evidence in  
6 November, the evidence in December up until the end of  
7 January, is clear that Al-Qaeda became -- was mentioned  
8 for the very first time on January 20th of 2006.  
9 That's as far as the factual accuracy is concerned.

10 As far as the second issue of that as to  
11 whether or not he agreed to work under the direction  
12 and control, I understand that the jury has spoken on  
13 that with respect to Count 1.

14 And I just want to preserve the issue as it  
15 relates to the direction and control issue.

16 THE COURT: Yes.

17 MS. ARANGO: Judge, as I stated before, all  
18 Ms. Jhones is arguing here is a competing inference,  
19 which was rejected by the jury.

20 And I would note that the jury found the  
21 Defendant guilty of conspiracy to provide material  
22 support to Al-Qaeda in Count 1 of the indictment.

23 And specifically at Page 2 of the indictment,  
24 Count 1 --

25 THE COURT: What about the date structure in

1 that paragraph? It says, from as early as November of  
2 2005, they agreed to provide material support and  
3 resources to Al-Qaeda.

4 In early November, 2005 -- at the first time  
5 that he met with Elie Assaad, which was in December,  
6 did he know he was from Al-Qaeda or -- he knew he was  
7 from a terrorist organization.

8 MS. ARANGO: He understood it to be a  
9 terrorist organization. He was hoping to meet up with  
10 somebody from Al-Qaeda and he was hoping that it was  
11 Al-Qaeda, but he wasn't certain at that point that it  
12 was Al-Qaeda.

13 But let's read the -- what it says is: From  
14 as early as November of 2005 through June of 2006,  
15 Narseal Batiste -- the sentence says: From as early as  
16 November of 2005 and through June of 2006, Narseal  
17 Batiste and the other Defendants conspired to provide  
18 material support and resources to Al-Qaeda, a foreign  
19 terrorist organization.

20 So it says "from as early as." As early as  
21 November, they wanted it to be Al-Qaeda and then, at  
22 some point after that, they determined that it was  
23 Al-Qaeda.

24 I don't think that this reads improperly.  
25 But....

1 MS. JHONES: I remind the Court, your Honor --

2 MS. ARANGO: I'm sorry.

3 I just want to make one more point, that, you  
4 know, Count 1 of the indictment at Page 2 does say  
5 that: From as early as in or about November, 2005, the  
6 exact date being unknown to the grand jury, and then  
7 continuing on until the date of the return of this  
8 indictment, the Defendants did conspire and agree to  
9 provide material support and resources to a foreign  
10 terrorist organization, that is, Al-Qaeda, by agreeing  
11 to provide personnel, including themselves, to work  
12 under Al-Qaeda's direction and control.

13 That was the other point that Ms. Jhones was  
14 making about the direction and control, which is set  
15 forth here in the indictment, which the Defendant's  
16 found guilty of.

17 MS. JHONES: Your Honor, I'd like to highlight  
18 for the Court, as painful as it may be, having listened  
19 to these things far too many times, in my opinion, on  
20 November 21st of 2005, when CW 1 brought up the issue  
21 out of the clear blue about that guy that's coming,  
22 whatever he said, back home or what have you, both  
23 Mr. Batiste and Mr. Abraham asked him, "Well, who is  
24 this guy? I mean, who is he?"

25 The point of the matter is -- and I don't have

1 any objection to changing the language in the PSI to  
2 reflect that it wasn't until January 28th of 2006 that  
3 the informant said, "I am from Al-Qaeda. Do you know  
4 who I am?" and also to reflect that, on March 16th,  
5 Mr. Batiste said, "I did not know you were from  
6 Al-Qaeda." That's the issue.

7 And as it relates to the direction and control  
8 argument, like I said, as a matter of fact, I'll  
9 withdraw that objection.

10 I think that, for purposes of, you know -- the  
11 jury has spoken on that issue and, for purposes of  
12 sentencing, I'm not going to contest, of course, the  
13 facts as far as it relates to the direction or control.

14 But I would like -- I think that it is proper  
15 because Paragraph 3, as it relates to the when and the  
16 who -- it is clear and undisputed, clear and  
17 undisputed --

18 THE COURT: All right. I'm going to grant the  
19 objection to this extent: I'm going to order that the  
20 revised advisory presentence investigation report be  
21 modified to read as follows:

22 "From as early as November of 2005 through  
23 June of 2006" -- and then it names the Defendants who  
24 were convicted -- "and others conspired to provide  
25 material support and resources to a foreign terrorist

1 organization (in January, 2006, that foreign terrorist  
2 organization was identified to the Defendants as ^  
3 Al-Qaeda.)" ^ Leave period like she says?

4 MS. JHONES: That's fine, your Honor.

5 The next objection is at Page 5, and it's  
6 Paragraph 5.

7 If I may just have a moment, your Honor.

8 If I may just have an inquiry of Probation.  
9 I'm a little bit confused as to Probation's response.  
10 I think this may resolve it, but I'm not entirely  
11 clear.

12 My objection to Paragraph 5 is attributing the  
13 existence -- and the conversation is between  
14 Mr. al-Saidi and Mr. Batiste -- about the Sears Tower  
15 as early as September of 2005.

16 THE COURT: I think it says "sometime in  
17 2005." It doesn't say September, the report itself.

18 MS. JHONES: Correct. Well, my objection,  
19 your Honor, is again as to the timing issue.

20 As the Court is aware, the first time that the  
21 Sears Tower was mentioned by Mr. Batiste in this case  
22 was on December 21st of 2005, when he had a  
23 conversation in CW 1's apartment where Mr. Batiste  
24 started -- the words were something to the effect, "Do  
25 you know where the Sears Tower is?", so to speak -- or

1 words to that effect.

2 And there was -- and CW 1, I believe it was,  
3 in the first trial had admitted that Mr. Batiste had  
4 never mentioned that until December 21st, 2005.

5 CW -- there's -- number one, there is no  
6 evidence that Mr. Batiste --

7 THE COURT: So why don't we just change that  
8 to "sometime in the latter part of 2005."

9 MS. JHONES: That's fine. That's fine.

10 THE COURT: Any objection to that by the  
11 Government?

12 MS. ARANGO: No, Judge.

13 THE COURT: So I'll order that to be modified  
14 to reflect that language.

15 Next?

16 MS. JHONES: As to the next objection, your  
17 Honor, it's just -- it's an -- the objection as to the  
18 reference to an AK-47.

19 The AK-47, as it relates to the culpability of  
20 Mr. Batiste, has no bearing on this case. I think  
21 that, given -- there's enough information in this PSI  
22 that is going to affect Mr. Batiste's classification in  
23 the BOP. Mr. Batiste had no dealings whatsoever with  
24 an AK-47.

25 THE COURT: Where is it in Paragraph 6?

1 MS. JHONES: I'm sorry. Did I say  
2 Paragraph 6? I misspoke.

3 THE COURT: No. It's Paragraph 7. I'm  
4 looking at the wrong thing. I apologize. I was  
5 looking at the page number. Okay.

6 MS. JHONES: My only objection is this is a  
7 PSI that pertains to the culpability and the facts of  
8 this case, not as to what the FBI instructed or did not  
9 instruct the informants to do as it relates to a  
10 separate investigation, in this case, the recovery of  
11 an AK-47.

12 THE COURT: Any objection?

13 MS. ARANGO: Judge, I have no objection to  
14 that.

15 THE COURT: I agree. That should be struck.

16 So I'm going to order that the sentence  
17 regarding the AK-47 and al-Saidi be struck in its  
18 entirety: "Al-Saidi was also instructed to retrieve  
19 the AK-47 that he illegally purchased and which he kept  
20 at the convenience store he once owned for protection."  
21 That should all be struck.

22 MS. JHONES: Thank you.

23 The next paragraph -- the next objection, I  
24 should say, is with respect to the same paragraph.  
25 And, again, we're talking here about specificity as to

1 what actually occurred.

2 This pertains to the unrecorded meeting in the  
3 hotel, the Holiday Inn in North Miami, where  
4 Mr. al-Saidi had testified in many different --  
5 differently on at least two separate occasions, if not  
6 three, that Narseal Batiste and others showed up  
7 unexpectedly when, in reality, as Mr. Coriolan  
8 testified, Mr. al-Saidi had no way of contacting  
9 Mr. Batiste, didn't have his phone number.

10 And Mr. Coriolan --

11 THE COURT: Could you slow down a little?

12 MS. JHONES: Yes, your Honor.

13 THE COURT: It's difficult for Lisa after a  
14 while.

15 MS. JHONES: I apologize.

16 Sorry, Lisa.

17 THE COURT: I need to not have her fingers get  
18 tired out.

19 Thank you.

20 MS. JHONES: Mr. Coriolan's testimony itself  
21 was that it was al-Saidi who was --

22 THE COURT: I'll strike the word  
23 "unexpectedly."

24 Any objection by the Government?

25 MS. ARANGO: No objection.

1 THE COURT: Okay.

2 MS. JHONES: The next objection has been  
3 resolved. That's the one on Paragraph 10.

4 The following objection is found at  
5 Paragraph 13.

6 MS. ARANGO: I'm sorry. What are we on now?

7 THE COURT: Paragraph 13.

8 MS. JHONES: Page 9.

9 MS. ARANGO: Page 9.

10 MS. JHONES: Your Honor, this is a similar  
11 objection to the earlier one with respect to the timing  
12 of Al-Qaeda as a foreign terrorist organization and the  
13 knowledge of the identity of that organization.

14 And if I may just have a minute to look at the  
15 PSI to see....

16 THE COURT: Well, why don't we just change  
17 "Al-Qaeda representative" -- "patiently wait for the  
18 Al-Qaeda representative" to "patiently wait for the  
19 foreign terrorist representative."

20 MS. ARANGO: That's fine.

21 We could also say -- since we're talking about  
22 November and I think her objection is making  
23 reference -- "back home making reference to  
24 Al-Qaeda," we could say "back home making reference to  
25 a foreign terrorist organization."

1 THE COURT: Right.

2 Do you see that, Mr. Garcia, in the two places  
3 in Paragraph 13?

4 THE PROBATION OFFICER: Yes, Judge.

5 THE COURT: Is that satisfactory?

6 MS. JHONES: Your Honor, unfortunately, I  
7 think that it is not. And if the Court overrules my  
8 objection, I understand.

9 But I would like to highlight for the Court a  
10 particular Government exhibit and a defense exhibit.

11 As the Court may recall, on October 29th,  
12 2005, that was the very first recorded conversation in  
13 this case.

14 The Government -- I don't remember the exhibit  
15 number. The Government presented into evidence,  
16 introduced into evidence, the audio, the CD, of that  
17 conversation.

18 This was the conversation where Mr. Batiste  
19 met up with al-Saidi in a Chinese restaurant in North  
20 Miami and then they went over to the location known as  
21 the Embassy and a number of things transpired.

22 The Government did not introduce neither in  
23 the first, the second or the third trial the transcript  
24 of that audio recording.

25 In the third trial, I was able to introduce

1 the transcript. That was a defense exhibit.

2 That defense exhibit clearly indicates who  
3 Mr. Batiste on October 29th of 2005 thought the person  
4 from back home was.

5 Now, whether that --

6 THE COURT: This paragraph is about November.  
7 Paragraph 13 is about a November meeting --

8 MS. JHONES: Except that, if you read --

9 THE COURT: -- at al-Saidi's apartment.

10 MS. JHONES: Yes.

11 But if you recall -- if you look at this, your  
12 Honor, where it says, "You remember the guy I told you  
13 about?" -- and I think it's significant in the context  
14 of this informant-driven case. I think that that's  
15 significant. "You remember the guy I told you about?"  
16 He's talking about the past.

17 And, again, this is very important in the  
18 context of the facts of this case, how they evolved.  
19 And that's my objection.

20 THE COURT: What is it that you say your  
21 transcript says?

22 MS. JHONES: The transcript --

23 THE COURT: I'm not sure I understand what the  
24 objection is. That may be because I interrupted you,  
25 and I apologize if I didn't let you finish your train

1 of thought. But I thought the date made a difference.

2 But if we change it to "foreign terrorist  
3 organization" rather than "Al-Qaeda" and the two times  
4 that Al-Qaeda is mentioned in that paragraph, you said  
5 you still have an objection to that. You were telling  
6 me why.

7 MS. JHONES: Yes, your Honor. I do.

8 The reason why I object to that is because the  
9 evidence in this case -- I understand that the  
10 Government's position is that CW 1's testimony is  
11 contrary, his testimony versus the corroborating  
12 information.

13 My problem is that the significance of "back  
14 home," the significance of "back home," is very  
15 important in the context of this ^ informant-driven,  
16 evolving case. ^ Informant-driven-evolving?

17 The conversation of October 29th of 2005 --  
18 the reason why I mentioned that conversation is because  
19 it is the first recorded conversation.

20 In that conversation, Mr. Batiste -- I'm  
21 sorry -- the informant says to Mr. Batiste, you know,  
22 "Remember that guy from back home? The brother of my  
23 uncle" -- I forget what the relationship was. But he  
24 goes, "He's married to my sister" and goes on and on.

25 In that conversation, it is clear, it is

1 clear, by virtue of what CW 1 said, that he was  
2 explaining to Mr. Batiste who -- not just the code name  
3 "back home," but, you know, my uncle, that person who's  
4 married to so-and-so and that sort of thing.

5 And then, of course, we have several  
6 conversations after that. And then -- and, again, this  
7 was the evolving -- the evolving -- the case with the  
8 evolving facts, if you will, as to Al-Qaeda, the  
9 foreign terrorist organization.

10 Now, I understand that, once we get to  
11 November of 2005, even though there was absolutely no  
12 knowledge as to Al-Qaeda, then the talk changes a  
13 little bit.

14 I cannot agree that -- and I just want to  
15 preserve my objection to the extent that the Court  
16 doesn't agree with me.

17 I cannot agree that the evidence in this case  
18 sustains the proposition that "back home" meant a  
19 foreign terrorist organization from day one. The facts  
20 are clearly contrary to that.

21 And, respectfully, I object.

22 THE COURT: So I'm going to grant the  
23 objection in part and deny it in part, grant it to the  
24 extent that "Al-Qaeda" is changed in the two portions  
25 of Paragraph 13 that Al-Qaeda appears and I'm going to

1 substitute "foreign terrorist organization  
2 representative."

3 And it's denied in part to the extent that I  
4 find that that is an accurate representation of the  
5 evidence in the case.

6 MS. JHONES: We are now, your Honor, up to  
7 Paragraph 15, which is found at Page 10.

8 This objection, your Honor, goes to the issue  
9 of evidence that was developed in an unrelated hearing,  
10 the pretrial detention hearing in Atlanta, Georgia, of  
11 acquitted Defendant Lyglenson Lemorin.

12 The PSI indicates that Mr. al-Saidi --

13 THE COURT: Any objection from the Government  
14 to striking that paragraph?

15 MS. ARANGO: That's fine, Judge.

16 THE COURT: That's struck. Paragraph 15 is  
17 struck.

18 Is that what your objection was? You wanted  
19 that out?

20 MS. JHONES: Yes. Thank you, your Honor.

21 The next objection is on Paragraph 17,  
22 Page 10.

23 And I just need a moment, your Honor.

24 I'm sorry. I think -- it's Paragraph 16 at  
25 Page 10.

1 My objection to this paragraph, your Honor,  
2 again deals with the evolving nature of the facts.

3 Paragraph 16 mixes -- or combines  
4 conversations that took place on November 21st of 2005,  
5 conversations that took place on 12-21 of 2005.

6 And I think that I -- I would proffer a way to  
7 resolve it is somehow to indicate that this  
8 was attributed -- the conversations that took place  
9 were not captured on one day.

10 These things happened during the course of --  
11 again, at least from November and continuing on to  
12 December 21st of 2005.

13 THE COURT: Any objection to including the  
14 dates from -- in the beginning of the paragraph from  
15 November 21st to December 21st of 2005?

16 MS. ARANGO: That's fine.

17 THE COURT: Batiste was captured on audiotaped  
18 conversations.

19 MS. ARANGO: That's fine.

20 THE COURT: I'll order that to be modified.

21 MS. JHONES: Paragraph 17, Page 10. It's the  
22 same issue regarding Al-Qaeda. And I guess, again,  
23 it's the same issue.

24 December of 2005, conversations were recorded.  
25 Batiste -- al-Saidi assured Batiste that the Al-Qaeda

1 representative was coming.

2 MS. ARANGO: I don't have a problem with  
3 changing the references throughout -- I see two -- to  
4 "foreign terrorist organization."

5 THE COURT: I'll order that the two references  
6 to "Al-Qaeda," "the Al-Qaeda representative" and "from  
7 Al-Qaeda" in Paragraph 17 be changed to "foreign  
8 terrorist organization."

9 MS. JHONES: Okay. The next objection is at  
10 Paragraph 19. That has been resolved.

11 THE COURT: Okay.

12 MS. JHONES: I just need a moment to make sure  
13 I'm not skipping anything, your Honor.

14 THE COURT: Sure.

15 MS. JHONES: Thank you.

16 Actually, I'm not sure if it's been resolved.

17 In reading the addendum, my objection, your  
18 Honor, relates to --

19 THE COURT: Which paragraph is this now?

20 MS. JHONES: It's going to be Paragraph 19 at  
21 Page 11, where it says that, on December 16th, 2005, in  
22 the meeting held between Mr. Batiste and Informant  
23 No. 2, Assaad, that there were discussions there about  
24 Mr. Batiste's mission of causing chaos.

25 The December 16th conversation is the

1 conversation where Mr. Batiste said that, after he  
2 had -- he acquired these weapons that he had mentioned  
3 on December 16th, then he was going to ^ "march over to  
4 Jeb Bush's office and let him know that we're here."  
5 December 16th had no references to plans to cause  
6 chaos. ^ Quotes okay?

7 In addition, this paragraph also says that  
8 Mr. Batiste was provided with a cellular phone on  
9 December 16th, and that occurred on December 22nd.

10 THE COURT: What's the Government's response?

11 MS. ARANGO: I disagree with her  
12 characterization. I mean, it outlines what the  
13 conversation was. He had previously talked about their  
14 mission to cause chaos on November 7th, on  
15 November 21st.

16 THE COURT: Do they talk about it in that  
17 conversation on December 16th in the hotel?

18 MS. ARANGO: Not in quotes, Judge. You can  
19 take the quotes out because it was a previous  
20 conversation.

21 THE COURT: Well, that was his first meeting  
22 with Assaad, though.

23 MS. ARANGO: Correct. Correct. ^ Reading?

24 THE COURT: ^ "he nonetheless agreed to meet  
25 with Assaad, to whom ^ he outlined his mission to cause

1 chaos." ^ He? ^ who? ^ we -- just "outlined...?"

2 MS. ARANGO: How about ^ we just "outlined his  
3 mission," period? I could take off -- we could take  
4 out "cause chaos."

5 MS. JHONES: I don't have an objection to  
6 that.

7 THE COURT: Okay. So we'll strike "to cause  
8 chaos."

9 MS. ARANGO: Okay.

10 THE COURT: And then it comes up again later  
11 on in the paragraph.

12 MS. JHONES: "...reiterated his plan of  
13 causing chaos and confusion..."

14 MS. ARANGO: I don't mind taking out that  
15 line.

16 THE COURT: Wait. I'm looking for it. I had  
17 it and I lost it. Okay.

18 MS. ARANGO: "Batiste again reiterated..."

19 THE COURT: Right.

20 So I'm going to strike the sentence, "The law  
21 enforcement agent testified that Batiste again  
22 reiterated his plan of creating chaos, confusion with  
23 the ultimate demise of the United States." Take that  
24 out.

25 So that objection is granted.

1 MS. JHONES: Lastly, your Honor, at the bottom  
2 of the paragraph, Mr. Batiste was not provided a  
3 cellular phone. If you just want to insert the date on  
4 December 22nd he was provided a cellular phone.

5 MS. ARANGO: That's fine. December 22nd. Was  
6 it the 22nd? Yes. On December 22nd.

7 THE COURT: "Batiste was later provided with a  
8 cellular telephone on December 22nd, 2005."

9 Got that, Mr. Garcia?

10 THE PROBATION OFFICER: Yes, Judge.

11 THE COURT: Thank you.

12 MS. JHONES: Paragraph 12, your Honor --

13 THE COURT: Paragraph 12?

14 MS. JHONES: I'm sorry. Paragraph 20,  
15 Page 12.

16 My only objection there was to the reference  
17 to the people that were present at the -- I didn't  
18 articulate it and Probation was not able to respond due  
19 to my failure to articulate.

20 I objected to the characterization because  
21 there was a reference in there that Rotschild Augustine  
22 was present at this location when, in fact, there was  
23 no evidence that he was present.

24 THE COURT: It says Phanor, Burson Augustin,  
25 Herrera and an unidentified individual.

1 MS. JHONES: That's been changed?

2 THE COURT: That's what it says in  
3 Paragraph 20.

4 MS. JHONES: Okay.

5 THE COURT: That's okay?

6 MS. JHONES: That's fine.

7 THE COURT: Okay.

8 MS. ARANGO: Judge, I don't have a problem on  
9 Paragraph 21. The objection is about -- if the  
10 objection is about Al-Qaeda.

11 I just don't -- just to shortcut this, I have  
12 no problem with substituting "foreign terrorist  
13 organization" for "Al-Qaeda," since they're referring  
14 to prior to January 28th, December 21st.

15 MS. JHONES: That's fine.

16 THE COURT: Okay. So in Paragraph 21, I see  
17 two references to "Al-Qaeda." That will be changed to  
18 "foreign terrorist organization."

19 Is the next Paragraph 33?

20 MS. JHONES: I do have -- it is, your Honor.

21 But if I could just go back to Paragraph --  
22 well, if I could just go back to the initial objection  
23 on Paragraph 33, I'd like to add -- to supplement that  
24 paragraph to reflect that --

25 THE COURT: We're on 33 now?

1 MS. JHONES: We are on --

2 THE COURT: Are we on Paragraph 33?

3 MS. JHONES: Let me make sure, your Honor,  
4 that I'm -- I'm sorry. I may have lost my place here.  
5 We're still on Paragraph 21.

6 THE COURT: Okay.

7 MS. JHONES: I'd like Paragraph 21 to reflect,  
8 your Honor, that -- Paragraph 21 incorporates  
9 discussions that were held both on December 21st and  
10 December 22nd. The reference to the 5,000 soldiers  
11 took place on December 22nd.

12 MS. ARANGO: Judge, I disagree with that.

13 It was on December 21st. That was a  
14 conversation with al-Saidi which occurred on  
15 December 21st. The conversation that occurred on  
16 December 22nd was with Elie Assaad.

17 MS. JHONES: That's correct.

18 But my memory is that the 5,000 soldiers were  
19 on December 22nd.

20 MS. ARANGO: No. It was December 21st. I  
21 mean, I -- you can put "or" --

22 THE COURT: Does it really make a difference?

23 MS. ARANGO: It doesn't.

24 MS. JHONES: It doesn't.

25 MS. ARANGO: You could put

1 "December 21st-22nd."

2 MS. JHONES: It doesn't. This is what I'd  
3 like to supplement, though, your Honor. It doesn't  
4 make a difference.

5 The 5,000 soldiers, I think, is significant  
6 and was mentioned, whether it was the 21st or 22nd.

7 THE COURT: None of this is going to change  
8 the guidelines. Correct?

9 MS. JHONES: I understand, your Honor. I  
10 understand.

11 If I may just have -- again, I'm trying to --  
12 I think that Probation has done a remarkable job of  
13 trying to put into a PSI thousands and thousands and  
14 thousands of hours and hundreds and hundreds of  
15 exhibits, and I commend Probation for doing that.

16 I have the job to try and set forth as best I  
17 can with as much accuracy as I can. That's my  
18 objective.

19 MS. ARANGO: And I would just ask, if she  
20 wanted to do that, then, why didn't she bring the page  
21 of the transcript?

22 I'm positive it was the 21st. I don't really  
23 think it makes a difference, and I don't even care  
24 about changing it to "21st-22nd."

25 THE COURT: Okay. We'll put "on

1 December 21st-22nd" for Paragraph 21.

2 MS. JHONES: What I'd like to do is supplement  
3 that paragraph and say that, on December 22nd of 2005,  
4 Mr. Batiste told the Informant No. 2 that no one knows  
5 about the Chicago plan. No one.

6 MS. ARANGO: A, I don't know if that's  
7 accurate, and I don't think it makes any difference,  
8 anyways. There was portions of time during this  
9 investigation where he did say nobody knows about this  
10 plan.

11 It would be nice if she came in with the  
12 transcript to establish that. But --

13 MS. JHONES: Your Honor, what I would propose  
14 is that -- what I would propose would be that there be  
15 inserted a sentence in there.

16 If the Government objects to -- if the  
17 Government does not agree that, on December 22nd of  
18 2005, Mr. Batiste told Informant Assaad that no one  
19 knows about the Chicago plan -- if that's the  
20 Government's position, then, what I would like to have  
21 inserted in that paragraph -- I would like to have  
22 inserted that -- the exhibits as -- the exhibits as  
23 to -- the transcripts, I should say, that are in  
24 evidence as to December 21 and December 22 that address  
25 the issue, address the issue --

1 THE COURT: I am not going to start putting in  
2 parties' positions, that it's the defense position that  
3 this is what happened and it's the Government's  
4 position that this is what happened.

5 If you want to present to me -- if there's  
6 actual factual inaccuracies based upon evidence  
7 submitted into the record, I will consider those.

8 MS. JHONES: Okay.

9 THE COURT: But I am not going to start  
10 inserting into an advisory presentence investigation  
11 report on issues that have no bearing on the  
12 determination of the advisory guidelines that it's this  
13 party's position that this happened and it's this  
14 party's position that that happened. I'm not going to  
15 do that.

16 MS. JHONES: Okay.

17 THE COURT: So that's denied.

18 MS. JHONES: Your Honor, what I'd like to do,  
19 if I may, is I could -- I could supplement by giving  
20 not the whole transcript, God forbid, but the front  
21 page and the page that references no one knows about  
22 the Chicago plan on December 22nd and supplement for  
23 purposes of the PSI.

24 MS. ARANGO: Judge, this is the sentencing of  
25 Mr. Batiste, not the other Defendants. I'm not sure

1 why this is of any consequence.

2 This is not the appellate court. The  
3 appellate court, if and when there's an appeal, will  
4 get the transcripts. This is a sentencing memorandum.  
5 It doesn't contain every word in all of those  
6 transcripts.

7 THE COURT: Okay. Pursuant to  
8 Rule 32(i)(3)(B), I find that a ruling is unnecessary  
9 because the matter is not going to affect sentencing  
10 and whether statements were made on December 21st or  
11 22nd or when Mr. Batiste may or may not have said that  
12 is not -- I'm not going to consider that in terms of  
13 sentencing Mr. Batiste.

14 MS. JHONES: Okay. The next objection, your  
15 Honor, is at Paragraph 33, Page 16.

16 And if I may just have a minute to review that  
17 paragraph.

18 As to the first -- there's two objections to  
19 Paragraph 33, your Honor. The first objection, which  
20 is found at Page 16, I'm going to withdraw.

21 And as to the second part of Paragraph 33,  
22 which is found at Page 17, I believe it has been  
23 resolved in the second addendum to the PSI.

24 As to the next objection, which is in  
25 Paragraph 41 --

1 THE COURT: Are you withdrawing the objection  
2 to Paragraph 34?

3 MS. JHONES: Oh, it was resolved, your Honor,  
4 by virtue of the addendum.

5 THE COURT: Okay. So the next one is on  
6 Paragraph 41?

7 MS. JHONES: Correct.

8 The objection on Paragraph 41 is as to the  
9 statement, "After viewing each site, Batiste selected a  
10 warehouse located..."

11 The evidence in this case established that  
12 only one warehouse was shown to Mr. Batiste. That was  
13 the one on March --

14 MS. ARANGO: Actually, the evidence was that  
15 they drove by. So I don't know if it's -- I don't know  
16 if that's really viewing, you know, driving by. After  
17 driving by each site and viewing the one warehouse?

18 I don't think it makes any difference, but....

19 THE COURT: We'll change it to Paragraph -- in  
20 Paragraph 41, "After driving by two sites and viewing  
21 one warehouse, Batiste selected a warehouse."

22 MS. JHONES: That's fine.

23 The next objection, your Honor -- if I may  
24 just have a moment.

25 As to Paragraph 42 at Page 20 -- I'm sorry,

1 your Honor. I just need one moment.

2 Paragraph 42 is withdrawn.

3 The next objection is at Paragraph 46.

4 MS. ARANGO: Judge, I don't have a problem  
5 with changing "another" to "a Jewish synagogue."

6 THE COURT: Where is it in Paragraph 46?

7 MS. ARANGO: It's the second sentence in  
8 Paragraph 46. "Assaad testified that Abraham drove  
9 past another Jewish synagogue" and then it goes on.

10 I don't have a problem with changing that to  
11 "a Jewish synagogue."

12 THE COURT: I'm sorry. I'm not seeing it. In  
13 46?

14 MS. ARANGO: Yeah. Paragraph 46.

15 MS. JHONES: I think it's actually -- I'm  
16 trying to find it myself. I think it's actually  
17 Paragraph -- okay. Oh.

18 I think -- your Honor, I think here's where  
19 the confusion is: I think that there was a change in  
20 the revised PSI, Mr. Garcia.

21 And that's where -- my original objection was  
22 as to the original PSI, and that was contained in  
23 Paragraph 46.

24 And I believe that Mr. Garcia resolved that in  
25 the revised. So you look at Paragraph 46 and it's no

1 longer in there.

2 THE COURT: It's in 45 and it's "pointed to a  
3 synagogue." I don't see "another synagogue" in there.  
4 Is there --

5 MS. JHONES: I think that Mr. Garcia corrected  
6 it. So that's been resolved.

7 THE COURT: Okay.

8 MS. ARANGO: Judge --

9 THE COURT: Are you looking at the revised,  
10 Ms. Arango, revised on November 13th?

11 MS. JHONES: Are you asking me, your Honor?

12 THE COURT: No. I'm asking Ms. Arango.

13 MS. ARANGO: You know what? I may not be.  
14 That may be the problem.

15 No. I have -- my revised is November 6th.  
16 Okay. That's fine.

17 THE COURT: Okay. Go ahead.

18 MS. JHONES: Thank you, your Honor.

19 MS. ARANGO: Judge, with respect to  
20 Paragraph 47, I think you've made the change in  
21 Rotschild Augustine's PSI.

22 THE COURT: Right.

23 MS. ARANGO: We could just -- I assume that  
24 change is going to be just consistent throughout all of  
25 the PSIs.

1 MS. JHONES: I think it was. I think in the  
2 revised --

3 THE COURT: Tell me what it was.

4 MS. ARANGO: It was the -- it says law  
5 enforcement intercepted several calls between Batiste,  
6 Phanor and Rotschild.

7 THE COURT: Oh. Between ^ and Phanor and  
8 between Batiste and Rotschild Augustine, to separate  
9 that they were -- there were only two people in the  
10 conversation, Batiste and Phanor and Batiste and  
11 Augustine.

12 MS. ARANGO: Correct.

13 THE COURT: Okay. That change will be made  
14 here. Yes. All of these changes will be made in all  
15 the presentence investigation reports.

16 MS. JHONES: The next objection, your Honor,  
17 is --

18 THE COURT: You know what? I'm going to  
19 strike the ruling that it's changed for all the  
20 presentence investigation reports.

21 I know they're identical, but I don't have all  
22 the other attorneys here to agree to it or not agree to  
23 it.

24 So it would be changed on this one. That  
25 paragraph would be changed on Mr. Augustine's if -- I

1 know that they're all the same for the offense conduct,  
2 but none of these issues were brought up by the other  
3 attorneys.

4 What I might do is bring everybody in for one  
5 more hearing and -- or maybe you prepare the revised  
6 report here, submit it to the attorneys and we can  
7 request whether they have any objections to those  
8 revisions.

9 MR. GREGORIE: Your Honor, with the Court's  
10 permission --

11 THE COURT: Have a nice trip.

12 MR. GREGORIE: -- I'm going to excuse myself.

13 THE COURT: Yes. I know that you're going on  
14 an airplane trip. Yes?

15 MR. GREGORIE: I am, Judge. And I have to  
16 catch that plane. But Ms. Arango is handling this  
17 fine, Judge. I'm sure she'll continue to handle it --

18 THE COURT: Have a safe flight.

19 MR. GREGORIE: Thank you, Judge.

20 THE COURT: Yes.

21 MS. JHONES: May I proceed, your Honor?

22 THE COURT: Yes.

23 MS. JHONES: Thank you.

24 With respect to Paragraph -- my next  
25 objection, which is at Page 22, Paragraph 48, pursuant

1 to the Court's ruling previously, I am going to  
2 withdraw that objection.

3 THE COURT: Okay.

4 MS. JHONES: The next objection is to  
5 Paragraph 50 on Page 22.

6 And I just need a moment on that one.

7 I'm withdrawing that objection based on  
8 Probation's response.

9 The next objection is Paragraph 52. That has  
10 been resolved by virtue of Probation's response.

11 The next objection is Paragraph 53. That has  
12 been resolved by virtue of Probation's response.

13 And I believe, as to the factual objections --  
14 the offense conduct, I should say, that that's the end  
15 of the objections.

16 I could move right on to the next ones, if  
17 you'd like, your Honor.

18 THE COURT: Okay.

19 MS. JHONES: Your Honor, with respect to  
20 Paragraph 55 and -- with respect to Paragraph 55, the  
21 role assessment, my request would be -- I honestly  
22 cannot argue to this Court that Mr. Batiste should not  
23 receive a role enhancement, in light of the jury's  
24 verdict, without, of course, waiving all of the issues  
25 for the appeal that we have preserved during the course

1 of these three years.

2 I think that Mr. Batiste's role was different  
3 than his Co-Defendants'.

4 What I would like to have reflected is what I  
5 have stated in Paragraph -- in my objection at Page 24,  
6 that he was a leader of a religious organization.

7 I do object to the reference in Paragraph 55  
8 regarding references to several unindicted individuals  
9 during -- several unindicted individuals during his  
10 attempts to obtain weapons.

11 MS. ARANGO: Judge, I would just say, in  
12 response to several unindicted individuals, that there  
13 was the whole sisterhood. There was Brother Corey that  
14 was mentioned in the recordings.

15 So there's definitely mention of unindicted  
16 individuals that he was the leader of.

17 THE COURT: That objection is overruled.

18 MS. JHONES: Okay. The next objection is --  
19 to the extent that Probation has -- in Paragraph 59,  
20 there's been a reference to a two-level enhancement and  
21 a 3C1.1.

22 It hasn't been calculated, at least not in  
23 the -- let me just make sure I'm looking at the right  
24 PSI.

25 It's not so much an objection as a response.

1 And I don't believe that an obstruction enhancement is  
2 warranted.

3 THE COURT: Did the Government request it?

4 MS. ARANGO: Judge, the Government did not  
5 request it. I would point out that the Government did  
6 not request it because it would have made absolutely no  
7 effect on his guideline range, but that we do believe  
8 that you can take into consideration -- and you heard  
9 his testimony, I believe, that he did lie on several  
10 occasions throughout his testimony.

11 And I think that that's just something that  
12 you can take into consideration in sentencing him as an  
13 individual under the 3553 factors.

14 But we did not move for the enhancement simply  
15 because it would have been piling on, I believe, and it  
16 would not have had an effect on his guideline range.

17 THE COURT: So it's not something that I need  
18 to rule on in terms of the application of the  
19 guidelines. Correct?

20 ^ MS. JHONES: Correct. ^ Arango?

21 ^ MS. JHONES: The next paragraph, your Honor,  
22 would be Paragraph 63. Yes. That -- now we get into  
23 the one issue that's unique to Mr. Batiste in terms of  
24 the base offense level.

25 Probation recommends that, in light of Count 4

1 not having a guideline, Count 4 being a violation of  
2 18, USC, 2384 -- because there is no guideline under  
3 2X5.1, Probation has recommended -- well, let me just  
4 strike that -- let me just clarify, I should say.

5 In light of Probation's addendum, my position  
6 is, your Honor, that the most -- that the treason  
7 guideline offense is not applicable here for the  
8 reasons that I have stated.

9 Probation, in their second addendum to the  
10 PSI, has stated that the one that would be more  
11 applicable, if the Court would not find the treason  
12 guideline applicable, would be 2M5.3(a), with which I  
13 agree.

14 I don't know how the Court wants to treat  
15 that.

16 THE COURT: What's the Government's position?

17 MS. ARANGO: Judge, he was found guilty by a  
18 jury of committing seditious conspiracy. The  
19 guidelines is clear that there is no applicable  
20 guideline for that.

21 The probation officer is directed, under the  
22 guideline, to apply the most analogous, and that is  
23 being the treason guideline.

24 In fact, the *Rahman* case -- Rahman was also --  
25 the blind sheikh -- was convicted of seditious

1 conspiracy and they applied the treason guideline for  
2 the very same rationale.

3 THE COURT: Anything further on that,  
4 Ms. Jhones?

5 MS. JHONES: Other than what I've argued in my  
6 memorandum, your Honor, no.

7 THE COURT: I'm going to deny the objection  
8 based upon the authority of the *United States versus*  
9 *Rahman*, 189 F.3d 88.

10 In that case -- it's a Second Circuit case,  
11 1999, previously cited by this Court for other reasons.

12 At Page 145 and 146, the Second Circuit  
13 stated, "The Court's initial task was to select a base  
14 offense level for the crime of seditious conspiracy."

15 In that case, all the appellants were  
16 convicted of it. ^ Continued quote?

17 ^ "the guidelines provide that the base  
18 offense for a conspiracy, unless covered by a specific  
19 offense guideline, is the base offense level for the  
20 substantive offense that the Defendant conspired to  
21 commit," referring to Section 2X1.1 in Comment Note 2.

22 ^ "however, the guidelines do not specify a  
23 base offense level for the generalized offense of  
24 sedition nor for the two specific goals of the  
25 conspiracy charged in Count 1, levying war against the

1 United States and opposing by force the authority of  
2 the United States.

3 ^ "the district court, therefore, turned to  
4 2X5.1, which provides that, if the offense is a felony  
5 for which no guideline has been issued, the sentencing  
6 judge is to apply the most analogous offense guideline  
7 so long as one is sufficiently analogous.

8 ^ "the Court determined that the treason  
9 guideline, 2M1.1, provided the most appropriate analogy  
10 because the jury had explicitly found in answer to a  
11 question on the verdict form that one of the goals of  
12 the seditious conspiracy had been to wage a war of  
13 urban terrorism against the United States." ^ Check  
14 ending quote

15 The Second Circuit went on at Page 151 -- and  
16 I quote -- "After careful consideration, we conclude  
17 that the use of the guideline for treason, tantamount  
18 to waging war against the United States, as analogous  
19 to the conduct of the Defendants constituting the  
20 Count 1 offense, was authorized by the guidelines and  
21 did not violate any protected rights of the Defendants.

22 "As a matter of language and logic, treason by  
23 waging war is surely analogous to the offense of a  
24 seditious conspiracy that includes as a goal levying  
25 war against the United States.

1 "Nothing in the guidelines precludes either  
2 the use of the treason analogy or the sentence  
3 calculations that resulted from it.

4 "Indeed, the guidelines call for precisely the  
5 calculations that Judge Mukasey made once the treason  
6 guideline was selected."

7 And the Eleventh Circuit went on to state that  
8 they agreed with Judge Mukasey's reasoning that the  
9 guideline covering treason was tantamount to waging war  
10 against the United States and that was found to be most  
11 analogous.

12 In that case, as I understand the facts of  
13 that case from the opinion, the seditious conspiracy  
14 referred to the Count 1 conspiracy and, therefore,  
15 Judge Mukasey had an interrogatory to the jury in their  
16 verdict.

17 In this case, the actual indictment in Count 4  
18 states that, "From at least as early as in or about  
19 November, 2005, the exact date being unknown to the  
20 grand jury, and continuing until on or about the date  
21 of the return of this indictment, in Miami-Dade County,  
22 in the Southern District of Florida and elsewhere, the  
23 Defendants" -- and it names all of the Defendants,  
24 including Narseal Batiste -- "did knowingly, willfully  
25 and unlawfully combine, conspire, confederate and agree

1 together and with persons unknown to the grand jury to  
2 levy war against the Government of the United States  
3 and to oppose by force the authority thereof, in  
4 violation of Title 18, United States Code,  
5 Section 2384." ^ Can't find that on Internet

6 So, based upon the language of the indictment,  
7 supported by the verdict that was rendered by the jury  
8 against Narseal Batiste, I find that the Probation  
9 Office has applied the most analogous guideline, 2M1.1,  
10 for the violation of 18, USC, ^ 2384-A, as charged in  
11 the indictment and found by the verdict of the jury via  
12 the provisions of 2X5.1 of the guidelines.

13 So that objection is denied.

14 MS. JHONES: Your Honor, in light of -- when  
15 the Court was reading from the indictment, the Court  
16 was reading, of course, from the indictment that was  
17 modified from the initial indictment in this case.

18 THE COURT: I don't know if I was. I don't  
19 know that this count was modified, other than to take  
20 out Lemorin at the time that it was submitted to the  
21 jury.

22 MS. ARANGO: I mean, I have the one that was  
23 submitted to the jury and it does not have Lemorin in  
24 it. But other than that, you read it exactly the way  
25 it read.

1 THE COURT: That's what was submitted to the  
2 jury?

3 MS. ARANGO: Yes.

4 MS. JHONES: Okay. Your Honor, in light of  
5 the Court's ruling overruling my objection to applying  
6 the treason guideline, respectfully, I would request  
7 that the Court provide Mr. Batiste with a three-point  
8 reduction under ^ 2 X 1 B2, which is a -- let me just  
9 get to it. ^ Misspeaking, I think ^ 2X1.1(b)(2)

10 We did discuss this on Monday on their common  
11 issues, but -- I mean, we referenced it. We didn't  
12 really get into it very much. We didn't get to it at  
13 all as it relates to the treason guideline.

14 Respectfully, under 2X1.1(b)(2) of the  
15 advisory guideline, the total base offense level -- or  
16 the base offense level, I should say, is to be reduced  
17 by three points in a conspiracy, unless the conspirator  
18 completed all the acts -- unless the defendant or a  
19 co-conspirator completed all of the acts conspirators  
20 believed necessary on their part --

21 THE COURT REPORTER: I'm sorry. "...believed  
22 necessary..."

23 MS. JHONES: I'm sorry. Let me go back.

24 In a conspiracy, a three-level decrease is  
25 warranted unless the defendant or a co-conspirator

1 completed all the acts the co-conspirators believed  
2 necessary on their part for the successful completion  
3 of the substantive offense or the circumstances  
4 demonstrate that the conspirators were about to  
5 complete all such acts but for the apprehension and  
6 interruption by some similar event beyond their  
7 control.

8 As a matter of law, 2X1.1 does not enumerate  
9 the treason guideline, which is 2M1 -- I'm sorry --  
10 strike that -- 2X1.1 does not exclude -- under the  
11 special instruction under Subsection ^ D, it does not  
12 exclude 18, USC, 2384, conspiracy to levy war against  
13 the United States. ^ Little "d," parens?

14 Moreover, in the *Rahman* decision, Judge  
15 Mukasey indicated that 2X1.1 would be applicable to --  
16 and this is at Page -- this is the *Rahman* decision at  
17 189 F.3d 88, a 1999 decision from the Second Circuit,  
18 at Page 185, where the Second Circuit intimates that a  
19 three-level reduction under 2X1.1 may be appropriate,  
20 depending on the circumstances, ^ as a matter of law in  
21 this case. It is appropriate to consider a  
22 two-level -- a three-level decrease for the inchoate  
23 offense of conspiracy. ^ Start of new sentence?

24 And, more importantly, your Honor -- or I  
25 shouldn't say "more importantly."

1           Of equal importance in this case, as I stated  
2 on Monday, there is absolutely no doubt not only that  
3 this conspiracy to levy war against the United States  
4 was not interrupted but for the intervention of law  
5 enforcement, it was law enforcement itself, the head of  
6 the prosecuting law enforcement agency and the Attorney  
7 General of the United States, who said on the day of  
8 the arrest that this offense was aspirational only.

9           There was no immediate threat to anyone in the  
10 United States as a result of the allegations in the  
11 original indictment and certainly the modified  
12 indictment.

13           Respectfully, if the Court is going to apply  
14 the treason guideline over defense objection, I would  
15 respectfully request a three-level decrease of the base  
16 offense level of 43.

17           THE COURT: Does it affect his advisory  
18 guidelines?

19           MS. JHONES: The difference, your Honor, would  
20 be -- and Mr. Garcia can correct me if I'm wrong in my  
21 calculations.

22           If the Court does not apply the three-level  
23 reduction, I believe the total base offense level --  
24 oh, my goodness. Bear with me, your Honor.

25           I believe the total base offense level would

1 be 59 without the three-point reduction. And it would  
2 be 53.

3 Does it affect the guideline --

4 THE COURT: No. It would be 56.

5 MS. JHONES: 56. I'm sorry.

6 Does it affect the guideline in terms of the  
7 chart? No.

8 I think it's important in terms of certainly  
9 the fact that the guidelines are advisory. I think  
10 it's important certainly in terms of the 3553 factors  
11 and an acknowledgement, if you will, as to -- 56 sounds  
12 better than 59, your Honor.

13 THE COURT: What's the Government's position?

14 MS. ARANGO: Well, the Government would  
15 oppose. I understand it doesn't affect the ultimate  
16 guideline, but I still think that giving a reduction  
17 for an uncompleted conspiracy would be improper on  
18 these grounds.

19 First of all, Ms. Jhones basically is saying,  
20 well, this is a government sting.

21 But the jury spoke about what the Defendant  
22 was convicted of, which is a conspiracy to wage war  
23 against the United States.

24 I would first cite to *United States versus*  
25 *Abu Ali* -- A-b-u, A-l-i -- at 528 F.3d 210 at Pages 264

1 through 265, the Fourth Circuit, 2008.

2 "As the district court properly recognized,  
3 but failed to adequately appreciate, we cannot, 'Wait  
4 until there are victims of terrorist attacks to fully  
5 enforce the nation's criminal laws against terrorism.'

6 "To deviate on the basis of unrealized harm is  
7 to require an act of completion for an offense that  
8 clearly contemplates incomplete conduct.

9 "By definition, conspiracy offenses do not  
10 require that all objects of the conspiracy be  
11 accomplished."

12 And then I would just state, your Honor, the  
13 facts support that Mr. Batiste conspired to wage war  
14 against the United States.

15 He -- and I would cite -- I would rely on my  
16 sentencing memorandum, but I would also cite to the  
17 testimony of Mick Coriolan, who said that, while he  
18 thought that Mr. Batiste was a nice guy -- and Mick  
19 Coriolan was a reluctant witness -- he said that he  
20 didn't -- wasn't willing to follow him.

21 He said, "I was born and raised in Haiti.  
22 I've seen different people build their own movement. I  
23 didn't want to come here and build another movement."

24 And then he was asked "What was his movement  
25 that concerned about you -- what was his movement about

1 that concerned you?"

2 He responded, "Basically, everything in  
3 general. The brothers are strong men. The thing I  
4 didn't like is about the fighting part.

5 "Fighting whom, sir?", was the question.

6 "The only thing I never like about Brother Naz  
7 is the part about taking over.

8 "Taking over what, sir?"

9 "The United States of America."

10 Narseal Batiste -- and I'm referring now to my  
11 sentencing memorandum at Page 23 -- on Page 30 of the  
12 Government's Exhibits 47 and 47-A in a tape-recorded  
13 conversation explained why he wanted to attack the  
14 United States.

15 He said, "The only way this Government is evil  
16 is of the devil. And the only way that purity can  
17 happen, unless the kingdom of Satan, which is the  
18 Government, can be destroyed."

19 He had many conversations about wanting to  
20 wage a war. He needed this war to come on. He needed  
21 to build an army in order to have great communications  
22 so that they can train for guerrilla warfare.

23 He told Elie Assaad in his first conversation  
24 with him on December 16th that his plan was to build an  
25 Islamic Army for Islamic jihad.

1           He even told his own spiritual godfather,  
2 Master Athea -- when Master Athea said, "Well, you're  
3 talking about committing subversive acts," he said,  
4 "You don't understand. I don't consider this country  
5 to be a legitimate nation."

6           He was clear throughout the course of his  
7 conversations with not only the informants, but with  
8 his own spiritual godfather, what his plans were, which  
9 was to wage war and overthrow this Government.

10           As lofty as those goals were, this jury found  
11 that those indeed were his goals.

12           THE COURT: Anything further on this issue,  
13 Ms. Jhones?

14           MS. JHONES: Yes, your Honor.

15           I did not rely on the sting operation nature  
16 of this case in support of the three-point reduction  
17 under 2X1.1(b), but, rather, I relied upon the  
18 statements of the Attorney General of the United States  
19 that this was an aspirational case, that there was no  
20 one in the United States ever in immediate danger.  
21 There was absolutely no steps that were taken to wage  
22 war.

23           The Court has listened to this evidence for  
24 three years.

25           In referencing the conversation that

1 Mr. Batiste had with Master Athea, I find it really  
2 hard to believe that he is going to be able to take  
3 over the United States of America without weapons when  
4 he told Master Athea that, "I was offered weapons. I  
5 did not take weapons."

6 This record is replete for months and months  
7 and months where Mr. Batiste adamantly refused to  
8 accept any type of weapons or explosives.

9 This -- we're not arguing about the  
10 conviction. We're arguing about the propriety of a  
11 decrease in light of the facts of this case, which are  
12 similar to no case, no facts ever, ever, to date in  
13 this country.

14 THE COURT: I find that this is something that  
15 you may argue under the 3553(a) factors, but is not --  
16 should not be part of the calculation of the advisory  
17 guidelines.

18 In Paragraph 62 of the report, the probation  
19 officer has referenced 3D1.2(b) of the guidelines,  
20 which stands for the authority that the four counts of  
21 conviction shall be grouped together in a single group  
22 because they involve the same victim and two or more  
23 acts or transactions connected by a common criminal  
24 objective or constituting part of a common scheme or  
25 plan. ^ Misspeaking? Comprising?

1           And then, in accordance with 3D1.3, when  
2 counts are grouped under Subsection ^ (b) of 3D1.2, the  
3 most serious of the counts ^ conspiring the group shall  
4 be used for the base offense level. In the instant  
5 case, the Count 4 conviction shall control as having  
6 the most -- is the most serious of the counts  
7 comprising the group. ^ Not sure what's quoted

8           Section 1B1.1 of the advisory sentencing  
9 guidelines in its definitions in the application notes  
10 ^ 1H, offense, ^ in quotes, means the offense of  
11 conviction and all relevant conduct under 1B1.3,  
12 relevant conduct, unless a different meaning is  
13 specified or is otherwise clear from the context.

14           So in looking at 2X1.1, ^ (d)(1)(A), states  
15 any of the following offenses, which would be offenses  
16 of conviction if such offense of conviction involved or  
17 was intended to promote a federal crime of terrorism as  
18 defined in 18, USC, 2332b(g)(5), and included in that  
19 list is one of the counts of conviction as this  
20 Defendant was convicted of all four counts of the  
21 indictment. And one of the counts of conviction is 18,  
22 USC, 2339A. ^ Comma okay like that?

23           Now, the Co-Defendants -- I believe the base  
24 offense level was used for 2339B rather than -A. And I  
25 did deny their request for this based upon the fact

1 that not only was it specifically excluded, but that  
2 2339A and -B convictions -- there was substantial  
3 completion.

4 So because -- as distinguished from the *Rahman*  
5 case, there was no -- and, in fact, this was an issue  
6 that came up Tuesday.

7 I asked the question and stated that Judge  
8 Mukasey applied 2X1.1 in his calculation for  
9 Mr. Rahman, but there were no convictions of 2339A or  
10 2339B in that indictment, as best I can tell from the  
11 opinion.

12 They don't list the actual statute numbers,  
13 but none of them speak to providing material support to  
14 a foreign terrorist organization.

15 MS. JHONES: I did not see it in that opinion  
16 either, your Honor.

17 THE COURT: I actually thought very long and  
18 carefully about this as it relates to Mr. Batiste, but  
19 because, ultimately, I found on Tuesday that, because  
20 there's an offense of conviction for 2339A, which is  
21 Count 2 of the indictment, conspiring by agreeing to  
22 provide personnel, including themselves, knowing and  
23 intended that they were to be used in preparation for  
24 and in carrying out a violation of Title 18, United  
25 States Code, Section 844(f)(1) and 844(i), that that

1 would exclude that application.

2 But certainly you may argue in your 3553(a)  
3 arguments regarding the fact that this base offense  
4 level was used based upon Count 4 and the -- as you put  
5 it, the aspirational nature of Count 4.

6 So that objection is denied.

7 MS. JHONES: I believe, your Honor, that  
8 that -- I believe that that concludes the objections as  
9 it relates to the advisory guidelines.

10 THE COURT: Okay. The Court will, therefore,  
11 adopt the factual findings and guideline applications  
12 as contained in the revised advisory presentence  
13 investigation report as modified at this hearing.

14 Before going further, I'd ask counsel to  
15 review with me the major calculations in the revised  
16 advisory presentence investigation report.

17 The offense level is 59.

18 MS. JHONES: The Court is referring to the  
19 total offense level?

20 THE COURT: Yes.

21 The total offense level is 59; the criminal  
22 history category is Roman numeral VI; the advisory  
23 guideline range is 840 months, two years to life in  
24 supervised release, 25,000- to a 250,000-dollar fine;  
25 and a total special assessment of \$400.

1 Is that correct in its totality?

2 MS. JHONES: Based upon the Court's ruling, I  
3 believe that it is, your Honor.

4 THE COURT: Do you agree, Ms. Arango?

5 MS. ARANGO: Yes, Judge. I agree.

6 THE COURT: Mr. Batiste, you're in court today  
7 to receive your sentence. Before that happens, I must  
8 ask you if there's any legal cause as to why the  
9 sentence of the law should not be pronounced upon you.

10 THE DEFENDANT: No. There is none, your  
11 Honor.

12 THE COURT: No legal cause having been shown  
13 as to why sentence should not be imposed, the Court  
14 will consider whatever you may wish to say in  
15 mitigation.

16 Ms. Jhones?

17 MS. JHONES: Your Honor, I'm ready to proceed.  
18 Mr. Batiste has requested that I ask the Court if he  
19 could possibly have a bathroom break.

20 THE COURT: Oh, sure. So we'll take  
21 15 minutes. We'll take a 15-minute recess.

22 (Thereupon a recess was taken, after which the  
23 following proceedings were had:)

24 THE COURT: United States of America versus  
25 Narseal Batiste, et al., Case No. 06-20373.

1 Counsel and Probation, state your appearances,  
2 please, for the record.

3 MS. ARANGO: Good afternoon, your Honor.

4 Jackie Arango on behalf of the United States.

5 THE COURT: Good afternoon.

6 MS. JHONES: Good afternoon, your Honor.

7 Ana Jhones and Bernadette Armand on behalf of  
8 Narseal Batiste, who is present.

9 THE COURT: Good afternoon.

10 THE PROBATION OFFICER: Good afternoon, your  
11 Honor.

12 Ric Garcia from Probation.

13 THE COURT: Yes, Ms. Jhones.

14 MS. JHONES: May I remain seated for this  
15 portion?

16 THE COURT: Yes.

17 MS. JHONES: Thank you, your Honor.

18 Your Honor, I'd like first to start off by  
19 addressing the 3553 factors. And with the Court's  
20 permission, I'd like to leave the nature and the  
21 circumstances of the offense and the history and  
22 characteristics of the Defendant, which happens to be  
23 the first factor under 3553(a)(1) -- I'd like to leave  
24 that for the last factor to address and move on to  
25 3553(a)(2)(a) and those that follow, with the Court's

1 permission.

2 THE COURT: Yes. You may.

3 MS. JHONES: I'm going to try not to repeat  
4 probably what my colleagues have said during the past  
5 week regarding the seriousness of the offense in this  
6 case. I just want -- so I'll just try to highlight,  
7 because I'm sure that the Court has considered this for  
8 a very long time.

9 As I said earlier, your Honor, I think that  
10 the facts of this case are such that they are probably  
11 unique to any other facts, recognizing that they are  
12 similar to *Mandhai*. But in terms of the facts of this  
13 particular case, I think that they are quite unique in  
14 comparison to all others.

15 Congress has seen fit that the Court has to  
16 consider a sentence that's going to reflect the  
17 seriousness of this offense.

18 When you consider the advisory guideline in  
19 this case and you consider the sentences that have been  
20 imposed for conduct in other cases, I think that there  
21 is an inescapable conclusion that the punishment that  
22 the advisory guidelines offer or recommend in this case  
23 do not fit this crime.

24 We unfortunately have occasion to rely upon  
25 cases such as *Rahman*, cases such as *Sattar*, cases

1 such as the case of Lynne Stewart and those Defendants.

2 And I'd like to make a distinction between  
3 what I think are the real terrorists for which these  
4 advisory guidelines were designed for and the wannabe  
5 terrorists.

6 We're now here at punishment. We're not here  
7 to debate the facts. The jury has spoken.

8 But I think that what's very significant in  
9 this case is that -- forget about the fact that there  
10 was no -- no one was hurt in this case, no one took  
11 possessions of any weapons in this case, no weapons  
12 were ever found, no literature of any terrorist nature  
13 was ever found, there were no plans that were ever  
14 found.

15 All of the talk that Mr. Batiste uttered for  
16 months and months and hours was just that. There was  
17 absolutely no corroboration that his words, his words,  
18 can be matched with action on the part of this man to  
19 do harm by bringing down the Sears Tower or any other  
20 building. And I will get to the photographs in a  
21 minute.

22 And so we have to first understand that real  
23 terrorists, the terrorists such as -- who I believe to  
24 be Lynne Stewart, respecting the majority's opinion --  
25 real people were harmed by the actions of Lynne

1 Stewart.

2 Rahman, Sattar and all of these people, the  
3 real terrorists, needed no inducement to commit the  
4 crime. They did not need the FBI or Mohammed or  
5 al-Saidi to tell Lynne Stewart, "Go over there and  
6 publish the wishes of Sheikh Rahman. Please do it. I  
7 am promising to give you this amount of money if you  
8 do. Please, Ms. Stewart. I'm not only going to  
9 promise you money for you to go over there and publish  
10 this to the media so that people could fight and so  
11 that the cease-fire could come to an end and innocent  
12 lives can be lost. Please, I'm paying you to do this."

13 No one had to tell the bombers of the 1993  
14 World Trade Center, "Please do it. Not only am I  
15 promising you money to do it, I'm going to pay you to  
16 do it. And here. Have a few thousand bucks to do it.  
17 Please do it."

18 No one told Osama bin Laden, no one told the  
19 Oklahoma City bombers -- no one told them, "Please do  
20 it. Please. I'm going to give you this money."

21 No one provided incentives to informants and  
22 no one egged Stewart, Ramsey Clark, Osama bin Laden or  
23 any of those people, because they were willing, they  
24 were able and they had the means to do it.

25 And that is the critical distinction between

1 Mr. Batiste and every other case.

2 The crimes that Mr. Batiste stands convicted  
3 of are very, very serious crimes. I can't imagine any  
4 crimes more serious.

5 The Court knows, based on what I believe to be  
6 more than enough arguments on my part -- I'm not going  
7 to repeat them. I think the Court knows pretty clear  
8 the position of defense in this case.

9 This is an atypical case, your Honor. This is  
10 a case that would not have happened -- it just would  
11 not have happened but for the intervention of law  
12 enforcement and these informants in a very critical  
13 time in this country.

14 Secondly, with respect to the factor in  
15 3553(a)(2)(B), the need to afford adequate deterrence  
16 to criminal conduct, once again, your Honor, you take  
17 all of the horrendous things that Mr. Batiste said  
18 throughout the course of all of these months -- you  
19 take everything that he said and then you compare it to  
20 what he's done.

21 And let's for the moment just talk about what  
22 he's done in the context of the fall of 2005 and the  
23 winter and the spring of 2006. What did he do besides  
24 talk? He took photographs of an FBI building and  
25 several other buildings.

1 I do not want to minimize the seriousness of  
2 that. But, again, your Honor, this man would never  
3 have taken any photographs in the absence of somebody  
4 of the likes of Mohammed. It just would not have  
5 happened.

6 And, more importantly, more importantly,  
7 Mr. Batiste said repeatedly, "Nothing is going to  
8 happen with those photographs. Nothing will happen  
9 with those photographs until I move forward on my  
10 plan."

11 And the evidence is overwhelming -- well,  
12 there is no evidence of any acts that this gentleman  
13 took to further his Sears plan.

14 Now, we can't lose sight of -- again, when  
15 Congress passed the statutes criminalizing providing  
16 material support to a foreign terrorist organization  
17 and a designated foreign terrorist organization and  
18 levying war against the United States, this was not a  
19 case they had in their mind, a case where an individual  
20 would say that, "I have 5,000 soldiers in Louisiana  
21 ready, willing and able to wage war in the United  
22 States" and the FBI did nothing to find out whether or  
23 not indeed there were 5,000 soldiers in Louisiana.

24 And the reason why they didn't do anything is  
25 because they knew that that was not true. It was after

1 June 22nd of 2006, after the indictment was secured,  
2 after the press conference -- it was only after that  
3 that they decided, "Let's take a ride up to Louisiana  
4 and see what's going on up there," only to find  
5 nothing.

6 The people that are entrusted with the  
7 security of this nation in the face of Narseal Batiste  
8 saying that he had 5,000 soldiers in Louisiana did  
9 nothing.

10 They stood around and gave Mohammed an  
11 apartment and gave Mohammed money and gave Mohammed  
12 immigration benefits and parols. And al-Saidi -- they  
13 gave him pot and they gave him money and they did  
14 nothing.

15 They didn't get in a car. They didn't pick up  
16 the phone in November of 2005 or December of 2005 when  
17 Narseal Batiste said he had 5,000 soldiers to bring  
18 down the United States of America.

19 That's not what Congress was thinking about  
20 when they passed that statute of levying war against  
21 the United States.

22 I respectfully submit that the wrongs that  
23 Mr. Batiste and the errors that Mr. Batiste has  
24 committed -- he is -- he ^ is and he's paying for them  
25 dearly.

1           Mr. Batiste is not an individual that will  
2 reoffend. He simply is not an individual that will  
3 reoffend. He had never offended before, ever, anything  
4 of this nature.

5           I ask the Court to not punish for Mr. Batiste  
6 what he said. Do not punish him for what he said.  
7 Whether we like it or not, our country says we can say  
8 whatever we want.

9           Punish him for taking photographs. Punish him  
10 for misleading people that he considered to be his  
11 brothers. You have to punish him for that because that  
12 he did. But don't punish him for his words, your  
13 Honor.

14           The need to provide -- or protect the public  
15 from further crimes of this Defendant: I have  
16 addressed that.

17           The need to provide the Defendant with needed  
18 education or vocational training: I think the only  
19 training that Mr. Batiste needs -- I think that he --  
20 quite frankly, my father had a saying that -- well,  
21 actually, we say the Cubans have a saying, but Cubans  
22 take credit for everything these days. But one of the  
23 sayings is that: We have to consult our pillow for our  
24 conduct.

25           Mr. Batiste is going to have to be consulting

1 his pillow for many, many years to come.

2 But in terms of providing him -- or the  
3 Bureau of Prisons providing him with any treatment,  
4 respectfully, I think the only treatment that  
5 Mr. Batiste would need cannot be provided by the Bureau  
6 of Prisons with the exception of drug treatment.

7 In this case, the Court is well aware of the  
8 sentences that are available. Notwithstanding the  
9 advisory guidelines, I will be asking and I am asking  
10 the Court to depart from the guidelines and, also, to  
11 consider variances from the guidelines in light of the  
12 factors in this case.

13 I'd like now to speak about the nature and the  
14 circumstances of the offense and the history and  
15 characteristics of the Defendant.

16 When you look at the evidence presented in  
17 this case, your Honor, both by the Government and by  
18 the defense, we have a moving target, if you will.

19 They just evolved from the beginning and they  
20 escalated and they kept on going up and the talk got  
21 more and more serious. The pressure got more and --  
22 got higher and higher.

23 This was not something -- there's no evidence  
24 in this record that, from day one, Narseal Batiste was  
25 talking the way Narseal Batiste was talking in the

1 absence of these informants, in the absence of these  
2 inducements.

3 But, more importantly, as the Government  
4 themselves admitted, law enforcement, when they  
5 received the information from Informant No. 1 about  
6 this very dangerous man that's out there in Liberty  
7 City -- when they received this information, they did  
8 not do anything, anything, to find out who this man  
9 was.

10 They found out who this man was by paying an  
11 informant -- two informants and telling them -- getting  
12 them to get Narseal Batiste to say things all with  
13 inducements.

14 But we do know who Narseal Batiste was and has  
15 been prior to September of 2005, because we know that  
16 Narseal Batiste doesn't have any criminal history. We  
17 know that Narseal Batiste has four children and a wife.

18 We know that Narseal Batiste had numerous  
19 people that came into this courtroom, something that is  
20 not very easy to do.

21 Criminal courts and federal criminal courts,  
22 in particular, are very intimidating. Defense counsel  
23 doesn't have the power of immunity. It is not easy to  
24 get witnesses to come here and testify. It is a  
25 terrifying proposition.

1           But people did it not because they were going  
2 to get immigration benefits, not because they were  
3 going to get paid, not because they were afraid and  
4 pressured, as Mr. Coriolan testified. They came here  
5 because they thought it was the right thing to do.

6           They told you and told the jury that this is a  
7 nonviolent man. The man that they have known for  
8 years, Charles Shelton, his high school teacher, the  
9 godfather of Giovanni Batiste, ^ "This is not a man  
10 that has ever engaged in anything like this." ^ Quote?

11           You heard from -- Maxwell Batiste say that, on  
12 September 11th, when he was on an airplane, he spoke to  
13 his brother and his brother expressed his remorse or  
14 his concern not only for his safety because he was on a  
15 plane, but for what happened on 9/11.

16           Undisputed evidence. The Government did not  
17 even cross-examine him. That's undisputed.

18           You heard from Teresa LeFleur. The Government  
19 wants this Court to believe that, when Narseal Batiste  
20 went to the City of Miami to provide karate classes for  
21 underprivileged children, that that was part of the  
22 plan to recruit young children into his war.

23           Unfortunately for the Government, your Honor,  
24 Mr. Shelton has told you and previously in a pleading  
25 that I filed in support of a bond application

1 Mr. Shelton's wife told you that, when he was in high  
2 school, he was doing that, that he's always been out  
3 there -- and I want to quote what Vivian Shelton had  
4 said.

5 And this is on Docket Entry, just for the  
6 record -- I apologize, your Honor. I just need a  
7 minute to find the entry.

8 I apologize, your Honor. I think it's Docket  
9 Entry 1244. I am not certain. But it relates to my  
10 application for bond.

11 I attached five exhibits in that pleading, and  
12 part of that exhibit was an affidavit by Vivian Shelton  
13 who, again, when Mr. Batiste was 17 years of age, as a  
14 student in high school, she was impressed by his  
15 altruistic concerns. "He has spent much of the free  
16 time in the north side of Chicago with other youths  
17 assisting and protecting elderly citizens and small  
18 children."

19 This is an individual that, in one of the most  
20 violent cities in the United States, was never ever  
21 engaged in any violence, ever. Quite the contrary.  
22 Never joined a gang.

23 As Mr. Shelton described him, he was a nerd.  
24 And I don't know if you recall how the Co-Defendants  
25 laughed when Mr. Shelton said that because they

1 understood what he was talking about.

2 As Ms. Shelton would say, he was exposed to  
3 violent and criminal activity during his youth, but  
4 he's always been a gentle and a law-abiding citizen.

5 Those are not words. Those with backed up by  
6 the facts -- undisputed facts. ^ Did?

7 The Government ^ didn't know that. But, then,  
8 the Government did not care. They did not care to say,  
9 "Wait. Let me stop. Before we start paying these  
10 people, let me stop. Let's see who this guy is. Let's  
11 do a little bit of background."

12 In today's age, where the vast majority of  
13 young men from inner cities, from violent cities,  
14 cities that have a low socioeconomic status, how many  
15 defendants have you seen, your Honor, that not only  
16 have one wife from high school, has been married to the  
17 same wife, has the same children with the same wife,  
18 has four children from the same wife, and has raised  
19 four remarkable children?

20 How do you reconcile that with the talk that  
21 this man engaged in from September to May or June of  
22 2006?

23 I haven't been able to figure it out yet. But  
24 I'll tell you, I think money had a lot to do with it,  
25 not because he was a mercenary, not because he would

1 say -- he was ready, willing and able to do this for  
2 money, but because it wasn't in his heart, because  
3 that's what the facts are.

4 Mr. Batiste is 32, 33 years old. His whole  
5 history of his existence, with the exception of  
6 September of 2005 through June of 2006 -- his history,  
7 his actions, do not back up his word, your Honor. They  
8 do not.

9 I have never lived in the type of  
10 neighborhoods that Mr. Batiste and his children have  
11 lived in. I don't know what it's like to, as a  
12 child -- I don't know what it's like as an adult and  
13 certainly as a child to walk down the street and see  
14 people being shot, see people do hand-to-hand drug  
15 deals, see children with guns, see criminals sell  
16 AK-47s. But Narseal Batiste's children have seen that.  
17 Narseal Batiste has seen it.

18 And these children weren't raised by a  
19 stranger. They weren't raised by foster care. They  
20 were raised by Mr. Batiste and his wife, the monster  
21 that the Government has portrayed Mr. Batiste to be.  
22 These children have a remarkable history.

23 Again, going back to the pleading that I filed  
24 in support of bond in 2008, ^ a nor I can't how,  
25 principal of Linda Lentin Elementary School, wrote as

1 follows:

2 "To Whom It May Concern: This letter is  
3 written to verify that Giovanni Batiste, Nicholas  
4 Batiste, ^ in a Cassia Batiste and Prince Batiste  
5 attended Linda K-8 Center between 2002 and 2005.

6 "The mother and father demonstrated  
7 involvement and support in their children's education  
8 and school activities. The children were well dressed,  
9 well behaved and excellent students. The parents were  
10 warm, cooperative, respectful and easy to contact."

11 The Court heard from Elsie Hamler from  
12 Contractors' Resource. The Court heard from Frank  
13 Adetu. The Court heard from Mike Sharpe.

14 The Court heard from Ms. Una, who is the lady  
15 that used to go to the park. And I remember her  
16 testimony as saying, "I just remember the way he  
17 interacted with his kids."

18 This is a case about actions speaking louder  
19 than words, actions that were not only not investigated  
20 prior to wiring up informants to induce Mr. Batiste,  
21 but actions that were of no interest to the Government.  
22 They were of no interest to the Government to see  
23 whether or not they were targeting the right  
24 individual.

25 With the Court's permission, your Honor, I'd

1 like to have Minerva Batiste address the Court and I'd  
2 like to have Mary Ramos address the Court and then I  
3 will wrap up my comments.

4 THE COURT: Okay.

5 MS. JHONES: Would you like her to go to the  
6 podium?

7 THE COURT: Yes, please.

8 Could you state your name for the record,  
9 ma'am.

10 ^ MS. MINERVA BATISTE: Minerva Hernandez  
11 Vasquez Batiste.

12 Good afternoon, your Honor.

13 I'd like to read a little bit of a letter that  
14 my daughter, ^ in a Cassia Batiste, wrote, if I may.  
15 It's titled, "Life Without My Father."

16 It says, "Hi. My name is ^ in a Cassia  
17 Carisma Batiste. You all may know me as the daughter  
18 of the person that you may consider a defendant."

19 And she's 14, by the way.

20 "I would love to start by thanking God for  
21 having me write this letter today. Ever since I was  
22 born, my father has been there for me since I was  
23 resting in my nursing bed to the little scratches or  
24 scrapes I would get on my legs and arms. My life was  
25 very beautiful and so elegantly fantastic.

1 "When I was in kindergarten through fourth  
2 grade, I have always received straight As or straight  
3 As and Bs and never received Cs or Ds or Fs by the help  
4 of my wonderful parents. So, yes, I have always ranked  
5 myself at the top of the A list.

6 "But without my parents' help, I definitely  
7 would have never become the intelligent, sweet, loving,  
8 caring and humble human being.

9 "He is a magnificent father. Every time I  
10 talk with my father, I love to smile because of his  
11 comfort and love. I know he'll always show me.

12 "I will always think I don't know what I would  
13 do without my such wonderful parents as far as him  
14 teaching us and many people of the great God.

15 "He would sit down and talk to many people, a  
16 lot of different colors and religions, about how to  
17 help them through their struggle and pain. Even with a  
18 heart as big as his and the young men, he had some  
19 financial problems himself, as many people.

20 "Because of a lot of people having different  
21 problems, so my father was not only a husband to my  
22 mother for over 18 years. He's not only a father, but  
23 a friend to us, not only a preacher to many people in  
24 need, but a great friend to them as well.

25 "I remember when I was younger until this day,

1 maybe even if he was out, I would run to my parents  
2 with my report card and all of us would just love to  
3 see the joy that it brought and how proud our parents  
4 were.

5 "I would thank them for them turning me into  
6 wanting to be a successful and intelligent young lady.  
7 But just to look into their eyes and their face when I  
8 receive all straight As filled my heart with so much  
9 joy."

10 Your Honor, we are all far from perfect and we  
11 wouldn't be human beings if we didn't make mistakes.

12 Narseal Batiste or, as you may know him,  
13 Defendant, we often visit. In our visits, we'd just  
14 sit down and he'd -- his eyes would swell up in tears  
15 and, understand, after all the confusion and everything  
16 that happened, he would cry.

17 This is the human side of him that no one  
18 knows. For close to 20 years I've shared my life with  
19 him.

20 And one of our first dates was to a church.  
21 Where other teenagers would have gone to any other  
22 place, this is a place that he brought me to, to our  
23 date.

24 The hardships and pains he understands and  
25 he's greatly paying for them now. Being away from his

1 kids, being away from me -- I'm sure no one here would  
2 ever understand what it is to walk in my shoes or my  
3 children's shoes and everything we've had to go  
4 through. And I'm not sharing this with anyone to feel  
5 pity for me.

6 But through God, we've made it through, having  
7 to sleep in the van, being without food, having to go  
8 to the nearest park to get them ready to go to school.  
9 This is a reality that we had to endure.

10 And this, I'm sure, Narseal knows and  
11 understands, the more human side of him that no one  
12 else has cared to even find out.

13 We had to sleep on the floor, roaches crawling  
14 on us, dog feces all around. But, nevertheless,  
15 through the struggles and the pain, with what their  
16 father has taught them, my children have helped me with  
17 the strength that they have in them and the faith that  
18 they have.

19 From what their father has taught them, in a  
20 household full of love and peace and joy, it has helped  
21 them to become the strong children that they are now  
22 and has, at times, wiped my tears.

23 The human side of Narseal. Oftentimes, I  
24 remember, when the children would receive their report  
25 cards, they would rush to show it to him because they

1 knew it meant Toys "R" Us or Krispy Kreme.

2 Every little child, especially a boy, would  
3 have run to go and grab that little gun, that little  
4 toy, just to run around and pretend to be a police  
5 officer or, you know, a cowboy or something.

6 Their father said, "No. No. You can have  
7 anything else in this store, but not a gun. I do not  
8 teach you violence and I do not teach you hate. I  
9 teach you love and respect for all humankind."

10 That is the human side of Narseal.

11 So to the disappointment of the little ones,  
12 they had to choose another toy. Violence was not a  
13 part of our home. They never had to see him be violent  
14 with me. We were never -- even though young and  
15 foolishly in love, we've all made our mistakes.

16 But, nevertheless, it has taught us to be  
17 better people day after day. It has taught my children  
18 to be law-abiding citizens. And when they do get  
19 themselves in any kind of trouble, their father shows  
20 them to honor and go back and try to learn from that  
21 mistake.

22 And we know a lot of -- several officers,  
23 Major Johnson, Officer Waldon. Their children are very  
24 well known by the whole school system in North Miami  
25 that patrol that area.

1           So we're no strangers to knowing and abiding  
2 and loving the law, because that is what keeps us safe.

3           We came to Florida so that we can be able to  
4 have an opportunity. We're obviously, as you can see,  
5 a biracial couple. That wasn't sitting pretty with my  
6 family.

7           We had several encounters that I'm sure  
8 everybody has gone through at some point or the other  
9 where we have problems in the family and there's  
10 nothing strange for us to come to another state and  
11 start a new beginning, visiting his cousin, Mary Ramos,  
12 and starting and building something with his children  
13 and myself.

14           There's nothing alien about that. There's  
15 nothing weird. We have to sit and dissect or try to  
16 understand. That's just the human part of Narseal. He  
17 has a child of a heart that would never hurt anyone.

18           This is 20 years. In the times that he would  
19 sit down and talk with me about him wanting to be in  
20 the community and many arguments we've had of him  
21 taking out of his own pocket money to feed people he  
22 didn't even know -- it was unheard of to me.

23           But, nevertheless, he showed he cared. That  
24 no one can deny. No one can ever take the values he  
25 has as a human being away from him, as a father and as

1 a husband.

2 Even though we are poor financially, we have a  
3 rich heart. And that's through him and the discipline  
4 and the love and the respect that we have for one  
5 another as placing God before us in everything that we  
6 do.

7 Giovanni, my oldest. I never thought that he  
8 would have to learn to be a father figure at the age of  
9 13 years old for his other three brothers and sister.  
10 He didn't at any opportunity that would come to him  
11 just to make ends meet -- and he knows the situation  
12 that I am in, having to work over 13 hours a day to  
13 provide for five people.

14 He never took an opportunity to sell drugs.  
15 And, trust me, living in North Miami, it's a very easy  
16 avenue to take. Never.

17 My second oldest, Nicholas Batiste, has taken  
18 on a part-time job in the *Sun-Sentinel* selling  
19 subscriptions, standing outside -- providing his  
20 homework was done, he'd stand outside of different  
21 stores with his employer and sell subscriptions.

22 These are the jobs that they would take. He  
23 had to stop it because his grades -- all of their  
24 grades suffering. Until his grades come back up to  
25 par, he can resume the job.

1           As much as I financially need it, these are  
2 the jobs that these young men, through what their  
3 father has taught them, decided to take, as easy as  
4 drug dealing could have been and fast money, because  
5 their father has taught them to be law-abiding  
6 citizens.

7           Your Honor, we are far from perfect and we  
8 wouldn't be human if we didn't make mistakes.

9           Narseal Batiste every day of his life for the  
10 past close to four years has been paying for it, and he  
11 has shown great regret through his tears, through his  
12 words and through him not being around his family, his  
13 children and I.

14           Your Honor, I just wanted to share the human  
15 side of Narseal, something that was never really  
16 brought up before. I don't know the technical words or  
17 fancy speeches or anything like that.

18           And I wanted to thank the investigator for  
19 allowing me that time to visit with him -- with Narseal  
20 before he was brought down to the federal detention.

21           And you thought I'd forgotten. It was a very  
22 noble, noble thing to do.

23           And several arguments Narseal and I would have  
24 with all these young men being, you know, in our home,  
25 and I got to know them as human beings and as a family.

1 In the struggles that we went through, I saw the  
2 progress of them developing into them being beautiful  
3 young men that never disrespect neither myself nor my  
4 daughter. And these are very noble men of character.

5 I believe that, when I speak -- and I thank  
6 you for the opportunity -- that I speak for all of my  
7 children and all of the families that have -- even the  
8 young men that have lost their mother.

9 It does not take us away from us being human  
10 and making mistakes. The only difference would be is  
11 if we do not learn from these mistakes. And that, I'm  
12 sure, we learn every day.

13 After we go home, every last one of us, no  
14 matter where we live in this neighborhood or in the  
15 ghettos, one thing we all will always have to remember  
16 is that we all are human beings.

17 Thank you.

18 MS. JHONES: Your Honor, I'd like Mary Ramos  
19 to address you briefly.

20 ^ MS. MARY RAMOS: Your Honor, my name is Mary  
21 Ramos. I've known Narseal Batiste since he was a  
22 little boy. My mother and his father are brother and  
23 sister.

24 We grew up in a very dysfunctional type of  
25 background. My mom's one of 11 kids. Her parents were

1 farmers. The upbringing sometimes was very tough. Our  
2 parents believed in strict upbringing, very firm hand  
3 with raising the kids.

4 And I can tell you, for all the years that  
5 I've known Narseal, since he was a child, he was always  
6 filled with so much love. His birthday is  
7 February 14th, 1974. Born on Valentine's Day.

8 And out of all of my cousins -- because I have  
9 almost 60 first cousins -- he's the only one, his  
10 family, in particular, that I've always been very close  
11 with. But Narseal, in particular, I've always been  
12 very close to.

13 My little cousin has always been the light. I  
14 graduated from a Christian college, Palm Beach  
15 Atlantic. Narseal came to visit me in 2001 -- I'm  
16 sorry, your Honor. I believe it was the summer of  
17 2000.

18 We went to Disney World. We had an incredible  
19 time. And during that time, I brought up a  
20 conversation of him and his family moving to South  
21 Florida to start a new life, get away from our  
22 dysfunctional families, start a new life down here.

23 I'd already been here some time and I'd  
24 established myself and I promised to help him with  
25 every bit of effort that I could. Through my

1 suggestion, after his mother passed away, it was very  
2 hard for him. He's the baby. And sometimes being the  
3 baby can be a blessing and a curse.

4 It's a blessing because his mother loved him  
5 immensely and babied him quite a bit, but it also meant  
6 that his older siblings sometimes had rivalries with  
7 him because he was favored in some ways by his mother.

8 When she passed away, it was so extremely  
9 devastating for Narseal, but not only for him, for me.  
10 I couldn't go to her funeral because I couldn't say  
11 goodbye to my favorite aunt who was not even my blood  
12 aunt. Her husband, my uncle, was my blood.

13 But I had no connection to him like I did with  
14 his wife. And, your Honor, you would understand why if  
15 you knew the man.

16 Narseal had difficulty in his years growing up  
17 and so did all the children with their father, my  
18 uncle. He just tended to be an extremely difficult  
19 person to get along with.

20 And I've got to be honest. My whole --  
21 mother, her whole side of the family, they're just  
22 pretty dysfunctional in some ways. But it didn't stop  
23 Narseal nor I from creating in ourselves a true love  
24 for God and a true love for others. Narseal is very  
25 much like me.

1 Thanksgiving of 2004, I spent my Thanksgiving  
2 inviting a homeless woman to stay in my home for a  
3 week. She sat at the Thanksgiving table with me and  
4 all my very well-to-do friends.

5 Because I do business, your Honor -- I deal  
6 with business owners that have payrolls of 7 million  
7 and upwards.

8 But she sat at that table. And her name was  
9 Terry. I'll never forget it. I met her on the streets  
10 of Miami. I invited her for Thanksgiving because I  
11 wanted her to feel like, for once, that nobody was  
12 judging her and they looked at her as a person.

13 Narseal is very much like that. He would take  
14 in a homeless person off the street. When we sat -- in  
15 2000, when we took our trip to Disney World, we sat  
16 over lunch and talked about our similarities and how  
17 much we put others ahead of ourselves and that we're so  
18 different from other family.

19 And I just wanted to reassure him that, if he  
20 made the attempt to come here, that I would support him  
21 in every way possible.

22 And, unfortunately, your Honor, we lost touch  
23 due to the fact that I had moved and I'd changed my  
24 number and my life was a little bit hectic, to be  
25 honest, at the time.

1           In some ways, I feel so gravely responsible  
2 that we're even here today because, had I been with my  
3 cousin, he would have never needed for anything.

4 Because I stand behind him. I love him.

5           I love his wife, his four children. Those  
6 children are incredible, your Honor. The things that  
7 his wife said, Minerva, is so incredibly true and so  
8 incredibly real.

9           And I have to say that God's view of Narseal  
10 is not distorted by circumstances, situations or wrong  
11 perceptions. God's view of Narseal is truly who he is.

12           And as my God's honest truth to you, your  
13 Honor, and to this Court today, Narseal's never been a  
14 violent person, ever, not even so much as getting a  
15 speeding ticket, your Honor, to which I can say I have.

16           When I tell you that his older siblings were  
17 very tough with him at times, no matter how many times  
18 they punched him or tussled with him or was rough with  
19 him, he always came back with a smile. That's his  
20 gentle spirit.

21           He's always been that way. That's why I  
22 always felt that I connected with him on something  
23 totally different, because of the way that he is,  
24 because he truly cares about others.

25           This circumstance and this situation that we

1 stand here dealing with today I would have fathomed for  
2 almost anybody else in my clan of 60 cousins, but he  
3 would be the last, because I know him.

4 I feel that, because sometimes we say things  
5 or do things, we make mistakes, and when we make those  
6 mistakes, sometimes we're held to ten times the  
7 standard than what we're expected.

8 His father, your Honor, taught his children to  
9 be in some ways tall-tales men. My Uncle Narcisse  
10 tended to always stretch a story ten miles longer than  
11 what it needed to be.

12 And what I'll say about Narseal in this  
13 situation is, all talk and nothing else, absolutely  
14 nothing else.

15 This country was built on freedom of speech.  
16 And, unfortunately, sometimes the speech we say can  
17 come back to hurt us. But I don't think it should harm  
18 him to the magnitude that I see here today.

19 I know my cousin. I vouch for him fully and  
20 completely and his entire family, his wife, his  
21 children. If not, I would not have invited them to  
22 come here.

23 And since this case has started, his family  
24 has lived in my home on numerous occasions, trying to  
25 help them to get back on their feet.

1           Your Honor, I cannot stress to you enough how  
2 much this has hurt not just his immediate family, but  
3 all the family around the United States who didn't have  
4 the strength to come here today, who didn't have the  
5 gumption to do what I'm doing.

6           But I'm doing this because I cannot sleep at  
7 night. For all the times that I think about him  
8 growing up as a kid, I cannot sleep at night knowing  
9 that he is the most law-abiding citizen, never known to  
10 be violent in any way, shape or form.

11           Narseal always helped others, always put  
12 others first. And I think the devastation of his  
13 mother passing away wedged a big -- wedged -- put a big  
14 wedge between him and his family. They already had a  
15 strained relationship.

16           And especially because he doesn't have a great  
17 relationship with his father, it put a major strain on  
18 him. His choice to come down here was for a new life,  
19 a better life.

20           I never expected I would be standing in this  
21 courtroom today speaking on behalf of a man who -- my  
22 little cousin is younger than me, but I look up to him.  
23 He's more selfless than I could ever hope to be.

24           I'm the one who graduated from this Christian  
25 school and went to school with Billy Graham's grandson

1 and have done so much to help others. But he literally  
2 would go and live in the middle of wherever, wherever  
3 he sees a need.

4 He'd go live in the middle of a Third World  
5 country, if he had to, or in the middle of the ghettos  
6 of Liberty City or wherever he had to live. He would  
7 live there and he wouldn't look down on the situation,  
8 but he'd look up to the opportunity to help others.

9 This is the man that we're standing here  
10 talking about today: Narseal. I just called him  
11 "Narse."

12 He's a good person, an absolutely wonderful  
13 person. I'm sure each and every one of us in this  
14 courtroom has either said or done something in our life  
15 that we highly regret. And I feel that this is the  
16 circumstance here. But, unfortunately, you cannot take  
17 the words back that you've said.

18 But at the end of the day, I look at who he is  
19 on the inside and who he truly is, his history of  
20 everything that he's done for others, and I'll stand  
21 behind him till the day I die.

22 And anything that I can do for him from this  
23 point forward, your Honor, if you allow him that  
24 opportunity to have his life, I stand behind him now.  
25 I'm fully available, ready and capable to take him in

1 and under my wings, as we always were together as kids,  
2 the way we always played together and looked out for  
3 each other.

4 Your Honor, I love that young man, not just  
5 because he's my family, but because I see who he truly  
6 is. It has nothing to do with just being blood. It  
7 has a lot to do with his character and his caliber of  
8 person.

9 I feel horribly responsible in some ways that  
10 he had to suffer financially and had to be pressed into  
11 a situation that I see only as a situation, something  
12 that can be overcome. But it will never change who he  
13 is. He's that pure, gentle spirit, always has, always  
14 will be.

15 And I thank you, your Honor, for listening to  
16 me today. And I give God honor and praise for creating  
17 in him the person that he is, because he's not your  
18 average person. He's unique.

19 Thank you, your Honor.

20 THE COURT: We're going to break for lunch.  
21 We'll be in recess until 2:30.

22 (Thereupon, a luncheon recess was taken, after  
23 which the following proceedings were had:)

24 THE COURT: You may be seated.

25 United States of America versus Narseal

1 Batiste, Case No. 06-20373.

2 Good afternoon, counsel and Probation.

3 State your appearances once more for the  
4 record.

5 MS. ARANGO: Good afternoon again, your Honor.

6 Jackie Arango on behalf of the United States.

7 THE COURT: Good afternoon.

8 MS. JHONES: Good afternoon, your Honor.

9 Ana Jhones on behalf of Narseal Batiste, who  
10 is present.

11 THE COURT: Good afternoon.

12 THE PROBATION OFFICER: Good afternoon, your  
13 Honor.

14 Ric Garcia with Probation.

15 THE COURT: Good afternoon.

16 Yes, Ms. Jhones. You were in the process of  
17 continuing with your allocution.

18 MS. JHONES: Yes, your Honor. A couple more  
19 things.

20 Your Honor, I wanted to clarify two points  
21 that I made and at the risk of not making them very  
22 articulately.

23 When I mentioned the fact Mr. Batiste had made  
24 representations during the course of these recordings  
25 that he had 5,000 soldiers in Louisiana and similar

1 representations and I said that the FBI did not bother  
2 going over there, it's not -- I did not mean to imply  
3 that they didn't do it because they were lazy, they  
4 didn't want to do it, they didn't care.

5 The point that I'm trying to make there is  
6 that they did not consider this man to be a threat.  
7 They did not believe what this man was saying.

8 The fact that they did not ^ garner their  
9 resources to check this out speaks volumes about what  
10 they knew to be the case. And I wanted to clear that  
11 up. ^ Garnish?

12 The other issue I wanted to talk about -- that  
13 I wanted to clear up was the issue of the children.

14 It is not my intent to -- I thought it was  
15 important for the Court to hear about the family and  
16 who these children are for one purpose only, and that  
17 is that -- the type of children that Mr. Batiste and  
18 his wife have raised and the strength of character that  
19 these children have. They're mature beyond their  
20 years.

21 It speaks volumes of the actions and the type  
22 of individual that Mr. Batiste really is. I certainly  
23 do not mean to convey to the Court that Mr. Batiste is  
24 without flaws. Quite the contrary.

25 But, again, with the theme of the actions

1 versus the words, the history of who this person is by  
2 his actions versus the words, that is the intent of  
3 bringing this issue forward. And I wanted to do it.

4 Quite frankly, the children wanted to address  
5 the Court directly and I didn't think that that was --  
6 I didn't think that that was appropriate. And,  
7 hopefully, Ms. Vasquez was able to express to the Court  
8 what I think is important about this family.

9 Additionally, your Honor, when you look at the  
10 *Rahman* case, even though in that case the Defendants  
11 were not charged with 2339 and 2339B, they were charged  
12 with seditious conspiracy.

13 And the Court, I'm sure, has read that case  
14 and knows the facts of this case, probably one of the  
15 most horrendous set of facts around.

16 And, yet, Mr. Batiste was charged with very  
17 similar offenses and more, not only seditious  
18 conspiracy, but, also, conspiracy to provide material  
19 support to a foreign terrorist organization and a  
20 terrorist organization.

21 These are offenses that involve national  
22 security. They are of the gravest. And look at this  
23 courtroom. With the exception of some family members  
24 that you heard from and perhaps one person from the  
25 press, this is an empty courtroom.

1           That, too, speaks volumes about what this case  
2 is really about, the fact that this is not the case --  
3 these are not the people nor is this the case that has  
4 an awful lot of people in this country concerned about  
5 their safety.

6           I also wanted to talk a little bit about this  
7 issue of Mr. Batiste and his betrayal of his -- the  
8 brothers, the Co-Defendants.

9           Mr. Batiste has hurt the individuals that this  
10 Court has already sentenced immensely. He's affected  
11 their lives forever. And one of those Defendants,  
12 Lyglenson Lemorin, although acquitted, remains in  
13 confinement to this very day.

14           His mother is present in this courtroom,  
15 supporting Mr. Batiste, when she should absolutely do  
16 the contrary.

17           Stanley Phanor's mother is in this courtroom  
18 here, supporting Mr. Batiste, when Stanley Phanor's  
19 mother should do anything but support Mr. Batiste after  
20 what Mr. Batiste has caused her son to endure.

21           Stanley Phanor's mother was not part of any  
22 meetings. Stanley Phanor's mother was not part of any  
23 cult. Stanley Phanor's mother is not under the spell  
24 of Narseal Batiste, nor is Mrs. Lemorin.

25           Now, why is that important? Because I think

1 that there has been a misunderstanding, perhaps, in  
2 what our society has become, that when people actually  
3 care for each other, when people actually have love for  
4 each other, it can't -- there has to be something else.  
5 It can't be normal. Perfect strangers.

6 And the reality is that the bond,  
7 notwithstanding Mr. Batiste's betrayal -- but the bond  
8 that existed between these brothers was not -- was a  
9 bond of love, something that many, many, many people  
10 won't ever be able to understand.

11 I'm sure the Court has seen a lot more cases  
12 and a lot more defendants than I have. But I can tell  
13 the Court, I've never seen anything like these people.

14 And, yet, we all -- and I'm sure the Court has  
15 and I certainly have for the past three years -- try to  
16 reconcile the reality with Mr. Batiste's words.

17 I won't truly ever be able to understand it,  
18 but I think that part of the beginning of  
19 understanding, at least in part, is that, for once in  
20 his life, Mr. Batiste took -- tried to take the easy  
21 way out.

22 And because he really did not have the street  
23 smarts -- in a very real way, he was a sheltered  
24 individual in terms of criminal activity and violence  
25 and gangs and all of that stuff, notwithstanding his

1 words.

2 For once in his life, he took the easy way  
3 out -- attempted to take the easy way out and,  
4 literally -- pardon the use of the term -- it blew up  
5 in his face.

6 One more thing on the issue of Mr. Batiste's  
7 influence and power and control over these other  
8 brothers.

9 I don't know if the Court recalls -- I don't  
10 have a transcript of it -- but in the first trial, when  
11 all of the wires were in evidence as introduced by the  
12 Government, Greg Prebish, then-counsel to Burson  
13 Augustin, introduced -- not introduced -- published an  
14 exhibit already in evidence, which was a conversation  
15 from one of the wires between Mr. Batiste and Burson  
16 Augustin.

17 And I don't recall the exact date of it, your  
18 Honor. I think it was the end of April. It was after  
19 Sultan Kahn-Bey had come down here and everybody went  
20 their separate ways.

21 Burson calls Narseal. Narseal calls Burson.  
22 I'm not exactly sure who reached out for who. And  
23 Burson is asking Narseal how he's doing.

24 "I want to go back and work with you. I want  
25 to be the way we used to be. I want to work."

1           And Mr. Batiste said, "I don't have any work.  
2 Things are not good right now. Why don't you just use  
3 that security license and go get a job? Why don't you  
4 go get a job with one of those security companies?"

5           And Mr. Prebish played that call because that  
6 was also very telling. An individual who wants to  
7 control for the purpose of waging war and doing harm,  
8 as these charges for which he stands alleged, is not  
9 going to let one of the men, one of his generals, go  
10 out away from under his control.

11           In my memorandum, I quoted -- I cited to, I  
12 should say, a case preguideline -- I'm sorry -- a  
13 pre-Booker case, a 1995 decision, *United States versus*  
14 *Naugle* -- N-a-u-g-l-e -- a United States District Court  
15 case from the Eastern District of Pennsylvania, 1995 --  
16 I'm sorry -- Eastern District of New York, 1995,  
17 written by Jack Weinstein, one of my favorite judges.

18           And it was a guideline case. They were  
19 seeking departures in this case based on the extreme  
20 family circumstances, which I am not doing. But what  
21 Judge Weinstein wrote, I think, is very telling.

22           I'm citing the Court to -- I believe it's  
23 beginning on Page 266. As the Court knows, in 1995,  
24 the guidelines were mandatory and the issues that all  
25 that raised and departures and authorities to depart

1 and whether they should depart and that sort of thing.

2 And this is some of the things that Jack  
3 Weinstein wrote in discussing the guidelines and, more  
4 importantly, discussing the role of the sentencing  
5 judge. And Judge Weinstein, as the Court knows, has  
6 always been a district court judge.

7 And he wrote, "Remembering the human element  
8 has become increasingly important in an era of  
9 determinant sentencing laws, including statutory  
10 minimums and guidelines' charts, which encourage judges  
11 to think of offenders as statistics. ^ Quote something?

12 "As one judge noted, the guidelines', ^  
13 quote, false aura of scientific certainty distances the  
14 Court from the offender," citing to a *Yale Law Journal*  
15 article of 1992 entitled "Reestablishing the Federal  
16 Judge's Role in Sentencing." ^ Of Boundless Domain" on  
17 'net

18 Judge Weinstein went on to quote from another  
19 article from 1995 called ^ "A Boundless Domains Line"  
20 by Michael I. Sovern -- S-o-v-e-r-n -- talking about  
21 the psychological and the emotional distance between  
22 the judge and the defendant.

23 Quoting to this article, Jack Weinstein  
24 writes, "Events in this century have demonstrated our  
25 ability to visit the grossest injustices and horrors on

1 people we permit ourselves to see as less than human."

2           And, finally, Judge Weinstein, quoting from,  
3 ^ according to this, a Martha Mussbaum, writes -- who  
4 quotes from the writings of Seneca regarding the role  
5 of the sentencing judge, wrote as follows on Page 268:  
6 "Seeing the complexity and the fallibility of his own  
7 acts, seeing those acts as a product of a complex web  
8 of highly particular connections among original  
9 impulses, the circumstances of life and the complicated  
10 psychological reactions life elicits from the mind, he  
11 learns to view others, too, as people whose errors  
12 emerge from a complex narrative history. Thus, Seneca  
13 chooses to moderate his retributive view toward the  
14 punishment of the injustices and intensify his  
15 commitment to mutual aid."

16           I beg the Court to look at this case for what  
17 it is, to punish Mr. Batiste for what he has done  
18 wrong, but to keep a perspective of what this case is  
19 about, to keep a perspective of when this case took  
20 place, and that you impose a sentence to fit the crime.

21           Thank you.

22           THE COURT: Mr. Batiste, is there anything you  
23 want to say, sir?

24           THE DEFENDANT: Yes, ma'am.

25           MS. JHONES: Would you like him to stand, your

1 Honor?

2 THE COURT: That's fine. He can sit, if he  
3 wants.

4 THE DEFENDANT: First, I would like to say to  
5 the Court that there's three things that I would like  
6 to apologize for.

7 Those three things first deal with my  
8 Co-Defendants and their families, to the Lyglenson  
9 Lemorin family and to the ^ Phanor family and the  
10 Herrera family and, also, the ^ cath Lynn family.

11 THE COURT REPORTER: I'm sorry. ^ pull it  
12 away ^

13 THE DEFENDANT: Oh, okay. I'm sorry.

14 I ^ don't believe I named them all. Those are  
15 my Co-Defendants, as the Court knows.

16 I apologize for that -- to them because, your  
17 Honor, quite frankly, I shouldn't have led these people  
18 here. And I feel like that I'm to blame for all of  
19 this, that this wouldn't have never happened if I  
20 wouldn't have participated with the CWs and the  
21 Government informants and the things that I was saying  
22 ^ and the lying that I was doing ^ . I know better.

23 THE COURT REPORTER: I'm sorry. All the ^  
24 Judge.

25 THE COURT: Okay.

1 THE COURT REPORTER: Would you try another  
2 microphone ^ .

3 THE DEFENDANT: Going back to what I was  
4 saying, it was that I feel like I'm to blame for all of  
5 this. I don't blame nobody else. I don't blame the  
6 CWs. I don't blame the Government. I don't blame  
7 nobody.

8 I feel like I'm the blame for this because I  
9 know morally what I was doing was wrong. And I knew  
10 that. And I was the one that led my Co-Defendants  
11 here. And that was not the direction that we had  
12 started off from. And that's not why they had given  
13 their trust to me.

14 Our whole goal and perspective, as you know --  
15 it's been stated over and over again -- is that we  
16 wanted to build a construction company. We wanted to  
17 be successful. And that was the dream and the vision  
18 that we all were sharing at the time.

19 And when the pressure got tough and I couldn't  
20 pay the bills like I wanted to and I couldn't pay my  
21 Co-Defendants, then the easiest path that came my way,  
22 that's what I chose, and it all backfired on me at the  
23 end.

24 And, also, it was very difficult at the time  
25 for me to pay -- put food on the table of my family.

1 And I was under a lot of pressure and anxiety and I  
2 thought that this was going to relieve my pressure and  
3 my anxiety. But it didn't. It made it even worser.

4 The second thing I want to apologize for is my  
5 family. As you well know, your Honor, I had my oldest  
6 son at the age of 17. So I kind of grew up with my  
7 kids as a teenager.

8 It was kind of rough for me because my mom  
9 was -- started pressuring me. Even though she loved me  
10 tremendously, she was very strict and she felt that,  
11 since I had a child, that I had to move out the house  
12 and support my family at a very young age.

13 I grew up with my children and I've always  
14 tried to teach my children to do the right thing, to be  
15 responsible for their actions. I always tried to teach  
16 my children how to love everybody and don't make fun of  
17 people who are handicapped and try to get the best  
18 grades in school and those kind of things.

19 And, you know, it's very painful ever since  
20 '06, when I got arrested, for my family to learn the  
21 things that I was engaged with and the activities and  
22 the conversations and the things that I had said and  
23 what was going on in my life they didn't really have no  
24 idea about.

25 So that's why I apologize to my family, your

1 Honor, because I feel like I let them down, because I  
2 know that I'm not the kind of person -- ^ of all the  
3 words that I did say that made everybody so angry at  
4 me, that I'm really not that kind of person.

5 And the last thing I want to apologize about  
6 is my arrogance and my pride. I feel like my arrogance  
7 and my pride is what led me here.

8 When I got arrested in '06, they put me in  
9 solitary confinement, which is isolation, for two years  
10 and about five months.

11 And during that time, I had a lot of time to  
12 do some reconstruction of myself by going back and  
13 thinking of the past and thinking of ill feelings that  
14 I had inside that were buried that I thought I had  
15 solved.

16 And it helped me come to a lot of realization  
17 of what led me here to this point and what made me  
18 vulnerable in getting myself involved in all of this.

19 And I want to say, your Honor, I know that  
20 this is not the time to argue the facts of the case and  
21 I'm not bringing up the facts of the case in terms of  
22 what actually took place.

23 I just want to just mention -- to clarify what  
24 was the emotions that was ^ churning inside of myself.

25 And I want to say, also, that it was exactly

1 true what Dr. Shelton testified about, about that I was  
2 never a member of a gang. And that's true.

3 I was never a member of a gang, your Honor. I  
4 grew up in a rough neighborhood at one point. I was  
5 actually a victim of being picked on by different gang  
6 members.

7 And I just remember the times that I was -- I  
8 used to be scared to go to the store because I was  
9 scared of walking down to the street corner and getting  
10 jumped on by two or three people that were in gangs  
11 that would try to intimidate young kids between  
12 11 years old all the way up to 22 years old.

13 Those were the guys that hanged out on the  
14 streets. Most of those guys that hanged out on the  
15 streets were in gangs. They were constantly getting  
16 arrested in small misdemeanors and other kind of crimes  
17 and they had tattoos and they would wear certain colors  
18 to represent who they were.

19 And the only reason why in my arrogance of  
20 trying to play a much more tougher role or be the tough  
21 guy when I met Mohammed was -- I mentioned Jeff Fort  
22 because, at that time growing up, that was the  
23 information on the street, that Jeff Fort was a real  
24 tough guy.

25 And I remember that one thing about the gangs.

1 What they really received was respect. Everybody  
2 respected them. Everybody wanted to play like they  
3 liked them because of the fear that they -- and the  
4 intimidation they put on people.

5 And I never wanted to put fear or intimidation  
6 on nobody. That was the part that I hated about the  
7 gangs. But I -- the admiration that I believe that you  
8 saw, your Honor, was the fact that they got respect.

9 And that was what I wanted. I wanted respect.  
10 At the time, those guys used to pick on me when I was  
11 growing up. And that -- that never happened.

12 But at the time that I mentioned to Mohammed  
13 about Jeff Fort, it was just only the fact that I  
14 wanted just to play this tough role with him and be  
15 this person that I really wasn't.

16 And I believe that I got mixed in with all of  
17 the admiration that I used to have over the fact of how  
18 those people were respected.

19 But it was never because of the fact of how  
20 they intimidated people and the threat they put on  
21 people because I always felt like I was the victim of  
22 that.

23 That's why I had joined the Guardian Angels  
24 and that's why I tried to do martial arts, because I  
25 felt like, when it came down to it, if I ever got

1 jumped on by one of those people, that I would be able  
2 to defend myself.

3 And, also, the reason why I wanted to mention  
4 my arrogance and my pride was because I knew starting  
5 off in this case of all the activities that were taking  
6 place and I was catching on that these informants --  
7 that these guys were informants. But I didn't care  
8 anymore.

9 The only thing I was concerned with was the  
10 benefit. And I always looked at the -- at the glory of  
11 it all, that everybody was going to be hand-clapping  
12 and thanking me for the fact that we all got successful  
13 and I would take the majority of the credit and  
14 everybody would be proud of me and I would feel like I  
15 did something good.

16 That's what I kept looking at. And I wasn't  
17 really thinking with a level head and a level mind,  
18 especially when it came down to the day I took those  
19 pictures. I didn't have a level head that day and I  
20 didn't think -- I didn't have a level mind and I didn't  
21 think things out thoroughly like I wanted to.

22 I believe, if I would have did that, they  
23 were -- that would have never happened. I definitely  
24 know from what I know now that, if I had -- what's done  
25 is done. But if I had to do it all over again, this

1 would never happen. This would never happen.

2 And, also, I wanted to mention that I've never  
3 been a violent person. The only time that I got  
4 arrested and got convicted of something, as you know,  
5 is in my criminal report -- in my background report --  
6 where they said in '93 that there was a criminal  
7 damage.

8 That criminal damage was the result of a guy  
9 that beat up a lady friend of mine at work and she  
10 called me to go pick her up because she was scared the  
11 guy was going to jump back on her when she got out the  
12 building.

13 So I went to pick her up and me and the  
14 gentleman came across each other. We got into an  
15 argument in front of his car. And after I punched him  
16 and missed, I broke his car window on the driver's  
17 side. And so they labeled that as criminal damage.

18 But it was not because I was going around  
19 graffitiing the city of Chicago or damaging anybody's  
20 business or personal property or carrying gasoline and  
21 throwing it on buildings and trying to light it on fire  
22 or anything like that. It was nothing like that.

23 My anger was pointed towards a specific  
24 individual. We had a heated-up discussion and it broke  
25 out into a physical confrontation and his car was the

1 one getting damaged. That was the result of that.

2 Lastly, I want to say thank you, your Honor,  
3 for giving me the time to speak. I truly believe, you  
4 know, your Honor -- even though it's like all odds is  
5 against me right now, but I actually believe -- I  
6 actually believe in the work that my mother did.

7 My mother was a pastor of a church, as you  
8 know, and a lot of times she would take me on her  
9 evangelist work because nobody else wanted to go with  
10 her. But I used do it -- go with her because I wanted  
11 to make sure my mother was safe.

12 And I really believe that, before my mother  
13 passed, that she blessed me with that kind of work.  
14 And I really believe that. I don't know how it's gonna  
15 happen.

16 But one day when this is over with, I still  
17 have the desire to do humanitarian aid and charity  
18 work. And that's the envisionment that me and my wife  
19 both have. And that's what I want to see my children  
20 do along with me.

21 I would love for them to be able to come to  
22 the juvenile delinquency facilities and sit down with  
23 the children in religious and social programs and talk  
24 with other kids.

25 I believe that that would help them understand

1 more about life and more about love. And I would like  
2 to be able to do those kind of things with those kind  
3 of people because of my life experiences and what I  
4 learned from them.

5 And I just wanted to let those people know  
6 that there is somebody out there that really loves them  
7 and that, no matter what their circumstances are, they  
8 can make it through it and they can choose to be a  
9 better person.

10 And I feel like that's what I've been called  
11 to do by the grace of God. I feel like one day that's  
12 gonna happen.

13 That's it.

14 THE COURT: Does that conclude your  
15 presentation, Ms. Jhones?

16 MS. JHONES: Yes, your Honor.

17 THE COURT: What does the Government say?

18 MS. ARANGO: Judge, initially, Ms. Jhones  
19 argued to you -- and I believe she trivialized the  
20 seriousness of these crimes by calling Mr. Batiste a  
21 wannabe terrorist, not a real terrorist where real  
22 people are harmed.

23 I think it's pretty -- we don't even need to  
24 go to case law to see the absurdity in that comment.  
25 But certainly the case of *Abu Ali*, which I cited to you

1 earlier, tells us that we shouldn't have to wait until  
2 people are harmed to adequately punish these people for  
3 their desire to inflict harm. We want to avoid that  
4 from ever happening.

5 And, in fact, that was what the FBI was doing  
6 when they were investigating this case, is to  
7 determine, as you heard from Agent Velazquez, what was  
8 going on in this guy's mind and did he really want to  
9 do the things that he told the informant he wanted to  
10 do.

11 And over the course of eight to ten months,  
12 Mr. Batiste was unwavering in expressing that desire  
13 over and over again.

14 Never once did he say, "I'm out of here. This  
15 is not what I'm about. I don't want to be any part of  
16 this. I'm joking" or, you know, "All I really want is  
17 money." Nothing like that. Never did he do that.

18 He always went full steam ahead with his plans  
19 and had every indication and, indeed, the jury found  
20 that he did by convicting him of all four counts.

21 Another thing Ms. Jhones said is, "Well, real  
22 terrorists don't need inducement." First of all, the  
23 jury rejected soundly that bogus defense.

24 And you saw the evidence, your Honor. He was  
25 not induced into doing anything. This was a powerful

1 man who was in control. In fact, he did the inducing.

2 And I'm going to talk a little bit more about  
3 that in a moment.

4 The FBI merely provided him with an  
5 opportunity to discuss his goals and objectives.  
6 Obviously, they did it in an undercover way. They had  
7 to. He wasn't going to discuss that with the FBI if he  
8 knew.

9 And as I stated before, he was very consistent  
10 in what he wanted to do. And this case really was  
11 about what was going on in this guy's mind, what he was  
12 thinking. The jury clearly decided that fact.

13 And there was certainly sufficient proof to --  
14 that your Honor saw yourself to at least get a -- maybe  
15 not understand why he did it, but certainly understand  
16 what his motivations were.

17 He was asked by the informant on -- Elie  
18 Assaad, on December 22nd -- excuse me -- yes -- on  
19 December 22nd, "Hmm, you have this plan for Chicago.  
20 Since when have you had this idea?"

21 And Mr. Batiste's response: "Since 19 --  
22 since '98."

23 I think that was very indicative. I used that  
24 in my closing statements because I do believe that was  
25 indicative.

1 In '98, he was living in Chicago. He was  
2 working for Federal Express. He had met Sultan  
3 Kahn-Bey. These ideas had started in his mind at that  
4 time. And I think he answered very honestly.

5 And you'll recall, when I cross-examined him  
6 about that, I said, "And Brother Mohammed, when he  
7 asked you when did you have this idea in your head, you  
8 came up with that year, 1998?"

9 And he says, "Yes, ma'am.

10 "And that wasn't just a coincidence, was it?"

11 And then he says, "Oh, I just thought of that  
12 number right then and there. I wanted to give him the  
13 impression that I was organized, that I thought about a  
14 plan."

15 And I said, "You mentioned the year 1998  
16 because that was the year that this idea got into your  
17 head when you were living in Chicago and meeting with  
18 Sultan Kahn-Bey?" ^ Judge corrects next page

19 ^ and I would just add to that, working for  
20 FBI (verbatim), driving through the Chicago loop,  
21 delivering packages to the Sears Tower.

22 And he says, "No, ma'am." ^ Part of quote?

23 And I said, "So you just pulled 1998 out of  
24 your hat?"

25 Well, there was an objection.

1 THE COURT: You meant FedEx, not "FBI."

2 Correct?

3 MS. ARANGO: I'm sorry. Federal Express.

4 Yes.

5 THE COURT: Okay.

6 MS. ARANGO: And I said, "You just decided to  
7 pick that year for no reason at all? It's just a  
8 coincidence?"

9 And he says, "Yes, ma'am. As you look right  
10 above" -- and he was referring to the transcript -- "I  
11 was using the number '8' already" -- because he had  
12 used the word "85" -- "So I just went to another figure  
13 of the number '8,' just throwing out the number '8.'"

14 And then I said, "You were talking about  
15 85 percent just above?"

16 He says, "Right. So then I just switched it  
17 over and said '98.'"

18 And I just think, obviously, the jury didn't  
19 buy it and it just showed the absurdity of that remark  
20 and his attempt to deny what was really going on in his  
21 head.

22 He made a truthful statement at that point in  
23 time and then his excuse was, "Oh, I was just playing  
24 with numbers and I just happened to come up with the  
25 number '98.'"

1           In his first meeting -- and we've discussed  
2 this various times, but I think it's still worth  
3 mentioning -- his first meeting with Elie Assaad, the  
4 person he believed was coming from this terrorist  
5 organization and who he had discussions with Abbas  
6 al-Saidi about, he mentions Jeff Fort.

7           It's very significant because Jeff Fort --  
8 these informants didn't know who Jeff Fort was. In  
9 fact, the FBI agents didn't know who Jeff Fort was.  
10 They had to go and do research and find out what this  
11 guy was about.

12           And he goes on to tell him, "Jeff Fort was one  
13 of the leaders of the biggest gangs and it started off  
14 as Islamic -- it started off in Islamic philosophy."

15           And he tells him, "There is a man you probably  
16 don't know and he was probably in the same situation  
17 that I am in right now."

18           Then he goes on to explain to him -- to  
19 explain to Mr. Assaad, "He was the first black man to  
20 ever be indicted in the United States court for  
21 terrorism. He was being helped by Libya."

22           He knew very well who this man was that he was  
23 emulating. It was a man that, as you heard through the  
24 testimony of Dan Young, was a man that's very well  
25 known in Chicago, where Mr. Batiste lived.

1           And I'm mentioning these things because I  
2 believe that it's very significant in showing what this  
3 person's intent was.

4           Why he had these intentions I don't know. But  
5 certainly the evidence in this case illuminated that  
6 intent through bits and pieces like this.

7           The kidnapping of the informants. Your Honor,  
8 who kidnaps people that you're afraid of, that are  
9 trying to intimidate and coerce you? You run from  
10 those people, if that's really what's happening.

11           He was -- by taking them down to the Keys, he  
12 was telling them, "I'm in charge. I'm the big kahuna  
13 here. I know exactly what's happening. And I don't  
14 want to get caught."

15           And he finally -- when he meets with them in  
16 the tent and he thinks that they're clean, he says,  
17 "This is about domestic terrorism." He knew exactly  
18 what was going on. And he said, "I don't want to be a  
19 fool and get caught."

20           But let's talk about inducement and who  
21 induced who.

22           Your Honor, you were greatly affected in -- I  
23 believe in the sentencings of the other -- of the  
24 Co-Defendants here about -- and I think you astutely  
25 and intuitively understood the psychology about their

1 desire to be controlled, to belong to something big and  
2 powerful and important.

3 For whatever reason, they lacked direction and  
4 control in their lives and they -- and, instead, they  
5 attached themselves to Narseal Batiste, and he had the  
6 inverse desire, to control, to be powerful, to have  
7 people following him unquestioningly.

8 I'm not sure why he had that desire. But  
9 clearly the evidence in this case showed that.

10 Look at the conversation with Burson Augustin  
11 on November 7th. Burson Augustin was talking about  
12 striking at different times around the city, taking  
13 over Allah's world.

14 Those really weren't his words. Those were  
15 the words of Narseal Batiste. Clearly, he was just  
16 reiterating what he had heard from this man and telling  
17 Abbas al-Saidi a little bit about what they were all  
18 about.

19 The telephone call with Patrick Abraham is  
20 very, very -- also instructive that I've referred to  
21 several times before, where he says, "You got to get  
22 Sister Melinda, your wife, in line here. She's not  
23 doing any reporting to the Queen. She doesn't feel  
24 like she wants to place herself under the authority of  
25 the leadership of the sisterhood."

1 He's not only wanting to control these men,  
2 but he wants his wife to control their wives.

3 And then he goes on to talk, as I've mentioned  
4 before, about having to survive on the mission, having  
5 to be ready to flee in the middle of the night.

6 What that is about is control. It's also  
7 about a desire to commit these crimes, but it also just  
8 gives you an indication as to who's doing the inducing  
9 here.

10 Naudimar Herrera's notes: That's another  
11 indication, clearly. These notes showed that Narseal  
12 Batiste was doing the preaching and Naudimar, like a  
13 dutiful student, was taking down what he was hearing.  
14 Those notes went into evidence as Government's  
15 Exhibit 125.

16 They were words like: Take orders only from  
17 the prince. Don't play with nobody. F-u-c-k  
18 everything if it don't come from the prince. You have  
19 surrendered your will to the Prince. No playing. Only  
20 take order as soldier from the prince.

21 And then there's some talk about: Nine points  
22 for a successful evasion. Large groups are easily  
23 detected. If there are a lot of you, split into  
24 four-man teams, which are a lot harder to detect.

25 Again, an indication as to what his intentions

1 and plans were: To make these men his soldiers, to  
2 have them follow him without any question, to assemble  
3 them and make them pawns in his plan to cause chaos, to  
4 overthrow the Government, to do harm.

5 Indeed, I also made a note in my closing  
6 arguments about some of the admissions that he made  
7 when he was on the stand on cross-examination.

8 He admitted that he formed the organization  
9 and he was the leader. He admitted that it was part of  
10 his organization and mission to recruit people.

11 He admitted that he recruited these Defendants  
12 and that he referred to them as "soldiers" and that he  
13 trained them and that he wanted his organization to  
14 look structured and organized and that he was also --  
15 which was also a recruiting technique.

16 He ordered -- he admitted that he ordered his  
17 men to hold post, to be on guard duty at the Embassy  
18 and he ordered them to clean and sweep.

19 He admitted that he was more than a spiritual  
20 leader, but that he was in complete control of the  
21 organization.

22 He said that he was the divine leader and that  
23 he made decisions as the divine leader of the  
24 organization.

25 And then there was even a conversation that we

1 had in cross-examination where he said that he believed  
2 that he -- that, "Man has the authority on a certain  
3 level to be God."

4 And I asked him, "And you thought you were God  
5 of this organization?"

6 And he said he was. That's what he thought.

7 And these men, for whatever reason, went  
8 willingly along, unlike Mick Coriolan, who saw it for  
9 what it was.

10 And he was a man also like them with not a  
11 tremendous amount of education, with not a tremendous  
12 amount of direction. His work was spotty. He engaged  
13 in, you know, the use of marijuana.

14 Yet, he didn't follow along with Batiste. He  
15 saw what it was about and he didn't want to have any  
16 part in that movement to overthrow the United States.

17 I'm not quite sure what motivates a man like  
18 that to commit these types of crimes. I mean, I've  
19 watched -- he obviously has a beautiful family.

20 He has a loving wife and a cousin and they  
21 themselves, I believe, his entire family and the people  
22 that love him and care for him, are also victims of  
23 these crimes.

24 In fact, he spent \$1200 a month -- and I  
25 remembered looking at this when I was investigating

1 this case -- \$1200 a month on that warehouse in Liberty  
2 City, \$1200 a month that could have been used for his  
3 family.

4 And the reason he did so was so he could have  
5 secret meetings, so he could amass his soldiers, so he  
6 could preach to them as we saw in those -- in Naudy's  
7 notes, so he could quench his desire to have power and  
8 control.

9 In fact, even the \$3500 that was given to him  
10 by the FBI, we didn't know where that \$3500 was going  
11 to go. We thought perhaps he might take that money and  
12 run.

13 But just like he told the informants, he  
14 didn't take that money and buy food. He took that  
15 money and he purchased the airline tickets for Sultan  
16 Kahn-Bey and his wife to travel to Miami.

17 Ms. Jhones says all he did was take photos.  
18 That's basically how she summed it up.

19 Obviously, Judge, that's not the way the jury  
20 summed it up. It ignores the months of meetings and  
21 conversations and horrific descriptions of what he  
22 wanted to do and shooting people and the mayhem and the  
23 havoc that he was seeking to wreak.

24 And those photos themselves -- they were  
25 photos of buildings that he believed were being

1 targeted for destruction by Al-Qaeda in a plot to  
2 destroy five FBI buildings. That's what was discussed  
3 with him.

4 He never said -- he didn't go out and take  
5 fake photos. He didn't go out and take pictures of  
6 boats or trees or houses. He went out and took the  
7 photos that Al-Qaeda was asking for, the photos that he  
8 thought Al-Qaeda might want.

9 In addition to the photos and the videos, he  
10 sat down with the -- well, first, he drove the  
11 Al-Qaeda -- who he believed to be the Al-Qaeda  
12 representative around and pointed out the FBI building,  
13 pointed out other targets that Al-Qaeda might want  
14 to -- other buildings that Al-Qaeda might want to  
15 target for destruction.

16 He sat down with the photographs and the  
17 videos. He stopped the videos, suggested entry points,  
18 suggested weaknesses within the structure that they  
19 could capitalize on, offered his men to be security  
20 guards in Government buildings, offered them up for  
21 Al-Qaeda.

22 This isn't -- this isn't about just taking --  
23 snapping a few pictures. This is about a very, very  
24 serious set of crimes that this man committed.

25 I think this is a vastly different situation

1 than the Lynne Stewart case. And I just want to quote  
2 one small portion of the Lynne Stewart case at  
3 Page 116, where the Court notes: First, Stewart's was  
4 an atypical case for the terrorism enhancement inasmuch  
5 as the, quote, thrust of the violation was the  
6 provision of a co-conspirator to a terrorist  
7 conspiracy.

8 So what they were saying -- I believe what  
9 this is saying is that this is unlike a situation where  
10 you had -- where you had a different situation than a  
11 co-conspirator in a terrorism conspiracy, the Lynne  
12 Stewart case. Lynne Stewart was somebody who assisted  
13 a man that was her client, albeit a very bad man.

14 And I would also point out that the Court went  
15 on to discuss at length in the Lynne Stewart case as to  
16 why there would be, you know, a low likelihood of  
17 recidivism and why a lesser sentence was appropriate  
18 for her.

19 And they went on to talk about how she was  
20 going to -- the crimes to which -- and I'm looking at  
21 Page 117 -- the crimes to which she had been  
22 convicted --

23 THE COURT: One moment, please.

24 MS. JHONES: Your Honor, I apologize.

25 If I could just have a moment. I have to turn

1 this off and it's going to come back on. So I just  
2 wanted to give it to somebody to take care of it.

3 THE COURT: Okay. I thought you were leaving.

4 MS. JHONES: I'm sorry.

5 I'm very sorry, Ms. Arango.

6 MS. ARANGO: That's okay.

7 The Court -- the Second Circuit in the Lynne  
8 Stewart case at Page 117 said, "The Court found that  
9 Stewart's opportunity to repeat the crimes to which she  
10 had been convicted will be nil because she will lose  
11 her license to practice law and will be forever  
12 separated from any contact with the Sheikh Omar  
13 Abdel-Rahman."

14 And then they went on to talk about her  
15 personal characteristics as being extraordinary because  
16 she actually throughout her career represented the  
17 poor, the disadvantaged, the unpopular, often as a  
18 court-appointed attorney, thereby providing a service  
19 not only to her clients, but to the nation, and that  
20 she had spent her professional career representing the  
21 poor, that she is now, at the end of her career,  
22 financially destitute.

23 And then they went on to say -- to note that  
24 she was in ill health, she had suffered from cancer and  
25 that she had a significant chance of recurrence. And

1 her age at that time was 67 years old and prison would  
2 be particularly difficult for her and that, at her age,  
3 moreover, the sentence would represent a greater  
4 portion of her remaining life than for a younger  
5 defendant and provide increased punishment.

6 I just wanted to point that out as -- and, of  
7 course, I understand, your Honor, that the sentence  
8 that she received was much less than Mr. Batiste is  
9 looking at here.

10 But I wanted -- I did want to point out  
11 that -- the light in which she was viewed.

12 And I think, you know, your Honor commented  
13 that, in Walker's dissent, they distinguished her from  
14 Rahman, and Rahman being the head of the snake.

15 And I think that that characterization is more  
16 applicable to Mr. Batiste, somebody who led others and  
17 manipulated and controlled them to further his  
18 nefarious goals.

19 Thank you, Judge.

20 MS. JHONES: Your Honor, I'd like an  
21 opportunity to respond, if I may.

22 THE COURT: Sure.

23 MS. JHONES: So that I am clear, which does  
24 not happen often, as to the argument that I am making  
25 to the Court, I am not in any way, shape or form

1 suggesting to revisit the jury's verdict for purposes  
2 of this hearing today.

3           When I talk about the real terrorists and the  
4 nonterrorists -- I'm sorry -- the real terrorists and  
5 the wannabe terrorists, what I am talking about and the  
6 argument that I'm making to the Court is that, as it  
7 relates to punishment -- the degree of punishment that  
8 this Court sees fit to visit upon Mr. Batiste, I submit  
9 to the Court that, under the sentencing factors, under  
10 the advisory guidelines, under every criteria that you  
11 could possibly measure, that, respectfully, the Court  
12 should not punish aspirants, aspiring terrorists,  
13 aspiring wannabes, who have been promised money, given  
14 money, promised vehicles, promised material things in  
15 order to commit the crimes, that as it relates to  
16 punishment, they cannot and should not be the same.

17           When Mr. Padilla returned from the Middle  
18 East after having been -- after having trained with  
19 Al-Qaeda, Mr. Padilla had \$10,000 in his pocket,  
20 \$10,000 that he had already said was going to be  
21 utilized and employed to commit a terrorist act in the  
22 United States.

23           That was money that was -- that was money that  
24 was to be utilized to commit a terrorist act in the  
25 United States.

1           The actions of Lynne Stewart, without the  
2 assistance of any inducements, a lawyer, an officer of  
3 the Court, communicated and published in the Middle  
4 East to a terrorist organization the wishes and desires  
5 of a convicted terrorist, not a terrorist that was an  
6 aspiring terrorist, but a terrorist who had already --  
7 whose actions had already resulted in the deaths of  
8 many people and an attempt on President Mubarak, not  
9 because of inducements.

10           What Lynne Stewart did resulted in the death  
11 of innocent people. And I am saying to you, your  
12 Honor, that when it comes to punishment, they cannot be  
13 treated the same.

14           I'd like to respond to the Government's  
15 argument about Mr. Batiste's inverse desire to be in  
16 power.

17           Let me remind the Court about some of the  
18 words of one of the most manipulative informants that I  
19 have ever seen throughout my career, the same informant  
20 in the *Mandhai* case.

21           Conversation after conversation after  
22 conversation, Mohammed would tell Mr. Batiste, "You are  
23 the leader. You are the man. It is your image,  
24 brother. It is your image, brother," when he's egging  
25 him on to bring Sultan Kahn-Bey down and impress Sultan

1 Kahn-Bey.

2 Lynne Stewart did not need Rahman to do that  
3 to her. Rahman did not need that to order the killings  
4 of innocent people, to order a cease-fire.

5 Padilla did not need that to go in Afghanistan  
6 or wherever it was that he went, in Iraq or Yemen, to  
7 train with Al-Qaeda, to come back and visit upon the  
8 United States the fruits of his training at the hands  
9 of Al-Qaeda.

10 No one paid Padilla to do that. Sattar. All  
11 of these people. That is what I am talking about.  
12 They didn't need a Mohammed. They didn't need an  
13 al-Saidi.

14 Finally, your Honor, I'd like to talk about --  
15 briefly about the troubling aspect of arguing to this  
16 Court the proposition, even assuming it's true: Punish  
17 this man because he thought he was God. Punish this  
18 man because of his beliefs.

19 I don't think that's what Congress has  
20 intended, however abhorrent or distasteful that may be  
21 to the Government. Indeed, that's why many of our  
22 veterans and the people in the Armed Forces are dying  
23 on a daily basis, to defend the right for Mr. Batiste  
24 to think that he's God if he would like to, even if we  
25 don't like it, even if it's weird.

1           Something very troubling is going on in this  
2 case. Something very dangerous is going on in this  
3 case.

4           Mr. Batiste got the \$3500 from Mohammed and  
5 spent it on bringing Sultan Kahn-Bey down here. He  
6 spent a very small portion of it. The balance? We  
7 don't know where it went, but we know it didn't go to  
8 buy guns. We know it didn't go to buy the tools of  
9 terrorism.

10           What we know is that the evidence clearly  
11 supports that it went to pay his bills and to feed his  
12 families and to pay the brothers for the hard work that  
13 they had done.

14           I am not saying that that's appropriate, your  
15 Honor, take the money. What I'm saying is Padilla and  
16 the Lynne Stewarts of the world and the Ramsey Clarks  
17 of the world and the Rahmans of the world would go  
18 hungry in exchange for them perpetuating their evil on  
19 innocent people and that should be treated differently  
20 in terms of punishment.

21           Thank you.

22           THE COURT: If you would, stand with your  
23 client.

24           As I've stated in the other sentencing  
25 hearings -- and I reiterate it here regarding the

1 sentencing of Mr. Batiste because it is perhaps the  
2 most important in his case -- the Eleventh Circuit case  
3 of *United States versus Mandhai* at 375 F.3d 1243 has  
4 tremendous similarity to the facts of this case.

5           The *Mandhai* case started when Mandhai met an  
6 FBI operative posing as a disgruntled ex-Marine who had  
7 converted to Islam and was interested in waging jihad  
8 against the United States, a man by the name of Howard  
9 Gilbert.

10           Mandhai then began training with Gilbert and  
11 Gilbert suggested that an effective way to harm the  
12 United States Government was to bomb electrical  
13 substations. Gilbert was then terminated as an FBI  
14 source, but he continued to train with Mandhai.

15           Subsequently, Mandhai was introduced to  
16 Mohammed, another FBI cooperating individual, who posed  
17 as a terrorist with ties to Osama bin Laden.

18           And Mohammed told Mandhai that he was planning  
19 to establish a local center for training Muslims to  
20 wage jihad in Florida.

21           The next day, Mandhai asked Mohammed to  
22 provide financial support to his group, which was  
23 planning to bomb electrical transformers in Florida in  
24 retaliation for the US Government's support of Israel  
25 and other countries that oppress Muslims, and Mohammed

1 agreed to help Mandhai.

2 Mandhai and Gilbert took Mohammed to view two  
3 electrical substations in Florida. Mandhai, on the  
4 drive to view the substations, claimed that he was in  
5 charge of the operation.

6 And Mandhai, after hearing again that Mohammed  
7 had ties with bin Laden, requested money and stated  
8 that he was concerned that Gilbert might be working for  
9 the FBI.

10 Eventually, Mandhai changes his mind. He  
11 doesn't want to bomb. He states that that idea had  
12 originated with Gilbert. He stated he was in charge of  
13 recruiting and operations.

14 He eventually tells Mohammed that he wanted to  
15 recruit 25 to 30 people to train for jihad and asked  
16 Mohammed to acquire firearms.

17 He was shown a collection of weapons and  
18 explosives -- Mohammed showed to Mandhai a collection  
19 of weapons and explosives that he was willing to  
20 provide, and Mandhai said he was suspicious of Mohammed  
21 and wanted out of the plot.

22 Again Mandhai expressed hesitation.  
23 Thereafter, when someone else joined in the group and  
24 purchased a gun -- not Mandhai, this other person --  
25 Mandhai expressed a hesitation about the bombing plot

1 and then he stated that he was ready to proceed.

2 Mandhai and Mohammed briefed this third person  
3 of the plan to bomb transformers. Mandhai wanted  
4 someone released from jail prior to the time that he  
5 would proceed, and Mohammed challenged his seriousness  
6 of his conviction. In response to that, Mandhai  
7 requested bombs from Mohammed so he could complete the  
8 plan.

9 Certainly not identical facts, but the same  
10 type of scenario of involvement of a cooperating  
11 witness based upon an initial suggestion of interest in  
12 jihad by the Defendant, as Batiste here expressed an  
13 interest in being connected with a terrorist  
14 organization to Abbas al-Saidi.

15 And the case evolved until, eventually -- I've  
16 given many of the pertinent facts -- Mandhai is charged  
17 with conspiring to damage and destroy electrical power  
18 stations or a National Guard Armory by means of fire  
19 and explosives under Title 18, United States Code,  
20 Sections 844(i) and (n), and inducing a third person to  
21 damage the property of an energy facility, in violation  
22 of 18, USC, 1366.

23 And Mandhai pleads guilty to Count 1. Judge  
24 Dimitrouleas, who was the sentencing judge, applied the  
25 terrorism enhancement under 3A1.4.

1           And this is the case that the Eleventh Circuit  
2 established the standard of the Defendant's purpose  
3 being relevant and, if that purpose is to promote a  
4 terrorism crime, the enhancement is triggered. And  
5 they upheld Judge Dimitrouleas's application of the  
6 terrorism enhancement.

7           At Page 1248, the Court stated, "The  
8 enhancement was proper even though the record reflects  
9 that Mandhai lacked both the means and the ability to  
10 carry out his defined activity without assistance that  
11 was not present."

12           And I find that statement is a pivotal  
13 statement for the facts in this case that underlie  
14 Mr. Batiste's involvement, that Batiste -- it could  
15 have been written for this case -- that Batiste lacked  
16 both the means and ability to carry out his defined  
17 activity without assistance that was not present.

18           The Eleventh Circuit, after approving the  
19 terrorism enhancement, agreed with the district court  
20 that the 12-level increase required by the terrorism  
21 enhancement prevents the penalty from fitting the crime  
22 based upon the facts of this record.

23           And the Court stated that the facts in the  
24 record may be sufficient to remove the case from the  
25 guidelines' heartland.

1           And do I find in this case that the facts of  
2 this case remove this case regarding Mr. Batiste from  
3 the guidelines' heartland, though Mr. Batiste stands  
4 convicted before this Court of very serious crimes.

5           And the *Mandhai* court eventually stated that  
6 the sentencing range of 188 to 235 months was excessive  
7 for the crime that Mandhai committed.

8           Though they had reversed Judge Dimitrouleas's  
9 granting of a downward departure based upon incomplete  
10 conspiracy, they remanded it back to him.

11           And, eventually -- I believe one of the  
12 lawyers in one of the other hearings indicated that  
13 Mr. Mandhai was eventually sentenced to 168 months by  
14 Judge Dimitrouleas.

15           But, factually, I found this case to be of  
16 such interest, besides the fact that it is the  
17 controlling law in the Eleventh Circuit as to the  
18 enhancement for 3A1.4, because of the great similarity  
19 in how the case was developed, the persons involved,  
20 the ability or inability to carry out the acts of  
21 terrorism without assistance that didn't exist.

22           Now, both side have mentioned, as I have  
23 mentioned in previous hearings, the *Stewart* case.

24           I do want to quote one other portion of the  
25 *Mandhai* case at Page 1249: "The three branches of

1 Government have distinct functions in the criminal  
2 justice system. The Legislative Branch defines the  
3 crime and prescribes penalties. The Executive Branch  
4 has absolute discretion in deciding who and what to  
5 charge. The Judicial Branch has responsibility for  
6 sentencing. There are sound reasons for this division  
7 of functions."

8 The Court went on to state at Page 1250: "It  
9 is easy to forget that the sentencing guidelines are  
10 merely that, guidelines."

11 And, actually, *Mandhai* was decided in 2004,  
12 prior to the *Booker* decision in which the Supreme Court  
13 determined that the federal sentencing guidelines are  
14 advisory.

15 Going back to the *Mandhai* decision, quote:  
16 "Any attempt to remove all judicial discretion in  
17 sentencing would raise serious concerns about the  
18 separation of powers."

19 And so here we have sentencing guidelines that  
20 have now been found to be advisory that are part of the  
21 function of the Legislative Branch, who defines the  
22 crimes, prescribes penalties and approves the  
23 sentencing guidelines.

24 The Executive Branch has decided who and what  
25 to charge and brought the case.

1           The jury decided the verdict.

2           And the responsibility for sentencing lies  
3 with the Judicial Branch.

4           Now, both sides today have referenced the  
5 Lynne Stewart case, which I first referenced in the  
6 first hearing, having read it the day that it was  
7 issued, that case being cited at 2009 Westlaw 3818860,  
8 a Second Circuit decision decided November 17th, 2009.

9           The district judge in the Lynne Stewart case,  
10 while applying the terrorism enhancement under 3A1.4 --  
11 and as Ms. Jhones indicated, Lynne Stewart was the  
12 attorney for the blind sheikh, Sheikh Rahman.

13           After he was convicted and sentenced to life  
14 imprisonment, she was allowed to visit him in prison.  
15 She signed various agreements with the US Attorney's  
16 Office that she would not utilize these visits to  
17 transmit messages from him to other persons or his  
18 followers.

19           And, eventually, she and an assistant of hers  
20 and an interpreter and perhaps others were charged with  
21 and convicted of actually assisting him in transmitting  
22 his messages to his followers in Egypt and issuing  
23 fatwas.

24           She was convicted of a violation of 2339A,  
25 which is one of the offenses of conviction here.

1           The district court in that case found that the  
2 criminal history category VI overstated her criminal  
3 history or her likelihood to commit further crimes  
4 based upon her past conduct.

5           Here, Mr. Batiste has no prior criminal  
6 history and his criminal history is increased from a I  
7 to a VI based upon the terrorism enhancement.

8           The district court went on to state that the  
9 terrorism enhancement, while correct under the  
10 guidelines, would result in an unreasonable result and  
11 produce a guideline range of quadruple what Lynne  
12 Stewart's guideline range was, and he typified it as  
13 dramatically unreasonable.

14           Judge Calabresi and Judge Walker in -- the  
15 concurrence of Judge Calabresi and the partial dissent  
16 of Judge Walker spoke about the very broad brush that  
17 is painted with the terrorism enhancement, that it  
18 casts a very broad net; it encompasses a wide range of  
19 conduct without modulation.

20           The Second Circuit also in the majority  
21 opinion stated, "We also recognize" -- at Page 119 in  
22 the slip opinion -- "We also recognize, as did the  
23 district court, that the terrorism enhancement may  
24 apply to persons who are culpable in substantially  
25 different degrees and that the district court may

1 differentiate between different levels of culpable  
2 conduct that, nonetheless, trigger the same substantial  
3 enhancement."

4 And Judge Calabresi in his concurrence  
5 compared the terrorism enhancement under 3A1.4 to the  
6 career criminal enhancements that are also present in  
7 the sentencing guidelines.

8 And a defendant may be declared a career  
9 criminal because of past violent crimes. And those  
10 crimes may range from, at one end of the spectrum, an  
11 attempted burglary of a dwelling or, at the other end  
12 of the spectrum, a murder or a rape, substantially  
13 different crimes.

14 Judge Walker in his dissent at Page 20 of the  
15 slip opinion spoke about the history of the terrorism  
16 enhancement.

17 And I want to read it here in the record  
18 because I find it's important that we understand the  
19 history of the terrorism enhancement.

20 "In 1994, Congress expressly mandated that the  
21 Sentencing Commission provide for a terrorism  
22 enhancement to ensure that crimes of terrorism were met  
23 with a punishment that reflected their extraordinary  
24 seriousness.

25 "The Commission accordingly created an

1 enhancement that operates both vertically, increasing  
2 the offense level to indicate the seriousness of the  
3 crime, and horizontally, increasing the defendant's  
4 criminal history category to reflect the need for  
5 deterrence regardless of the defendant's prior record.

6 "The import of this enhancement could not be  
7 clearer. It reflects Congress's and the Commission's  
8 policy judgment that an act of terrorism represents a  
9 particularly grave threat because of the dangerousness  
10 of the crime and the difficulty of deterring and  
11 rehabilitating the criminal.

12 "And, thus, the terrorists and their  
13 supporters should be incapacitated for a longer period  
14 of time," quoting from *United States versus ^ mess key*  
15 *knee*, 319 F.3d 88, a 2003 decision from the Second  
16 Circuit.

17 I've listened to both lawyers from both sides  
18 argue for -- regarding the conduct of Lynne Stewart and  
19 the Government, on one hand, finding differences  
20 between Lynn Stewart and the Defendant and the defense,  
21 on the other hand, finding differences also on the  
22 other end of the spectrum.

23 And I have struggled with this since I read  
24 the opinion. Lynne Stewart was an attorney, very well  
25 versed in representing criminal defendants, and made

1 conscious decisions -- and if you read the facts of the  
2 case, they're quite interesting.

3           There's descriptions of all kinds of  
4 subterfuge being used by Lynne Stewart and the  
5 interpreter and the assistant, who were there in the  
6 jail speaking with the blind sheikh, to distract the  
7 correctional officers who were there so they don't  
8 understand what information they're really transmitting  
9 back and forth, all the while they were really being  
10 videotaped, I believe. And so all of this was evidence  
11 in the case.

12           But it was very strong intent as to what they  
13 were trying to accomplish and what they did accomplish.  
14 And while it certainly is different from the planning  
15 of a terrorist conspiracy, though Judge Walker in his  
16 dissent on that very line that Ms. Arango cited found  
17 great difficulty in figuring out exactly what that  
18 meant.

19           And I wondered what that meant, also -- that  
20 was a quote from the district court, and I wondered  
21 what exactly that meant. But I do believe he was  
22 trying to distinguish between a co-conspirator of an  
23 actual terrorist conspiracy and somebody who's  
24 transmitting messages.

25           But it's a very fine line, considering who the

1 blind sheikh is and what was being transmitted out of  
2 that jail.

3 He was described by Judge Walker in the  
4 dissent, Sheikh Abdel-Rahman: "He was no ordinary  
5 co-conspirator. He was the head of the snake, a  
6 spiritual leader of a violent terrorist group whose  
7 words carried the force of a holy writ among his  
8 followers and a man serving a life term for conspiring  
9 to bring deadly chaos to New York City."

10 Lynne Stewart had been sentenced by the  
11 district judge to 28 months' incarceration from her  
12 advisory sentencing guidelines of 360 months. The  
13 Second Circuit did remand the case because the Judge  
14 did not consider whether she committed perjury when she  
15 testified.

16 But they did uphold the concept of that  
17 28-month sentence and the setting aside -- or the  
18 finding of the unreasonableness of the terrorism  
19 guidelines in her instance.

20 I also am mandated under the *Pugh* decision of  
21 the Eleventh Circuit to consider the 3553(a) factors.  
22 And *United States versus Pugh* is 515 F.3d 1179, a 2008  
23 decision by the Eleventh Circuit.

24 The *Pugh* court recognized, as does this Court,  
25 that subsequent to the *Booker* and *Gall* and *Rita*

1 decisions of the United States Supreme Court, the  
2 sentencing guidelines are advisory. They are not  
3 mandatory. The Court must consult them and consider  
4 them, but is not bound by them.

5 And the *Pugh* court determined a procedure for  
6 a sentencing court to follow when determining what is  
7 the appropriate sentence when there's been a request  
8 for a variance or a downward departure from the  
9 advisory guidelines.

10 And the Court stated that, first, the Court  
11 must correctly calculate the guidelines and then give  
12 both parties an opportunity to argue for whatever  
13 sentence they deem appropriate. And then the Court  
14 should consider the 3553(a) factors to determine  
15 whether they support the requested sentence.

16 So I turn now to the 3553(a) factors.

17 Under 3553(a), the Court, in determining the  
18 particular sentence to be imposed, shall consider,  
19 first, the nature and circumstances of the offense and  
20 the history and characteristics of the Defendant.

21 And here, the Defendant stands before the  
22 Court having been convicted of four conspiracies, a  
23 conspiracy first to provide material support to a  
24 foreign terrorist organization by agreeing to provide  
25 personnel, including themselves, to work under

1 Al-Qaeda's direction and control, pursuant to Title 18,  
2 United States Code, Section 2339A;

3 A conspiracy to provide material support and  
4 resources by agreeing to provide personnel, knowing  
5 that they were to be used in preparation for and  
6 carrying out a violation of Title 18, United States  
7 Code, Section 844(f)(1) and 844(i);

8 A conspiracy to knowingly and intentionally  
9 agree to maliciously damage and destroy by means of an  
10 explosive a building leased to an agency of the United  
11 States, that being the FBI building in North Miami  
12 Beach, or a building used in interstate and foreign  
13 commerce, that being the Sears Tower in Chicago, in  
14 violation of Title 18, United States Code,  
15 Section 844(n);

16 And a conspiracy to knowingly, willfully and  
17 unlawfully agree with persons unknown to the grand jury  
18 to levy war against the United States and to oppose by  
19 force the authority thereof, in violation of Title 18,  
20 United States Code, Section 2384.

21 These are very, very serious crimes. The  
22 facts and circumstances of these offenses, as  
23 established at trial, are that this Defendant, in  
24 whatever way or manner, positioned himself as the  
25 spiritual leader, the military leader of a group of

1 persons who, in addition to whatever other studies they  
2 may have involved in, provided aid and support to a  
3 foreign terrorist organization.

4 Mr. Batiste was very much the leader of this  
5 group. The Co-Defendants were under his direction and  
6 control. He was the person who made the decisions. He  
7 was the person who decided what roads to travel on,  
8 what were the goals and aspirations of this group, and  
9 his Co-Defendants fell into line.

10 As I said in earlier sentencing hearings, his  
11 Co-Defendants, for whatever reason, whether it be lack  
12 of direction, naivete of youth, lack of family  
13 structure, rebelliousness, had a need to belong, a need  
14 to be controlled, and Mr. Batiste had a need to control  
15 and did control.

16 He may not have been a member of a gang as a  
17 young man, but he positioned himself as the leader of  
18 this gang.

19 And in response -- just as in the *Mandhai*  
20 case, in response to inquiries about his express desire  
21 to wage jihad and be connected with a foreign terrorist  
22 organization and as a result of the conversations that  
23 ensued, they and he agreed to take photographs of the  
24 FBI building and what they thought was a second FBI  
25 office building here in the federal court complex in

1 Downtown Miami and provide it to the representative of  
2 Al-Qaeda, a man who I -- and the evidence supports --  
3 who I believe they thought was a true representative of  
4 Al-Qaeda for the purpose of providing material support  
5 so that Al-Qaeda could blow up five FBI buildings  
6 around the country, including the FBI building here in  
7 Miami.

8 In addition, Mr. Batiste shared his plans  
9 about blowing up the Sears Tower, about waging war  
10 against the United States and causing chaos and strife  
11 in the streets of Miami and elsewhere.

12 He took the stand and testified. I do not  
13 find that he testified truthfully about many, many  
14 matters, including the fact that this was all a con  
15 game to obtain money from men from the Mideast or  
16 people he thought were FBI informants. The stories  
17 changed and evolved.

18 Under his leadership and direction and  
19 control, the two cooperating witnesses were taken to  
20 the Keys, ordered to change their clothes. They feared  
21 for their lives. And this was a test by this group,  
22 led by Mr. Batiste, to see if, in fact, they were  
23 actually Government informants.

24 Eventually, after Mr. Batiste expressed an  
25 interest in bringing down from Chicago Sultan Kahn-Bey,

1 one of the -- his associates, and after informing  
2 Sultan Kahn-Bey that these folks are, as he said it,  
3 "ready to get down with us," and Sultan Kahn-Bey came  
4 down and, perhaps, being much more street-smart and  
5 savvy, immediately determined these weren't people from  
6 Al-Qaeda; these were FBI.

7 And after that, everything fell apart. The  
8 group fell apart. Mr. Batiste's leadership of the  
9 group fell apart.

10 So these are very, very serious matters,  
11 though I do not find that they totally fall under that  
12 broad brush or I should consider how broad the brush is  
13 for the terrorism enhancement when determining an  
14 promote sentence.

15 And that I have to couple with looking at the  
16 history and characteristics of the Defendant.

17 As I stated, he has no criminal history. And  
18 from everything about his background and his family, he  
19 should have been a hard-working man, providing for his  
20 family, trying to make his way in the world.

21 Somehow, he lost that way and determined that  
22 being the leader of this group -- I also wondered: Why  
23 would a man who's struggling so hard to make his way in  
24 the world of construction and provide for his family be  
25 paying \$1200 a month for a warehouse for this group?

1 What are the priorities here? His business? The  
2 group? His family?

3 I think the group won out because he was in  
4 control. He was the leader.

5 The Court also has to consider the need for  
6 the sentence imposed to reflect the seriousness of the  
7 offense, to promote respect for the law and to provide  
8 just punishment for the offense, to afford adequate  
9 deterrence to criminal conduct, to protect the public  
10 from further crimes of the Defendant, provide the  
11 Defendant with needed educational or vocational  
12 training, medical care or other correctional treatment,  
13 the kinds of sentences that are available and the need  
14 to avoid unwarranted sentencing disparities among  
15 defendants with similar records who have been found  
16 guilty of similar conduct. And the Court must also  
17 consider the advisory guidelines.

18 Having considered all of these matters and in  
19 a sentence that I find is appropriate for both  
20 punishment and deterrence that protects the public and  
21 avoids unwarranted sentencing disparities, Mr. Batiste,  
22 you've done great harm to yourself, your family, the  
23 young men who are your Co-Defendants, and you have  
24 violated the trust and laws of your country.

25 And for that, you stand before the Court to be

1 punished and sentenced.

2 I find that a sentence of 162 months, coupled  
3 with supervised release of 35 years, is the appropriate  
4 sentence in this matter. It is fair and just. It  
5 provides for adequate deterrence, protects the public  
6 and is just punishment.

7 The Court has considered the statements of the  
8 parties, the revised advisory presentence investigation  
9 report, which contains the advisory guidelines and the  
10 statutory factors set forth in Title 18, United States  
11 Code, Section 3553(a)(1) through (7).

12 It is the finding of the Court that the  
13 Defendant is not able to pay a fine and, therefore, no  
14 fine shall be imposed.

15 Pursuant to the Sentencing Reform Act of 1984,  
16 it is the judgment of the Court that the Defendant,  
17 Narseal Batiste, is hereby committed to the custody of  
18 the United States Bureau of Prisons to be imprisoned  
19 for 162 months as to each of Counts 1, 2, 3 and 4, to  
20 be served concurrently.

21 Upon release from imprisonment, the Defendant  
22 shall be placed on supervised release for a term of  
23 35 years. This term consists of 35 years as to each of  
24 Counts 1, 2 and 3 and three years as to Count 4, all  
25 such terms to run concurrently.

1           Within 48 hours of release from the custody of  
2 the United States Bureau of Prisons, the Defendant  
3 shall report in person to the probation office in the  
4 district to which he is released.

5           While on supervised release, the Defendant  
6 shall not commit any federal, state or local crimes; he  
7 shall be prohibited from possessing a firearm or other  
8 dangerous device; he shall not possess a controlled  
9 substance; he shall cooperate in the collection of DNA  
10 and shall comply with the standard conditions of  
11 supervised release that have been adopted by this Court  
12 and with the following special conditions:

13           The Defendant shall maintain full-time,  
14 legitimate employment and not be unemployed for a term  
15 of more than 30 days unless excused for schooling,  
16 training or other acceptable reasons.

17           The Defendant shall provide documentation,  
18 including, but not limited to, pay stubs, contractual  
19 agreements, W-2 wage and earning statements and other  
20 documentation requested by the United States probation  
21 officer.

22           The Defendant shall obtain prior written  
23 approval from the Court before entering into any  
24 self-employment.

25           The Defendant shall submit to a search of his

1 person or property conducted in a reasonable manner and  
2 at a reasonable time by the United States probation  
3 officer.

4 It is further ordered that the Defendant shall  
5 pay to the United States a special assessment of \$100  
6 for each of Counts 1 through 4, for a total of \$400,  
7 which shall be due immediately.

8 Mr. Batiste, it is my duty to inform you, sir,  
9 that you have ten days with which to appeal the  
10 judgment and sentence of this court.

11 Should you desire to appeal and be without  
12 funds with which to prosecute an appeal, an attorney  
13 will be appointed to represent you in connection with  
14 that appeal.

15 Should you fail to appeal within that ten-day  
16 period, it will constitute a waiver of your right to  
17 appeal.

18 It is also my duty to elicit from counsel from  
19 both sides fully articulated objections to the Court's  
20 finding of facts and conclusions of law as announced at  
21 this sentencing hearing and to further elicit any  
22 objections which either side may have to the manner in  
23 which sentence was imposed in this case.

24 Are there any objections from the Government?

25 MS. ARANGO: None, Judge.

1 THE COURT: From the Defendant?

2 MS. JHONES: None, other than the ones that  
3 have been preserved, your Honor.

4 THE COURT: The marshal will execute the  
5 sentence of the Court.

6 MS. JHONES: May I make a request, your  
7 Honor -- a couple of requests?

8 THE COURT: Yes.

9 MS. JHONES: Number one, that the Court  
10 consider recommending a facility in South Florida so  
11 that his family would have an opportunity to visit with  
12 him.

13 THE COURT: I'll recommend Florida or as  
14 close to Florida as possible. I have to tell you that  
15 99.99 percent of the defendants who appear before me  
16 all want to be in Florida.

17 They don't even send me letters anymore. But  
18 I know they try and place people as close to their  
19 families as possible.

20 MS. JHONES: I understand, your Honor.

21 And, also, given the history of drug use,  
22 especially during the course -- towards the end of this  
23 case, that a drug program be recommended.

24 THE COURT: I'll recommend that he be  
25 evaluated for appropriate drug treatment while he's

1 incarcerated.

2 MS. JHONES: Thank you, your Honor.

3 THE COURT: We're in recess in this matter and  
4 in recess for the day and the week.

5 (Proceedings concluded.)

6

7 C E R T I F I C A T E

8

9 I hereby certify that the foregoing is an  
10 accurate transcription of the proceedings in the  
11 above-entitled matter.

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14

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DATE

/s/Lisa Edwards  
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