

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,  
Plaintiff,

-vs-

Case No. 15-CR-37-JDP-1

JOSHUA VAN HAFTEN,  
Defendant.

Madison, Wisconsin  
February 17, 2017  
1:02 p.m.

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STENOGRAPHIC TRANSCRIPT OF SENTENCING HEARING  
HELD BEFORE U.S. DISTRICT JUDGE JAMES D. PETERSON

APPEARANCES:

For the Plaintiff:

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Also appearing: JOSHUA VAN HAFTEN, Defendant  
 RICHARD WILLIAMS, U.S Probation Agent

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14 (Proceedings called to order at 1:02 p.m.)

15 THE CLERK: Case No. 15-CR-37-JDP-1, *USA v. Joshua Van*  
 16 *Haften*, called for sentencing. May we have the appearances,  
 17 please.

18 MR. VAUDREUIL: The United States Attorney John  
 19 Vaudreuil, Your Honor, First Assistant United States Attorney  
 20 Jeff Anderson, and Lolita Lukose from the National Security  
 21 Division from the United States Department of Justice for the  
 22 United States.

23 THE COURT: Good afternoon to all of you.

24 MR. BUGNI: Your Honor, Joe Bugni, Federal Defender  
 25 Services, appearing on behalf of Joshua Van Haften.

1 THE COURT: Mr. Van Haften, Mr. Bugni, good afternoon  
2 to you.

3 All right. So let's start this way. Let me just do a  
4 rundown of the materials I have looked at in connection with the  
5 sentencing. We've got a couple of wrinkles we have to address  
6 here, but let's just run down the materials.

7 So -- also, by the way, Mr. Rich Williams is in the  
8 courtroom with us. He's the author of the presentence report,  
9 which is one of the things I have reviewed. That's the  
10 presentence report. I have got objections and submissions from  
11 both sides regarding some clarifications from the defendant and  
12 the objection to the terrorism enhancement, which I have already  
13 ruled on. I've got the addendum to the presentence report and  
14 the revised presentence report, and I have sentencing memoranda  
15 from both sides, and Mr. Bugni's sentencing memorandum has  
16 several attachments, which I have also reviewed.

17 So with that, let's make sure I didn't miss anything.  
18 Mr. Vaudreuil, are you on point here for your side today?

19 MR. VAUDREUIL: Yes, sir.

20 THE COURT: All right. Did I get everything you  
21 submitted?

22 MR. VAUDREUIL: Yes, sir.

23 THE COURT: All right. Very good. Mr. Bugni?

24 MR. BUGNI: Got everything.

25 THE COURT: Am I missing anything? All right. Very

1 good. Okay. Mr. Van Haften, let's handle this right now. I  
2 need to make sure that you read the presentence report and that  
3 you discussed it with your attorney. Have you done that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. And have all of your concerns with  
6 what's in the presentence report been conveyed to me?

7 THE DEFENDANT: Correct. Yes, they have.

8 THE COURT: Nothing else you want to address about the  
9 presentence report?

10 THE DEFENDANT: No.

11 THE COURT: Okay. Very good. All right. So let's  
12 deal with the problem that was the subject of my short order  
13 yesterday. First of all, let me check in with counsel. Is  
14 there any objection to my handling it the way I proposed, which  
15 is to address the fact that the plea agreement and the plea  
16 colloquy did not properly disclose to Mr. Van Haften what the  
17 maximum term of supervised release is.

18 MR. BUGNI: That's correct, Your Honor. We have no  
19 problem with the way you're handling it.

20 THE COURT: Mr. Vaudreuil?

21 MR. VAUDREUIL: Neither do we, Your Honor.

22 THE COURT: Okay. Very good. Okay. Mr. Van Haften,  
23 when you changed your plea to guilty, we went over the maximum  
24 penalties that you might face, and we had the term of  
25 incarceration right -- the maximum term of incarceration is 15

1 years -- but the plea agreement and my interview with you  
2 indicated that the maximum term of supervision was 3 years.  
3 Actually the maximum term of supervision is up to the rest of  
4 your life. Because I didn't go over that with you accurately at  
5 the time of your plea hearing, I want to make sure that that's  
6 clear to you now, and because it's different from what our  
7 discussion was when you pled guilty, I'm going to give you a  
8 chance to withdraw your plea if that's what you want to do. So,  
9 first of all, let me make sure that you understand that the  
10 actual maximum penalty that you could face is the 15 years  
11 incarceration plus that could be followed by a term of  
12 supervised release that would be up to the rest of your life.  
13 Do you understand that?

14 THE DEFENDANT: That has been clarified with me, and I  
15 do understand that.

16 THE COURT: Okay. So in light of that clarification,  
17 would you like to withdraw your plea of guilty?

18 THE DEFENDANT: No, sir, I would not like to withdraw  
19 my plea.

20 THE COURT: Okay. So even with that clarification,  
21 you're still prepared to plead guilty facing the additional term  
22 of -- the potential for a much longer term of supervision; is  
23 that right?

24 THE DEFENDANT: That is accurate.

25 THE COURT: Okay. All right. Thank you, Mr. Van

1 Haften.

2 Okay. So I will find that the defendant has been clearly  
3 and accurately apprised of the penalties that he will face and  
4 has decided to persist in his plea of guilty.

5 So I will accept the plea agreement on the basis of my  
6 findings that the offense of conviction adequately reflects the  
7 defendant's criminal conduct and that the plea agreement does  
8 not undermine the statutory purposes of sentencing. In  
9 determining the defendant's sentence, I will take into  
10 consideration the advisory sentencing guidelines and the  
11 statutory purposes of sentencing that are set forth in Title 18  
12 of the United States Code at Section 3553(a).

13 All right. I'm just going to make a record of the guideline  
14 calculations. There was an objection to the application of the  
15 terrorism enhancement, but I ruled on that after briefing from  
16 both sides in a written order that I issued a week or so ago.  
17 So here is where we are on the guidelines. The guideline for a  
18 violation of the offense of conviction, which is Title 18,  
19 United States Code, Section 2339B(a)(1) is in guideline section  
20 2M5.3. The base offense level is 26. There are no other  
21 Chapter Two adjustments that apply, but for the reasons stated  
22 in my order on the terrorism enhancement, I find that the  
23 present offense is a felony that involved or was intended to  
24 promote a federal crime of terrorism. Therefore, 12 levels are  
25 added to that base offense level. I believe the government is

1 prepared to move for one additional level of downward adjustment  
2 for acceptance of responsibility; is that correct?

3 MR. VAUDREUIL: Yes, Your Honor.

4 THE COURT: Okay. I'll grant that motion, which means  
5 that Mr. Van Haften gets three levels of downward adjustment for  
6 acceptance because of his timely plea and the government's  
7 motion. So after that three-level adjustment then, we land at a  
8 total offense level of 35 and a criminal history category of VI,  
9 which is also the result of the application of the terrorism  
10 enhancement. Mr. Van Haften would otherwise have a lower  
11 criminal history category.

12 So the guideline imprisonment range would be 292 months to  
13 365 months, but the statutory maximum for this crime, maximum  
14 term of incarceration, is 180 months, so that means that that is  
15 the guideline range, 180 months. Okay. So that's where we land  
16 on the guidelines, and those guidelines I will consider, but I  
17 have to consider all the 3553(a) factors in figuring out what an  
18 appropriate sentence would be. So Mr. Vaudreuil.

19 MR. VAUDREUIL: Thank you, Your Honor. As set out in  
20 the government's sentencing memorandum, we do recommend the  
21 statutory maximum sentence of 15 years in prison, and we believe  
22 it's supported for several reasons, and I won't go through in  
23 any great detail what we said in our sentencing memo, but just a  
24 couple of points.

25 He made things very clear. The defendant's statements both

1 to friends, family, and online made clear his anger at the  
2 United States in no small part because of his anger at having to  
3 register given his sexual assault conviction from Rock County.  
4 He made clear his intent to travel, his intent to fight with  
5 ISIL against the United States, and he made it clear to friends,  
6 family, and online that he was willing and intended to kill  
7 Americans and their allies if that came up.

8           Significantly then, he acted. It's not a crime in this  
9 country to espouse views and to spout them on the internet, but  
10 he acted. He traveled to Turkey. He tried on at least a couple  
11 of occasions to cross the border into Syria to join ISIL, and  
12 then, perhaps even most significantly, while in Turkey he  
13 assisted -- tried to assist Leon Davis, another American, to  
14 come from Georgia, come to Turkey, cross to Syria to join to  
15 ISIL -- to travel to ISIL-controlled territory. This is not a  
16 case of just a defendant who spoke in angry terms online, the  
17 so-called sort of Facebook muscles, people bragging and talking.  
18 This is a crime of action. So we believe that Mr. Van Haften's  
19 intent, his words, and his actions support the 15-year sentence.

20           I want to briefly address the sentencing memorandum  
21 submitted by Mr. Bugni on behalf of his client. It very  
22 carefully sets out the defendant's difficult upbringing. It  
23 sets out his social, family, and psychological issues, and it  
24 explains and takes that upbringing and how it led him to  
25 discontent, anger, isolation. We don't disagree with those

1 facts. They're set out very accurately in the PSR that was  
2 submitted to the Court, but we do part ways on the meaning of  
3 those things in this case. As we said in our sentencing  
4 memorandum, rather than mitigating, we see his angry, troubled,  
5 frightening mindset, his anger and hatred of his home country,  
6 his world view, his conspiracy theories, we see those as  
7 aggravating because we believe that mindset has in the past, and  
8 there's no reason to doubt it still does, makes him dangerous.

9 Quite frankly, as set out in the sentencing memorandum, his  
10 views and anger are frightening. He shares these with many  
11 other individuals, just reading the newspapers and what we all  
12 know, people who plan and often commit acts of extreme, violent,  
13 horrible actions. He has already acted on those views. He's  
14 acted on his anger. He's acted on his world views, his  
15 frightening views, because he did, in fact, travel. He did, in  
16 fact, get to the Syrian border, and he was ready to follow  
17 through with violence. So fundamentally we recommend the  
18 15-year sentence because, given his views, given his anger, his  
19 isolation, we believe that sentence will protect the public from  
20 him acting again in at least that time period.

21 A couple other things I would just address from the  
22 sentencing memorandum filed by the defense. There's some  
23 comparisons in the -- or attempted comparisons in the memorandum  
24 to the prosecution of Abdullahi Yusuf in the district of  
25 Minnesota, a young man who was sentenced in December 2016 to a

1 year and slightly more, eight months, in prison, again for  
2 attempting to provide material support. And the Court was  
3 provided with Judge Davis's sentencing order as well as some  
4 media reports.

5 I only comment on this because it is our view that it is not  
6 comparable in the least, and if one does look at it as any sort  
7 of a comparison case, it only serves to be more aggravating in  
8 the case of Mr. Van Haften. Abdullahi Yusuf was an 18-year-old  
9 young Somali individual from the Twin Cities area. With several  
10 other Somali youth, together they fed on each other, they  
11 supported each other, and then they decided to fight and leave  
12 the country and fight with ISIL. As set out in the press report  
13 attached to the memorandum, it accurately describes them as,  
14 quote, malleable youths ensnared by sly recruiting tactics.  
15 When Abdullahi Yusuf was arrested, he in a relatively short time  
16 expressed remorse, complete remorse, and then at the trials of  
17 his friends and co-defendants, he testified. In Judge Davis's  
18 words, he provided extraordinary assistance such that Judge  
19 Davis pointed out the United States Attorney himself, Andy  
20 Luger, came to Yusuf's sentencing hearing and talked about that  
21 extraordinary assistance.

22 I go through those facts because the juxtaposition with our  
23 case is stark. Mr. Van Haften is now a 36-year-old. He has a  
24 felony record. He served some prison time, on supervision, on  
25 probation, state probation that didn't work very well. There's

1 nothing in the record to show that he was a malleable youth  
2 ensnared by sly recruiting tactics. In fact, it's quite clear  
3 that he chose his own path. He chose it alone. He chose it for  
4 all the reasons that we've already -- I've already mentioned.

5 He spoke; then he acted. Unlike Abdullahi Yusuf and the  
6 co-defendants, who didn't get out of this country, were stopped  
7 at the airport like so many are, Mr. Van Haften obviously  
8 traveled to Turkey, and then again, unlike Yusuf, he assisted  
9 another individual, Leon Davis. There's not any special --  
10 other than pleading guilty, no real signs of remorse. We see no  
11 cooperation. Apparently and perhaps still angry at the United  
12 States and still isolated. In fact, in the words from the  
13 psychologist, the defense psychologist, he indicated in his  
14 assessment if Mr. Van Haften were to travel to Syria and join  
15 the terrorists even now, it's very likely he would become  
16 involved in violence. So there's really no comparison except to  
17 show that in a totally different case with a totally different  
18 defendant, Judge Davis took a different approach. I would point  
19 out that Judge Davis also sentenced several co-defendants to  
20 very, very long sentences, people in different situations, up to  
21 30 years, as I recall.

22 I think, and I always think it's not a real useful project,  
23 but if one is to draw any comparison cases that would help this  
24 court, the better comparison would be to the person whose name  
25 is absent really from the defense sentencing arguments and the

1 memorandum at least. That would be Mr. Van Haften's  
2 co-conspirator, Leon Davis. Leon Davis is 36. Angry man,  
3 isolated, wanted to travel to go to ISIL-controlled territory.  
4 Never got out of the United States, was arrested in the airport  
5 in Atlanta. He pleaded guilty, and he received a 15-year  
6 sentence. There are differences between these two defendants as  
7 well, but if one is going to draw any comparison cases, I would  
8 suggest that is one.

9 So in conclusion, I just want to return to where I started.  
10 We believe that the 15-year sentence is warranted under 3553 and  
11 the factors, as we set out in the memo, calling on the Court to  
12 look at who a defendant is, what he did, and the goals of  
13 sentencing. Mr. Van Haften, by his own submissions in the  
14 memorandum, is -- seems to be clearly an angry loner who planned  
15 to fight and kill Americans and their allies and then acted on  
16 that plan. He assisted another to join the fight. I don't  
17 believe it's overstating it, so I'll state it again: His views  
18 strike us as exactly those of home-grown, violent extremists.  
19 We believe the 15-year sentence not only reflects the  
20 seriousness of the offense but is just punishment for the  
21 offense. Thank you.

22 THE COURT: All right. Let me just follow-up with a  
23 couple questions, if you don't mind. You can sit down if you'd  
24 like. Suit yourself.

25 MR. VAUDREUIL: Thanks.

1 THE COURT: A lot of what you say makes a very  
2 compelling showing that Mr. Van Haften is, indeed, guilty of  
3 exactly what he's charged with and that it is terrorism in the  
4 sense that I've already addressed in my decision on the  
5 terrorism enhancement, but I still have to make a decision about  
6 what sentence best serves the needs of sentencing, and I have to  
7 do it all viewed through my legal instruction that I have to  
8 impose a sentence that is sufficient but not greater than what  
9 is necessary to serve the purposes of sentencing.

10 Your argument here to me today really focused on protection  
11 of the public, and so I want to talk about that for just a  
12 minute. Sooner or later -- Mr. Van Haften, given the charge  
13 here, has a statutory minimum -- or maximum of 15 years. Sooner  
14 or later Mr. Van Haften is going to come out of prison, and so  
15 what then? Will he be not dangerous after 15 years?

16 MR. VAUDREUIL: That is our hope. As you can even tell  
17 from some of the Minnesota materials, and I believe it's being  
18 used as some conditions of supervised release down in some of  
19 the Chicago cases, there is a significant growth in trying to  
20 essentially reorient people who have become extremist and become  
21 radicalized. As you can see from the *Yusuf* case with the young  
22 man that everybody believed has disavowed those beliefs, they  
23 felt they kind of made quite a bit of that distance. One of the  
24 other defendants Judge Davis gave, I think, a three -- close to  
25 a three-year sentence. They felt he wasn't quite there.

1           So in answer to the Court's question, I'm hopeful that  
2 through Bureau of Prisons' programs specifically directed at  
3 this type of mental mind -- this mindset, I should say, that Mr.  
4 Van Haften will change his thinking. I don't know other than to  
5 hope for that, I guess -- I can't predict that -- that he will  
6 perhaps continue to practice his faith, the faith he says he's  
7 adopted.

8           In all of my connections, and I was with the imam from one  
9 of the Madison masjids yesterday, Islam is a religion of peace,  
10 and people who actually practice Islam are peaceful. People who  
11 say they're Muslims and subscribe to violence, in the words of  
12 all the Muslims I know, they simply are not Muslims. My hope is  
13 that like so many people -- or some people at least who are  
14 incarcerated, that he truly does begin to understand his faith,  
15 and if that is helpful to him and that is the way he moves  
16 forward and becomes a true believer in what I believe is a  
17 peaceful -- a religion of peace, then perhaps we can have some  
18 confidence that this would be solved as time goes on. Now, I  
19 suppose one might ask can that be done in four years, three  
20 years, two years, five years --

21           THE COURT: You're anticipating my follow-up. Again,  
22 you're really focusing on protection, which I'm going to guess  
23 there's sort of a consensus that that is, if not the paramount  
24 goal of this particular sentencing, it's at least among the top  
25 two concerns, but I wonder if there really is some hope that

1 there's some kind of programming or the incarceration experience  
2 itself will help Mr. Van Haften reorient his thinking, that it  
3 wouldn't take 15 years.

4 MR. VAUDREUIL: I don't know the answer to that, of  
5 course, and I am -- the Court is correctly assessing that I'm  
6 trying to balance that sort of goal with the goal of he's not 18  
7 years old. He's 36 years old, and he apparently is an angry,  
8 isolated man, and we need to make sure that nothing happens,  
9 nobody is hurt. So in terms of making that balance, it's  
10 probably pretty obvious the United States has opted for  
11 emphasizing more in our view of the case the protection of the  
12 public view.

13 That doesn't mean we're not hopeful. We are not --  
14 certainly not uncaring in this case, although it may seem like  
15 that at some level. I hope Mr. Van Haften gets his head in  
16 order, but he is 36, and as is set out in great detail in the  
17 sentencing memorandum, the defense sentencing memorandum, this  
18 has been a long time coming, a long buildup of what led him to  
19 this moment in his life, and I am not -- my feeling is that it  
20 will take a long time to unwind that.

21 THE COURT: Let me ask you another follow-up. I guess  
22 you cited the -- I think it's Dr. Spierer's analysis in response  
23 to Mr. Bugni's question about whether Mr. Van Haften was likely  
24 to pose a danger in the future. And his answer was, more or  
25 less, look, Mr. Van Haften wanted to go to Syria and fight with

1       ISIS, and if he's out of the country and could accomplish that,  
2       yeah, he'd probably fight with ISIS, but if he stays in the  
3       United States, that's just not his goal, to be a domestic  
4       terrorist. He had a fantasy of going and joining ISIS and  
5       fighting in the Middle East, but he's never really done anything  
6       that would indicate that he's going to do an act of terrorism  
7       here in the United States. Here he's just kind of an angry  
8       internet troll. I mean, if I look at it, I really don't see any  
9       indication that there's any plotting to do the kinds of things  
10      that we expect from domestic terrorists. He's never said he's  
11      going to do anything like that.

12               MR. VAUDREUIL: That's correct.

13               THE COURT: Did he have some specialized kind of vision  
14      of what he wants to do with regard to his commitment to ISIS  
15      that would suggest that he really isn't going to do anything  
16      here? If we keep him here in the United States, he's not as  
17      dangerous as he might otherwise seem?

18               MR. VAUDREUIL: Your Honor, that's certainly a correct  
19      reading of what Dr. Spierer says. His history and the fact that  
20      he's never attempted violence as a lone wolf suggest, of course  
21      don't guarantee, but suggest that he wouldn't do so in the  
22      future, and Mr. Bugni, I believe, in his memorandum correctly  
23      points out -- and I'm not making the argument -- that, well, you  
24      never know. You know, a lot of people do. So that's not the  
25      government's position. Everything in this case is a man, as you

1 point out, whose goal was to fight in Syria essentially with  
2 ISIL and not to go to Fort Hood or other places and commit  
3 horrible acts of terrorism and extremism in this country. So I  
4 don't deny that.

5 However, the reason I quoted from Dr. Spierer's answer, his  
6 email answer, it suggests he wouldn't do so in the future. What  
7 I'm suggesting is that the -- it is difficult to predict what an  
8 angry loner, isolated person will do if he remains like that,  
9 and I would hope that we would solve that problem in terms of  
10 protection by a lengthy period of incarceration.

11 THE COURT: All right. One last question before I  
12 pivot over to Mr. Bugni. Mr. Van Haften had a rough start in  
13 life, and it included something that has concerned me all along,  
14 and that is that he had a brain injury when he was 12. And so  
15 usually if I look at the background of a person and I find that  
16 they have a history that might explain their inability to make  
17 normal, pro-social decisions throughout their life, it doesn't  
18 relieve them of responsibility, but I do recognize that it might  
19 have a mitigating effect as I consider their culpability.

20 And, again, I'm not suggesting that a defendant should be  
21 relieved of all responsibility, but when I look at what they did  
22 and how responsible they are for it, when I have somebody who  
23 has a brain injury when he's 12 that put him in a coma for  
24 weeks, I got to think there's a background here and that his  
25 mental health may not entirely be his entire fault. So that,

1 again, it doesn't relieve him of responsibility, but it's a  
2 mitigating effect when I'm looking at what an appropriate  
3 punishment is. You don't seem to be particularly open to that,  
4 but I expect Mr. Bugni is going to press that issue pretty  
5 significantly.

6 MR. VAUDREUIL: I suspect that's true, Your Honor. If  
7 Mr. Van Haften was here like some of the defendants in  
8 Minnesota, as a 22-year-old and we were talking about an injury  
9 and a relatively short period of time, I would see it. I think  
10 we would see it as perhaps something that would warrant much  
11 more discussion. That isn't the way we see it, as the Court  
12 correctly points out.

13 It's been 24 years, as is set out in detail. There's been  
14 opportunities. I mean, certainly he's had mental health people  
15 approach him. He's been incarcerated in the Wisconsin prison  
16 system, and the anger that comes out of his conviction and his  
17 sex register requirement, and Mr. Bugni acknowledges this, is  
18 not atypical for people who have to register as sex offenders.  
19 It does not seem to me, to us, in any way to be linked -- an  
20 anger that's linked to his brain injury. When he wants to  
21 strike back against this country, when he wants to leave because  
22 he cannot stand to have to go from state to state and register  
23 as the law requires him, I don't see any way that one says,  
24 well, that's atypical; that's just related to this injury that  
25 he had.

1 Over that long period of time, the anger that led him to  
2 these acts and really seemed to be a very big portion of his  
3 thinking about why he wanted to strike back against this country  
4 and to join ISIL just doesn't seem to be connected to the brain  
5 injury. Had there been no conviction and suddenly there's this  
6 angry person -- he was angry from that moment; he's angry ever  
7 since -- okay. But he has this injury. He's convicted when  
8 he's 18, a fact that he continues to -- obviously had to admit  
9 because it was statutory but continues to deny any real criminal  
10 conduct, completely inconsistent with the victim's story of  
11 nonconsensual sex. So he has that moment six years later that  
12 leads to a conviction that leads to time in prison, probation.  
13 He's revoked because he doesn't do well on supervision, and then  
14 just the anger builds, and I just -- I just, quite frankly,  
15 don't see the connection between that anger and an injury as a  
16 very young boy.

17 THE COURT: Thank you, Mr. Vaudreuil. Mr. Bugni.

18 MR. BUGNI: Your Honor, Dr. Spierer is here. I imagine  
19 the Court has questions, and I thought I'd call him to give a  
20 little bit, but I know that you're going to have other questions  
21 as well. Dr. Spierer.

22 Judge, do you want to swear him?

23 THE COURT: Go ahead.

24 **MICHAEL SPIERER, DEFENDANT'S WITNESS, SWORN,**

25 DIRECT EXAMINATION

1 BY MR. BUGNI:

2 Q Dr. Spierer, how long have you been practicing?

3 A As a psychologist?

4 Q Yes.

5 A About 40 years.

6 Q How many times have you testified in court?

7 A I have probably testified several hundred times in courts.

8 Q Including federal court?

9 A A few times in federal court, yes.

10 Q How much time did you spend with Mr. Van Haften?

11 A We met on two occasions for a total of just under six  
12 hours.

13 Q Okay. And did you review anything else in this case?

14 A I did. I did.

15 Q Could you tell the Judge what you reviewed?

16 A I reviewed the presentence investigation report. I  
17 reviewed the report of Dr. William Merrick, who had been  
18 retained to conduct a neuropsychological evaluation. I reviewed  
19 the memorandum that you prepared regarding the enhancement  
20 argument. I looked at Social Security documents, foster care  
21 records, records -- psychiatric records from the Department of  
22 Corrections, and I think that covers it.

23 Q Did you do any testing with Mr. Van Haften?

24 A I did. I administered two psychological tests to him.

25 Q Was there any evidence he was malingering?

1 A On the testing there was not.

2 Q All right. Now, you've made certain conclusions in your  
3 report. Mr. Vaudreuil has referenced them. I referenced them  
4 in the sentencing memo. How did you come to understand the  
5 behavior that led to Mr. Van Haften's crime?

6 A My notion, Mr. Bugni, of what happened is that Mr. Van  
7 Haften grew up in a family where he was treated poorly, both  
8 physically and emotionally. I detail this in my report, but he  
9 was physically and emotionally abused by his stepfather. At one  
10 point his mother gave him and his two half-siblings up under a  
11 CHIPS petition because she felt she couldn't handle them. A  
12 great deal of what happened in his upbringing I think affected  
13 the way he came to see himself and the way he came to relate to  
14 people with whom he came in contact.

15 Over his early years, he had relatively few friends. He had  
16 relatively few contacts with people outside the family. I  
17 quizzed him on both -- occasions of both our meetings about  
18 friendships that he had made and retained, and there were,  
19 indeed, very few. He could name a couple of people in his life  
20 who he had maintained friendships with, and I came to view this  
21 as a kind of isolation that developed for him, isolation not  
22 just from family members, but from potential friends. And he  
23 was very much alone, and what happened when he was convicted of  
24 sexual assault -- and I parallel what Mr. Vaudreuil said  
25 earlier -- what Mr. Van Haften told me was that this was

1 consensual, and he acknowledged, he, Mr. Van Haften,  
2 acknowledged that the testimony of the young woman with whom he  
3 was involved said that he had forced her to do this. It  
4 indicates he was convicted of second-degree sexual assault and  
5 placed on the sex offender registry for life.

6 The impact that's had on him is -- incalculable is probably  
7 too strong, but it's been such a strong effect that it's colored  
8 the way he has seen relationships, jobs, connections with people  
9 in his family. He's seen no way to make a life for himself. He  
10 has found that when people learn that he's listed in the  
11 registry, either they shun him or they make fun of him or they  
12 bully him. Employers won't have anything to do with him, and I  
13 think he's taken that notion, and he has tried to find a way to  
14 make a life for himself that allows him to work outside the  
15 boundaries imposed by that.

16 I've looked at his history over the time since his -- well,  
17 since childhood. He has, with the exception of a conviction  
18 that came before the sexual assault conviction, only one violent  
19 episode in which he was involved. He hit another kid in the  
20 head with a toy gun. It was meant to look like a gun. It was  
21 not a real gun. But in the years subsequent to 1999, I could  
22 find nothing either in the presentence investigation or any  
23 other materials that I looked through that indicated that he'd  
24 committed any violent acts.

25 So I came to view this as an effort on his part to try to

1 find a way, and I say this -- I'm talking about his involvement  
2 with terrorist groups -- let me leave that for a moment, but I  
3 think what he did in his life was try to find a way to find a  
4 place for himself because he couldn't be accepted in the normal  
5 way that young men his age were. That failed. That really  
6 didn't work very well. When he got to prison in 2000, he almost  
7 immediately declared that he had taken up Islam and converted,  
8 and it's unclear to me exactly how that process evolved or what  
9 he did that took him in that direction, but it's clear from the  
10 record and from what he said that that's what happened. He has  
11 maintained a connection with Islam over the last I think it's 17  
12 or 18 years. I think what it has provided for him is a life  
13 path.

14 It's struck me that he -- even though he is charged with --  
15 he's acknowledged that he made the statements that he made  
16 publicly over Facebook and in other social media, that he's  
17 never acted in a violent way. He's never done anything as a, if  
18 you will, a lone wolf in the United States. He's never taken  
19 any action to try to harm anyone. I think in the email I shared  
20 with you that Mr. Vaudreuil referenced, I said that if he were  
21 overseas, if he were in Syria, for example, I think the  
22 likelihood, the probability, that he would do something violent  
23 would increase significantly because there he would be with  
24 people who were of like mind, if you will, who might have  
25 resources that he didn't have, and there I would be concerned

1 about him. I'm much less concerned in terms of whether he does  
2 anything violent if he remains in the United States, and my  
3 thinking is based on the notion that the best predictors of  
4 future behavior are past behavior.

5 Now, as a Muslim since 1999 and out of prison since 2004,  
6 he's had 13 years to act, if you will, and there's nothing in  
7 the record, nothing I could elicit from him, that indicated to  
8 me that he had done anything like that. So I think the  
9 probability of him acting out violently in the United States is  
10 low.

11 Q What do you make of -- you've read Mr. Van Haften's posts,  
12 some of them very vitriol -- vitriolic, some of them very  
13 violent, but also many of them telling exactly what he's doing:  
14 "I'm going to Syria. I am trying to get into Syria. I am doing  
15 this. I am pledging allegiance to ISIS or ISIL." What do you  
16 make of that?

17 A I think of it as a way of him saying to people who might  
18 read these posts that he's found a way in life, he's found a  
19 path for himself in life and that this is it, and he has really  
20 exercised poor judgment in determining how those statements  
21 might be read by people other than those he might have been  
22 trying to influence. But I think that's really a statement that  
23 says I finally figured out what to do, and it empowers me, and  
24 I'm going to go do that.

25 Q Is it more or less consistent with somebody who is trying

1 to be covert, surreptitiously cross in and join ISIL, to  
2 announce that, hey, this is what I'm doing and this is what I  
3 am?

4 A It's hardly covert to put your name on a piece of paper and  
5 post it in social media. To do something like that, you would  
6 assume, and I think he assumed, that others would look at it,  
7 which I think is the reason why he put that there. Would he  
8 have suspected that the U.S. government would read those?  
9 Possibly. I don't know.

10 Q And you've talked about bad judgment, and we all agree with  
11 many that that's here. What impact would the brain injury -- I  
12 know Dr. Merrick said there's lingering effects of it. We don't  
13 really know. There's the hand tremor. There's other aspects of  
14 it. Lifelong friends have said he was never the same after  
15 that. How would the brain injury affect his judgment?

16 A I'm not sure that I can tell you how the brain injury would  
17 affect his judgment. What I would suggest may be more relevant  
18 is how the brain injury might affect his decisionmaking. That  
19 is, people with certain kinds of brain injuries, and Dr. Merrick  
20 refers to this, can be more impulsive, and if you do things  
21 impulsively in part because you're biologically, if you will,  
22 unable to control that, that's a problem. I have not -- I do  
23 not view -- the neuropsychological aspect is not my area of  
24 expertise, but my reading of Dr. Merrick's report suggested that  
25 he didn't think this was a major piece of this though the event

1 and the damage clearly had an effect on Mr. Van Haften and his  
2 life.

3 Q You've talked about his ability to be monitored. Can he be  
4 monitored? Can he cooperate with the rules and the structures  
5 that we place on him with supervision and would that reduce his  
6 risk? Sorry, go ahead.

7 A Let me start with the first. I think he can be monitored.  
8 Again, I hearken back to the years between --

9 THE COURT: When you say he can be monitored -- and I  
10 have read your report, so we can be succinct. I don't need to  
11 have the whole thing recapitulated to me. But when you say he  
12 can be monitored, I don't know what you mean by that. Like,  
13 obviously anybody can be monitored. We just watch him. It's  
14 really more a question -- the question that matters is how does  
15 he respond to it.

16 THE WITNESS: Well, Your Honor, if I look at what  
17 he's -- he hasn't had a lot of therapy, hasn't had a lot of  
18 treatment contact in a number of years. If he were monitored,  
19 for example, with an electronic bracelet so that people knew  
20 where he was, if he were meeting with a probation agent  
21 regularly who could monitor his activities, if he had a job, if  
22 he was in psychotherapy -- he has a diagnosis. One of the  
23 diagnoses is bipolar disorder. He's not medicated for that. If  
24 he were medicated for that, he'd have at least five different  
25 points of observation, including probation -- a probation agent

1 who could look at his behavior, look for changes in his  
2 behavior, and have a way of judging whether there's some  
3 increased likelihood of him acting out in some way that would be  
4 either illegal or prohibited by his -- by the terms of his  
5 probation.

6 THE COURT: Okay.

7 MR. BUGNI: I have no other questions unless the Court  
8 does.

9 THE COURT: I'll give Mr. Vaudreuil a chance. Maybe  
10 he'll bring out whatever concerns I have. I'll probably have a  
11 couple follow-ups. Go ahead.

12 MR. VAUDREUIL: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. VAUDREUIL:

15 Q Let's start with the last point, Dr. Spierer, regarding his  
16 ability -- your assessment of the defendant's ability to be  
17 supervised, if you will, and if he could benefit from that.  
18 You've read a lot of his background. You know that he's been on  
19 supervision before, correct?

20 A Yes.

21 Q And you know that he failed, correct?

22 A I do.

23 Q And was revoked and sent back to prison?

24 A I do.

25 Q And you'd agree that, frankly, throughout the presentence

1 report and the materials we have, that there's really never any  
2 indication that Mr. Van Haften has been successful on that sort  
3 of supervision.

4 A Well, to go back to a point you made earlier, he was 19  
5 years old at the time. That's when the probation was revoked,  
6 if I recall, and that's when he went to prison. I don't think  
7 he's -- I don't remember whether he has had any probation  
8 revocations since that time. I do remember that any that he's  
9 had would not have been related to violence because I don't  
10 believe there are any other violent acts that he was charged  
11 with.

12 Q And you indicated -- I'm just kind of going around my notes  
13 here, hodgepodge here.

14 A It's okay.

15 Q When you talked about what you had assessed, where you  
16 believe that Islam had given him sort of a life path, are you  
17 aware that he had numerous and frequent arguments with Muslims  
18 in the Madison area and that they, in fact, told him they wanted  
19 nothing to do with him, that he did not espouse their faith?

20 A I was not aware of that.

21 Q Now, you agreed that, and you said that in the email that  
22 we've talked about here, that there is a possibility you believe  
23 that he would be violent if he was out of the country I think  
24 you said with people of like mind and with resources, correct?

25 A Correct.

1 Q And I presume you'd agree that there are people in the  
2 United States who are angry and disaffected and would like to do  
3 violent acts in this country?

4 A I would agree.

5 Q And, sadly, some of them have the resources to do so,  
6 correct?

7 A Yes.

8 Q So would you have any certainty that if Mr. Van Haften were  
9 to link up with people of like mind with resources in this  
10 country that he would not join in that -- join them in that  
11 path?

12 A I think it -- if he were to hook up with people as you  
13 describe, I think the probability that he might do something  
14 violent would be increased.

15 Q And in terms of Mr. Bugni's questions to you about his  
16 postings and being sort of visible and all that, are you aware  
17 that much of what he posted that -- is now public because we've  
18 prosecuted this case, but much of what he posted was posted on  
19 extremely private social media communications, networks, if you  
20 will?

21 A I was not aware of that. I was aware that he had published  
22 on Facebook and other relatively common social media, but I  
23 wasn't aware of what you asked.

24 Q And assuming what I have said is true, and it is, would it  
25 change your assessment of this sort of openness, if you will, if

1 you were to understand that many of these communications that  
2 are in our materials were posted on these private social media  
3 communication networks?

4 A I don't know that it would change my interpretation of why  
5 he did this or what effect they might have. I'm more moved by  
6 your statement that some of these remain on private networks.

7 Q Now, with the brain injury when he was 12 -- I don't ask  
8 this in any sign of disrespect -- you're not a neurosurgeon,  
9 right?

10 A Nor a neuropsychologist.

11 Q And I know you assessed that he doesn't have any psychosis  
12 or that sort of mental disease. I think you said that in one of  
13 your reports.

14 A He does not display symptoms of psychosis now, but I would  
15 point to my report where other evaluators who also have  
16 diagnosed him with bipolar disorder have found him to present  
17 with paranoid and psychotic symptoms, so at some points in time  
18 he may well appear that way.

19 Q And you indicated some of the records from the Department  
20 of Corrections indicated I believe October 8, 2001, he had  
21 become isolated, intolerant, arrogant, indicated that he stated  
22 in 2002 he must spend his life alone so that he will not hurt  
23 anyone?

24 A Is that in my report?

25 Q Yes, sir.

1 A Then I must have seen that.

2 Q Now, you indicated -- and just a couple more questions --  
3 that the main driver, and I believe you said this in the email  
4 as well to Mr. Bugni, is his requirement that he register as a  
5 sex offender, correct?

6 A Yes. I think it's broader than that, but I think that's  
7 what I said in the email.

8 Q Specifically what you said, "His desire to find a life  
9 outside the United States where he believes he would be free of  
10 the albatross of the sex offender registry is one of the  
11 drivers" -- I'm sorry -- "one of the drivers that has made him  
12 want to leave the country. His desire to find an identity among  
13 members of ISIL is another."

14 A Yes.

15 Q Now, this anger at being -- at what you refer to as the  
16 albatross of the sex offender registry, ask a couple questions  
17 about that. In your practice you have, I presume, on occasion  
18 dealt with sex offenders and done some analysis of them and that  
19 sort of thing?

20 A I have.

21 Q And would I be correct in saying that this sort of anger at  
22 the sex offender registration requirement is not atypical for  
23 those folks?

24 A You would be correct.

25 Q And there's nothing that you would see, I take it, that

1 would indicate that that anger that is a driver of his -- some  
2 of his reason to leave the country, that that anger is connected  
3 to this brain injury, this accident when he was 12?

4 A I don't see a connection between those two.

5 MR. VAUDREUIL: Okay. Thank you. No other questions,  
6 Your Honor.

7 THE COURT: Dr. Spierer, just a couple of questions.  
8 Would you just tell me a little bit more about your background.  
9 I know you've got 40 years of practice. I gather you must deal  
10 with forensic issues fairly regularly if you've testified in  
11 court that much, but I'm not sure I have a really good picture  
12 of what you do.

13 THE WITNESS: Sure. About four years ago, Your Honor,  
14 I retired from my therapy practice and have exclusively done  
15 forensic practice. I began doing forensic work in about 1982,  
16 and I have worked with both the State Public Defender's Office,  
17 private attorneys. I consult with the Madison Police  
18 Department, the Dane County Sheriff's Department on issues  
19 related to officer-involved shootings. I have done competency  
20 evaluations, NGI evaluations, personal injury evaluations  
21 probably is the bulk of my practice certainly for the last four  
22 years, a substantial part of my practice for the last  
23 approximately 30 years.

24 THE COURT: Okay. And then is there training,  
25 certification? How do you get into -- for example, you're

1 dealing with competency evaluations, NGI evaluations. Is that a  
2 particular subspecialty within the field of psychology?

3 THE WITNESS: It's a good question. There are  
4 subspecialties in both areas, both those areas in psychology.  
5 I'm old enough that there were no subspecialties in those areas  
6 when I was trained, so my training has come through continuing  
7 education, through work with colleagues, but I don't have the  
8 degree that would allow me to describe myself as a forensic  
9 psychologist, for example, or certification. So what it says in  
10 my work is that I practice forensic psychology, which I'm told  
11 is ethical and legitimate, but that's where the background comes  
12 from.

13 THE COURT: Okay. And so I gather in this district --  
14 now, let me just find out and make sure I'm not making a  
15 mistaken assumption. You live in Madison?

16 THE WITNESS: I do.

17 THE COURT: And your practice is in Madison?

18 THE WITNESS: It is.

19 THE COURT: Do you travel around the world or around  
20 the country doing this work or is it all here?

21 THE WITNESS: It's not all in Madison. Almost all of  
22 it has been in Wisconsin.

23 THE COURT: Okay. Now, in this district sex offenders  
24 are pretty common. We get a lot of those, so I gather your  
25 practice probably has a lot of sex offenders that you've looked

1 at.

2 THE WITNESS: I have seen a number of sex offenders.  
3 Mostly I have seen them as part of a treatment process,  
4 occasionally as part of an evaluation process.

5 THE COURT: Okay. I'm drilling down really to this  
6 case because this happens to involve somebody who has a sex  
7 offense conviction, and that plays a role in his world view, but  
8 this case is a terrorism case, and we're dealing with somebody  
9 who has been convicted, because of his plea, of committing an  
10 act of terrorism.

11 THE WITNESS: Yes.

12 THE COURT: And so tell me about your experience with  
13 dealing with people who have become radicalized or pledge  
14 allegiance to ISIS or kind of express themselves in the way that  
15 Mr. Van Haften has.

16 THE WITNESS: I don't think I have ever seen anyone who  
17 has the same history or a similar history to Mr. Van Haften or  
18 who has been charged with a crime like this. I have seen  
19 individuals who have been charged with homicide, people who have  
20 been charged with child abuse. I have seen people about whom I  
21 have been asked to make predictions about future behavior, but I  
22 don't think that I have seen anybody before who has been charged  
23 with this crime.

24 THE COURT: I mean, this must be a general stock in  
25 trade for people in your field that are in Minneapolis. There's

1 a lot of terrorism convictions up there. The judge said that --  
2 in the *Yusuf* case that Mr. Vaudreuil was talking about, that  
3 judge had a lot of experience with terrorism cases. I'm  
4 guessing -- I haven't, and I'm guessing you haven't either.

5 THE WITNESS: That's correct.

6 THE COURT: Okay. All right. Thanks. Any follow-up?

7 MR. BUGNI: A couple.

8 REDIRECT EXAMINATION

9 BY MR. BUGNI:

10 Q Back to Mr. Vaudreuil's questions. Among the things that  
11 you looked at were -- and you based your opinion upon his public  
12 statements was the PSR, correct?

13 A Yes.

14 Q Do you have it in front of you?

15 A I don't, but I think I have it in my file. I have it.

16 Q Could you turn to paragraph 33. It's the middle of page 8.

17 A I have it.

18 Q Could you read the first sentence of paragraph 33 and then  
19 the first sentence of paragraph 34.

20 A "On October 1st, 2014, the agent again viewed the  
21 defendant's publicly available Facebook page."

22 Q And what about paragraph 33?

23 A "On October 21, 2014, the FBI received authority to execute  
24 a federal search warrant on the defendant's Facebook page."

25 Q Sorry. You're working on the old one. We have an updated

1 one. I'll just --

2 A I don't have that.

3 Q That's all right.

4 THE COURT: I take your point. I get it. It's not all  
5 secret.

6 MR. BUGNI: That's exactly it.

7 THE COURT: There might be some dark web stuff, but a  
8 lot of is out in the bright daylight of Facebook.

9 BY MR. BUGNI:

10 Q And the fact that -- or the allegation that many Muslims  
11 have rejected Mr. Van Haften, is that something surprising to  
12 you?

13 A No.

14 Q Why isn't it surprising to you?

15 A It's my belief that Islam is a peaceful religion and that  
16 the vast, vast majority of people, of Muslims, are peaceful  
17 people, and I would think that they would reject not only Mr.  
18 Van Haften's position but that of other people who espouse  
19 violence in the name of Islam.

20 Q And given the role that Islam plays in Mr. Van Haften's  
21 life, what is that rejection likely to do?

22 A It adds to the rejection I described earlier, the  
23 difficulty he has had forming relationships, and is likely to  
24 make the impetus for him to look for another path in life even  
25 greater.

1 Q And we've talked about the five kind of points of contact  
2 between medication, checking with probation officer, possible  
3 GPS, et cetera. Does that diminish the likelihood of possibly  
4 hooking up with the people who have the resources to commit this  
5 kind of attack that Mr. Vaudreuil made allusion to?

6 A It's hard to know. I mean, at least in theory if he were  
7 monitored in all these different ways, someone would recognize  
8 if that happened, particularly a therapist or parole agent,  
9 probation agent.

10 Q And in your two meetings with Mr. Van Haften, was he closed  
11 off? Was he willing to communicate with you? Was he willing to  
12 sit down and talk?

13 A He was. Initially he started out with some reticence I  
14 think, but as the five or six hours of interview developed, I  
15 thought he was pretty open.

16 MR. BUGNI: All right. Thank you, Your Honor. Nothing  
17 else.

18 THE COURT: Mr. Vaudreuil, anything else?

19 REXCROSS-EXAMINATION

20 BY MR. VAUDREUIL:

21 Q In that five to six hours, did he ever show any remorse?

22 MR. BUGNI: Towards what?

23 MR. VAUDREUIL: For this crime.

24 THE WITNESS: I don't think I can say that he did,  
25 Mr. Vaudreuil, nor did I ask him about that. I mean, it wasn't

1 a question I posed.

2 MR. VAUDREUIL: Fair enough. Thanks.

3 MR. BUGNI: Sorry. We're going to keep on going back  
4 and forth.

5 THE COURT: Last chance. Go ahead. One more.

6 MR. BUGNI: There is a part in here where there was  
7 remorse, but, of course, I didn't tap it. Your Honor, you  
8 already read this, so I'm sure you saw that part about remorse.  
9 So no more questions.

10 THE COURT: Thank you, Dr. Spierer.

11 THE WITNESS: Thank you.

12 (Witness excused at 1:55 p.m.)

13 THE COURT: Mr. Bugni, what else you got?

14 MR. BUGNI: Your Honor, I have given you the best I  
15 got. I have hit you with 38 pages and countless attachments  
16 only to be swatted away, and I gave you the best I got as far as  
17 a sentencing memo. What are you struggling with?

18 THE COURT: Well, what I'm struggling with is that,  
19 first of all, let me say you've done a great job of getting me  
20 to be able to see Mr. Van Haften in his path through life, and I  
21 really appreciate that. I hope Mr. Van Haften appreciates it  
22 because I know you leave it all on the field, and I think you  
23 have done a great job. But here are my lingering concerns is  
24 that I think you have made me feel like I have some  
25 understanding of Mr. Van Haften's path and how he got to where

1 he was, but here is what I'm left with is, like, I'm sure that  
2 everyone who lays down their life to fight for ISIS has a path.  
3 Sometimes the paths are the more traditional ones that we think  
4 of that come from Minnesota where there's a Somali community,  
5 and some subsegment of the community, usually of young men,  
6 becomes alienated, and they connect with each other on social  
7 media, and they keep it all under wraps, and they end up with a  
8 kind of distorted view of Islam and the world that leads them on  
9 their path to lay down their lives with ISIS.

10 Mr. Van Haften's path is a little bit different, but -- and  
11 he comes to it not so much as part of the Somali community or  
12 another ethnic subculture in the United States. He's done it  
13 kind of on his own and in his own sense of isolation has ended  
14 up with the kind of deluded -- a world view that's a combination  
15 of delusions, the conspiracy theory stuff, his own actual  
16 resentments against his treatment in the criminal justice system  
17 here in the United States, but he's able to act very, very  
18 rationally on the basis of the beliefs that he holds. Some are  
19 deluded, but some aren't, and so this was his path, and this is  
20 what he chose to do.

21 The fact that I now understand it doesn't change a lot of  
22 what Mr. Vaudreuil says is that he seems to have pledged his  
23 commitment to this path and that the path involves a willingness  
24 to lay down his life and fight against the United States and  
25 kill Americans, and the particular expression of it this time

1 was his trip to Turkey to get to Syria, but if he's frustrated  
2 in that because we take his passport, I don't see that there's a  
3 fundamental change in the path that he has chosen. He's not  
4 just an internet troll. It's not just a thought crime. It's  
5 not even just a crime that's based on his expression. It's  
6 really based on his actions, which he was very overt about.  
7 Some of the stuff might have been on the darker parts of the  
8 web, but he was pretty open about it.

9 But at the same time it seems very rational to me. Even his  
10 resentments are understandable. His response to them I think is  
11 "nuts," I think is the way you put it, but I understand his  
12 resentment at the sex offender registry. I think sometimes the  
13 sex offender registry requirement is more broadly applied than  
14 it should be, particularly with young offenders. I understand  
15 all that, and so -- but it doesn't really help me feel confident  
16 that it's not a set of commitments that portend a very high risk  
17 of future violence because it's very, very rational in a way.  
18 He has beliefs that are weird and untrue, but he has a lot of  
19 things that are just his resentments at what he doesn't like,  
20 and this path and a quest for kind of belonging and, like I  
21 said, a set of commitments really portends a great risk of  
22 future danger. So that's what I'm stuck with. I feel like I  
23 understand it, but I don't feel like it really alleviates my  
24 concern that the public is at danger from Mr. Van Haften.

25 MR. BUGNI: So I'll address all the points. I hope I

1 do. If I don't, just hit them back.

2 THE COURT: I won't be shy.

3 MR. BUGNI: So the rationale part, I agree to a certain  
4 extent. There's definitely some parts that, you know, are  
5 logical, but there's so much that's not, and I know it's easy to  
6 kind of pluck out, well, that's rational and, therefore, we're  
7 going to follow it there. But you think about going to  
8 Mr. Vaudreuil -- you know, the first time you meet him and  
9 you're like, here you go, check this out. I'm going to just  
10 give it to you and everything in there. That's not rational.  
11 I'm going to go meet with the FBI. They're here. I'll tell you  
12 exactly what I'm thinking. I'm going to go -- I'm going to get  
13 caught up in Customs. Guess what? I'm going to tell you  
14 everything I'm thinking. None of that is rational.

15 None of that is something that's like the plotting, I want  
16 to do harm, and I think that's what I was trying to get out in  
17 the sentencing memo and all the other submissions is when  
18 someone really wants to hurt another human being, they're not  
19 telling the United States Attorney. They're not also telling  
20 the FBI. They're not telling the world on Facebook, and that's  
21 part of something different. That's part of actually the  
22 delusional behavior. Part of why I asked my organization to  
23 spend all the money it did on Merrick and Dr. Spierer, rather  
24 than going to get somebody who would actually say he's  
25 deradicalized or he's not a radical -- and that person, you have

1 to actually go to Germany to get that guy. There's nobody who  
2 has that niche in Minnesota yet. But that really undergirds all  
3 of this, and the more you see it through that, there is this  
4 consistent behavior, but it's not rational.

5 Now, in some ways it has to scare you more. You're not  
6 rational; you're going to act. Well, you said it yourself,  
7 supervision, yeah, we can supervise anybody. We just throw a  
8 monitor on you, and we just keep it there, and we're going to  
9 make you check in all the time. That comes down to protection  
10 of the public. Now, where I really came down on this case is I  
11 thought about it, and we're really -- what we're doing is we're  
12 mad at Mr. Van Haften, and that's very true. And he's got to  
13 get some time for that, and I think five years is enough when it  
14 comes to that --

15 THE COURT: That's just the punishment component. You  
16 think five years does the punishment.

17 MR. BUGNI: That's it, yeah. And the reason I thought  
18 five years is -- and I think it's actually my first sentencing  
19 came before you. Just five years, when you don't really know,  
20 it's just five years seems like, yeah -- you know, is it 48?  
21 72? Five years. But what we're talking about is protection of  
22 the public. That's it, man. Like, one day you have to answer  
23 for, you know, did you just let this terrorist out. And Judge  
24 Davis, he was comfortable with two of them. He was comfortable.  
25 He was, like, "Look, you guys I think get it. You guys are

1 deradicalized." The question is -- for you is, is Mr. Van  
2 Haften -- could you do that?

3 And where I draw my analogy, because he's not that typical  
4 radical -- I'm all-in -- instead, it's a mixture. You know,  
5 it's a cacophony of different reasons that are playing into it,  
6 some rational, some irrational. You look at like the  
7 eco-terrorist, and I don't know if you read the *Christianson*  
8 case that we cited in the brief, but that was an eco-terrorism  
9 case, actually originated out of this district, and there they  
10 make reference to all the other cases that were going on around  
11 in the country, and all those people didn't get huge sentences,  
12 yet they were doing very terrible crimes. We're talking about  
13 arson. We're talking about, you know, vandalism to the extreme  
14 of burning places, talking about bombings. We're talking about  
15 failed bombings, and I pulled their sentences. Some of them, a  
16 year and a day. Other people, three years. One guy, 14 years.  
17 One person, 21 years. But that's sort of what you'd expect with  
18 arson. But a lot of them were all around the five-year mark and  
19 some of them less.

20 Why is it that the person who says, you know, "Look, I got  
21 to go vegan. I'm only going to wear Birkenstocks and, by the  
22 way, I'm into bombing," so now we're like we got a good risk for  
23 you because we can kind of identify with that. That's the only  
24 reason that you can say because they've actually engaged in the  
25 violent behavior. They're the ones who have done it. Now, the

1 fact that they resemble everybody else we see on State Street,  
2 maybe that gives us a little more ease and Mr. Van Haften  
3 doesn't, but it says that people who engage in bad behavior, who  
4 become extreme in some viewpoint, don't always have to have 15  
5 years. It doesn't always have to be a decade in prison. We can  
6 say, all right, there's other things we can do here, and that's  
7 true. I mean, Christianson, I think she got 18 months. Other  
8 guy got 24. I can, you know, read off the list.

9 But then I thought a little bit even deeper. And thinking  
10 about the history of terrorism in Madison, it's not very long.  
11 Mr. Van Haften actually poses chapter three, and the first one  
12 is actually the Sterling Hall bombing, and that was the case  
13 back in the '70s --

14 THE COURT: I remember it well.

15 MR. BUGNI: Okay.

16 THE COURT: I was alive then. I don't know if you  
17 were.

18 MR. BUGNI: Judge, you had me fooled. But you look at  
19 that case, all right, and that's a big case. I mean, a man is  
20 murdered. People are maimed. A building is blown up. Guess  
21 what they got? One guy got 23 years, served 7. The rest of  
22 them, 7 years; they do 3. Now, we might want to point to Leon  
23 Davis and say, "Look, that's the mark, Your Honor," but instead  
24 I stand on history. I stand on the idea that these statements,  
25 this kind of behavior that really disrupts us and makes us

1 uncomfortable hasn't just happened with Mr. Van Haften when it  
2 comes to ISIS.

3 Violence is violence, and it's all abhorrent, and what they  
4 did at the Sterling Hall bombing, what they did there -- now, if  
5 we said, all right, you know what? You can actually be changed.  
6 Mr. Fine, you can be changed. He goes on to become a lawyer.  
7 Sorry, let me just get this right. Mr. Armstrong, he goes on to  
8 found Radical Rye, that great sandwich shop over on State Street  
9 and the juice cart. If we can say to those guys, you know what?  
10 I don't like that you would actually commit a bombing, a  
11 bombing, but we're going to let you out, okay? That has to give  
12 you a little bit of comfort. You're standing with Judge Doyle.  
13 You're standing with Judge Crabb, and you're saying I think that  
14 our probation department can do more, and I think that your  
15 humanity can change. I think that we can protect the public  
16 with something less than the statutory max.

17 That has to give you comfort, and then it ropes back into  
18 it. What am I trying to do here? I'm trying to justly punish.  
19 I'm trying to come up with an answer that says this is  
20 abhorrent, and I'm trying to come up with that answer in the  
21 context of what is sufficient but not greater than necessary.  
22 And there's not -- there's not a 47. There's not like a 72.  
23 There's just -- man, Josh, that's ISIL. I mean, that's a bad  
24 thing, and we have to condemn it, but we don't need to condemn  
25 it beyond five years. That sends every message that you need to

1 send. And at the same time --

2 THE COURT: They're working out the differences between  
3 the Sterling Hall bombing and this act.

4 MR. BUGNI: We'll get a PowerPoint later on today.

5 THE COURT: I don't think we'll need it. I think there  
6 are huge differences, but, you know, go on. Point taken.

7 MR. BUGNI: There are huge differences. No one died  
8 from Mr. Van Haften. Mr. Van Haften never has a gun in his  
9 hand. Mr. Van Haften never has bomb makings in his apartment.  
10 Mr. Van Haften never trains for violence. Mr. Van Haften never  
11 goes paint balling. Mr. Van Haften never plots with other  
12 people to go take an airplane and escape. Mr. Van Haften tells  
13 everybody exactly what he's doing. So whatever comparisons we  
14 might draw with Sterling Hall, they all go towards Mr. Van  
15 Haften not needing as much punishment, and that, Your Honor, I  
16 submit is why five years is sufficient but not greater than  
17 necessary. I hope that I have addressed your concerns. I know  
18 you're going to --

19 THE COURT: Let me follow up with another one. Okay.  
20 As I said, sooner or later, whether it's 5 years or 15 years,  
21 Mr. Van Haften is going to be out of incarceration, and the  
22 suggestion is that supervision is enough to protect the public.  
23 I'm not persuaded, and the reason I'm not persuaded is that Mr.  
24 Van Haften's anger at the United States was expressed by his  
25 trip to Turkey and his attempt to go into Syria where he'd do

1 battle there. If he's denied that opportunity because we keep  
2 him here, which I think we could do, his set of commitments  
3 might lead him to do something more lone wolf, more low tech,  
4 and I don't know if we could possibly supervise him close enough  
5 to stop him from doing that. If he decides that he's going to  
6 do a truck ramming -- you know, granted, something big takes a  
7 lot of planning, but there are low-tech things that are  
8 dangerous, and he could do that relatively easily, and he could  
9 do it in the gaps between the points of contact with the  
10 supervising officer.

11 MR. BUGNI: He could. Yeah, there is never going to be  
12 a guarantee. There's never a guarantee on anything, and I would  
13 be a liar and Dr. Spierer would be a liar if we were just like,  
14 oh, no, don't worry about it; he's totally fine.

15 THE COURT: Dr. Spierer wasn't a liar. He said he  
16 wouldn't know. I think that's right, but I am concerned that  
17 he's able to do things that we just can't possibly supervise  
18 enough, and it's in the context here of when I compare it to the  
19 case that you cited with the *Yusuf* sentencing, there were really  
20 big signs of transformation in that offender, and that's what  
21 I'm not seeing here.

22 MR. BUGNI: I think that's because you have a different  
23 kind of offender. You know, I don't think that -- I don't think  
24 that Josh is actually that guy. Just like Dr. Spierer said, his  
25 motivation wasn't I got to go die on the battlefield. His

1 motivation was I have got to go somewhere and be accepted. And  
2 believe me, we've looked. The Cistercian monastery, I believe  
3 with all of my heart if Josh could go there, if there was a  
4 Islamic version of that, you plop him down there where he just  
5 gets to work out and pray and somebody is on him, like, did you  
6 have 12 lentils or 7? And you're like, man, I took 12. All  
7 right. That's terrible. He needs -- that's what goes towards  
8 his psychological makeup.

9 As far as what's going to protect the public, let's see.  
10 You know, like, you can't guarantee now and we don't know what  
11 he will be like five years from now. Maybe he connects  
12 wonderfully with the probation agent, and it's not like we  
13 can't -- you guys can't revoke him for something later on if it  
14 became like that. There's always a violation of supervised  
15 release lingering somewhere, and that's always more than enough  
16 to send somebody to prison. Instead, if we're talking about  
17 what's sufficient but not greater than necessary, you got to  
18 have certainty that, you know, I can't do anything short of let  
19 you out.

20 THE COURT: I don't know if I got to have certainty. I  
21 never have certainty.

22 MR. BUGNI: Well --

23 THE COURT: I make reasonable predictions. I do my  
24 best.

25 MR. BUGNI: But where does it line to? It lines to the

1 individual. We never say, like, well, we just can't know;  
2 therefore, I'm going to give you the max. Instead we say, I  
3 just can't know; therefore, I give you the minimum. That's  
4 actually what the parsimony clause means. It's not that like --  
5 because we never know. I never know if many of the people that  
6 come before -- I stand next to, if they're really going to  
7 change their lives, but we're hopeful, and that's why we give  
8 less.

9 You know, if you think about recidivism among drug dealers,  
10 there should be no sentence beneath the statutory max because  
11 there's always a chance. But with Josh, you have a chance to  
12 deliver a sound message with five years, and you have a chance  
13 to say, let's see what supervision can do. And I agree that  
14 there's anger there. There's a lot of lingering stuff from a  
15 lot of different events in his life, but with time things  
16 mature. He hits 40. You know, and as the doc said, he's never  
17 had therapy -- he hasn't had much therapy. You know, things  
18 from when he was 18, 19, I don't think they really count. You  
19 know, that was 17 years ago. So --

20 THE COURT: The comparison with the drug dealer is  
21 interesting, but it kind of underlines my concern here, which is  
22 that if he slips up, it's not a relapse where he slings some  
23 dope and some kids get some more meth. I mean, it's did he --  
24 he drives a truck into the side of a building or onto the  
25 sidewalk or that he does something really catastrophic. The

1 stakes are more cataclysmic here if he decides that he can't get  
2 over his anger.

3 MR. BUGNI: True, true, but you're also going to see  
4 him for something else. If that's what the psychologist is  
5 telling you -- and hopefully five years from now we have a  
6 better understanding of this. And maybe I did play it wrong.  
7 Maybe I shouldn't have hired Spierer, and I should have hired  
8 the deradicalization guy from Germany to let you know because  
9 that's really -- like, what you're searching for is, you know,  
10 like, that certainty, and I don't think that I can provide that,  
11 but I do think that we can say the best opportunity to have that  
12 is going to be in mental health therapy when he's released and  
13 he is monitored, and then you get a chance to see.

14 Now, you have lifetime supervision at your hands. That  
15 means you can revoke him for a long time if there is -- like  
16 he's not living up to his side of the agreement, if there isn't  
17 that legitimate change, if there are even those small  
18 increments. Probation is bad enough or supervision is bad  
19 enough for the guy who is dealing drugs. I can't imagine what  
20 it's going to be like for the guy with the terrorism charge. So  
21 they're going to be on him. This isn't going to be like we'll  
22 see you every couple months. That should give you comfort to  
23 say, all right, you know, I can try this. I trust our probation  
24 department. I trust Mr. Van Haften. If he's willing to meet  
25 with a psychologist, and he didn't say, look, you know -- I

1 can't even say it in Islam -- but I don't want anything to do  
2 with you. No. You know, he's communicated with me. He's  
3 communicated with Dr. Spierer. He has given the indications.

4 Now, in many ways we want the mea culpa, you know, just  
5 throwing it down. That's not going to come. That really isn't  
6 going to come because so much of him is so complex and so many  
7 of the different reasons, but we also don't have -- we have very  
8 little as far as I want to kill GIs versus I'm afraid of Prince  
9 William. In the grand scheme of things, those statements, they  
10 far outnumber it. And you, Your Honor, can take some comfort  
11 that this is complex, and the mental health professionals can do  
12 their job, and he can cooperate, and if he's not, then you have  
13 the power to revoke, and that's why they give you that  
14 supervision. It's not just three years. It's the ability to  
15 give a much longer term because if we do get it wrong, think of  
16 what we've cost. We've cost Josh his freedom. You know, that's  
17 why Judge Davis is willing to go out on a limb. He's like,  
18 yeah, you know what? I can accomplish everything I need to  
19 accomplish with less.

20 And that was the point of the sentencing memo. It wasn't  
21 just like, hey, Judge, everybody else is doing it. No, not  
22 everybody else is doing it. But it's to say that it doesn't  
23 have to be 15 years. It can be 5. It can be 5 with  
24 supervision, so, Your Honor, that's what I'd humbly submit  
25 should be the right sentence here.

1 THE COURT: Before I turn to Mr. Van Haften, I'm sure  
2 all of that mad notetaking was to some end, so Mr. Vaudreuil.

3 MR. VAUDREUIL: I have written --

4 THE COURT: And I'm more interested in hearing your  
5 responses to my concerns, you know, and obviously I had a lot of  
6 concerns I voiced with Mr. Bugni, but I do really --  
7 fundamentally I get it. You know, they're going to get a stout  
8 sentence here for somebody who has committed a really serious  
9 crime that if we take him at his word, he's just, you know,  
10 committing to hurt America and Americans, so I get that, but I  
11 still have to calibrate this to an appropriate level. And so  
12 whether I have to go to the statutory maximum -- again, since  
13 we're driven by the concern with protection of the public, I can  
14 put him on supervision for the rest of his life, and sooner or  
15 later that is going to be what separates us from another  
16 terrorist act by Joshua Van Haften is that there's some PO who  
17 is keeping an eye on him, and whether I have to tack on another  
18 five or ten years to a prison sentence, you know, I don't want  
19 to do it just for symbolic purposes because we're, you know --  
20 because ISIS and terrorism are involved here. I want to do  
21 what's right for the public and for justice, not just for  
22 symbolic reasons.

23 MR. VAUDREUIL: And I appreciate that, Your Honor, and  
24 we aren't making the request for symbolic reasons. I don't  
25 think anybody would disagree that the only way for any certainty

1 would be life in prison, and had he been convicted of this crime  
2 and also assisting Leon Davis, he'd be looking at 30 years in  
3 the maximum penalty, and the guideline range of 292 to 365 would  
4 actually come into play. We're already talking about an almost  
5 ten-year reduction from that guideline range, and that's fully  
6 appropriate. That's the plea agreement.

7 Just a couple of things that I think that -- and I tried to  
8 organize my notes from what Mr. Bugni was saying, what I have  
9 taken from Dr. Spierer, and from the Court's questions. There  
10 are no signs of transformation. There is no indication that he  
11 can change or wants to change. I would go back to the fact that  
12 it has been 18 years since he was convicted of the sexual  
13 assault. He still denies that that was anything but consensual.  
14 He still contends the victim was lying. He is still angry at a  
15 sexual registry. That's 18 years.

16 And so the idea that he would be out in a couple -- you  
17 know, if he gets five years, he's done two and a half. He's got  
18 two and a half more years. He does 86 percent of that under  
19 federal law, and the idea that he would then be out and being  
20 supervised by -- well, Rich is going to retire but somebody who  
21 follows Mr. Williams, and that they would be able to solve this  
22 anger problem and watch him carefully, nothing from his prior  
23 conviction and where he stands today I think should give the  
24 Court any confidence that that's the case.

25 His motivation to fight against the United States, this

1 anger really seems -- the driver, as Dr. Spierer talked about  
2 today and in writing, is this sex registry, not atypical, not  
3 linked, in Dr. Spierer's opinion and apparently in mine as well,  
4 to his brain injury, and he has carried that with him to the  
5 effect that he wants to leave the country, cross the border into  
6 a despicable, horribly broken war zone, and kill Americans and  
7 their allies. That's an anger that is unfathomable to us, but I  
8 think those are, I think, some of the key bullet points. No  
9 signs of transformation, no indication he wants to change.

10 Just a couple of other remarks, Your Honor. You asked the  
11 questions -- you stated, look, he acted rationally -- he acted  
12 rationally, excuse me. His resentments seem to be  
13 understandable. It is not a thought crime, and I want to make  
14 that -- and I said it before, and I'll say it again. We don't  
15 prosecute people in this country for that, but in your words, I  
16 believe, "portends a great risk of future danger."

17 And then there was some -- Mr. Bugni was addressing this.  
18 You know, he was interviewed. He talked about what he was  
19 doing. It was rational. It worked. He did not become  
20 seriously "wait a minute, we got a problem" on the FBI and all  
21 of our radar until he had been in Turkey for a couple of weeks.  
22 So it did work. He didn't get stopped at the airport like a  
23 huge percentage of the people prosecuted for providing material  
24 support. They get on our radar, we figure this out, and we stop  
25 them before they get out of the country. So it did work. What

1 he did was rational, and it achieved what he wanted to achieve.  
2 He got to the Syrian border, and then because he couldn't get in  
3 and so on and so forth, as we all know he didn't make it. So  
4 that was the second point. It was rational; it did work. It  
5 only seems irrational, like so many crimes, when you stand here  
6 today and you go, well, why would he tell the truth? Why would  
7 you do this? Why would you do that? Well, when you turn the  
8 clock back, when he said those things, nothing happened because  
9 he was talking. He was a talker then.

10 Two more points. One -- and I'm just going to briefly  
11 mention it because it goes to my response regarding these  
12 comparison crimes -- *Yusuf* is not a comparable, and Sterling  
13 Hall is most certainly not a comparable. I was around. We have  
14 the open case. We have a fugitive. We read this file. It's  
15 ten feet outside of my office in a file room. It wasn't murder.  
16 It was 3:00 in the morning. They called the police. They did  
17 not know Dr. Fassnacht was there doing research.

18 When Judge Doyle, and I have his sentencing statement and I  
19 keep it close at hand, when he sentenced Karleton Armstrong, he  
20 pointed out how different things were from 1970 and 1974. We  
21 were leaving Vietnam. It wasn't 1970. There wasn't a draft.  
22 And he was sentencing a man who was not the same student radical  
23 that Armstrong, Armstrong, Fine, and Burt had been in 1970.  
24 There is simply no comparison. There are other facts that make  
25 it noncomparable, but my point isn't -- just to clear up the

1 record.

2 But my point is this is -- if one wanted to look at  
3 comparables, and I didn't intend to do this, you would bring in  
4 all the people like Leon Davis who have been sentenced to 15  
5 years or thereabouts, 12, 13, 14, 15 years, who were stopped at  
6 the airports. Judges across the country have found that  
7 significant enough to put people in prison for a long time  
8 because, I suspect without knowing, they don't see any signs of  
9 hope or transformation at that moment in time. But I say that  
10 not because I want the Court to think of it that way. I think  
11 this is a fool's errand to go down the rabbit hole and try to  
12 find these comparables. When I say a fool's errand, I am not  
13 implying the Court is doing that, just to be clear, but I don't  
14 think we need to do that --

15 THE COURT: I agree with you. You don't have to  
16 belabor the point any longer because I never know enough about  
17 most of the other cases to really feel that I can compare apples  
18 to apples because, as Mr. Bugni would tell me every single time,  
19 I have to sentence the offender and not just the crime, and I  
20 don't know enough about those individual stories to say, yeah,  
21 this guy is a Leon Davis, done.

22 MR. VAUDREUIL: Absolutely.

23 THE COURT: So it's all about what we're doing here.  
24 Consistency is part of justice, so I'm not totally deaf to  
25 comparable sentences. I think that that is an appropriate

1 component of justice, but we reach a point of diminishing  
2 returns where I just don't know enough about that crime and that  
3 offender to say, yeah, I got to do that so --

4 MR. VAUDREUIL: I appreciate that, Your Honor. The  
5 last point I would make in response to Mr. Bugni's argument that  
6 Mr. Van Haften is not the typical radical -- he wasn't all-in --  
7 he left the country. He got to Turkey. He got to the border.  
8 He was waiting at the tram stop for Leon Davis. I simply don't  
9 know how much more all-in he could be, and with that I'm done.

10 THE COURT: All right. Thank you, Mr. Vaudreuil. All  
11 right. Now I'm ready to hear from Mr. Van Haften.

12 MR. BUGNI: Can I give like 45 seconds?

13 THE COURT: You can have 45 seconds.

14 MR. BUGNI: I appreciate that, Your Honor, just because  
15 I don't want it to weigh into your calculus. Mr. Vaudreuil's  
16 point, he still denies the sexual assault after 18 years. Well,  
17 there could be two reasons for that. One, he's delusional and  
18 he just refuses to accept the facts or maybe it didn't happen  
19 that way. Why do we know it didn't happen that way? Because of  
20 the sentence he got. You don't rape a girl with that criminal  
21 record when you're that young and you get probation. The judge  
22 is, like, don't worry about it. Sure, it's fine. That's how  
23 you look into a case. Nobody is walking out of state court with  
24 that hell-on-wheels record at 18 years old and they're like, oh,  
25 yeah, that's great. I'm sure you'll be fine with that. So

1 that's a big indicator. The fact that he continues to persist  
2 in that shouldn't be held against him. It should be said maybe  
3 you did get a raw end of the deal. Maybe that sophomore and  
4 senior conduct really has been something that is hard to grasp.

5 THE COURT: Look, I take your point, but here is -- the  
6 problem is that everybody has something they can be angry about,  
7 and we're not here because Mr. Van Haften is angry about the sex  
8 offender registry. We're here because of his response to it.

9 MR. BUGNI: But that goes to his remorse, and that's  
10 the thing is there isn't going to be the mea culpa. There's not  
11 going to be, you know, like it's just, oh, man, here you go.  
12 And that's for two reasons. One is that --

13 THE COURT: I'm not looking for the mea culpa on the  
14 sex offense from when he's 18.

15 MR. BUGNI: But what you're wanting is for him to say,  
16 you know -- I think what everyone really wants is this  
17 heartfelt, you know, gosh, I did wrong, and it just won't happen  
18 again, and Josh can say it. You know --

19 THE COURT: And I'll be honest with you, that's not  
20 really what I'm looking for.

21 MR. BUGNI: Okay. Tell me what you're looking for.  
22 I'll give it to you.

23 THE COURT: I don't think you can.

24 MR. BUGNI: All right.

25 THE COURT: I'm looking for that sign of transformation

1 that was in the case -- the *Yusuf* case that you cited to me.

2 MR. BUGNI: Sure.

3 THE COURT: Some indication that all of these things  
4 that set Mr. Van Haften on the path that led him to Turkey, that  
5 those don't apply anymore.

6 MR. BUGNI: And that's not going to happen.

7 THE COURT: I know it.

8 MR. BUGNI: I mean, partly because --

9 THE COURT: That's the nub of the problem that I have  
10 here because otherwise I'd say, yeah, look at this crime here.  
11 Nobody actually got shot. He didn't even shoot at anybody.  
12 Mr. Vaudreuil has a point about the all-in business. I mean, he  
13 went all-in. It's just that the chips got pushed back to him  
14 because he didn't get across the border into Syria. Otherwise,  
15 I have no doubt that he would have gone into Syria and died  
16 fighting for ISIS.

17 MR. BUGNI: Or he leaves. I mean, part of what I cited  
18 to you was they got a ton of people from Europe, especially the  
19 Netherlands, who they're like, whoa, this isn't what I signed up  
20 for. This is not what I wanted. Even in Dr. Spierer's  
21 report -- and that's what I was trying to find. I'm kicking  
22 myself for not tabbing it, but there is a moment where Josh says  
23 I wouldn't have gone if I would have known what it was, you  
24 know, that it was like this, with everything else that's  
25 happening. So, yeah, you know, *Yusuf's* is very easy. Gosh, I

1 was wrong -- I was with the wrong guys, and they just tricked me  
2 and --

3 THE COURT: And then he put his money where his mouth  
4 is and testified, and I don't see that from Mr. Van Haften. I  
5 wish I did, but I know, it's not there.

6 MR. BUGNI: If Mr. Vaudreuil would bring some more  
7 trials, we'd testify. But what we really need here and what we  
8 have here is an individual, and that transformation is not the  
9 only thing that would allow for a five-year sentence. And  
10 that's what my point is, is that, yeah, I would love to give you  
11 the gold star and just like, here you go, and you can really  
12 trust in it. I can't give you that, but what I'm saying is what  
13 I can offer is his sincerity in sitting down with Dr. Spierer.  
14 The fact that nobody has detected he's malingering or just  
15 hiding everything. That he's cooperative and that everything  
16 else that went into this crime says this is someone who we can  
17 protect the public with with something less than a decade in  
18 prison. It can be five years, and five years would fit that  
19 bill because we would have him under supervision. That's it. I  
20 mean, I can't sell you the Cadillac, but I'm going to give you a  
21 great Honda, and that Honda will get you what you need, and  
22 that's safety and that's protection and that's from point A to  
23 point B, and that should be enough to guarantee that this  
24 sentence is five years with a stiff amount of supervised  
25 release.

1 THE COURT: Mr. Van Haften, I'd like to hear from you.

2 THE DEFENDANT: I beseech the law's protection in what  
3 is to proceed and invoke prayers and blessings upon the Prophet  
4 Muhammad.

5 I would like to begin by offering thanks to my esteemed  
6 counsel and everyone from his office who has worked with me over  
7 this past year and 11 months. When I sat in Turkish immigration  
8 center, I believed that when I came back to the United States,  
9 that I would be railroaded by the criminal justice system. I am  
10 thankful that was not the case and that Mr. Bugni and his office  
11 have diligently represented me.

12 Despite what has been said about me, I also want to thank  
13 Mr. Vaudreuil for taking the time and speaking to my mother when  
14 I was in Turkey and putting some of her concerns at ease.

15 Finally, I do not agree with all that has been said about me  
16 in the filings and today in court, but I hope that everyone  
17 could believe that I would never have hurt anyone. Given the  
18 Court's order and the terrorism enhancement, I think that  
19 anything else I say would be considered self-serving, but I want  
20 to make sure I convey my thanks to Mr. Bugni, to Mr. Vaudreuil,  
21 and to let you know that I didn't want to hurt anyone. I just  
22 wanted to be away from the United States, specifically the State  
23 of Wisconsin Department of Corrections. That was all. Further,  
24 that is all I have to say. Thank you.

25 THE COURT: All right. Mr. Van Haften, you don't have

1 to worry that I will take your comments to be self-serving. So  
2 I want you to feel like you can speak freely, and I'm -- I don't  
3 hold it against you for wanting to tell me what we have said  
4 that's wrong, and I don't want you to feel like you got to hold  
5 back because I'm going to think that you're being self-serving.  
6 I think, to be honest, the defendant's allocution is supposed to  
7 be self-serving. You're saying this to help yourself, so don't  
8 hold back. Tell me what you want me to know, and if that's all  
9 you want to say, that's fine too. Don't feel that I'm trying to  
10 twist your arm into saying something else.

11 THE DEFENDANT: Yes. I don't think that, Your Honor.  
12 I just -- I'm a deep-thinking, more deliberate person, and I  
13 said a lot of things -- I still say a lot of things. I talk a  
14 lot, say a lot of things that I didn't mean to, you know, to  
15 facilitate, you know, seeing and, you know, being some part of  
16 what I wanted to see happening going on. You know, I didn't  
17 mean everything I said via Facebook and, you know,  
18 communications on the internet and to other people. I discuss  
19 things. I never -- from my understanding I was not pushed out  
20 of a masjid or told -- not allowed. That never happened, not  
21 allowed to come or, you know, be around anybody. There were one  
22 or two people that didn't agree with some of the things that I  
23 expressed from what I seen happening, but anyhow, like I said, I  
24 have said a lot of things, and I didn't mean to take full action  
25 in everything that I expressed.

1 THE COURT: Do you still feel committed to the  
2 principles that guide ISIL?

3 THE DEFENDANT: I do not, sir. I -- you know --  
4 things -- it was declared on June 29th. I had been, you know,  
5 listening and, you know, watching some videos by other Muslims  
6 talking about what was going on. Previously when I was in  
7 Egypt, I had heard about, you know, things that were happening  
8 there, and I didn't know that it would become what it became. I  
9 was there the first month after it was declared, you know, and I  
10 had intentions to, you know, go and be around those people and  
11 see what was happening, and so I said things to be accepted, to,  
12 you know, gain their acceptance.

13 THE COURT: But you saw the video of Mr. Foley being  
14 beheaded, and you expressed approval of that. You liked that  
15 video.

16 THE DEFENDANT: Again, this was for their acceptance,  
17 to allow me, you know, entrance into their area and, you know,  
18 be around those people and see -- for me I wanted to see how the  
19 other Muslims were being cared for or, you know, being handled.

20 THE COURT: All right. Anything else you want to share  
21 with me?

22 THE DEFENDANT: Not on the top of my head, sir.

23 THE COURT: All right. Thank you, Mr. Van Haften. I'm  
24 going to take a brief recess, and I'll come back, and we'll  
25 finish up the sentencing.

1 THE CLERK: Court is in recess.

2 (Recess taken from 2:35 p.m.-2:47 p.m.)

3 THE CLERK: Please be seated and come to order.

4 THE COURT: All right. Thank you all for your  
5 patience. Mr. Van Haften, I'm going to start by talking  
6 directly to you because I want my sentence to be a message not  
7 just to the public, but also a message to you.

8 One of my big concerns here has been that I had not seen  
9 signs of transformation from you. This isn't like the case that  
10 Mr. Bugni cited from Minnesota where somebody came back, and  
11 they recanted their position, and they testified against other  
12 defendants in terrorism cases. I don't have that kind of sign  
13 of transformation, and I know that all the things that made you  
14 angry with the United States are still there. The isolation  
15 that you experienced, that might still be a factor in your life  
16 going forward, and so I'm concerned that you're the same person  
17 now that you went -- that you were when you went to Turkey.

18 But the difference is now I do have your words to me, and  
19 your words mean something to me, and it sounds like you're  
20 sincere now, but, of course, I have to measure your words  
21 against what you did, and so when I listen to your words now and  
22 you're telling me that you really want everybody to believe that  
23 you would have never hurt anybody, you never would have followed  
24 through on what you said, that is very hard for me to believe.  
25 And so I have to look at what you did against what you're

1 telling me now, and I have a hard time really being fully  
2 persuaded that you never would have followed through on your  
3 pledge to go into Syria. So that's really what I want to lay on  
4 the table first, and I want to say I have heard your allocution.  
5 It sounds sincere, and I don't believe that you're a hopeless  
6 case, but I have to do what's right for you and for the public  
7 in setting a sentence.

8 But I also want to make part of the message that I have for  
9 you is you've not been railroaded here. I think, as you  
10 acknowledge, Mr. Bugni, who just as a matter of his ordinary  
11 life as a lawyer really gives his all to his clients -- I have  
12 seen it time after time after time -- but he gave his all and  
13 then some for you in this case, and I think -- I appreciate you  
14 recognizing that because he really did go all out for you on  
15 this case.

16 I also want you to know that I spent a lot of time on this  
17 case, not just because I respect Mr. Bugni and Mr. Vaudreuil and  
18 their presentations here, but I took this as a really serious  
19 case, and I'm very aware of the potential for this to be the  
20 kind of thing in which the public is so outraged because the  
21 words "ISIS" and "terrorism" are used in connection with your  
22 crime, and I want to assure you that I'm looking to do something  
23 that is the right thing to do, not because of the symbolism that  
24 it has. I need to have a sentence that reflects the seriousness  
25 of the crime, but I also have to tailor it to you, and I know

1 that Mr. Vaudreuil is not doing this just to grandstand because  
2 it's a terrorism case either. And so I want you to feel like I  
3 have been fair to you, that I have heard out your counsel very  
4 fully, and I have heard you very fully. And so I want to tell  
5 you that I'm trying very hard to be fair to you and to really  
6 tailor this sentence to you and not just to somebody who ended  
7 up pledging themselves to ISIS.

8 I understand that your motives here in committing yourself  
9 to ISIS were in a significant part because you were looking for  
10 some way to find acceptance in some group, and then it resonated  
11 with you to some degree because you had pledged yourself to the  
12 faith of Islam, and I can understand all that, but what we have  
13 to recognize here is that the acceptance you sought was with a  
14 community whose fundamental values were not just antagonistic to  
15 the United States, but were pledged to battle with the United  
16 States and violence against the United States, and one of the  
17 things that you saw was the beheading of James Foley and that  
18 you expressed appreciation for that.

19 And so I understand your quest for acceptance, I really do,  
20 and I even understand your anger at the sex offender treatment  
21 that you have, but I can't escape the fact that you sought  
22 acceptance from a group that expressed the intent to commit  
23 violence and that you so vigorously indicated in your Facebook  
24 postings and in your other correspondence that you were  
25 committing yourself to that course of action and that you went

1 to Turkey to do it. So I'm not really persuaded that you  
2 wouldn't have gone through with it hadn't you been -- if you  
3 hadn't been stopped by external factors. And you also helped  
4 Leon Davis find himself in the same boat.

5 So I have to look at the whole picture here, and really I  
6 think it's been pretty clear that the main drivers of the  
7 sentence here are punishment for what is a very serious crime  
8 and to protect the public from what you might do in the future.  
9 Punishment is just not an exact science. I really -- I'm more  
10 or less persuaded that I don't need to sentence you to 15 years  
11 just to punish you, but I'm not persuaded by Mr. Bugni's  
12 explanation or argument that 5 years is enough either.

13 But really the primary driver of our sentence here is to  
14 protect the public. Sooner or later we're going to have to rely  
15 on your supervision to protect the public, and now my comments  
16 are not just for you, Mr. Van Haften, but kind of for everybody.  
17 Whether it's in 15 years or 10 years or even 5 years, sooner or  
18 later we're going to have to have Mr. Van Haften out in the  
19 world as a citizen among us, and this is a result in part  
20 because of charging decisions that the U.S. Attorney made  
21 because they didn't charge this in a way that would allow me to  
22 give you a sentence of 30 years or life or any such thing. So  
23 Mr. Vaudreuil has already exercised some discretion here to  
24 expose you to a maximum term of 15 years, which means sooner or  
25 later you're going to be out, and we're going to have to rely on

1 supervision to protect you from the public.

2 I think you're going to be a challenge potentially to  
3 supervise because if you really were committed to violence  
4 against the United States or its citizens, you know, you  
5 could -- you might be able to do it, but the bottom line is  
6 sooner or later you're going to be out on supervision, so the  
7 question really comes, and Mr. Vaudreuil really put it kind of  
8 nicely, what's enough in terms of the incarceration sentence?

9 I'm going to sentence you to a term of incarceration of ten  
10 years, and I really mean to communicate here a couple of things.  
11 One, this is a very serious crime that warrants a very serious  
12 sentence, and ten years is that. Five years, especially since  
13 you've already served two and a half, means that you're going to  
14 be out relatively shortly. I think we need ten years to develop  
15 some confidence that you'll have time to have programming, time  
16 for reflection, a substantial punishment so you recognize that  
17 we take this very seriously, but I'm also trying to communicate  
18 to you that I am not writing you off by just automatically  
19 giving you the statutory maximum sentence.

20 I don't know that you're really going to see this as an act  
21 of enormous mercy here for you, but I mean to communicate to you  
22 something, that the justice system in the United States is not  
23 unrelentingly unfair. It's not thoughtless. I'm giving you  
24 what I think is a thoughtful sentence, and it is not the  
25 statutory maximum, and I hope you appreciate that.

1 I don't think your crime was victimless, although you didn't  
2 actually shoot anyone or take up arms, but you have to look at  
3 what has happened to Mr. Davis with your assistance. He's  
4 serving time in prison. But I think your expression of intent  
5 to harm the United States and its citizens was really very clear  
6 and hard to mistake. I take you at your word today that as you  
7 sit here now, you no longer subscribe to those violent views,  
8 but I don't know if that's a position that will endure over  
9 time. I am really worried that you might be the kind of person  
10 who, in isolation and in kind of a belief system that you've  
11 adopted in the past, you might return to that and you might  
12 decide that some expression of violence is warranted again. You  
13 expressed it before in your travel to Turkey, but I just have to  
14 recognize that there is some substantial risk that you'll become  
15 alienated and isolated again and that you'll draw information  
16 from sources that have information that's -- that leads you into  
17 deciding that violence is appropriate, so I have to protect the  
18 public I think with this term of incarceration for ten years.

19 The term of supervision that I will impose will be for the  
20 rest of your life. I'm going to put you on supervision for the  
21 rest of your life because I just -- all of the factors that led  
22 to your decision to commit this crime to me are going to be  
23 permanent features of your life. You're going to be a sex  
24 offender and have to register as such for the rest of your life.  
25 You think the United States is anti-Islam. That is a perception

1 that can endure for a really long time, and so for the  
2 protection of the public, I'm imposing a term of supervision  
3 that will be for the rest of your life.

4 Now, we haven't talked specifically about the conditions of  
5 that supervision. I didn't really get any objections to those,  
6 and so I'm prepared to impose the conditions that are proposed  
7 and justified in the presentence report, but let me check with  
8 Mr. Bugni and Mr. Vaudreuil if they have any objections or  
9 concerns with those conditions, which are Condition No. 1,  
10 Condition No. 2, Conditions No. 4 through 9, all of those among  
11 the standard conditions, and 12 through 18 of the special  
12 conditions.

13 MR. BUGNI: Judge, I -- maybe everyone will disagree,  
14 but I think that 14, 16, 17 are unnecessary, and not just our  
15 position about what happened 18 years ago, but the fact that  
16 there's been no conduct since then. I don't think that there  
17 should be --

18 THE COURT: Let me make sure I get those. That's 14.

19 MR. BUGNI: 14, 16 -- 15 just says you have to comply  
20 with the law, so we're fine with that. So 14, 16, 17.

21 THE COURT: Mr. Vaudreuil, what's your reaction to  
22 those?

23 MR. VAUDREUIL: Well, I think, Your Honor, 14 is a  
24 totally different situation because that requires him to  
25 participate in substance abuse treatment. It has nothing to do

1 with this sex offender status.

2 THE COURT: We have some history of use of  
3 intoxicant -- it's not very serious, but he used marijuana and  
4 alcohol.

5 MR. VAUDREUIL: I think -- and the basis for, as is  
6 stated in the appendix, is on basically his self-reported use of  
7 drugs. I think it is one of those conditions that should remain  
8 in place because of that, but as we always say, when he gets out  
9 of prison, if this is no longer needed, they can approach the  
10 Court.

11 THE COURT: Yeah.

12 MR. VAUDREUIL: Regarding the -- excuse me, 16, 17, and  
13 18, which are essentially -- I know monitoring contact and  
14 technology with people under the age of 18 given his sex  
15 offender status and, as they point out, his violations of  
16 supervision back then without -- with underage girls, I think --  
17 again, I think the basis is there. I think the recommendation  
18 is based on facts that really are simply beyond dispute, and I  
19 think the probation officer should be given the ability to  
20 monitor this sort of activity as well. So we would join in the  
21 recommendation of the probation officer for those three  
22 conditions.

23 THE COURT: All right. That's -- did you object to 18?

24 MR. BUGNI: Sorry. Let me just pull up 18.

25 THE COURT: 18 is the IT restriction.

1 MR. BUGNI: I think -- I'd be disingenuous. My whole  
2 sentencing memo said 18 would do everything you wanted.

3 THE COURT: I would overrule it if you were objecting  
4 to 18.

5 MR. BUGNI: I wasn't even going to.

6 THE COURT: 16, 17, and then the substance abuse. I'm  
7 going to overrule the objection as to 14. I'll leave it there  
8 in place. I don't think that Mr. Van Haften has a really  
9 substantial history of substance abuse, but he does have some  
10 self-reported substance abuse. So let's -- I'm going to leave  
11 that in for now. Again, all of these are with the proviso that  
12 they can be revisited, which I will make a more explicit  
13 statement about that in a minute.

14 I'm more ambivalent about 16 and 17. I am not going to -- I  
15 am going to sustain the objection as to 16 and 17 with the  
16 proviso that those be revisited as well if they become  
17 appropriate, but I don't think -- you know, we have the burdens  
18 of the Sex Offender Registration and Notification Act. That  
19 provides some leeway, it seems to me, on third-party  
20 notification, and I think that that provides the supervising  
21 officer with some leeway to consider whether further action  
22 should be taken with regard to the -- Mr. Van Haften's conduct,  
23 but I don't think we've got any indication that there's been any  
24 inappropriate sexual attention directed to children since the  
25 original offense, and, again, given the fact that the nature of

1 the offense -- and again not whether it's -- the offense is  
2 challengeable in any way. It did involve contact with a minor  
3 when Mr. Van Haften was himself 18 years old, so I don't think  
4 there's any indication that Mr. Van Haften has an abiding  
5 interest in sexual contact with minors, and so I will not impose  
6 16 and 17.

7 But, again, all of these conditions are imposed here in  
8 anticipation of their application when Mr. Van Haften is  
9 released from prison, and, Mr. Van Haften, I'll make this very  
10 clear to you: These conditions are my prediction about what's  
11 appropriate for you. If when you begin your term of supervision  
12 these conditions aren't appropriate, if we need to eliminate  
13 some, add others, refine any of them, you can make a motion to  
14 the Court to do that. The government can do the same thing and  
15 so can the probation office. So for now I'll start with these.

16 Now, the Seventh Circuit suggests that I should read these  
17 into the record unless the reading and justification is waived.

18 MR. BUGNI: We'll waive.

19 THE COURT: All right. So, Mr. Van Haften, I'm not  
20 going to read these to you now. A lot easier for you to look at  
21 them in writing and go over them with your counsel as well.  
22 I'll make a record again that the conditions that are imposed  
23 are conditions 1, 2, 4 -- 1, 2, and 4 through 9. Those are  
24 among the standard conditions of supervision, and then I'm also  
25 going to impose special condition 12, 13, 14, 15, and 18. I

1 will not impose 16 and 17 at the time. Okay. So those are the  
2 conditions that we will impose.

3 Let me make sure that I cover the remaining formalities of  
4 the sentence here. So, as I said, taking into consideration the  
5 nature of the offense as well as the defendant's personal  
6 history and characteristics, I'm persuaded that a custodial  
7 sentence of ten years is reasonable and no greater than  
8 necessary to hold the defendant accountable, to protect the  
9 community, to provide the defendant the opportunity for  
10 rehabilitative programs, and to achieve parity with the  
11 sentences of similarly situated offenders.

12 As to Count 1 of the indictment, it is adjudged that the  
13 defendant is committed to the custody of the Bureau of Prisons  
14 for a term of ten years. I do recommend that the defendant  
15 receive substance abuse assessment while incarcerated and any  
16 appropriate substance abuse treatment. I also recommend that he  
17 receive mental health treatment and also specifically if the  
18 Bureau of Prisons has treatment and counseling that is  
19 appropriate for people who have been radicalized into terrorist  
20 ideology, I would like Mr. Van Haften to participate in that.

21 I also recommend that the defendant be afforded prerelease  
22 placement in a residential re-entry center with work release  
23 privileges, and I will impose the life term of supervised  
24 release subject to the conditions that I've just outlined.

25 Although the incident offense is not drug related, the

1 defendant does have some self-reported history of drug use.  
2 Accordingly, the mandatory drug testing that's set forth in  
3 Title 18, United States Code, Section 3583(d) is not waived.  
4 The defendant shall submit to one drug test within 15 days of  
5 his placement on supervised release and periodic tests  
6 thereafter in the discretion of the probation office.

7 Let me just check, is there any statutory requirement that I  
8 do any more drug testing than that?

9 THE AGENT: No, Your Honor.

10 THE COURT: Okay. It is adjudged that the defendant is  
11 to pay the \$100 criminal assessment penalty to the Clerk of  
12 Court for the Western District of Wisconsin immediately  
13 following sentencing. I do find that the defendant does not  
14 have the means to pay a fine without impairing his ability to  
15 support himself upon release from custody and, accordingly, no  
16 fine is imposed.

17 Okay. I think I have covered everything. Let me also  
18 indicate one other factor that I thought was particularly  
19 important here is that Mr. Van Haften is convicted of a crime  
20 that is a crime of terrorism. I think the terrorism enhancement  
21 applies, but I do find it significant here that there's no  
22 direct injury to another person that was traced to his support  
23 that he had provided, and it was -- if it were the kind of  
24 financial support or anything like that that even would have an  
25 indirect impact on any actual violence committed against anyone,

1 I would think that would have been very significant. As I said,  
2 it's not completely a victimless crime. Mr. Davis, partly  
3 through your assistance, now faces a 15-year prison term, so  
4 it's not free of any victimhood, but I do think it warrants a  
5 very serious crime because I think your intentions to commit  
6 violence against the United States were so clearly expressed and  
7 you took such significant actions toward the accomplishment of  
8 that goal.

9 All right. So I think I've covered my justifications for my  
10 sentence and the term of supervised release, and again to make  
11 clear, the reason I am imposing a lifetime term of supervised  
12 release is that I think that the conditions that are offered to  
13 explain your offense here are really ones that are going to  
14 endure probably for the rest of your life. I hope that you  
15 don't respond to them in the way that you have in this case, but  
16 I think it warrants a long term of supervised -- supervision for  
17 the rest of your life.

18 Okay. I think I have covered everything except the right to  
19 appeal. Mr. Vaudreuil?

20 MR. VAUDREUIL: That was all I was going to comment on.

21 THE COURT: Mr. Bugni.

22 MR. BUGNI: Two things -- actually three things. One,  
23 could you make a recommendation within 500 miles of the Western  
24 District of Wisconsin so he could be -- at least be close to his  
25 mom.

1 THE COURT: For his placement?

2 MR. BUGNI: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. BUGNI: Two, we'd ask Dr. Spierer's report be  
5 attached to the PSR so that the BOP would have it in assessing  
6 his risk.

7 And then, three, he was arrested in Turkey on October 24th,  
8 but it wasn't until he was arraigned here I believe April 9th,  
9 so we would just ask that that time be credited towards his  
10 sentence, that six months that he's in custody.

11 THE COURT: All right. Mr. Vaudreuil, I'm going to  
12 assume that you don't have any objection to the recommendation  
13 that he be placed within 500 miles. It's not really up to me,  
14 but I'm willing to make that recommendation.

15 MR. VAUDREUIL: We have no objection to the Court  
16 making that recommendation to BOP.

17 THE COURT: And the attachment of Dr. Spierer's report  
18 is not going to be objectionable to me.

19 MR. VAUDREUIL: No.

20 THE COURT: I'll check with the government. And then  
21 what about the credit for time since his arrest?

22 MR. VAUDREUIL: First of all, that's a question for  
23 BOP, and we would object to that, although it's ultimately BOP's  
24 decision. I believe he will get credit from -- he should get  
25 credit from his arrest in Chicago in April 2015 but will not get

1 credit for the arrest in Turkey.

2 THE COURT: Okay. I think in this case I'm going to  
3 leave that to the BOP. Okay? And so --

4 MR. BUGNI: Well, do you desire for him -- in  
5 calculating your sentence, were you going back to his arrest in  
6 Turkey? I think that's the dispositive question.

7 THE COURT: I hadn't actually thought about it. Okay?  
8 I did anticipate that he would get credit for the time that he  
9 had served already, but I hadn't specifically contemplated  
10 whether it would go from the time he was arrested in Turkey to  
11 now.

12 MR. BUGNI: And I only say that because you made the  
13 comment, you know, he has two-and-a-half years of credit, which  
14 is correct, or two-and-a-half years you've already served if you  
15 go back to the time he's in Turkey. I mean, he's in chains no  
16 matter where he is. He's detained no matter where he is. The  
17 custody should count no matter if it was, you know, with  
18 handcuffs from the United States or handcuffs in Turkey.

19 I'd also note that the criminal complaint in this case  
20 issued, I believe, the day after his arrest. So he should get  
21 credit. It sounded like it was part of your calculus, and I'd  
22 just ask that that be put in the minutes, that he would get the  
23 time.

24 THE COURT: All right.

25 MR. VAUDREUIL: Your Honor --

1 THE COURT: Mr. Vaudreuil?

2 MR. VAUDREUIL: -- first of all, he was not in custody  
3 in Turkey on this charge for one minute. He was in custody in  
4 Turkey because Turkish immigration authorities took him into  
5 custody given his sex offender status. He went into custody in  
6 this charge when he got to the United States. He was brought  
7 back by Turkish officials, Turkish national police, not by  
8 anybody connected to this case.

9 I have been through this before with an actual drug case  
10 where the person spent five years in a Curacao prison before  
11 coming back here to be sentenced on the continuation of that  
12 drug case, and he did not get credit for the Curacao prison  
13 time, but that's a legal matter that is not before the Court.  
14 I'm just saying as a factual matter he was not arrested in  
15 Turkey for this charge. He was arrested by Turkish immigration  
16 authorities given his status.

17 THE COURT: Okay. Look, I did -- in contemplating his  
18 sentence, I did consider the time that he was in custody. I  
19 hadn't specifically contemplated the date on which it should  
20 begin. I think it's fair that he was taken into custody for  
21 charges that were not these charges, and so I will follow  
22 Mr. Vaudreuil's argument -- accept Mr. Vaudreuil's argument that  
23 he will get credit for the time that he was in federal custody  
24 on these charges.

25 MR. BUGNI: Sorry, real quick. He's arrested at a cafe

1 setting up to go join ISIS. Those were the text messages and  
2 the communications going on with the Viber app. You know, it  
3 might be that the pretext was we're going to arrest him for  
4 being a sex offender -- I don't know Turkish law -- that he's in  
5 violation for being a sex offender there, but it's all part of  
6 this case. The FBI is texting with him. I have no doubt that  
7 that is what the stated reason was, that it was a SORNA  
8 violation under Turkish law, but if that's part of the  
9 Court's -- I guess if that's part of the Court's determination,  
10 that's what you're thinking is it goes back to all the time he's  
11 in custody, that's where -- I'm not trying to build on the  
12 niceties so much as you seem to be in your gut saying I don't  
13 want you to get out in five years because -- among many things  
14 because you already have two-and-a-half years of credit. Give  
15 the guy two-and-a-half years of credit.

16 THE COURT: Mr. Vaudreuil, any further response?

17 MR. VAUDREUIL: He was out of status on his visa, on  
18 the U.S. visa, and, yes, he was getting ready to go fight for  
19 ISIL, but I would just repeat it's a fact he was taken into  
20 custody. There wasn't any subterfuge. We do not have the  
21 Turkish immigration police working closely with us at all, and  
22 they took him into custody on that visa -- on his immigration  
23 issues, and then he was brought back to this country and removed  
24 from Turkey, so I think as a fact, and BOP will consider that,  
25 but as a matter of fact, it was not based on this charge.

1 THE COURT: I'm satisfied that it is appropriate and  
2 fair for my sentence to begin to run at the date that he is in  
3 federal custody in the United States on these charges. When I  
4 announced my original sentence of ten years, I hadn't  
5 specifically contemplated the moment at which it begins. Now  
6 having heard from both parties, I'm satisfied that it is fair  
7 for his sentence to begin when he's in federal custody in the  
8 United States.

9 MR. BUGNI: Thank you, Your Honor.

10 THE COURT: Okay. All right. And I will order that  
11 Dr. Spierer's report be included in the PSR, and I will also  
12 direct that the Bureau of Prisons should try, if they can,  
13 consistent with his needs for Mr. Van Haften's security and the  
14 security concerns of the prison and whatever programming needs  
15 Mr. Van Haften has, keep him within 500 miles of Janesville so  
16 he can maintain his relationship with his mother.

17 Okay, Mr. Van Haften, with that then I'm going to tell you  
18 about your right to appeal. You have the right to appeal your  
19 conviction if you think that your plea was somehow unlawful or  
20 involuntary, and you have the right to appeal your sentence if  
21 you think that it's contrary to law. If you want to appeal, you  
22 must file a notice of appeal within 14 days of entry of judgment  
23 or within 14 days of any notice of appeal that might be filed by  
24 the government.

25 If you can't afford the filing fee for your appeal, you can

1 apply for leave to appeal in forma pauperis, which means without  
2 paying the filing fee, and if you cannot afford an attorney, you  
3 may also apply for court-appointed counsel to represent you in  
4 the appeal.

5 Okay. And so also the United States Probation Office is to  
6 notify local law enforcement agencies and the state attorney  
7 general of the defendant's release to the community. With that  
8 I believe we are finished. Anything else?

9 MR. VAUDREUIL: No. Thanks, Your Honor.

10 MR. BUGNI: No, Your Honor.

11 THE COURT: Thank you, all.

12 THE CLERK: Court is in recess.

13 (Proceedings concluded at 3:15 p.m.)

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1 I, JENNIFER L. DOBBRATZ, Certified Realtime and Merit  
2 Reporter in and for the State of Wisconsin, certify that the  
3 foregoing is a true and accurate record of the proceedings held  
4 on the 17th day of February, 2017, before the Honorable James D.  
5 Peterson, U.S. District Judge for the Western District of  
6 Wisconsin, in my presence and reduced to writing in accordance  
7 with my stenographic notes made at said time and place.

8 Dated this 9th day of March, 2017.

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\_\_\_\_\_/s/ Jennifer L. Dobbratz

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Jennifer L. Dobbratz, RMR, CRR, CRC  
Federal Court Reporter

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