

1 UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
3 (Asheville Division)

4 -----x  
5 UNITED STATES OF AMERICA, :  
6 Plaintiff, :  
7 :  
8 vs :Criminal Action:1:16-CR-05  
9 :  
10 JUSTIN NOJAN SULLIVAN, :  
11 Defendant. :  
12 -----x

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Tuesday, June 27, 2017  
Asheville, North Carolina

The above-entitled action came on for a Sentencing Hearing Proceeding before the HONORABLE MARTIN K. REIDINGER, United States District Judge, in Courtroom 1, commencing at 9:05 a.m.

**APPEARANCES:**

On behalf of the Plaintiff:

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On behalf of the Defendant:

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Official Court Reporter

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I N D E X

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Dr. James Hilkey.....15.....25.....31

E X H I B I T S

Page

Government's Exhibits 1 through 19.....14

Page

Reporter's Certificate .....78

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

1  
2 THE COURT: The other matter that we have on the  
3 calendar for today is the case of United States versus  
4 Justin Nojan Sullivan which is before the Court for the  
5 sentencing of the defendant pursuant to his plea of  
6 guilty and, also, for the hearing with regard to the  
7 acceptance of the plea agreement under Rule 11(c)(1)(C).  
8 on the charge of Attempted Act of Terrorism Transcending  
9 National Boundaries, in violation of 18, U.S.C., Section  
10 2232b(a)(1), (a)(2), and (c)(1).

11 Ms. Sison, good morning.

12 MS. SISON: Good morning, Your Honor.

13 THE COURT: Is the defendant prepared to proceed?

14 MS. SISON: Mr. Sullivan is, sir.

15 THE COURT: Okay. Mr. Savage, good morning to  
16 you.

17 MR. SAVAGE: Good morning, Your Honor.

18 THE COURT: Is the government prepared to proceed?

19 MR. SAVAGE: Yes, Your Honor.

20 THE COURT: As far as this hearing is concerned,  
21 the way I would propose to proceed is since the Rule 11  
22 hearing was conducted by me, rather than by a magistrate  
23 judge, there's no need for the completion of the Rule 11.  
24 So, then, the next thing I would do would be to move on  
25 to the questions regarding the completion of the

1 presentence report. And then, if there is any evidence  
2 that is to be presented by either side, we would move to  
3 that evidence and then to arguments and the elocution  
4 before I make my ruling regarding the acceptance of the  
5 agreed sentence.

6 Mr. Savage, did you envision us proceeding in any  
7 different manner?

8 MR. SAVAGE: No, Your Honor. And I was going to  
9 defer to the Court. Just to let the Court know, we have  
10 -- as the Court is aware, the government filed a  
11 sentencing memorandum, which is Document 66, with various  
12 exhibits. We are prepared to rely on that as the  
13 government's proof and offer those exhibits into  
14 evidence. We also have witnesses present. Since the  
15 Court is the decider and the trier -- the finder of fact  
16 in this particular matter, we'll defer to the Court as to  
17 how you want us to proceed.

18 THE COURT: Are you saying that if the Court  
19 receives the exhibits that are attached to your  
20 sentencing memorandum that that would dispense with the  
21 need for the calling of any witnesses?

22 MR. SAVAGE: Yes, Your Honor. And I think that  
23 in combination with the factual resume which has, as you  
24 know, several disputed paragraphs but has a number of  
25 facts in it which we rely on to reach the conclusion. So

1 the findings in the disputed portions of the presentence  
2 report. You know, Your Honor, I think it depends on  
3 whether the Court finds the evidence is sufficiently  
4 reliable under the rules for sentencing to consider the  
5 documentary proof and the proffer or whether the Court  
6 wishes to have further evidence. Either way, we're  
7 prepared to proceed.

8 THE COURT: Okay. Ms. Sison. First, let me ask  
9 you, do you have a view that we should proceed in a  
10 manner that is different from what I outlined?

11 MS. SISON: No, Your Honor. And just to address  
12 the government's position as far as the presentation of  
13 the evidence that is the attachment to its sentencing  
14 memo. We would not object to that although, obviously I,  
15 still maintain that Mr. Sullivan does not admit any of  
16 the controverted facts regarding the William Clark case.  
17 As you know, that case is still pending. And, so,  
18 whatever they do present, I understand the Court will use  
19 it or not use it upon its sentencing.

20 I do believe, however, that even without the  
21 agreement to those particular facts, I think there is  
22 enough evidence that the Court can make a finding that  
23 the sentence that is being recommended by the parties is  
24 appropriate. And just to let you know, Your Honor, I do  
25 have one witness that I would like to present. It's

1 specific to the designation of placement at a Bureau of  
2 Prisons facility, but that's the only witness I have.

3 THE COURT: Okay.

4 MS. SISON: So that's our position, sir.

5 THE COURT: Ms. Sison, let me follow up on one  
6 point, though, with regard to the acceptance by the Court  
7 of the government's sentencing memorandum and the  
8 exhibits there to -- in lieu of hearing any evidence. Is  
9 there any argument that you would be making with regard  
10 to the credibility of that evidence that should  
11 necessitate my hearing from those witnesses in person as  
12 opposed to receiving this evidence in written form as I  
13 have which I have already read?

14 MS. SISON: I don't believe so, Your Honor. I  
15 think you have the information in those written documents  
16 rather than hearing it from witnesses that will take the  
17 stand.

18 THE COURT: Okay. Thank you. In light of that,  
19 Mr. Savage, I really don't see the need to receive the  
20 evidence from live witnesses as opposed to what I have  
21 already read. The sentencing memorandum that was  
22 submitted was very extensive. I have read it carefully  
23 and, in light of the position taken on behalf of the  
24 defendant, I will receive that evidence in the form that  
25 it is presented and will be able to make sufficient

1 findings from that. Therefore, if I understand  
2 correctly, when we get to the evidentiary portion, there  
3 will only be the one witness, that being a defense  
4 witness that we'll need to call. Do I understand that  
5 correctly?

6 MR. SAVAGE: That's correct, Your Honor. Just as  
7 our record -- or, at the appropriate time I would move  
8 into evidence what I've previously marked as Government's  
9 Exhibits 1 through 17. And then I have two additional  
10 exhibits, Your Honor, that weren't in the memorandum that  
11 I would proffer to the Court, which are Exhibits 18 and  
12 19, at the appropriate time.

13 THE COURT: Okay. We'll get to that in a moment.  
14 But, first, with regard to some of the preliminary  
15 matters. Regarding the Rule 11 and the taking of the  
16 plea. The Court took the guilty plea of Mr. Sullivan  
17 back in November and, at that time, the Court made  
18 specific findings which I now reiterate. That being,  
19 based upon the representations made to the Court and the  
20 answers given by the defendant at the Rule 11 hearing,  
21 the Court finds, concludes and confirms that the  
22 defendant's plea is knowingly and voluntarily made, and  
23 that the defendant understands the charges, potential  
24 penalties and consequences of his plea and, also, based  
25 on the uncontroverted and admitted evidence that has been

1 set forth in the factual basis document and to the extent  
2 that that has also been incorporated into the presentence  
3 report. And, both, that factual basis document, the  
4 undisputed portions thereof, and the presentence report  
5 have previously been reviewed by the Court. And, based  
6 thereon, and based upon the defendant's admission of  
7 guilt, the Court finds, concludes and confirms that there  
8 is a factual basis for the defendant's plea.

9           With that, Mr. Sullivan, I need for you to stand  
10 for a moment, please. Mr. Sullivan, there is a document  
11 that has been prepared by the probation officer. The  
12 document that I'm talking about, on its front page, has a  
13 caption on the upper left-hand side that says, "United  
14 States of America versus Justin Nojan Sullivan, aka 'the  
15 Mujahid,'" and on the upper right-hand side of the front  
16 page it has a title that reads: " Presentence  
17 Investigation Report." Have you seen this document  
18 before today?

19           THE DEFENDANT: Yes.

20           THE COURT: Have you had an opportunity to review  
21 it with your attorney?

22           THE DEFENDANT: Yes.

23           THE COURT: Do you understand the contents of that  
24 document?

25           THE DEFENDANT: Yes.



1 THE COURT: Ms. Sison, have you had an opportunity  
2 to review the presentence report with Mr. Sullivan?

3 MS. SISON: I have, sir.

4 THE COURT: Are you satisfied that he understands  
5 the contents of the presentence report?

6 MS. SISON: I am, Your Honor.

7 THE COURT: Thank you, Mr. Sullivan. You may  
8 take your seat.

9 Regarding the presentence report. There were  
10 objections to the report that were filed on behalf of  
11 both sides but they all appear to have been resolved.  
12 Are there any issues regarding the presentence report  
13 that we need to take up at this time? Any for the  
14 defendant?

15 MS. SISON: None for Mr. Sullivan.

16 THE COURT: Any for the government?

17 MR. SAVAGE: No, Your Honor. They've all been  
18 resolved.

19 THE COURT: With that, the Court will accept the  
20 presentence report as written and as amended after the  
21 resolution of those objections. Based thereon, the Court  
22 will find that the total offense level that applies in  
23 this case is 42, and the criminal history category that  
24 applies in this case is category VI. Based on that total  
25 offense level and criminal history category, the Court

1 will conclude as a matter of law that the guideline range  
2 that applies in this case calls for a term of  
3 incarceration between 360 and a term of life  
4 imprisonment.

5 Ms. Sison, did calculate that correctly?

6 MS. SISON: Yes, sir.

7 THE COURT: Do you agree, Mr. Savage?

8 MR. SAVAGE: Yes, Your Honor.

9 THE COURT: Mr. Savage, you mentioned that there  
10 were some exhibits that you wanted to tender as evidence.

11 MR. SAVAGE: Yes, Your Honor, for the sake of  
12 completeness for or record. I know the Court's aware of  
13 these but the government would now offer into evidence  
14 what it has previously marked as attachments to its  
15 sentencing memorandum as Government's Exhibits 1 through  
16 17. We would offer those into evidence in this hearing  
17 today.

18 However, we would ask that with respect to those  
19 exhibits that Exhibit 5, which portrays the grave of the  
20 decedent, Mr. John Bailey Clark, that that remain under  
21 seal because of its sensitive contents and that, also,  
22 the transcripts and video of the defendant's statement,  
23 which are Exhibits 12 and 13, remain under seal. The  
24 reason for that, Your Honor -- as the Court is aware,  
25 there is a subsequent state proceeding. I believe it

1 would prejudice the ability of the state to find a jury  
2 if the statements of the defendant were verbatim placed  
3 in the press at this time.

4           Your Honor, we would also offer -- and I think the  
5 Court has a copy of the notebook that we prepared with  
6 all the exhibits in it. We would also offer into  
7 evidence what we have previously marked as Government's  
8 Exhibit 18. I'll show that to the defense counsel.  
9 That's a document that we previously provided in  
10 discovery. It is the written statement of Special Agent  
11 Power of the SBI, State Bureau of Investigation, that  
12 describes his search of the crime scene at Mr. Clark's  
13 residence in Morganton. Specifically, the crime scene  
14 search of 557 Rose Carswell Road, Morganton, North  
15 Carolina.

16           Your Honor, Exhibit No. 19 is the curriculum vitae  
17 of John Webb. Mr. Webb is a forensic examiner at the  
18 FBI's laboratory in Quantico. Mr. Webb performed an  
19 analysis of the Marlin -- .222 Marlin shotgun that was  
20 found underneath the defendant's house hidden in a crawl  
21 space and compared that with the cartridge that was found  
22 in Mr. Clark's bedroom, which was the scene of the  
23 murder. He is the author of the report that the  
24 government is offering at Government's Exhibit 11. We  
25 offer that exhibit merely to show that Mr. Webb, who is

1 present in the courtroom today, if he were to testify,  
2 that he is qualified to make those assessments.

3 THE COURT: Okay. Ms. Sison, let me go through  
4 these one at a time. Is there any objection on the part  
5 of the defendant to the admission of the Exhibits 1  
6 through 17 which have previously been filed with the  
7 government?

8 MS. SISON: Your Honor, the only objection we  
9 would pose is the same one that we posed before and that  
10 he still maintains he has not made any admissions to the  
11 Clark case.

12 THE COURT: But as to the admission, you -- the  
13 admission of the evidence. I understand he's not  
14 admitting that those elements are true but, as to the  
15 admission of the evidence, there is no objection. Is  
16 that correct?

17 MS. SISON: That's correct, Your Honor.

18 THE COURT: And, then, with regard to Exhibit 5,  
19 those photographs that were described by Mr. Savage. Is  
20 there any objection to at least temporarily maintaining  
21 those under seal in the court's file?

22 MS. SISON: No, Your Honor. And we don't object  
23 to their admission of that particular exhibit but just to  
24 -- again, I'm reiterating his right under the Fifth  
25 Amendment to maintain he makes no admissions as to the

1 Clark case.

2 THE COURT: And I do understand that. And then,  
3 also, with regard to Exhibits 12 and 13, those two  
4 transcripts. Again, the government has asked that those  
5 remain under seal, at least temporarily. As you know, I  
6 do not like the idea of keeping things under seal but  
7 temporarily under seal pending the state matter. Is  
8 there any objection to those remaining sealed on a  
9 temporary basis?

10 MS. SISON: No, Your Honor.

11 THE COURT: Now with regard to Government's  
12 Exhibit 18, the SBI report. Is there any objection to  
13 the admission of that report?

14 MS. SISON: As to the Court setting it for the  
15 purposes of the determining a sentence, no. But, again,  
16 he maintains his Fifth Amendment rights, sir.

17 THE COURT: And then with regard to Government's  
18 Exhibit 19, the curriculum vitae of Mr. Webb. Is there  
19 any objection to the admission of that item?

20 MS. SISON: That will be my same response to that  
21 exhibit, Your Honor.

22 THE COURT: Okay. And with that, then,  
23 Government's Exhibits 1 through 19 are admitted for the  
24 purposes of this hearing. Exhibits 5, 12 and 13 shall  
25 remain under seal. The others will not be sealed, but 5,

1 12 and 13 will remain under seal until further orders of  
2 this court. And even though this isn't a self-executing  
3 order but, after the conclusion -- it is my intent that  
4 after the conclusion of the state court proceeding that  
5 that seal would be lifted, because it is important for  
6 the public to understand what goes on in this court and  
7 the basis for this court's rulings and, therefore,  
8 maintaining the sealing of such matters in perpetuity  
9 would not be appropriate. But I am requiring those three  
10 exhibits to remain under seal until further order of this  
11 court.

12 (Government's Exhibits 1, 2, 3, 4, 5 [Under  
13 Seal], 6, 7, 8, 9, 10, 11, 12 [Under Seal],  
14 13 [Under Seal], 14, 15, 16, 17, 18, and 19  
15 are admitted into evidence.)

16 THE COURT: Mr. Savage, is there anything else  
17 that the government seeks to admit?

18 MR. SAVAGE: Not at this time, Your Honor.

19 THE COURT: Okay. Ms. Sison, you said that there  
20 would be evidence for the defendant.

21 MS. SISON: Yes, Your Honor. I would like to call  
22 Dr. James Hilkey.

23 THE COURT: Okay. Dr. Hilkey, please come forward  
24 to be sworn.

25 (Witness duly sworn at 9:22 a.m.)

## DIRECT - HILKEY

1 MS. SISON: Your Honor, before I ask Dr. Hilkey  
2 any questions, I would like to tender to the Court his  
3 CV. And I have provided copies of the CV to the  
4 government.

5 THE COURT: You may approach and hand that up.

6 MR. SAVAGE: No objection, Your Honor.

7 **DIRECT EXAMINATION**

8 BY MS. SISON:

9 Q. Dr. Hilkey, can you spell your first and last name  
10 for the record?

11 A. Yes. It's James H. Hilkey. Last name is spelled  
12 H I L K E Y.

13 Q. What do you do a living, sir?

14 A. I am a licensed psychologist practicing forensic  
15 psychology.

16 Q. Can you give an abbreviated list of your  
17 qualifications?

18 A. Yes, I can. Born and raised in northern  
19 California. I was educated in Westmont College in Santa  
20 Barbara, California, with a degree in psychology that was  
21 conferred in 1968. I have a master's degree in  
22 counseling and clinical psychology conferred in 1970 from  
23 Arizona State University, and I hold a Ph.D in counseling  
24 and clinical psychology granted in 1975, conferred at  
25 Indiana State University.

## DIRECT - HILKEY

1 Q. And have you -- you're in private practice now; is  
2 that correct?

3 A. I'm in private practice. Prior to being in  
4 private practice, I was a psychologist with the Federal  
5 Bureau of Prisons. I was the Chief of Psychology  
6 Services at the Federal Correctional Institution from the  
7 date of its opening until my retirement from federal  
8 service in 1996.

9 Q. And so how long was that, sir?

10 A. Twenty-five years.

11 Q. And what kind of duties did you have when you  
12 worked at the Bureau of Prisons?

13 A. I was responsible for 26 other psychologists and  
14 mental health professionals. I was the original clinical  
15 director of the Mental Health Division which performed  
16 psychological evaluations for federal courts. We also  
17 treated inmates in the federal system who had acute  
18 psychiatric illnesses. Butner had a joint commission  
19 psychiatric hospital that was afforded treatment for  
20 infirmed federal detainees.

21 Q. As far as BOP's concerned, there are federal  
22 medical facilities that have psychiatric units or  
23 psychological units.

24 A. That is correct. At the time that Butner was  
25 established, the only federal medical facility was in



## DIRECT - HILKEY

1 Springfield, Missouri. Butner was brought online to  
2 provide psychiatric services and provide forensic  
3 evaluations for federal courts with the increase of  
4 population and demand increased.

5 Q. Now there are other types of BOP facilities:  
6 medium, camps, penitentiaries. Do they have the same  
7 type of medical care provided to the inmates?

8 A. It varies, based on the security level. Obviously  
9 the medical centers are afforded greater psychiatric  
10 mental health staff because of the demands of that  
11 population. All federal facilities have some semblance  
12 of mental health services, but it does vary from  
13 institution to institution and based on security levels.

14 Q. And, so, if you had to rate which would provide  
15 the most effective kind of psychiatric treatment, how  
16 would you rate the types of facilities?

17 A. Right. The medical facilities are the most  
18 equipped to handle acute psychiatric evaluations. Most  
19 of the forensic evaluations ordered by federal courts are  
20 performed at medical centers. Some of those studies are  
21 completed at administrative FCIs, Federal Correctional  
22 Institutions. The designations are determined based on  
23 the available staff, their qualifications to both treat  
24 and evaluate federal presentence evaluations, and  
25 sentenced prisoners.

## DIRECT - HILKEY

1 Q. Do you know what the designation people use to  
2 determine what facility they are put in?

3 A. Yes, I do. When a person is sentenced, there is a  
4 paper review in the central office by the designating  
5 staff. They look at factors such as age, prior criminal  
6 offense records, severity of offense, and they make  
7 determinations based on a paper review of the defendant  
8 and sub designate that person.

9 Q. All right. Were you hired to work on the Justin  
10 Sullivan case?

11 A. Yes, I was.

12 Q. Who hired you?

13 A. The Western District of Public Defenders' office.

14 Q. Okay. And when was the first time you met with  
15 Justin?

16 A. I Initially met Justin at the Madison County  
17 Detention Center on July 1st 1915 -- 2015.

18 Q. And how many times would you estimate you've met  
19 with him?

20 A. I believe I have seen Mr. Sullivan approximately  
21 15 times, the last time being yesterday in the Buncombe  
22 County Detention Center.

23 Q. And what kind -- have you conducted any kind of  
24 evaluation on him?

25 A. Yes, I have. I was asked to do the evaluation to

## DIRECT - HILKEY

1 first develop a psychological profile of Mr. Sullivan  
2 and to answer some specific questions posed by your  
3 office. One: Is Mr. Sullivan actually competent to  
4 proceed with the adjudication of this case, including his  
5 competency to accept a plea? And, also, to establish his  
6 mental state at the time of the alleged offense.

7 Q. And were you able to make a decision as to whether  
8 or not he is competent?

9 A. It is my opinion that Mr. Sullivan is in fact  
10 competent to proceed with adjudication with his current  
11 charges and competent to enter a plea, which he has done.

12 Q. All right. And how many types of tests did you  
13 perform on Mr. Sullivan?

14 A. I did a complete psychological battery with  
15 Mr. Sullivan. That included tests for malingering to  
16 see whether or not Mr. Sullivan was being truthful in  
17 his presentation of his psychological symptoms. I also  
18 gave tests of motivation, prior to administering  
19 cognitive tests, to make sure he was putting forth good  
20 effort. He was given an IQ test, he was given a variety  
21 of both self-report personality tests and projective  
22 techniques to assess personality traits of Mr. Sullivan.

23 Q. And based on your time with Mr. Sullivan,  
24 Dr. Hilkey, did you come up with any kind of diagnosis or  
25 recommendation you could make to the Court as the best

DIRECT - HILKEY

1 place to put him?

2 A. Yes, I did. And the summary of those findings are  
3 included in the presentence report. I will not go into  
4 all of those details. Essentially, even though I believe  
5 that Mr. Sullivan's competent and I believe that he does  
6 not meet the standards for insanity, as determined by  
7 federal law, he does have very significant psychological  
8 problems. The predominant diagnosis is a prodromal form  
9 of schizophrenia. Prodromal schizophrenia is the  
10 intermediate stage where people start showing some signs  
11 of psychological deterioration. It doesn't rise to the  
12 full diagnosis of schizophrenia, but it warrants careful  
13 observation because people at Mr. Sullivan's age can  
14 well deteriorate into an acute psychotic state. That was  
15 my concern and my assessment of Mr. Sullivan at the time  
16 of my evaluation.

17 Q. And, so, when you say they have to be under  
18 careful observation, what does that look like in terms of  
19 the Bureau of Prisons?

20 A. Mr. Sullivan can show, under stress, some  
21 deterioration. He may in fact develop more acute  
22 psychotic symptoms as he ages, with delusional ideation.  
23 He may start showing both auditory and visual  
24 hallucinations as part of the schizophrenic disorder.  
25 Right now he is not showing acute signs, but his

## DIRECT - HILKEY

1 psychological profile suggests considerable fragility,  
2 and he could in fact deteriorate under acute stress.

3           Currently, he's doing well. He's also currently  
4 treated with antidepressant medications which has really  
5 helped him adjust to the prison environment. He's done  
6 quite well in the confines of the Buncombe County jail.  
7 His socialization abilities have improved, and the  
8 structure afforded by that confinement has been helpful  
9 to Mr. Sullivan. And he is in better shape now than he  
10 was when I first saw him.

11 Q.       So someone like Mr. Sullivan can be in a general  
12 population?

13 A.       He has done well in general population at Buncombe  
14 County. Again, in sentencing, I think it's important to  
15 find an environment that provides the adequate structure  
16 and support but not in situations where more are more  
17 restrictive than is needed. So what my recommendation  
18 would with be is that he be placed in a facility where he  
19 could have continuous mental health observation in a  
20 medium type of secure facility.

21 Q.       Okay. So you're familiar with Super Max and ADX?

22 A.       I am.

23 Q.       Would that be a proper placement for him?

24 A.       In my opinion, Mr. Sullivan does not require that  
25 type of structure. It is a very restrictive environment,

## DIRECT - HILKEY

1 which is really reserved for those offenders who pose a  
2 significant potential for acting out or are violent and  
3 demand extra security. In my opinion, Mr. Sullivan does  
4 not need that type of security. In fact, it would be  
5 deleterious to his long-term mental health adjustment.

6 Q. Do you personally know if he's had any problems at  
7 Buncombe County?

8 A. He has not. He has adjusted well. There's not  
9 been any significant incidences at all. He's actually  
10 socialized quite well. And he's quite proud of the fact  
11 that he's been able to relate to people much better than  
12 he did when he was in the community.

13 Q. All right. The next classification level down  
14 would be a United States Penitentiary. What's your  
15 opinion of placement at some place like that?

16 A. I spent five years working at a maximum security  
17 penitentiary in Indiana, and my experience would be that  
18 that would be a very deleterious environment for  
19 Mr. Sullivan based on his age, his psychological  
20 vulnerability, and his complex mental health problems. I  
21 would certainly advise against that type of placement.

22 Q. And, so, what about a medium, or an FCI?

23 A. Medium Security Federal Correctional Institution  
24 would be an ideal place. Those facilities are absolutely  
25 secure but they afford the available mental health

## DIRECT - HILKEY

1 services that Mr. Sullivan would require. It would  
2 allow him to function well in a safe environment both for  
3 himself and for others.

4 Q. But the optimum would be a medical center?

5 A. The optimal would be -- initially, I would  
6 recommend that he be evaluated to have the Bureau of  
7 Prisons have additional information about Mr. Sullivan.  
8 He presents with a very complex psychological picture.  
9 In my opinion a paper review would not do justice for  
10 fully understanding his particular needs, and I would  
11 recommend that he be evaluated at a medical center to  
12 determine appropriate placement, if the Court so orders.

13 Q. As I understand what you just said, Dr. Hilkey, is  
14 that a paper review of his case is not enough to find  
15 proper designation. Is that correct?

16 A. That would be my impression. Before this hearing  
17 today I did consult with a colleague, Dr. Sally Johnson,  
18 who I worked with for many years. The Court may be  
19 familiar with Dr. Johnson's work. Dr. Johnson used to be  
20 the Chief of Psychiatry at the Federal Medical Center and  
21 also for the Federal Bureau of Prisons. And I did  
22 discuss this without mentioning Mr. Sullivan's name with  
23 Dr. Johnson. And it was her recommendation that we ask  
24 the Court for a pre-designation review. And I am not  
25 sure of the particular statute in which that can be

DIRECT - HILKEY

1 ordered, but that would be my recommendation, I think,  
2 with concurrence of Dr. Johnson as well.

3 Q. So, as I understand it -- I mean he still goes to  
4 a Bureau of Prisons facility, but the recommendation is  
5 that he be observed in some sort of mental health setting  
6 so that they can say this is the appropriate place, and  
7 that's where you could send him off to. So it's not only  
8 paper but it's also actual observations?

9 A. Absolutely. In those types of studies we used to  
10 do those under the provision of 4245(b) studies, I  
11 believe is the correct term. But it gave the staff a  
12 chance to observe the behavior and get to know  
13 Mr. Sullivan and to make any adjustments in his current  
14 medications and then use that information for an  
15 appropriate designation for his incarceration.

16 Q. So you said it's been done before. It's not as if  
17 we're asking the Court to do something that's never been  
18 done before?

19 A. No, that is correct.

20 Q. Okay. And so that particular recommendation would  
21 have to be in the court's recommendation to BOP, I take  
22 it?

23 A. I believe that would be helpful to the designation  
24 authorities within the federal Bureau of Prisons to have  
25 that recommendation from this court.



## CROSS - HILKEY

1 Q. Is there anything else that the Court needs to  
2 know about Mr. Sullivan?

3 A. Not that I know of. Again, I think the summary of  
4 my findings are detailed in the report that the judge has  
5 had a chance to read. It's contained in the presentence  
6 report.

7 Q. All right. Thank you, Dr. Hilkey. I have no more  
8 questions, sir.

9 THE COURT: Mr. Savage, any cross-examination?

10 MR. SAVAGE: Thank you.

11 **CROSS-EXAMINATION**

12 BY MR. SAVAGE:

13 Q. Good morning, Dr. Hilkey.

14 A. Good morning, Mr. Savage.

15 Q. You said that the defendant may possibly or could  
16 develop a psychosis such as schizophrenia?

17 A. There's no way of guaranteeing or assuring that  
18 that could happen. He certainly has risk factors which  
19 indicate that that is a possibility. And I think it's  
20 prudent to be aware of those situations and afford the  
21 opportunity for further evaluation, in the event that  
22 there is a deterioration and be adequately treated.

23 Q. Is the defendant currently taking any medication?

24 A. He is.

25 Q. If he takes that medication does his condition and

## CROSS - HILKEY

1 his risk of developing this psychosis improve?

2 A. Again, the medication he's currently taking is an  
3 antidepressant medication. There is some indication that  
4 SSRI is the type of medication -- serotonin reuptake  
5 inhibitors -- may not be the appropriate medication. I  
6 think it would be prudent to have a complete psychiatric  
7 exam in a controlled environment to further evaluate the  
8 adequacy of his current medication.

9 Q. Well you've seen him 15 times?

10 A. I have.

11 Q. So you've had an extensive period of time to  
12 evaluate him; is that correct?

13 A. I have.

14 Q. You've provided your report and it is actually in  
15 the presentence report?

16 A. That is correct.

17 Q. And, in addition, the defense in the state case  
18 has -- are you familiar with -- let's see. This would be  
19 -- are you familiar with Dr. Corvin?

20 A. I know Dr. Corvin, yes.

21 Q. Did you consult with Dr. Corvin in his evaluation?

22 A. Our evaluations -- my evaluation of Mr. Sullivan  
23 was done independently. I have reviewed Dr. Corvin's  
24 memo so I am aware of his opinion.

25 Q. Okay. Now you mentioned that the Bureau of

## CROSS - HILKEY

1 Prisons has observation and mental health treatment at  
2 all of its facilities. Is that correct?

3 A. It varies, obviously, with the -- because there  
4 are a variety of needs that the federal Bureau of Prisons  
5 serves, the institutions are staffed accordingly based on  
6 the needs of the particular population they serve.

7 Q. Certainly, the security of the prisoners -- of the  
8 prisoner himself and his fellow prisoners is equally  
9 important as this mental treatment?

10 A. And the Bureau of Prisons will certainly take that  
11 into consideration. Medium security facilities are quite  
12 secure. I spent 20 years at Butner and we had many very  
13 high profile inmates there, many of which are known to  
14 the population. That was a very secure facility but it  
15 did afford both medical care and adequate security. So  
16 the concerns that I have, I think, Mr. Savage about  
17 placing a person like Mr. Sullivan in a high security  
18 ADX or maximum security federal penitentiary is that he's  
19 going to be surrounded by people who are much more  
20 sophisticated criminally. He is a young person and he's  
21 quite vulnerable. I think that the proper punishment,  
22 confinement, can certainly be done in a less restrictive  
23 environment which will be more beneficial for  
24 Mr. Sullivan while providing safety for the community  
25 and his fellow inmates.

## CROSS - HILKEY

1 Q. You mean at a high security prison he could be  
2 surrounded by cold-blooded murderers?

3 A. Well I think I know where you're going with that  
4 question. But he -

5 Q. Well, no, it's just a question.

6 A. There are people who are in high security who are  
7 much more criminally sophisticated than Mr. Sullivan.

8 Q. Okay. Well let's talk about that. Did you talk  
9 with Mr. Sullivan about whether he has acted out any of  
10 his violent thoughts in the past?

11 A. I have no direct opinion about that.

12 Q. Well did you talk to him about that?

13 A. I think this -- I need advice from the Court on  
14 this now. I think this goes into the Mr. Clark issue  
15 and I'm not prepared to discuss that at this time.

16 MR. SAVAGE: Well, Your Honor, I think that the  
17 doctor has testified regarding his recommendation, and I  
18 think that the security issue of whether the defendant  
19 has committed a murder in the past is certainly relevant  
20 to this discussion.

21 THE COURT: You've been asked a specific question.  
22 Listen to the question. Answer what has been asked but  
23 only what has been asked.

24 THE WITNESS: Would you restate the question,  
25 Mr. Savage?

## CROSS - HILKEY

1 BY MR. SAVAGE:

2 Q. Did you talk to the defendant about whether or not  
3 he has acted out his violent ideations in the past?

4 A. I did not discuss the Mr. Clark incident with  
5 Mr. Sullivan.

6 Q. But you're aware the defendant is accused?

7 A. I am aware that he is accused.

8 Q. Are you aware of the evidence that supports that  
9 accusation?

10 A. I am aware of some of that evidence. I did not  
11 discuss the specifics -- that was not the request of my  
12 evaluation of Mr. Sullivan.

13 Q. Well certainly the sophistication of your patient  
14 would depend upon whether or not he was sophisticated  
15 enough to carry out a murder under the cover of darkness  
16 and not be caught and then later lie about it. That  
17 would indicate sophistication, would it not?

18 A. Again, we're talking about criminal  
19 sophistication, prior records, a course of a criminal  
20 history of which Mr. Sullivan does not fit.

21 Q. Okay.

22 A. I know he's been accused of a serious offense in  
23 addition to the federal offense. I'm aware of that. He  
24 does not have a record of prior violence and he is not  
25 criminally or psychologically sophisticated.

## CROSS - HILKEY

1 Q. Okay.

2 A. I believe -- again, my opinion is that he can be  
3 adequately cared for in a safe environment, both for the  
4 community and himself, in a less secure facility.

5 Q. Well if the defendant were convicted and in fact  
6 this court finds, as it may, that the defendant committed  
7 a calculated and cold-blooded murder, that would  
8 certainly be part of the evaluation of the Bureau of  
9 Prisons would have to make, wouldn't it?

10 A. And I think that would be the purview of our  
11 recommendation for a pre-designation evaluation to  
12 determine the potential for acting out.

13 Q. Now, in addition, are you aware of evidence in the  
14 defendant's -- in this case that the defendant sought out  
15 ISIS and terrorist organizations because of his -- he  
16 agreed with their ideations and their fixation on death?

17 A. I am aware of that.

18 Q. And are there computers at the facilities which  
19 are low security? I mean is he able to access the  
20 Internet?

21 A. Mr. Savage, we're not talking about a low  
22 security. We're talking about a medium security. And I  
23 can assure you that the Federal Bureau of Prisons makes  
24 every provision to maintain that people do not have  
25 access in ways of furthering their criminal activities.

## CROSS - HILKEY

1 Q. In your discussions with the defendant, has he  
2 expressed any remorse for his plan to carry out a mass  
3 attack and killing as many people as he possibly could?

4 A. He is ardent in his belief about his Muslim faith.  
5 He has not expressed any specific intent to carry out  
6 that in the future. There's no way of predicting that  
7 but, again, the risk of him doing that in a secure  
8 facility is quite remote.

9 Q. Well, again, the question was, did he express any  
10 remorse for his plan to carry out the mass attack in  
11 support of the Islamic State?

12 A. He did not specifically state remorse to me. He  
13 is ardent in his faith and that is important to him.

14 Q. No further questions, Your Honor.

15 THE COURT: Any redirect, Ms. Sison?

16 MS. SISON: Yes, sir.

17 **REDIRECT EXAMINATION**

18 BY MS. SISON:

19 Q. Dr. Hilkey, getting back to him being surrounded  
20 by other people with longer criminal histories who are  
21 very versed in the criminal life. What is your concern  
22 about Mr. Sullivan being with people like that?

23 A. Mr. Sullivan, even though he's chronologically in  
24 his early 20s, developmentally and psychologically he's  
25 much younger. He's very susceptible to the influence

## REDIRECT - HILKEY

1 of others. I think putting him in an environment where  
2 he's exposed to more sophisticated individuals may, in  
3 fact, enhance his risk to act out, and I think that he  
4 would be much better served in a less secured facility.

5 Again, our recommendation is that we afford a  
6 pre-predetermination to assess some of these issues and  
7 use that information in an appropriate designation.

8 Q. And is your concern about some of these higher  
9 facilities due to the fact that he can also be physically  
10 hurt by the people there?

11 A. Again, his age makes him quite vulnerable to his  
12 own physical safety in a higher secure facility.

13 Q. Okay. Given the questions that the government has  
14 asked, do you still believe that he is better served in a  
15 facility that isn't as highly designated as ADX or the  
16 USP?

17 A. That is my ardent belief and opinion, yes.

18 Q. And you had also -- he had also asked you a  
19 question about antidepressants. Do you know if the jail  
20 -- Buncombe County, specifically -- can provide any kind  
21 of intensive psychological treatment to the people that  
22 are there waiting their witnesses?

23 A. They, like most county jails, are not equipped to  
24 provide other than just rudimentary services. There is  
25 no ongoing counseling, no ongoing mental health services,



## REDIRECT - HILKEY

1 other than medication management.

2 Q. Okay. And even during the time that he's been in  
3 custody for the past -- over a year, you've never heard  
4 of him ever hurting another person.

5 A. That is correct.

6 Q. Or continuing work in ISIS?

7 A. That is correct. And, again, his behavior has  
8 been quite contained. He's been continuously respectful  
9 to me. I've had a chance to observe him with other staff  
10 during multiple visits. He's always been polite and  
11 respectful. There's been no incidents of acting out.  
12 There's not been -- he's not been placed in intensive  
13 confinement at the Buncombe County jail.

14 Q. Okay. Thank you, sir.

15 No more questions, Your Honor.

16 THE COURT: Anything else Mr. Savage?

17 MR. SAVAGE: No, Your Honor.

18 THE COURT: Thank you, Dr. Hilkey. You may step  
19 down.

20 THE WITNESS: Thank you, Your Honor.

21 (Witness excused at 9:48 a.m.)

22 THE COURT: Is there anything else in the way of  
23 evidence to be presented by the defense?

24 MS. SISON: No, Your Honor. Thank you.

25 MR. SAVAGE: Not from the government, Your Honor.

1           THE COURT: Is there anything else we need to  
2 address before we move on to the question of the  
3 arguments of whether the Court should accept the sentence  
4 that was proposed in the 11(c)(1)(C) plea agreement?  
5 Anything else we need to address first?

6           MR. SAVAGE: Your Honor, I think that the  
7 government would ask that the Court make findings on the  
8 disputed facts and then, based on those findings, I think  
9 the argument can be more focused. Specifically, I think  
10 the government in its sentencing memorandum --

11           THE COURT: Let me stop you, Mr. Savage, because  
12 I had in mind the idea that you could make your arguments  
13 with regard to facts with regard to the acceptance of the  
14 sentence. It would be very hard, I would think, to  
15 separate those arguments. So I envision you making those  
16 arguments together and then I will proceed with that  
17 afterward.

18           MR. SAVAGE: Yes, Your Honor. I'm happy to do  
19 so.

20           THE COURT: Ms. Sison, let me hear from you then.  
21 I want you to address not only what I should find as fact  
22 but also your reasons for why you believe I should accept  
23 what has been agreed upon in the 11(c)(1)(C) agreement as  
24 to the appropriate sentence in this case.

25           MS. SISON: Your Honor, the guidelines here are

1 360 to life. So the Court isn't being asked to vary  
2 upward in order to get the sentence both parties are  
3 requesting. And, so, you are getting -- you are given a  
4 guidelines sentence, whether you choose to be on the low  
5 end or on the high end. So there's no issue as to that  
6 the Court needs to find anything more.

7 I believe that just based on the information  
8 regarding the specifics of the offenses that Mr.  
9 Sullivan has pleaded guilty to that the life sentence  
10 that we are asking this court to impose in this case is  
11 adequate; just those findings without any references to  
12 the Clark case. And I say that because this court has  
13 been given all the information it needs regarding his  
14 behavior during the time that the FBI was dealing with  
15 him in that operation, the request that he's made of the  
16 FBI, the things that he did regarding the conversations  
17 that he had with this undercover agent.

18 I don't think you need to go further in order to  
19 look into the Clark matter in order to make those  
20 findings that this is an appropriate sentence that we are  
21 recommending to the Court. And, again, part of my  
22 concern is that there is a pending state matter. You've  
23 got an agreement between the parties that there is enough  
24 evidence here to give a life sentence to Mr. Sullivan.

25 So when I look at what the Court has to do as far

1 as determining whether or not a life sentence is  
2 appropriate, obviously, it takes into consideration the  
3 seriousness of this offense. And, Your Honor, given  
4 what's been happening in the world in the past 15 years,  
5 I can't think of anything more serious than terrorist  
6 acts, or attempts to commit terrorist acts, and I think  
7 that's something that across borders people will agree  
8 that that is a very, very serious offense, and that's  
9 what we have in court today.

10 As far as a life sentence. It does promote  
11 respect for the law because it says to the people outside  
12 of this court who believes that these things are very,  
13 very serious. It protects the public by keeping  
14 Mr. Sullivan in custody for the rest of his life. And,  
15 as far as deterrence, there is both specific and general  
16 deterrence. And, so, I think that the evidence before  
17 you -- Mr. Clark's pending case notwithstanding -- is  
18 adequate to meet the purposes of sentencing.

19 So, really, Your Honor, the argument that I want  
20 to make and I want to focus on now is that we have agreed  
21 upon the appropriateness of a life sentence is this. The  
22 Court has to look at 3553(a) factors, and I think I've  
23 touched upon them in this elocution. But the one factor  
24 that I'm asking this court to look deeply into and I  
25 think is the most important part for Mr. Sullivan is

1 3553(a)(1)(D). Specifically, that talks about the type  
2 of sentence that this court must fashion is to provide  
3 the defendant with needed educational or vocational  
4 training, medical care, or other correctional treatment  
5 in the most effective manner. So that stands alone and,  
6 obviously, it's important enough that it is part of  
7 3553(a) factors.

8           Specifically, the portion of that particular  
9 subsection is the medical care which in this case is  
10 mental healthcare. Part of the reason we've worked so  
11 much on trying to figure out what is happening with  
12 Justin is to find out at some point what happened to him  
13 and what can we do for him in the future. And when I  
14 look at that particular subsection, Your Honor, it says  
15 that the Bureau of Prisons must provide him with needed  
16 medical care. And we have shown the Court that it is  
17 needed. I mean you can't just put this man away and not  
18 give him any type of mental health treatment. That would  
19 be cruel.

20           Also, Your Honor, when they say "much needed  
21 care." We're not talking about an occasional visit to a  
22 counselor. Maybe he can go once a month or once every  
23 couple months. That is not the care that we are looking  
24 for. We're looking for care in which, as you heard from  
25 Dr. Hilkey, there's a chance that this may go into full

1 schizophrenia, and that's something that they have to  
2 watch out for. And you can't watch out for that unless  
3 you have a unit that's equipped to handle that kind of  
4 thing. Part of that statute also requires that the  
5 treatment must be provided in the most effective manner.  
6 That is part of that subsection. And when you say "most  
7 effective manner," that means we're not paying lip  
8 service to it. We're saying that you have to figure out  
9 where is the best place for this person.

10           And the Bureau of Prisons does listen to the  
11 Court, Your Honor. That's why we submitted Dr. Hilkey's  
12 letter and asked probation to make it part of the  
13 presentence report, because we wanted them to look at  
14 that. Obviously, we're asking a little bit more. That's  
15 the whole purpose of Dr. Hilkey testifying is that we are  
16 concerned that they're just going to do a paper  
17 designation which we don't feel is enough. Yes, it's  
18 comprehensive what Dr. Hilkey said.

19           But, I think, in order to provide the best place  
20 so that he can get the needed medical care in the most  
21 effective manner they have to do a little bit more. And  
22 so what we're asking this court to do is to recommend to  
23 the Bureau of Prisons that they do a study to determine  
24 what place is that? It doesn't mean that Justin gets to  
25 go out. I mean he goes straight to the facility but that

1 particular facility has the manpower, i.e., the  
2 psychological team that can watch him, make observations,  
3 make recommendations, determine what kind of medication  
4 he needs, and what placement he should be. So that is  
5 what we mean by the type of effective care.

6           Now Dr. Hilkey talked about how vulnerable Justin  
7 is. Obviously, he's vulnerable because of his age. I  
8 mean the offense occurred around the time he turned 18.  
9 And we know all these studies that discuss the adolescent  
10 brain and the young adult brain. And, in fact, most  
11 people will tell you that young people are not equipped  
12 to make any kind of decisions, big decision, because  
13 their brains haven't fully formed until about their mid-  
14 20s, and we recognize that as a society.

15           I mean he had just turned 18 at the time -- near  
16 the time of his arrest. And at 18, what do we allow  
17 people to do? Well we allow them to go to war. We allow  
18 them to vote. We allow them to make contracts that they  
19 can hold on their own. But even at 18, young adults are  
20 not allowed to do certain things. And, in fact, just 17  
21 days ago he is now about to legally drink. And that's at  
22 age 21. That's three years after we consider somebody an  
23 adult. Now he can buy tobacco. That's just a  
24 recognition of our society that says these are still  
25 kids. Their brains are still forming. They're

1 vulnerable. And part of the reason we made such a big  
2 thing about him not being put in ADX, Super Max, a USP or  
3 any of the higher facilities is because when you're that  
4 vulnerable, people can do things to you. You are not  
5 equipped to make the type of decisions that will take  
6 these people away from you. He can be used. He can be  
7 manipulated. And, so, that's the reason we say that is  
8 not an appropriate place for him.

9 Now, Your Honor, I know that part of the colloquy  
10 that the Court says to our clients whenever we ask the  
11 court to make a recommendation is this: I don't know  
12 what the Bureau of Prisons will do. It's just the  
13 recommendation. I can't force them to do something. But  
14 know, Your Honor, that what comes from the Court is  
15 really, really important to the Bureau of Prisons. I  
16 think they make an effort to do what the Court believes  
17 is right. And why is that? It's because the Court has  
18 taken the time to study this case. It's taken time to  
19 study the pleadings. It's taken time to look at the  
20 client. It's taken time to talk to the prosecutor and  
21 defense and listen to the arguments that are being made.  
22 It's taken time to appoint a probation officer to do a  
23 really thorough presentence report in which in this case  
24 that was done. Obviously, you are doing more work than  
25 somebody who's just looking at paper at the designation.



1 Yes, they may be good at it but you have done more in  
2 determining what kind of sentence.

3 Now I heard a story from the Bureau of Prisons  
4 legal counsel in which 19. He turned 19, Your Honor. He  
5 just wanted me to correct that.

6 But I want to tell the story the legal counsel  
7 told me about a judge who was frustrated with the Bureau  
8 of Prisons and said you never take my recommendations.  
9 Every time I make a recommendation, you send me a letter  
10 that says I'm sorry we weren't able to designate these  
11 people at this particular place. Well they contacted  
12 that judge, Your Honor, and they said, look. We actually  
13 do take your recommendations. And in fact we figure out  
14 it's about 83 percent of the time. But the reason it  
15 seems like a lot to you is because we send you a letter  
16 when we can't do it but we don't send you a letter when  
17 we do do it.

18 So if you look at the time you've made the  
19 recommendations, you're not counting those times Your  
20 Honor. And this person -- this is a BOP legal counsel  
21 who said they take what you say very seriously. And, so,  
22 that's the reason I say to Your Honor I understand that  
23 it's just a recommendation, but it is a strong  
24 recommendation and it's based on the evidence that is  
25 before you.

1           Obviously this isn't a typical case and you don't  
2 get this case every day. In fact, the interest in this  
3 case is tremendous. I see that by looking behind me, and  
4 I see that looking at the trucks that are outside. What  
5 is going to happen to this young man? And all I'm asking  
6 this court to do is to make that kind of recommendation  
7 that will take care of this young man. I mean he is  
8 being punished. And I know there are people who say, why  
9 should he get that kind of treatment? Why should he get  
10 this in the Bureau of Prisons? I can't get this outside.  
11 And maybe they're right. But to say that he isn't being  
12 punished and you're looking at a life sentence, I think  
13 that conversation should be a nonstopper. He is going to  
14 prison for the rest of his life. And I think, we as a  
15 society, have an obligation to make sure that he is safe  
16 and, also, he gets the treatment that he needs.

17           Now, Your Honor, obviously this case means a lot  
18 to the defense. Yesterday I thought about how we, as a  
19 society, look at people that we put in prison and, you  
20 know, Gandhi said that the true measure of any society  
21 can be found in how it treats its most vulnerable  
22 members. Obviously we can all be vulnerable because we  
23 don't know what can happen to us day-to-day. We walk  
24 down the street and we may be hit by a car. We may get a  
25 cancer diagnosis. We don't know. But all of us are to

1 some extent vulnerable. When you put people in custody,  
2 you put them in a locked place where they can't get out.  
3 If there is something that puts me in danger, I have  
4 other options. I can hire somebody to protect me. I can  
5 prove move away some place else. There are other options  
6 for me. When you put somebody in prison, especially  
7 someone as young as Justin is, he does have those  
8 vulnerabilities but he can't have a way out. So that's  
9 the reason we're asking this court to consider what is  
10 the best place for him.

11 Now I was listening to the radio yesterday --  
12 actually on Sunday, Your Honor, and one of the things  
13 that caught my attention in listening to this program is  
14 Pope Francis had said something that, as a society, we  
15 spend more time building museums for saints rather than  
16 building hospitals for sinners. And I think what he  
17 meant by that is that we do spend a lot of time not  
18 paying attention to the people that are least among all  
19 of us. I'm not saying that Justin is a perfect example  
20 of a great human being. I think he knows what he did in  
21 dealing with the FBI agent, that's all bad, okay, and  
22 that is a sin. But at the same time I think what Pope  
23 Francis was talking about is in creating hospitals for  
24 sinners is that we must help them heal. And the healing  
25 process requires them being put in a hospital that's

1 right for him.

2 I mean I don't think any of us can say we're not  
3 broken people. We all are broken people. Some of us are  
4 more broken than others, and it is up to us as a society  
5 to take care of those who are the most broken. And  
6 sometimes we can help ourselves become less broken. And  
7 I -- as an example, if I feel broken I can talk to  
8 friends, I can work out, I can do all sorts of things to  
9 make myself less broken. I can go to a psychiatrist. I  
10 can do all those things because I'm on the outside and I  
11 have that freedom. The people that are inside, they  
12 can't do that. But you can.

13 All I'm asking this court to do is to make that  
14 recommendation and in fact I am going to ask this court  
15 to consider the following. I typed up something that I  
16 hope this court will consider in its recommendation to  
17 the Bureau of Prisons. And if I can read that to the  
18 Court and submit it, I would appreciate it Your Honor.

19 THE COURT: You may approach and hand that up.

20 MS. SISON: Specifically, Your Honor -- and I hope  
21 the Court considers in determining the recommendation to  
22 the Bureau of Prisons is that, pursuant to 18, U.S.C.,  
23 3553(a)(1)(D) which requires that a defendant be provided  
24 with needed medical care in the most effective manner.  
25 You, the Court, am recommending to the Bureau of Prisons

1 that Mr. Sullivan undergo a pre-assignment study  
2 consisting of a psychological/psychiatric evaluation to  
3 properly determine the appropriate designation for  
4 Mr. Sullivan. Because of Mr. Sullivan's age, his  
5 vulnerabilities, and his complicated mental health  
6 profile, a pre-assignment study would ensure  
7 Mr. Sullivan receives the mental health services he  
8 needs in the least restrictive environment as possible.

9 We are not questioning the life sentence, Your  
10 Honor. In fact, we are supporting it and ask that you  
11 impose that. However, we are asking this one particular  
12 thing and I think the law supports our request for it,  
13 and I hope that this court does exactly that. Thank you,  
14 sir.

15 THE COURT: Thank you.

16 Mr. Savage, what is the position of the  
17 government?

18 MR. SAVAGE: Your Honor, just to begin with, the  
19 Court -- the government would move at this time to remove  
20 the seal on Document 66. We had sealed that document in  
21 accordance with the protocol of this district and because  
22 it referred to the recommendation of the psychiatrist, or  
23 psychologist, Dr. Hilkey who has now testified. So we  
24 think there is no reason to keep that under seal. It  
25 doesn't refer to anything -- any personal issues in the

1 presentence report, and then we would refer to that in  
2 our argument.

3 THE COURT: Are you asking for that to be unsealed  
4 now so you can refer to it in part of your argument? Or  
5 are you just bringing this up as a housekeeping matter?

6 MR. SAVAGE: Both, Your Honor, yes.

7 THE COURT: Ms. Sison, is there any objection to  
8 the current unsealing of Document 66? That is  
9 Dr. Hilkey's report.

10 MS. SISON: No, Your Honor.

11 THE COURT: Okay. The motion, then, will be  
12 allowed, and the seal with regard to Document 66 will be  
13 removed. Mr. Savage, you may refer to that report in  
14 your argument.

15 MR. SAVAGE: Thank you, Your Honor. And I'll  
16 keep my remarks brief, because I know the Court -- I know  
17 this Court, in particular, reads everything when it comes  
18 to the sentencing. And I'm not going to remind the Court  
19 of all the 3553 factors except the defense in this case  
20 is focused on one, just one. There is also the history  
21 and characteristics of the defendant, the need to reflect  
22 the seriousness of the offense, to provide adequate  
23 deterrence, and to protect the public.

24 The needs of the defendant are just one of the  
25 factors this court must look at. Indeed, as the Court is

1 aware, the Bureau of Prisons is going to look at the  
2 presentence report and this court's finding to inform it  
3 on how it is going to balance security and the needs of  
4 the defendant and all of the needs of the federal Bureau  
5 of Prisons. Your Honor, we don't disagree with 90  
6 percent of what the defense said in this case.

7           We concur on the life sentence. But we think  
8 there are a couple of things the Court needs to address  
9 in its duty to determine the particular sentence. And  
10 that is to make a resolution of the disputed facts in  
11 this case. And the disputed facts include an important  
12 matter, and that is whether the defendant committed a  
13 murder in conjunction with the charged offense in this  
14 case. And maybe not as directly part of it but,  
15 certainly, within six months before he was detected in  
16 reaching out to ISIS and planning an Orlando-style attack  
17 on a soft target of vulnerable people in a nightclub or a  
18 bar, he snuck down the street and, the facts suggest, he  
19 killed his neighbor, a very vulnerable person,  
20 Mr. John Bailey Clark was a 74 year old-man who was  
21 living on Social Security disability of \$600 a month, was  
22 a recluse, never hurt anybody, never did anything. If  
23 anybody was vulnerable in this society, it was this man.  
24 All he is doing is living his life in a peaceful manner  
25 at the end of a street near Justin Sullivan.

1           Now the evidence in this case suggests that the  
2 Court can make this determination by a preponderance of  
3 the evidence, as cited in the report, and it begins on  
4 page seven of the report. And I know the Court has read  
5 these, but I'll just kind of pick through a few things.  
6 Ms. Glenda Clark, who is the defendant's sister-in-law,  
7 and who is married to the defendant's brother, Douglas  
8 Mackey Clark, is present in the courtroom today. She  
9 went to Mr. Clark's house on the day.

10           THE COURT: The defendant's?

11           MR. SAVAGE: I'm sorry. The victim's. It's the  
12 victim. I misspoke, Your Honor. I'm sorry. I'm getting  
13 ahead of myself. I'll slow down a bit.

14           Mrs. Clark went to see her brother-in-law, John,  
15 as it says in the report, on the day of the 17th. He was  
16 alive and well on December 17th. The next day she went  
17 to check, and bring groceries home, and noticed that the  
18 light was out in the house, which was very unusual for  
19 Mr. Clark, who doesn't go out at night and stays home  
20 all the time. He doesn't have anywhere else to go.

21           She went with her son-in-law and checked on the  
22 house and immediately knew something was wrong. There  
23 was disturbed earth at the side of the house. She goes  
24 in, opens the door, and there are strained blood marks  
25 all through the house, and the lights were off. She



1 called 911, as Exhibit 1 shows, at 6:15. The police came  
2 and within -- the law enforcement came, and within a  
3 matter of hours they unearthed the body of John Clark  
4 buried in a shallow grave at the side of his house, with  
5 no clothes on, who had been murdered in his bedroom and,  
6 as the autopsy shows, with three bullets to his head  
7 which were later determined by Mr. Webb, at the  
8 laboratory in Quantico, to be from a .22 caliber rifle.

9 That rifle was found in the defendant's house,  
10 along with a silencer, a black mask, and a lock pick kit,  
11 buried under a plastic tarp, as shown in the exhibits  
12 that accompanied the FBI's search which would be Exhibit  
13 10. And they found in the bedroom of Mr. Clark a shell  
14 casing from a .22 caliber rifle. That shell casing was  
15 determined with specific conclusory evidence to match the  
16 same as that test fired by Mr. Webb from that weapon at  
17 the Quantico laboratory. And that weapon was the key  
18 part of the interview that James Meade -- agents Meade  
19 and Zackman when they conducted the defendant's  
20 interview. And the entire interview is there at Exhibits  
21 12 and 13 for the Court to review.

22 When they interviewed him on the 19th, on the day  
23 he was arrested, the agents asked him: Do you have a  
24 rifle? Do you have any weapons? Obviously important  
25 questions to somebody who's planning a terrorist attack.

1 And his answer was no. They said, do you know anything  
2 about Mr. Clark and what happened to him? The defendant  
3 acknowledged that he knew who he was. And his answer was  
4 not no, I didn't do anything; it's, I've never been on  
5 his property. The following day, after the search was  
6 conducted -- and if the Court goes specifically to page  
7 11 of that second interview -- the defendant was reminded  
8 of the day before that he promised to tell the truth.

9           When the agents asked the defendant whether he  
10 told the truth, what was his response? He said, oh. You  
11 found the gun. I didn't tell you about the gun. I lied  
12 about the gun. And then at that point, knowing that they  
13 had the gun, he stole it from his father, Richie  
14 Sullivan, who kept it otherwise locked up. You have the  
15 reports of interview of Mr. Sullivan by the people who  
16 canvassed the area around the neighbors on -- right after  
17 December 2014. And Mr. Sullivan tells the canvassing  
18 sheriff: My wife and I weren't home.

19           He doesn't say that anybody else lived in the  
20 house. He just simply says they weren't home. But we  
21 well know from the statements that Mr. Justin Sullivan  
22 made later, six months later, that he was home, home  
23 alone. And, in fact, he tried to make the mass attacks  
24 that he talked to Janaid Hussein about, a notorious ISIL  
25 hacker in Syria. He talked about the fact he was going

1 to do those attacks on the next day or the next Monday or  
2 Tuesday because his parents would not be home.

3           So you put all these facts together on this time  
4 line, and the only conclusion -- certainly, by a  
5 preponderance of the evidence in this case -- is that the  
6 defendant murdered Mr. Clark for whatever reason, just  
7 because he could and just because he was vulnerable. Now  
8 that's a vulnerable person. Who would think that a 74  
9 year-old man sleeping in his bed would be assailed and  
10 shot three times in the head and buried in his yard  
11 because he lived next door to a person who was fixated by  
12 death and who sought out ISIL?

13           Those facts -- Your Honor, we would suggest that  
14 the Court should make a finding on that because it's  
15 certainly relevant to the nature and characteristics of  
16 this defendant. It's also relevant to the very charge,  
17 as the Court is aware, from the texts that were conducted  
18 and are listed in detail in the factual resume which is  
19 now the facts of this case. The defendant told -- when  
20 he is trying to recruit the undercover in this case who  
21 is posing as a person who might be interested in ISIL,  
22 but the defendant was trying to recruit him to commit his  
23 own atrocities, the defendant -- he asked the undercover  
24 to commit a murder on his own so that he can trust him so  
25 he wouldn't know that he's, quote, "an informant," so he

1 wouldn't be arrested. And what did the defendant say in  
2 his text on Sure Spot? He said, oh, don't worry. You  
3 won't get caught. Just do it at night and wear a mask.  
4 And when the Court looks at the evidence that Agent Guppy  
5 found underneath -- buried underneath the defendant's  
6 tarp underneath his house in the farthest part, where  
7 nobody would find it, what did they find but a black ski  
8 mask and the weapon used to murder Mr. Clark. So, Your  
9 Honor, if the BOP is truly going to make an informed  
10 decision -- not just based on the defendant's need but on  
11 the security of what the violent tendencies of what this  
12 defendant are -- they need all the facts.

13           Your Honor, one of the argument arguments the  
14 defense makes in this case is the Court should not follow  
15 its duty to make the determination because it could  
16 impair what might be later on a decision by the state the  
17 court. But this well court is well aware of the  
18 difference between the federal laws and the state court.  
19 The state court would have to make a finding beyond a  
20 reasonable doubt. No court -- state court is going to  
21 allow the determination of this court to be used in that  
22 state court proceeding, and that proceeding would occur  
23 upon its own merits, with its own rules, in its own time.  
24 But that doesn't mean that this court shouldn't make a  
25 finding that is relevant to its sentencing

1 responsibilities under 3553 or under the federal  
2 sentencing guidelines.

3           Your Honor, for all the reasons that we cited in  
4 the -- in our sentencing memorandum, which is now  
5 unsealed, we suggest that this court should find that the  
6 defendant caused the death of Mr. Clark by murdering him  
7 with a weapon that he lied about and hid in his basement,  
8 that that is relevant to the charged offenses of the  
9 offense of conviction here, which is committing a -- or  
10 planning and attempting to commit an atrocity, a  
11 terrorist attack transcending national boundaries. And  
12 even if it wasn't conduct, it certainly is conduct that  
13 is informative of the defendant's characteristics.

14           With that in mind, when the Court considers the  
15 fact the defendant committed a cold-blooded murder six  
16 months before he planned another murder, a mass casualty,  
17 solicited someone to kill his parents, solicited an  
18 undercover to kill somebody just to demonstrate his good  
19 faith, this shows that this defendant's history and  
20 characteristics, particularly under 3553, is a very  
21 dangerous man. He might be 20 years old, but there are  
22 plenty of 20 year-olds who commit atrocities in this  
23 society.

24           And the government suggests that the Court, as a  
25 matter of justice, needs to provide justice to the

1 society in which this offender has committed these  
2 offenses which reflects the nature around seriousness of  
3 the offense. Those offenses and offense of conviction  
4 here becomes even more serious if you know the defendant  
5 has committed murder before. And the reason that informs  
6 this Court is this. If this person wasn't just sitting  
7 in his basement talking to ISIS, he sought them out.

8 He said repeatedly in the answers to the question  
9 which Agent Meade asked him: Did they contact you or did  
10 you contact them? And his answer was: I contacted them.  
11 I found Janaid Hussein. I looked on the Internet. I saw  
12 who he was. I talked to other terrorists who were in  
13 Syria. I knew who they were. I knew what they were  
14 talking about, and I gave them ideas, ideas on how to  
15 create mass casualty attacks that would create death and  
16 mayhem in our society right here in North Carolina.

17 So the fact that the defendant had already  
18 murdered somebody shows that he wasn't just thinking  
19 about this. It shows he was going to do it. Other  
20 things that showed he was going to do it is, while he was  
21 under surveillance by the FBI, and while he was planning  
22 this, he drove to a gun shop and tried to buy hollow  
23 point bullets because, as he said in his text, hollow  
24 point bullets will create maximum casualties, maximum  
25 damage to the bodies of those people he would shoot. He

1 did that.

2 He had the \$600 ready to buy the gun, as he said.  
3 He had the coupon because everybody wants to be thrifty  
4 when they're going to the gun show to buy a weapon, an  
5 AR-15. He knew where he was going to buy it. And he  
6 knew he needed a silencer, I suggest, Your Honor, because  
7 he had already shot Mr. Clark in his house with a gun  
8 and he knew what it was going to sound like.

9 So, for all those reasons, this defendant went out  
10 of his way -- way beyond the mere musing of somebody. It  
11 is not a vulnerable youth in his basement who has been  
12 tricked or cajoled by ISIS. And I think that the other  
13 defense psychiatrist in the state seems to think this was  
14 a vulnerable youth who was preyed upon by ISIL  
15 recruiters. Not the case. Not the case here, Your  
16 Honor. The facts in this case suggest, if anything, this  
17 defendant was the person who was recruiting. He tried to  
18 recruit the undercover agent believing that he was a  
19 person interested in committing murder just as he would.

20 So for all those reasons, Your Honor, under the  
21 3553 factors, the life sentence is just not justified in  
22 this case. It's required. It is the high end of the  
23 guidelines. But there is a guideline in this case  
24 because the defendant is a cold-blooded murderer. He has  
25 committed a terrorist act. He has a criminal history

1 category III because of the guidelines and experience of  
2 the Sentencing Commission.

3 THE COURT: Six.

4 MR. SAVAGE: I'm sorry. Six, Your Honor, because  
5 the terrorism enhancement recognizes the danger that this  
6 type of person imposes on society.

7 As for the defense recommendation about treatment  
8 of the defendant. Your Honor, I think that is best left  
9 to the Bureau of Prisons not to consider just one aspect  
10 of this, just one part of one facet of it, but to  
11 consider all the factors. This court's finding and the  
12 presentence report will do that but, to do that, the  
13 Court needs to make a finding regarding Mr. Clark.

14 And we think it's important, both for the record  
15 in this case, should it be reviewed on appeal, and  
16 certainly for the presentence -- for the Bureau of  
17 Prisons to have this court's finding based on all the  
18 independent evidence that you have before you, and the  
19 factual resume, that the defendant has committed murder,  
20 would do so again, and this society needs to be  
21 protected. But more than that, that the seriousness of  
22 the offense demands a serious punishment which, in this  
23 case, is life imprisonment. Thank you, Your Honor.

24 MS. SISON: Your Honor I'd like to respond to some  
25 of the things the government has said. First, we've



1 already stipulated that a life sentence is appropriate  
2 given the particular facts of the offense itself. And I  
3 don't believe that this court needs to make a finding as  
4 to the Clark murder case. Part of the reason I'm  
5 concerned, Your Honor, is, one, you are using a different  
6 burden of proof. However, when it comes out that a court  
7 made this particular finding then you tend to sway the  
8 opinion of other people. And so that's my biggest  
9 concern.

10 As I said before, you've got a full proof plea  
11 agreement in which we are not going to appeal a life  
12 sentence. And so you've got that. And I'm telling you  
13 right now we are not appealing his sentence because we  
14 made the plea agreement with the government and we are  
15 living up to it. So I think there is enough proof in the  
16 offense conduct itself to make that particular finding.

17 As to the unsealing of 66. Let me -- on second  
18 thought, Your Honor, here is my concern. There's a  
19 number of items in here that relate to the Clark case.  
20 And I think that if this is unsealed and it is made  
21 available to anybody then what happens is you take the  
22 potential jury pool that is going to look at that case,  
23 which is not what we want in this particular case.

24 To the extent we can redact it -- and I understand  
25 what this court's saying and that you would like

1 everything to be out in the open. However, sentencing  
2 memorandums are typically not unsealed. And they had  
3 asked, and I had said all right. But in retrospect,  
4 given what the government has argued, I don't think it's  
5 appropriate in this case. And if the Court does decide  
6 maybe it is appropriate, then I would ask this court to,  
7 at this point, pretrial, on that particular case, that  
8 you do not give it unless it's redacted as to any matters  
9 that is in regard to that pending state matter.

10 THE COURT: Which exhibit is the one that is the  
11 report of Dr. Hilkey?

12 MS. SISON: Your Honor, it's already in the  
13 presentence report but it's also in our sentencing  
14 position paper. I think that might be 67. I'm not  
15 certain, Your Honor.

16 MR. SAVAGE: One minute, Your Honor.

17 MS. SISON: That's 67, sir.

18 THE COURT: So you're referring to where portions  
19 of Dr. Hilkey's report was included within your letter,  
20 Ms. Sison?

21 MS. SISON: No, Your Honor. I was talking about  
22 the government's memorandum. The government asked that  
23 it be unsealed.

24 THE COURT: Okay. This is where you're confusing  
25 me. Because Mr. Savage asked for the unsealing of most

1 of Document 66, which is the government's sentencing  
2 memorandum. There were three specific exhibits that he  
3 asked not to be unsealed but that the others to be  
4 unsealed. But if I -- maybe I just misunderstood you. I  
5 thought what you were saying is you felt that  
6 Dr. Hilkey's report should not be unsealed, and I don't  
7 believe that's part of Exhibit 66.

8 MS. SISON: No, Your Honor. I believe Mr. Savage  
9 had indicated that the government's sentencing memorandum  
10 should be unsealed and that's Document 66. If I misheard  
11 him, that's one thing.

12 THE COURT: I don't mean to talk over you but I  
13 want to make sure we have a clear record here. When the  
14 evidence was being presented, Mr. Savage had asked and  
15 had offered into evidence the exhibits to Document 66,  
16 which are the various elements of evidence that I'm being  
17 asked to review. From that, he excerpted three exhibits.  
18 And if I remember correctly, it's Exhibits 5, 12 and 13  
19 and that those not be unsealed but that the others be  
20 unsealed.

21 MS. SISON: Again, Your Honor, my concern is there  
22 is a pending state case and, in retrospect, as I was  
23 sitting here --

24 THE COURT: I understand that. I understand what  
25 your argument is. I just don't understand what you're

1 arguing for. What is it that you don't want unsealed?

2 MS. SISON: I don't want any references to the  
3 pending state matter be unsealed and made available. My  
4 concern is that when they go to trial and you've got a  
5 jury pool that's read all those materials which may or  
6 may not be admissible in court. And, so, if the Court is  
7 inclined to put them out there and they're unsealed, then  
8 at least take the time to redact any of the references to  
9 that particular case. Because I understand some of the  
10 documents that are before the Court and they do -- they  
11 have information about both the federal case and both  
12 about the state case. And, again, my concern is with the  
13 state case and if they go to trial what will happen if  
14 people have access to these documents that are not  
15 redacted as to the state case.

16 THE COURT: Well what I will do with regard to  
17 Document 66 and all of the attachments to it is I will go  
18 through those to make a determination of what needs to  
19 remain sealed. I believe both sides agree that Exhibits  
20 5, 12 and 13 to Document 66 need to remain sealed. If I  
21 understand correctly, the brief itself -- in other words,  
22 the statements of Mr. Savage, there's no reason to  
23 unseal those. That's merely an argument. That's nothing  
24 different from what he has said here, and sentencing  
25 memoranda generally are sealed.

1           As for the other exhibits, 1 one through 17, they  
2 are exhibits to 66. I will go through those to make a  
3 determination about unsealing those. It is my  
4 inclination to unseal as much of that as possible. The  
5 public has a right to know the basis on which this court  
6 makes any decisions. There may be some exceptions to  
7 that, and there's some case law to back that up, but I  
8 will make that determination on a document by document  
9 basis regarding those exhibits.

10           Mr. Savage.

11           MR. SAVAGE: Just Briefly. On this point, Your  
12 Honor, I would ask, when the court makes that review, if  
13 you would refer to the factual resume which is already  
14 unsealed in the public domain as Document 51. All of  
15 those factors, all those things that were mentioned in  
16 the government's memorandum and those exhibits, are also  
17 in the public domain because Document 51 is unsealed.

18           THE COURT: Well that's a very significant part of  
19 that review, Mr. Savage.

20           MR. SAVAGE: Yes, Your Honor. And I would note  
21 that even though we disputed the conclusion that all of  
22 the facts that support that -- many of the facts that  
23 support the conclusion in the factual resume, such as  
24 paragraphs five through 12, are stipulated by the defense  
25 and are already public.

1           THE COURT: Well that, Mr. Savage, is part and  
2 parcel of the review. There is no need to remain or  
3 maintain the seal on documents that are already in the  
4 public domain, particularly if they have any bearing on  
5 the actions of this court. Therefore, I will go through  
6 those exhibits, 1 through 17, with the exception of 5, 12  
7 and 13, to make a determination whether there is any  
8 portion of any of those that needs to remain sealed, even  
9 though I will candidly say my default is not to maintain  
10 the seal on those documents unless there is some  
11 particular reason to do so.

12           MR. SAVAGE: Your Honor, just for our record, we  
13 -- if you'll recall, we added 18 and 19 so the Court  
14 would want to --

15           THE COURT: They weren't exhibits to Exhibit 66.

16           MR. SAVAGE: No. But they were offered as  
17 exhibits in the hearing.

18           THE COURT: But they were never offered under  
19 seal.

20           MR. SAVAGE: That's correct, Your Honor.

21           THE COURT: Anything else, Mr. Savage or Ms.  
22 Sison before we proceed?

23           MR. SAVAGE: Your Honor, if I can make one  
24 comment about the argument the defendant -- you know,  
25 I've worked with Ms. Sison for a long time and I respect

1 everything she says. And when she says something, you  
2 can take it to the bank. One of the things I think the  
3 finding of the Court, even though she doesn't appeal,  
4 there is every chance that after this court sentences,  
5 especially if it is the agreed sentence that is rendered,  
6 somebody is going to question her. And the record in  
7 this case needs to be absolutely complete in the findings  
8 of this court. So in the event that there is a motion  
9 under 2255 attacking the representation of Ms. Sison, we  
10 want a full record. And I think that's a good reason to  
11 have a finding as well.

12 THE COURT: Mr. Sullivan, I am being called on to  
13 make a determination of whether or not to accept the  
14 agreed sentence in this case but, before I do that, you  
15 have an opportunity to address the Court and to tell me  
16 anything that you feel I should know before I make the  
17 decisions that I am called upon to make in this case. So  
18 if you have something that you would like to say to the  
19 Court at this time, this is your opportunity.

20 THE DEFENDANT: Yes. I just want to address.  
21 Mr. Savage likes to yell a lot and make me seem like the  
22 bad person I'm not. But he says that undercover agent  
23 might be someone interested in ISIS, but that's not true.  
24 The undercover agent said that he was helping them  
25 online. So that's another lie of his. And I just want

1 to say that, you know, you can't judge me. You don't  
2 even know me, you know. Most people here, well, I'm sure  
3 they'd like me if they actually knew me. And, you know,  
4 I don't -- I mean, yeah, I don't -- I don't -- I'm not a  
5 troublemaker, and I'm -- I don't cause problems for  
6 anybody. You know, things just happened.

7           But the thing that I'm a cold-blooded murderer is  
8 a total lie. I'm not just going to do anything to  
9 anybody. That's a complete lie. And I think it's  
10 hypocrisy and double standards because, like, I was  
11 listening on the BBC radio a couple of days ago and in,  
12 like, 1982 this guy had a bachelor party, Vincent Chin, a  
13 Chinese guy, and these two guys killed him with a  
14 baseball bat and they didn't get any time for it at all.  
15 And they said these guys are clean cut guys and they  
16 don't need to go to jail. So you can kill an innocent  
17 Chinese man four days before his wedding and it's okay.  
18 But when somebody else -- when other things happen, then  
19 it's not okay. And I think there's much hypocrisy and  
20 double standards. You know, you can kill some people and  
21 you're not a murderer and other people and you're a bad  
22 person. But I just want to make it fully clear that I'm  
23 not a bad person. And I know for a fact that a lot of  
24 people that would like me out.

25           And, you know, a life sentence isn't justified at



1 all, you know. Like, if I was out today, I wouldn't  
2 cause any problems. And, yes, I'm a Muslim and, you  
3 know, Islam is Islam. People can change it to suit their  
4 needs or desires. And but I just -- things just  
5 happened, and I should have never been moved down here to  
6 Morganton. And I really just -- on the outside, I really  
7 just wanted to get married and stuff but I was -- I had a  
8 lot of like -- I used to be really shy before, and that  
9 was -- that caused problems, but I'm better with that  
10 now. And, yeah, I just don't want people to misjudge me.  
11 That's all I have to say. Thank you.

12 THE COURT: Thank you, Mr. Sullivan.

13 The question before the Court today is whether the  
14 Court will accept the agreed upon sentence that is set  
15 out in the plea agreement that has been entered into  
16 between the parties and has been presented to this court  
17 pursuant to Rule 11(c)(1)(C) of the Federal Rules of  
18 Criminal Procedure. The plea of the defendant has  
19 already been taken and has already been accepted by the  
20 Court, subject only to the question of whether or not as  
21 a part of this proceeding that we are having here today  
22 the Court will find that the agreed sentence is an  
23 appropriate sentence in light of the factors for  
24 sentencing under the statute Section 3553(a).

25 So I will go through those factors and, to the

1 extent that I need to, make any findings regarding those  
2 factors I will make them as part of this analysis.

3 First, I start with the nature and circumstances of the  
4 offense under Section (a)(1) and the seriousness of the  
5 offense under Section (a)(2)(A). And, here, looking at  
6 the count of conviction, the attempted act of terrorism  
7 transcending national boundaries. That is what I look at  
8 with regard to these two factors. And the offense here,  
9 the attempted act of terrorism, is not only the planning  
10 of a mass murder but the taking of affirmative steps to  
11 effectuate that mass murder.

12 Now the -- as the record clearly shows, and the  
13 parties have agreed, and the Court will find that the  
14 plan was something very closely akin to what has come to  
15 be called the "Orlando Massacre." It was similar in many  
16 respects in that it was intended to take out and kill as  
17 many people as possible in a social environment. But  
18 there are certain differences between that attack and  
19 what was planned here because, here, the planning was for  
20 an attack that was stealthy, that was silent, that the  
21 defendant had made his plans and had actually procured a  
22 silencer for his firearm, that he had a mask to hide his  
23 identity, that he wanted to act in a silent way so as to,  
24 so to speak, have more sitting duck victims in order to  
25 kill more people but, also, to do so in a stealthy way

1 with the hope of escaping to have an opportunity to live  
2 and kill again.

3 I see that as an attempted act of terrorism that  
4 is cold and calculated, needless to say, despicable but  
5 also cowardly. A cowardly way to plan mass murder while  
6 hiding behind a mask, hiding behind a silencer. Those  
7 factors -- all of these facts that I find -- and I  
8 believe all of these facts have been agreed upon by the  
9 parties -- show me that the factors for the nature and  
10 circumstances of the offense, and the seriousness of the  
11 offense, weigh very heavily in favor of a very lengthy  
12 sentence and weigh very heavily in favor of accepting the  
13 agreed sentence of life imprisonment as set out in the  
14 11(c)(1)(C) plea agreement.

15 I next turn to the factors under Sections  
16 (a)(2)(B) and (a)(2)(C). Namely, that the Court must  
17 fashion a sentence that provides adequate deterrence to  
18 criminal conduct and protects the public from further  
19 harm from the defendant. Of course, with regard to  
20 deterrence, there are two factors. There is specific  
21 deterrence as well as general deterrence. But here,  
22 looking at the specific deterrence of this defendant,  
23 looking at the evidence that is agreed upon that the  
24 defendant acted in such a cold and calculated manner such  
25 as to manifest a disrespect and a disregard for human

1 life, and not just a disrespect and disregard for human  
2 life but innocent human life. Those who would be in a  
3 social setting, who had never done anything to the  
4 defendant or to anyone ever associated with the  
5 defendant, but simply to be the victims, to make a point.  
6 The cold nature, the calculated nature, the disregard and  
7 disrespect that that manifests, I believe, is something  
8 that specifically needs to be deterred with a lengthy  
9 sentence. Likewise, it shows that the public needs to be  
10 protected from that.

11           And the public needs to be protected not just with  
12 specific deterrence but with general deterrence. In  
13 other words, for anyone who is out there who is a  
14 prospective warrior in what the defendant here saw as his  
15 holy war need to understand that law enforcement in this  
16 country has significant resources and that the chances of  
17 being caught, short of committing such acts, are very  
18 high, and that the sentences that are received when  
19 caught not only are very harsh and very lengthy but must  
20 be. Because anyone who is in that situation, who plans  
21 to perpetrate such acts, are not martyrs. They're  
22 criminals.

23           Therefore, when looking at these two factors for  
24 sentencing, adequate deterrence and the protection of the  
25 public, once again, I see both of these factors as

1 weighing very heavily in favor of a very lengthy sentence  
2 and that they weigh very heavily in favor of accepting  
3 the agreed upon life term as set out in the 11(c)(1)(C)  
4 plea agreement.

5           Next I turn to the factor under Section (a)(2)(A)  
6 of fashioning a sentence to promote respect for the law  
7 and whether the agreed sentence in fact does promote  
8 respect for the law. Here the defendant in his actions  
9 in attempting to effectuate this act of terrorism was  
10 acting to fulfill his own concept of propriety or, maybe,  
11 his own concept of revenge against what he sees as an  
12 unjust society. But I see that as remarkably  
13 self-centered acts. In fact, self-centered to the point  
14 of the defendant even envisioning these acts to be the  
15 initiation of what he referred to as the Islamic State of  
16 North America, with the defendant there at the forefront  
17 of such an organization. Therefore, the defendant here,  
18 by his acts and this attempted act of terrorism,  
19 manifested a willingness to impose his own beliefs on  
20 others and to kill others and to do it on a massive  
21 scale.

22           The defendant acted and even referred to himself  
23 in his acts as the "Mujahid." He saw himself as a  
24 jihadi. But, at root, this manifests a complete  
25 disregard, even a rejection of our basic concept of law.

1 Even our most fundamental laws against murder,  
2 particularly the murder of innocent people. That's not  
3 just a rejection of American culture or Western culture,  
4 it is fundamentally a rejection of ordered society. If  
5 one wants to change society or culture or law or policy,  
6 we have a political process in which we all have the  
7 opportunity to participate, and that is part of the  
8 fundamental fabric of our country and of the law. But to  
9 seek to murder innocent people, particularly on a massive  
10 scale because of disagreement with government or with  
11 culture, is a fundamental rejection of law even of the  
12 concept of law.

13           Therefore, in order to fashion a sentence that  
14 promotes respect for the law, these acts of the defendant  
15 and his attempted act of terrorism weigh in favor of a  
16 very lengthy sentence. In fact, they weigh very heavily  
17 in favor of the acceptance of the life term as set out in  
18 the 11(c)(1)(C) plea agreement. In addition, I look to  
19 the factor under Section (a)(2)(A): That the Court  
20 fashion a sentence that provides just punishment and  
21 whether that sentence of life term of imprisonment is  
22 justice under the circumstances. This is a factor that  
23 is obviously much more nebulous than the more particular  
24 factors that I have already addressed. But, still,  
25 seeking to murder on a mass scale of completely innocent

1 people who have never done anything to the defendant  
2 under circumstances such as this is something that  
3 warrants a lengthy sentence and, therefore, I believe  
4 even the factor of a just punishment weighs very heavily  
5 in favor of the acceptance of the life term as set out in  
6 the 11(c)(1)(C) plea.

7         Now, to this point, I have not addressed at all  
8 the issue that the government has made central to its  
9 argument here today and that is regarding the murder of  
10 Mr. Clark. With regard to that issue, I see that --  
11 first of all, I've obviously already reviewed all of the  
12 factors for sentencing under Section 3553(a) without  
13 reference to the Clark murder and find that they support  
14 the imposition of the life sentence that is set out in  
15 the agreed -- or the agreed life sentence that is set out  
16 in the 11(c)(1)(C) plea agreement. Therefore, I come to  
17 the conclusion that making findings with regard to the  
18 Clark murder in this proceeding is not necessary to the  
19 question that is before this court.

20         Now the government makes the point that a complete  
21 record is always best. But, here, in light of the fact  
22 that I find that those findings are not necessary for the  
23 Court to answer the question before the court, I will  
24 address the fact that neither side -- or the issue that  
25 neither side has really touched upon, maybe just

1 tangentially, and that -- there is a federalism question  
2 here. Since the findings regarding the Clark murder are  
3 unnecessary for this court, I believe that it invades the  
4 province of the state tribunal that is to make a  
5 determination about the defendant's guilt or innocence  
6 concerning the Clark murder and, therefore, it is not  
7 appropriately -- not appropriate for this court to make  
8 those findings, particularly in a situation such as we  
9 have here where the standard of proof with regard to this  
10 proceeding for sentencing is a preponderance standard.  
11 Whereas, that question really needs to be answered by the  
12 state tribunal that has jurisdiction over it on the basis  
13 of whether or not it is proven beyond a reasonable doubt.

14           So, for those reasons, I am not making findings  
15 one way or the other. I suppose that at some later date  
16 I could make findings if they become relevant to  
17 something that this court needs to determine, but at this  
18 point, in order to answer the question that is before the  
19 Court, I do not need to make those findings and therefore  
20 will not make any findings one way or the other  
21 concerning the defendant's responsibility for the Clarke  
22 murder.

23           Based on all of the foregoing factors, the Court  
24 finds and concludes that the agreed sentence of a life  
25 term of imprisonment is fully supported and appropriate



1 under all of the factors that are set out in Section  
2 3553(a). And since that sentence is an appropriate  
3 sentence, the Court will accept the 11(c)(1)(C) plea in  
4 its entirety and impose the sentence that is set forth in  
5 the plea agreement.

6 Is there anything that needs to be addressed  
7 before we move on to the imposition of the sentence?  
8 Anything for the government?

9 MR. SAVAGE: Your Honor, at the appropriate  
10 point, when the Court announces sentence, the government  
11 would move to dismiss the remaining counts of the  
12 indictment. I'd also note that there is a forfeiture  
13 count. The government seized some \$689 and it's the  
14 policy of the Justice Department not to pursue forfeiture  
15 less than \$1,000. So we'll be returning that to the  
16 defendant or to his representative. Other than that, all  
17 the other evidence that's been seized in the case we  
18 would retain for use in the state proceeding.

19 THE COURT: Okay. Ms. Sison.

20 MS. SISON: Nothing for Mr. Sullivan, Your Honor.  
21 And we will provide the government with all the lists  
22 they provided to us regarding discovery.

23 THE COURT: Mr. Sullivan, I need for you to stand  
24 please. Pursuant to the Sentencing Reform Act of 1984  
25 and the case of *United States versus Booker*, it is the

1 judgment of this court, having considered the factors  
2 noted in 18, U.S.C., Section 3553(a), that the defendant,  
3 Justin Nojan Sullivan, is hereby committed to the custody  
4 of the United States Bureau of Prisons to be imprisoned  
5 for a term of the balance of his life. This term of  
6 imprisonment that is imposed by this judgment shall run  
7 consecutively to any term of imprisonment either  
8 heretofore or hereafter imposed by this court or any  
9 other court in any other matter whether related to this  
10 matter or not.

11 The Court calls to the attention of the custodial  
12 authorities that the defendant has a history of mental  
13 health issues and recommends that the defendant be  
14 allowed to participate in any available mental health  
15 treatment programs while incarcerated.

16 The Court also recommends that the defendant  
17 undergo a pre-assignment study consisting of a  
18 psychological and psychiatric evaluation to properly  
19 determine the appropriate designation for the defendant.

20 In the event that the defendant is released from  
21 imprisonment, the defendant shall be on supervised  
22 release for a term of the balance of his life.

23 Within 72 hours of release from the custody of the  
24 Bureau of Prisons the defendant shall report in person to  
25 the probation office in the district to which he is

1 released. While on supervised release, the defendant  
2 shall not commit another federal, state or local crime,  
3 and shall comply with the standard conditions that have  
4 been adopted by the court in the Western District of  
5 North Carolina. In addition, the defendant shall comply  
6 with the following additional condition. The defendant  
7 shall participate in a mental health evaluation and  
8 treatment program and follow the rules and regulations of  
9 that program. The probation officer, in consultation  
10 with the treatment provider, will supervise the  
11 defendant's participation in the program, including but  
12 not limited to provider location modality duration and  
13 intensity.

14 The defendant shall take all mental health  
15 medications as prescribed by a licensed healthcare  
16 practitioner.

17 It is ordered that the defendant shall pay the  
18 United States a special assessment in the amount of \$100.

19 The Court finds that the defendant does not have  
20 the ability to pay a fine or interest. And having  
21 considered the factors noted in 18, U.S.C., Section  
22 3572(a), the Court will waive the payment of a fine and  
23 interest in this case. Payment of the criminal monetary  
24 penalties shall be due and payable immediately. The  
25 Court has considered the financial and other information

1 contained in the presentence report and finds that the  
2 following is feasible. If the defendant is unable to pay  
3 any monetary penalty immediately, during the period of  
4 imprisonment, payments shall be made through the federal  
5 Bureau of Prisons inmate financial responsibility  
6 program.

7           Upon release from imprisonment, any remaining  
8 balance shall be paid in monthly installments of no less  
9 than \$50 to commence within 60 days of such release until  
10 paid in full. Throughout the period of supervision, the  
11 probation officer shall monitor the defendant's economic  
12 circumstances and shall report to the Court with  
13 recommendations, as warranted, any material changes that  
14 affect the defendant's ability to pay any court ordered  
15 penalties.

16           My reasons for the acceptance of the sentence were  
17 as set out in my reasons for accepting the 11(c)(1)(C)  
18 plea agreement.

19           Ms. Sison, are there any other issues regarding  
20 either the sentence or the judgment that need to be  
21 addressed?

22           MS. SISON: No, sir.

23           THE COURT: Mr. Savage, are there any for the  
24 government?

25           MR. SAVAGE: No, Your Honor. We move, as

1 previously stated, to dismiss the remaining counts of the  
2 indictment -- superseding indictment.

3 THE COURT: And the count of conviction was Count  
4 Nine. So counts one through eight of the superseding  
5 indictment as to Mr. Sullivan are hereby dismissed.

6 Mr. Sullivan, you have the right to appeal the  
7 sentence that I have imposed to the Fourth Circuit Court  
8 of Appeals on any grounds that you've not waived. You  
9 plead guilty pursuant to a plea agreement. That plea  
10 agreement includes some waivers that may substantially  
11 affect your appeal rights. So you will need to consult  
12 with your attorney as to what effect those waivers may  
13 have. However, if you choose to appeal you must file a  
14 written notice of appeal with the clerk of this court  
15 within a period of 14 calendar days following the date of  
16 the entry of the final judgment in this case. If you  
17 choose to appeal but do not have the funds with which to  
18 appeal, you have previously been determined to be  
19 indigent and therefore you may appeal at government  
20 expense.

21 Do you understand this right of appeal as I have  
22 explained it to you?

23 THE DEFENDANT: Yes.

24 THE COURT: With that, this matter is concluded  
25 and the defendant is remanded to the custody of the

1 United States marshal.

2 Marshal, please recess this court until further  
3 call.

4 (Off the record at 10:57 a.m.)

5 **CERTIFICATE**

6 I, Tracy Rae Dunlap, RMR, CRR, an Official Court  
7 Reporter for the United States District Court for the  
8 Western District of North Carolina, Asheville Division,  
9 do hereby certify that I transcribed, by machine  
shorthand, the proceedings had in the case of UNITED  
STATES OF AMERICA versus JUSTIN NOJAN SULLIVAN, Criminal  
Action 1:16-CR-05, on June 27, 2017.

10 In witness whereof, I have hereto subscribed my  
11 name, this 12th day of July, 2017.

12 \_\_\_/S/\_\_\_Tracy Rae Dunlap\_\_\_  
13 TRACY RAE DUNLAP, RMR, CRR  
14 OFFICIAL COURT REPORTER  
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