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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)
) Case No. 2:22-cr-00022-GMN-NJK
Plaintiff,)
) Las Vegas, Nevada
vs.) August 17, 2022
) Courtroom 7D
SCOTT F. CARPENTER,)
)
) Recording method:
Defendant.) Liberty/ECRO
) 10:00 a.m. - 11:28 a.m.
) IMPOSITION OF SENTENCE

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GLORIA M. NAVARRO
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Government: **DANIEL SCHIESS, AUSA**
UNITED STATES ATTORNEY'S OFFICE
501 Las Vegas Boulevard South, Suite 1100
Las Vegas, Nevada 89101
(702) 388-6336

(Appearances continued on page 2.)

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United States District Court
333 Las Vegas Boulevard South, Room 1334
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Proceedings recorded by electronic sound recording.
Transcript produced by mechanical stenography and computer.

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1 APPEARANCES CONTINUED:

2 For the Defendant:

3 **PAUL J. FISHMAN, ESQ.**
4 *ARNOLD & PORTER KAYE SCHOLER LLP*
5 *One Gateway Center, Suite 1025*
6 *Newark, New Jersey 07102*
7 *(212) 836-8152*

8 Also Present:

9 *Matthew McCloskey, FBI*

10 *Erica Strome, USPO*

11 *Emily McKillip, PTS*

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1 LAS VEGAS, NEVADA; WEDNESDAY, AUGUST 17, 2022; 10:00 A.M.

2 --o0o--

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

4 **COURTROOM ADMINISTRATOR:** This is the time set for
5 the imposition of sentence in Case Number 2:22-cr-22-GMN-NJK,
6 United States of America versus Scott Carpenter.

7 Counsel, your appearances, plea.

8 **MR. SCHIESS:** Good morning, Your Honor. Daniel
9 Schiess representing the United States. At counsel table with
10 me is Special Agent Matthew McCloskey from the Department of
11 Justice Office of Inspector General.

12 **THE COURT:** Good morning, Mr. Schiess. Good morning,
13 Special Agent McCloskey.

14 **AGENT McCLOSKEY:** Good morning.

15 **THE COURT:** We have Probation Officer Erica Strome?
16 We do. Thank you.

17 Okay. Go ahead, sir.

18 **MR. FISHMAN:** Good morning, Your Honor. Paul --

19 **THE COURT:** Good morning.

20 **MR. FISHMAN:** Paul Fishman from the law firm of
21 Arnold & Porter on behalf of Mr. Carpenter. Mr. Carpenter is
22 seated at counsel table to my left.

23 **THE COURT:** Good morning, Mr. Fishman. Good morning,
24 Mr. Carpenter.

25 **THE DEFENDANT:** Good morning.

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1 **THE COURT:** Is everybody ready to go forward with
2 sentencing today?

3 **MR. SCHIESS:** Yes, Your Honor.

4 **MR. FISHMAN:** We are, Judge.

5 **THE COURT:** All right. So, Mr. Carpenter, this is
6 the time set for imposition of sentence upon you in Case
7 Number CR-well, two -- 22-cr-22. You entered a plea of guilty
8 in February, February 22nd of 2022, to one count of conversion
9 of Government money in violation of Title 18 of the United
10 States Code § 641. I've reviewed your presentence report and
11 your plea agreement. I do accept your plea of guilty, and you
12 are hereby adjudicated guilty of this charge.

13 I have received a sentencing memorandum, which is on
14 file at Number 25 on the docket, requesting a noncustodial
15 sentence, and I did not receive any other documentation -- no
16 documentation from the Government, that is; is --

17 **MR. SCHIESS:** That's correct.

18 **THE COURT:** -- that correct? Okay. I didn't miss
19 anything. Thank you.

20 So, Mr. Fishman, have you had sufficient time to
21 review the revised presentence report with your client? The
22 revised report that I have is dated June 1st, 2022.

23 **MR. FISHMAN:** I have, Judge.

24 **THE COURT:** And have you found any mistakes, any
25 typos, or any changes that you would like me to consider other

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1 than those that are listed at the very end of the document in
2 the objections portion, which is pages 24, 25, and 6?

3 **MR. FISHMAN:** No, Your Honor. As the Court I'm sure
4 noted, in our sentencing memorandum I alluded to -- to those
5 discrepancies in a foot note, but Mr. Schiess and I have
6 agreed that, for the purpose of sentencing today, the Court
7 need not resolve those disputes.

8 **THE COURT:** All right. So I do need to resolve the
9 objections, though, because there are objections on the
10 record.

11 **MR. FISHMAN:** I -- I appreciate that, Judge.

12 **THE COURT:** So I -- I do need to resolve those. But
13 I understand that -- that there's -- some revisions have been
14 made and others have been addressed in a different way.

15 So the first objection is as to paragraphs 14 through
16 21, and the objection is that because of the information not
17 affecting the elements of the offense, that the Court should
18 not consider the information in those paragraphs and that
19 they're respectfully requested to be stricken.

20 I agree with the Probation Office response that all
21 the information that was provided in those paragraphs is from
22 the available investigative material. Those are considered to
23 be reliable and accurate, and that they address the relevant
24 conduct, which is something the Court does consider during the
25 offense of conviction. And it includes the planning and

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1 preparation for the offense, the circumstances leading to the
2 arrest or summons of the defendant in the course of attempting
3 to avoid detection or responsibility for that offense; and
4 that pursuant to Title 18 of the United States Code § 3661,
5 the conduct of a person convicted of an offense, which,
6 according to the United States, that information is something
7 that the Court may receive and consider for the purposes of
8 imposing an appropriate sentence. And they're also relevant
9 to the factors in Title 18 of the United States Code
10 § 3553(a).

11 So that first objection is denied.

12 The second objection is as to paragraph 7 and 14
13 where the defense argues that the PSR incorrectly stated that
14 Mr. Carpenter lost \$14,700 when the plea agreement stipulated
15 the actual amount was \$13,500. So we are using the \$13,500 in
16 the calculation for the guidelines. I went back to make sure,
17 noted that \$14,700 wouldn't actually make a difference to the
18 offense guideline anyway because it's under \$15,000. So it
19 wouldn't add an additional point or anything like that.

20 The Probation Office response is that the monetary
21 amount reported in paragraph 7 and 14 was found within the
22 discovery materials, the investigative materials, and they are
23 considered reliable and accurate. And that the amount from
24 the pre -- from the plea agreement, \$13,500, is also within --
25 stated in paragraph 22 of the presentence report. So I agree,

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1 and so for that reason the Objection Number 2 is also denied.

2 Let's see. Objection Number 3 is about paragraphs 21
3 and 71 that talks about whether or not Mr. Carpenter might
4 have a gambling problem, and mister -- Mr. Carpenter
5 strongly -- well, no, this is not the one that's
6 [indiscernible] -- he does object to the impression that he
7 has a gambling problem. He does not believe that he has a
8 gambling problem. He has not been diagnosed with a gambling
9 addiction, and so he would like that information to not be
10 included in the report. The Probation Office notes that the
11 objection probably was not to paragraph 21 but, rather, to
12 paragraph 19. And notes that the information in paragraph 19
13 was extracted from an investigative document, discovery
14 document Bate Number 000051, which is considered accurate and
15 reliable, so no changes were made to that paragraph.

16 However, in reference to paragraph 71 of the
17 presentence report and in light of the objection, the
18 Probation Office did revise the paragraph to accurately
19 reflect the defendant's assertion that he does not believe
20 that he has a gambling problem. And so I -- and I agree with
21 that revision to 71, and I agree that the information in
22 paragraph 21 is correct and appropriate. So that Objection
23 Number 3 is granted in part and denied in part.

24 Also there was a revision to paragraph 78, and so I
25 want to double-check and make sure that there's no objection

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1 to paragraph 78 and the -- the revision that was made to that
2 paragraph.

3 **MR. FISHMAN:** No, that -- that's fine, Judge. Thank
4 you.

5 **THE COURT:** Okay. So any other information in the
6 report that you would like me to consider changing?

7 **MR. FISHMAN:** No, Judge. I will discuss a little bit
8 the objections that we raised and the Court's conclusions just
9 now during my -- my pitch on sentencing, but I don't -- the
10 Court does not need to do anything about them now.

11 **THE COURT:** All right.

12 **MR. FISHMAN:** Thank you.

13 **THE COURT:** And, Mr. Carpenter, did you have
14 sufficient time to review the Presentence Investigation Report
15 with your attorney?

16 **THE DEFENDANT:** Yes, Your Honor.

17 **THE COURT:** And did he answer all your questions
18 about the presentence report?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** Did you find any mistakes, typos, changes
21 of any kind that you would like me to make to that report,
22 keeping in mind that this document can be used not just today
23 for purposes of sentencing but it can be used by other federal
24 agencies once it leaves my hands? So, for example, if you are
25 sent to prison, the Bureau of Prisons may use this document to

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1 determine which facility you would be housed in, who your
2 roommates can or cannot be, what programs you're eligible for
3 or not eligible for. It can also be used by Homeland Security
4 for their purposes. It can be used by the IRS for their
5 purposes.

6 So once it leaves my hands, I'm told that it's very
7 difficult, sometimes impossible, to change the information.
8 So that's why I spend a lot of time making sure that everybody
9 has an opportunity to tell me if there's any information that
10 they believe is incorrect.

11 So is there any other information in here you would
12 like me to consider changing?

13 **THE DEFENDANT:** No, Your Honor.

14 **THE COURT:** All right. So let's go ahead. You can
15 go ahead and be seated. Let's go ahead and look at the
16 offense level computation which begins on page 7 using the
17 2021 edition of the guidelines. The Probation Office
18 determined that the appropriate base offense level pursuant to
19 § 2B1.1(a)(2) is offense level six. Then two more levels were
20 added because the offense involved a loss of more than \$6,500
21 but less than \$15,000. In this case, the loss -- the
22 stipulated loss was \$13,500. So pursuant to § 2B1.1(b)(1)(B)
23 of the guidelines, those two levels were added to the base
24 offense level of six.

25 Then two more levels were added as an adjustment for

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1 the role in the offense pursuant to § 3B1.3 of the guidelines
2 because the defendant abused a position of public or private
3 trust in a manner that significantly facilitated the
4 commission or concealment of the offense. That produced an
5 adjusted offense level of ten. Minus two for acceptance of
6 responsibility pursuant to guideline § 3E1.1(a) provides a
7 total offense level of eight.

8 The criminal history score is zero placing
9 Mr. Carpenter in criminal history category I.

10 And then looking at the recommendation on page 21, we
11 see that the statute provides for a sentence of up to one year
12 in prison. The guidelines with a total offense level of
13 eight, a criminal history category of I, provides a guideline
14 range of zero months in custody up to six months in custody.
15 And the Probation Office is not recommending any custodial
16 time.

17 There is information that is provided to us now from
18 the judiciary sentencing information database, which is
19 referred to as JSIN, that states that the average length of
20 imprisonment imposed for someone with the same offense level
21 and the same criminal history category as Mr. Carpenter, the
22 average length imposed has been three months, and the median
23 length of imprisonment imposed has been three months in
24 custody.

25 The supervised release is authorized by the statute

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1 for up to one year. The guidelines provides for one year of
2 supervision, but the Probation Office does not recommend
3 supervision.

4 The Probation Office -- or probation, under the
5 statute, is available for up to five years. The Probation
6 Office recommends two years. The guideline range is one to
7 five years.

8 The fine amount by statute is up to \$100,000. The
9 guideline range for the fine in this case is \$2,000 minimum up
10 to \$20,000. And the Probation Office is recommending a fine
11 of \$5,000.

12 Restitution by statute is \$13,500. The guideline
13 range, likewise, has the restitution calculated at \$13,500.
14 And the probation officer is recommending the full \$13,500.

15 The Probation Office also, in paragraph 111, talks
16 about the cost of prosecution, but it's not added into the
17 recommendations page. So I'm not sure if they're recommending
18 it or not.

19 There is a special assessment in this case. Because
20 it's a misdemeanor, it's only \$25 instead of \$100. That's
21 provided by statute and not -- it's mandatory, so it's not
22 discretionary.

23 Does the probation officer have a position on the
24 information provided in paragraph 111 as to the cost of
25 prosecution?

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1 **PROBATION OFFICER:** No, Your Honor. We would defer
2 to the Court.

3 **THE COURT:** All right. Because the language used is
4 cost of prosecution shall be imposed. That indicates to me
5 maybe I don't have discretion, but then there's not a
6 recommendation afterwards. So I didn't know if there was an
7 exception or some reason why I have discretion or do I not
8 have discretion? So I'll let you look into that while we move
9 on so that we don't delay things.

10 So let's hear first from the Government as to whether
11 you agree or disagree with the recommendation of the Probation
12 Office. I think you recommend -- you agree because in the
13 plea agreement you agree to -- to probation, but tell me --
14 tell me why I should not sentence Mr. Carpenter to three
15 months in custody since that is also the average and median
16 for this type of case. And also you might want to address the
17 cost of prosecution if you think that that's mandatory or if
18 you think that I do have discretion to not impose that and
19 whether you think I should or not. I think -- it's not
20 addressed in the plea agreement, but, you know -- and tell me
21 anything else you want me to know, obviously, as well.

22 **MR. SCHIESS:** And, Your Honor, may I approach the
23 lectern?

24 **THE COURT:** Yes, you may.

25 **MR. SCHIESS:** Thank you.

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1 Your Honor, thank you for the opportunity to address
2 the Court. I take this as always, you know, a serious
3 obligation that I have to advocate for what we believe to be a
4 fair and just sentence.

5 We -- the plea agreement articulates what we and the
6 United States Attorney's Office believe to be a fair and just
7 sentence. We have looked thoroughly at all the circumstances.
8 We have looked at all the 3553 factors, and we've concluded
9 that probation's appropriate.

10 Now, let me add some detail to that to support. This
11 case has been the subject of a very thorough investigation.
12 It was initially assigned to another AUSA who conducted the
13 initial stages of the case and then -- and he did a very good
14 job, and he's left the office. And so I took over partway
15 through.

16 At the point of time that he left, the Office of
17 Inspector General for Justice -- different agent -- had
18 conducted the initial interviews, and they began a financial
19 analysis. When I took over the case, I interviewed the three
20 other -- well, at the time the two other agents, and then,
21 based on information I had and based upon inconsistencies that
22 I saw between their statements that were concerning to me, I
23 went back to New York and sat down and interviewed them all
24 face-to-face. The first one was -- because of COVID was
25 virtual.

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1 At the end of that interview with them, there still
2 remains inconsistencies between their testimonies that were
3 concerning to us, and I've addressed those with Mr. Fishman
4 over the course of time.

5 In addition to interviews with those individuals,
6 we've -- the Office of Inspector General has done a very
7 thorough financial analysis, and then we have tried to, based
8 upon our many years of experience, look at all the other
9 avenues of evidence to be able to determine what went on, to
10 determine motivations, and both before, during, and after.
11 And it's based upon the thoroughness of what we've done.

12 Now, in addition, Mr. Fishman has had the opportunity
13 to present his case and his defense to our former criminal
14 chief, and then he's had the opportunity to do so to the U.S.
15 attorney -- the acting U.S. -- well, the U.S. attorney at the
16 time, Mr. Trutanich. And then as well, twice to the
17 Department of Justice, to the Office of the Deputy Attorney
18 General. And so after all of those discussions -- even before
19 but after -- we feel that the recommendation of probation is
20 fair.

21 Let me say that, with respect to the objections, the
22 first objection, which deals with the information pertaining
23 to whether there was a cover-up, they -- the information on
24 that is one agent provides -- or agents provide information.
25 Those are inconsistent with in -- internally inconsistent to

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1 various degrees. That was one of the reasons I went to
2 New York and sat down and met him face-to-face.

3 I -- while I have views as to who's credible and
4 who's not or whose statements are, you know, consistent with
5 what I perceive to be the facts, certainly I can't resolve
6 them -- couldn't resolve the inconsistencies that they had.
7 And so, for that reason, I agreed with Mr. Fishman and I agree
8 that it's -- that the Court doesn't need to resolve those
9 issues in order to impose a fair and just sentence. To do
10 so --

11 **THE COURT:** Are we referring then to the information
12 in paragraph 16, for example, where Mr. Carpenter's pacing
13 around the hotel room realizing he lost the money and he can't
14 replace it right away, and then it says that one of the -- he
15 told one of the agents he had lost the money, the \$10,000 that
16 he -- he brought, and then also the \$5,000 that he had the
17 other agent give to him, and that Agent 1 told the
18 investigator that Carpenter was brainstorming on how to make
19 it right; and he asked agent Number 1 if they could try to say
20 that the gambling was part of the operation, to which agent
21 Number 1 told Carpenter no, and stated that Carpenter needed
22 to go to the supervising officer; and then later -- this was
23 when they returned to -- to New York, that Carpenter asked to
24 talk to agents Number 1 and 2, and during that conversation
25 asked Agent 1 and 2 if they could help Mr. Carpenter -- if

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1 they could help him put the money back into the safe, and they
2 told him no, that they were not going to be helping him;
3 and... I think that's the only part that I saw that was --
4 that was the --

5 **MR. SCHIESS:** I can address those line by line for
6 the Court.

7 **THE COURT:** Okay. Thank you.

8 **MR. SCHIESS:** With respect to the agent's statement
9 that on Sunday morning early Mr. Carpenter was saying what
10 you've articulated, the agent made that statement. I have no
11 contradictory evidence to that particular event.

12 With respect to the -- Mr. Carpenter in New York
13 meeting with the two agents, the junior agent and the
14 undercover agent making those same type of statements again on
15 Wednesday afternoon, I have no contradictory evidence to that.

16 The issue becomes, with respect to -- and this is not
17 articulated in their report. This is part why I say it.
18 There is -- there have been statements made that early Sunday
19 morning, before the supervisor left to return to New York,
20 that the four people met together, and there was a discussion
21 among the four, sometimes direct and sometimes indirect in
22 implications as to just take care of it. That, of course, the
23 supervisor and the young junior agent hotly contest that.
24 They deny that that meeting ever took place. The undercover
25 agent is the one who provided that information.

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1 With respect to --

2 **THE COURT:** There's Mr. Carpenter, who's the lead
3 case agent. Then there's Agent 1 and Agent 2 who are junior
4 agents, and then the fourth person is who?

5 **MR. SCHIESS:** Almost. The fourth person is the
6 supervisor.

7 **THE COURT:** Okay.

8 **MR. SCHIESS:** So he supervises the other three.
9 Mr. Carpenter is the lead case agent. Agent Emery (phonetic)
10 was the undercover agent. And then Mr. Carpenter -- or I
11 shouldn't say Carpenter. The team also had the new or the
12 junior agent there.

13 So with respect to what happened early Sunday
14 morning, a different variation, we have no consistency. The
15 junior agent and the supervisor vehemently deny that a meeting
16 took place early Sunday morning. The junior agent, though,
17 has said that Sunday morning, when he first was with
18 Mr. Carpenter, that Mr. Carpenter made statements to the
19 effect of how do I put the money back, can we just say. And I
20 have no contradictory evidence to that. Of course that was
21 Sunday morning when, you know, the alcohol was wearing off and
22 probably the initial shock of what he had done was wearing
23 off. And then the agent had said that a couple times during
24 the day, while they were cleaning up and, you know, wrapping
25 things up, Mr. Carpenter made one or two more comments similar

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1 to that.

2 But then in New York, when they returned to the
3 office, that on the morning -- well, they -- when they flew
4 back, they all took a -- a day off because they had worked
5 very hard over the weekend and -- and before the weekend so
6 they put a number of hours in. So the first day back into the
7 office they then met with the supervisor. And there's
8 inconsistencies somewhat what happened in a conversation with
9 the supervisor. He has taken the position that he first found
10 out about the missing money on Wednesday, the day they were
11 back into the office. And there's, you know, contradictory
12 evidence to that to some degree, as I've told you, based upon
13 what happened early Sunday morning.

14 So, you know, looking at that, looking at those
15 factors, realizing that if we went to trial I would need to
16 deal with those issues, and looking at motivations of -- of
17 witnesses to either -- you know, to speak as they did, that I
18 would have to address those issues.

19 So I -- we felt, looking at this case all the way
20 through from -- mine is the line attorney who's immersed in
21 the case and handling it through levels of supervision, and
22 then, you know, going beyond, that very fair to have a
23 sentence of probation.

24 Now, with respect to the restitution amount, here's
25 why there's a difference. We obtained from the casino and

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1 then perhaps duplicate from the Nevada Gaming Commission the
2 records of how much was gambled that night for Mr. Carpenter.
3 And the records show from the Bellagio that there was \$13,500
4 lost gambling. When the Office of Inspector General
5 conducted -- I should say within the FBI, when the FBI
6 conducted an audit -- and that was then also addressed, as I
7 recall, by the Office of Inspector General -- the -- the
8 difference between the amount of cash taken from New York to
9 Las Vegas and returned was \$14,700. You know, but whether
10 that money was lost gambling or whether there was money
11 that -- you know, that was unaccounted for because of lack of
12 receipts, we couldn't resolve that difference. So we felt
13 that the 13,000 --

14 **THE COURT:** Right. Wasn't there over a thousand
15 dollars that was paid for the cabana at the pool side or --

16 **MR. SCHIESS:** Yes, but that --

17 **THE COURT:** -- is that not factored?

18 **MR. SCHIESS:** -- was charged -- but that wasn't --
19 that was a room charge, as I understand. It's not a cash
20 charge.

21 **THE COURT:** Okay.

22 **MR. SCHIESS:** And it wasn't money that was paid
23 directly. It was you have to have \$1,500 in food and
24 beverages to be able to get the cabana.

25 So, you know, some purchases by the FBI, when they're

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1 doing undercover, if they don't have receipts, they can, you
2 know, write justifications of matters of that nature. So with
3 that, it didn't make any difference to the -- you know, what a
4 guideline calculation would be. Whether there was restitution
5 of \$14,000 or \$13,500, we felt that because we had the casino
6 records to show how much was lost during the gambling, that
7 that would be the amount that we could rely upon firmly with
8 that.

9 And then with respect to the third objection, with
10 respect to whether Mr. Carpenter said that he had a gambling
11 problem or is problematic or it was a gambling problem in
12 conjunction with an alcohol abuse problem, I'm just going to
13 defer to the Court on that one with it.

14 You know, I will say that, you know, minus the -- the
15 statements that Mr. Carpenter made on Sunday morning early
16 and, you know, it depends on how you weigh the evidence,
17 whether he, again, engaged in that type of conduct on
18 Wednesday afternoon -- and let's -- let's just say even the
19 worst-case scenario, if you find that those happened, even in
20 that situation Mr. Carpenter was -- on Wednesday afternoon had
21 talked with the supervisor to say the money's missing. He
22 didn't hide it from the supervisor, assuming that's the first
23 time the supervisor knew. And it would have been after that
24 admission to the supervisor that he may have -- that he had
25 what the other two agents believed to be then a conversation

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1 occurred later in the day: Hey, I'm going to try and pay it
2 back, can we all split it up or something.

3 But putting that aside, from the time that he then on
4 the next day walked in with the supervisor to the office of
5 the assistant special agent in charge and had the discussion
6 about what had happened, he had been straightforward. He had
7 admitted to what he did. He made no excuses; didn't try to
8 blame anybody else. He stood up and said: It's on me. And,
9 you know, from there on out it was all on him. And he's
10 always, from that point on, the evidence is consistent that
11 he's -- he's accepted responsibility and full responsibility
12 for what happened.

13 And I think that one of the factors that we took into
14 account is also that how did he demonstrate that
15 accountability was on him? He demonstrated that by
16 immediately -- I use that term in the sense of within a few
17 days of this happening -- taking steps to make restitution.
18 He had provided a check through his then attorney for
19 restitution at that point: \$15,000 he just coughed up. Maybe
20 it was \$14,700. It was a larger amount. But there -- you
21 know, because the investigation started and there was an
22 attorney involved, we don't why that didn't get immediately
23 back to the FBI. But there was the effort to make restitution
24 right then, and there's always been the -- the offer to pay
25 the money back.

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1 So that leaves me to the last point that you asked
2 for comment on, and that's on whether the Court should -- has
3 the discretion to impose in the scope of restitution the cost
4 of supervision. And I'm going to be honest with you, I don't
5 know the answer to that because in the many years I've been
6 here I have never seen the Court impose, that I recall, on any
7 defendant that obligation to pay. I know it's always in the
8 PSR, but I don't ever recall a Court articulating and ordering
9 a defendant to pay that amount, the amount of prosecution or
10 supervision. Obviously, if you've done it and I, you know,
11 wasn't within -- in front of you when that had happened. So I
12 don't have a position on that because I'm not familiar with
13 the law in that area at this point.

14 **THE COURT:** I don't think we usually have defendants
15 that have this much money, that are capable of paying the
16 costs of prosecution.

17 **MR. SCHIESS:** Yeah.

18 **THE COURT:** What caught my eye was that it said shall
19 be imposed. So then I questioned whether I have any
20 discretion or not if the person, you know, is able to pay a
21 fine, is able to pay for cost of --

22 **MR. SCHIESS:** Yeah.

23 **THE COURT:** You know, usually the person is just not
24 financially able to pay, and so we waive --

25 **MR. SCHIESS:** Yeah.

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1 **THE COURT:** -- the payments of everything.

2 **PROBATION OFFICER:** And, Your Honor, the policy
3 statement under that section of the guidelines does state that
4 certain statutes require it, and this -- the offense of
5 conviction in this case does not require the payment of
6 prosecution.

7 **THE COURT:** Okay. Thank you. Thank you for that
8 clarification. Okay.

9 **MR. SCHIESS:** So, Your Honor, in summary, having
10 reviewed not only personally this case but then consulted with
11 others within the office and then conversation with, you know,
12 Department of Justice at certain offices, we -- our belief is
13 that a fair and just resolution would be what we've negotiated
14 in the plea agreement, and that's what we we'd ask the Court
15 to impose.

16 **THE COURT:** All right. Thank you.

17 All right. Mr. Carpenter, you do have the right to
18 address the Court if you'd like to. You're not required to.
19 Mr. Fishman is here to speak on your behalf, of course. If
20 you would like to make a statement, you could do so now, or
21 you could do so after Mr. Fishman speaks. It's completely up
22 to you, sir.

23 **MR. FISHMAN:** You can go first if you want.

24 **THE DEFENDANT:** Okay. Thank you, Your Honor, for
25 giving me the chance to speak to you today.

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1 Five years ago I made a terrible and stupid mistake.
2 The consequences of what I have did have been serious and
3 profound. Aside from fact that I'm standing here today, I
4 lost my dream job in public service, I disappointed and
5 embarrassed my wife, my parents, and my friends, and I let
6 down my colleagues in the FBI and everyone else who believed
7 in me. And to all of them I am truly sorry for that.

8 While there isn't an excuse for what I did, there's
9 an explanation: The combination of job stress, alcohol, and
10 lingering issues from my military service. But today, five
11 years later, I'm healthier, smarter, and more self-aware. I
12 assure Your Honor that nothing like that will ever happen
13 again, and I ask you to help me finally put this chapter of my
14 life behind me. Thank you.

15 **THE COURT:** Thank you, Mr. Carpenter.

16 Mr. Fishman.

17 **MR. FISHMAN:** Thank you, Judge.

18 Let me -- I'm going to address all of the things that
19 Mr. Schiess discussed with the Court a moment ago, but if the
20 Court would indulge me, I'd like to set the stage a little bit
21 and give the --

22 **THE COURT:** Yes.

23 **MR. FISHMAN:** -- Court a little more --

24 **THE COURT:** Go ahead, sir.

25 **MR. FISHMAN:** -- context.

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1 So -- so, first of all, I -- and I've been
2 representing Mr. Carpenter for many years. And not -- I hate
3 to say -- to point this out, not at the traditional
4 Arnold & Porter rates. Mr. Carpenter came to me because he
5 lives in New Jersey, I live in New Jersey. The Court may not
6 be aware I was the former U.S. attorney in New Jersey, and --
7 and so we had a connection. And he -- and he asked me and my
8 law firm to represent him, and we agreed to do that.

9 And -- and -- and honestly, it's been, for me, both a
10 privilege and a pleasure to spend that much time with an agent
11 who I didn't know. I know a lot of FBI agents, as the Court
12 won't be surprised to hear, and he is among the finest that I
13 have met. I am here today, of course, with Mr. Carpenter.
14 His father, Frank Carpenter, is seated in the front row behind
15 me and my client. Mr. Carpenter's mother and wife would both
16 like to be here as well. But as the Court knows from the
17 material we submitted, both are not well enough to travel to
18 Las Vegas for this event. But I don't want the Court to think
19 for a moment -- and I'm sure you wouldn't -- that their not --
20 that their lack of a presence here today is anything other
21 than the fact that they are unable to travel.

22 We are here because, as the Court knows,
23 Mr. Carpenter pled guilty in February to a one-count
24 information charging him with a misdemeanor violation of
25 § 641. And I point out the word "misdemeanor" because the

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1 Court asked Mr. Schiess and noted yourself that the average
2 sentence for people who plead to 641 in this context is three
3 months. But those are mostly felonies; they are not
4 misdemeanors. And if the Court goes and check -- I mean, I'm
5 sure Ms. Strome can do this -- most of the reported cases for
6 641 violations are not misdemeanors because they don't happen
7 every day. It's a -- it's an example of lenience that the
8 United States has shown in this case because of the
9 circumstances that Mr. Schiess discussed that are in our
10 memorandum and I'll talk about in a minute. But I suggest to
11 the Court, respectfully, that that average does not apply to
12 this case for all the reasons -- for that reason and for
13 others.

14 The -- the -- the thing I think we do need to focus
15 on is that both the United States Attorney's Office and
16 Probation are recommending a noncustodial sentence, and I
17 think it's important and I think they both appreciate the
18 facts here. Mr. Schiess alluded to meetings I had with
19 Mr. Trutanich and with the chief of the criminal division and
20 with the current U.S. attorney and with the Deputy Attorney
21 General's Office. Honestly, Judge, I made an effort to not
22 have Mr. Carpenter prosecuted at all. I thought, and I still
23 think, I -- Mr. Schiess and I disagree and the Court may
24 disagree, but my view was that, if an FBI agent does what
25 Mr. Carpenter did -- and I'll talk about that -- in a moment

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1 of impulse and stupidity, to be fair, but with the issues that
2 he had and immediately confronts those issues in a way that
3 the FBI should encourage rather than burying it, not going to
4 rehab, not willing to pay the money back, that would be the
5 wrong message. And I suggested to the Department that, if
6 they wanted to encourage agents to -- to react to their own
7 malfeasance -- or misfeasance the way Special Agent Carpenter
8 did, that the way to do that was not to prosecute them. I
9 lost that battle, but I did end up negotiating the misdemeanor
10 plea with the recommendation of probation. And it wasn't the
11 whole loaf, but it was pretty much a big part of the loaf for
12 us.

13 So how did we get -- how did we get here? We --
14 there's no dispute -- there has never been a dispute, Judge,
15 about what happened essentially on the evening of July 29th,
16 2017. Special -- then Special Agent Carpenter who was a
17 passionate, committed, dedicated public service, a decorated
18 veteran, a devoted son, a good husband, a wonderful
19 colleague -- honestly, Judge, a patriot and a great
20 American -- made a spectacular and tragic mistake. In the
21 middle of an undercover operation that he was supervising here
22 in Las Vegas, at -- he, in one of the most significant
23 investigations being handled by the New York office of the FBI
24 at the time, he got drunk, he was drinking in front of and
25 with three of his colleagues. There is, in Ms. Strome's

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1 report, a suggestion that they were off duty. It's a little
2 unclear to me, honestly, whether they were off duty at that
3 point on a travel assignment to do an undercover operation,
4 but they all -- they had permission to rent that cabana
5 from -- from New York. That was not -- nothing underhanded
6 about that. It was charged to the room, as -- as Mr. Schiess
7 noted. It turned out that when they got up to leave after the
8 undercover operation was concluded, they found out from the
9 waitress that the \$1,500 is not for the cabana; it's actually
10 a food and drink minimum. The cabana is sort of free if you
11 spend enough money, and they hadn't spent the money. So they
12 decided to stay at the cabana and eat and drink. And as you
13 know from our memorandum and -- and from -- and from the
14 presentence report, Special Agent Carpenter, himself, recalls
15 that he had at least a six-pack of beer and a fifth of gray
16 goose. That's a lot of alcohol. Even if you've been drinking
17 a lot, that's a lot of alcohol.

18 And so by the time they went upstairs to change for
19 dinner, he was completely inebriated. Unclear how -- how
20 inebriated the rest of his colleagues were, but with at least
21 the knowledge of one of them there was 10,000 -- and let me
22 digress just for a second. There are two pots of money in an
23 undercover operation agents have access to when they're on an
24 operation like that. One is the bribe money, which is -- as
25 the Court knows from being -- watching TV, I'm sure, that

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1 money's marked. And so when it goes --

2 (Simultaneous crosstalk.)

3 **THE COURT:** -- trials I [indiscernible] --

4 **MR. FISHMAN:** -- to -- right. Exactly. Exactly. So
5 I'm not familiar with the docket in this district, but that
6 doesn't surprise me that you are. And so some of it's marked.
7 But the undercover agent also has money for expenses that
8 relate to establishing his *bona fides*: Liquor, tips,
9 whatever. And that was the kind of money that was -- that
10 was -- there was some of that money in the safe. So -- and
11 the safe was open. They were all in the suite, which, by the
12 way, they shouldn't have been because that compromises the
13 undercover operation anyway. And -- and Special Agent
14 Carpenter put \$10,000 in his pocket, and they all walked
15 across the street supposedly for dinner. But instead they all
16 went to the high-roller room.

17 And I think, when you consider the information that
18 Mr. Schiess was giving you before, one thing respectfully you
19 might want to think about is the three agents are in that
20 room, in the high-roller room. They were the only ones in
21 that high-roller room, and they're sitting at the bar and
22 they're watching Special Agent Carpenter gamble. There's --
23 in my mind -- in my mind, there's no question they had to
24 know -- all had to know where that money was from. FBI agents
25 don't carry \$10,000 in cash in their pockets. He made

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1 \$100,000 a year. That wasn't what it was.

2 And so when Mr. Schiess talks about the
3 inconsistencies among the -- the accounts of the agents and
4 their motivations -- which is the word he used in his effort
5 to try to distinguish whether they were credible, the extent
6 to which they were credible, trying to resolve the
7 inconsistencies, they had their own issues with the FBI that
8 they had to deal with. They all were interviewed under -- I
9 think the Court knows about this -- *Garrity* immunity, which
10 meant their statements couldn't be used against them in a
11 criminal proceeding. They effectively got immunity. But
12 their jobs and their status as FBI agents was very much on the
13 line. And so the fact that there are inconsistencies among
14 their accounts and that some of them were pointing their
15 fingers at each other and perhaps at Special Agent Carpenter's
16 not actually a surprise, which is why I think, as experienced
17 and talented as Mr. Schiess is, he was unable to resolve some
18 of those inconsistencies. And of course we never interviewed
19 them --

20 **THE COURT:** Are you implying that it was the other
21 agent, the junior agent and the undercover agent's
22 responsibility to stop Mr. Carpenter from making a fool out of
23 himself and -- and wasting the taxpayer money? Are you saying
24 they were all in on it and they had agreed --

25 **MR. FISHMAN:** No, they --

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1 **THE COURT:** -- they're gonna split whatever money
2 they --

3 **MR. FISHMAN:** They were not going to split it, Judge.
4 I don't -- no. All I'm saying, Judge, is very simple, is that
5 the reason -- I'm trying to explain the inconsistencies, which
6 is they have one of their colleagues who is drunk sitting at a
7 high-roller table with they at least had to have a decent idea
8 was FBI undercover money, and nobody took the keys to the car.
9 Right, Judge? I mean, we all -- we all teach our children
10 that, if you see someone like that, you take the keys. They
11 didn't take the keys.

12 And I'm not suggesting for a second, to be clear,
13 that that absolves my client, Mr. Carpenter, of a moment of
14 responsibility for what he does. I'm not suggesting that. I
15 am just suggesting that the reason that I suggested to
16 Mr. Schiess and Mr. Schiess and I discussed not trying to deal
17 with those issues of inconsistencies and what may have
18 happened in that first 24 or 48 hours, "I gotta put the money
19 back." Whether that might be misinterpreted wasn't worth
20 resolving because, as Mr. Schiess points out, when Scott got
21 back to New York, he owned it.

22 **THE COURT:** Wasn't the person who was at the bar
23 watching Mr. Carpenter gamble the undercover officer?

24 **MR. FISHMAN:** The undercover --

25 **THE COURT:** So he can't blow his cover --

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1 **MR. FISHMAN:** The undercover --

2 **THE COURT:** -- and -- and go do something.

3 **MR. FISHMAN:** -- the co-case agent, and, by the way,
4 their supervisor. So the one who -- in New York who, when
5 Mr. Carpenter walked into his office and said, "Money's
6 missing," and Scott said to him, "You were there." Right?
7 So -- but, again, Judge, I -- to [indiscernible] the reason --
8 the reason that I suggested and Mr. Schiess and I agree that
9 that was not so important [indiscernible] moment -- and I
10 don't mean to take something out of your hands that the Court
11 thinks is important. But the reason, for me, that it's not
12 important and the reason Mr. Schiess just said it's not the
13 most important thing is because starting on Wednesday, three
14 days later -- and just so the Court knows, this happened on
15 Saturday night. Two agents flew back on Sunday.
16 Mr. Carpenter did not fly back until Monday. Two of them left
17 on Sunday; two stays.

18 Tuesday, he took -- he was told to take a day off.
19 It was his day off. And he went in Wednesday. And by
20 Wednesday night his entire supervisory chain knew what had
21 happened. So there's -- there's not a -- there's not a
22 question that even if in a moment, as Mr. Schiess described
23 it, as the alcohol is wearing off he thought how do I fix
24 this, had a moment of panic, within 72 or 96 hours he was
25 hell-bent on a path to make it completely right. And I think

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1 that's critical in this case, and I'll come back to that in a
2 second.

3 But I -- but before I even get to that, the --

4 **THE COURT:** I think what we're missing here, these
5 individuals, the -- the junior agent, the undercover agent,
6 the supervisor, whether they chose to help Mr. Carpenter cover
7 it up or take the blame or report it, however you want to
8 interpret that, how they reacted to the situation bothers me
9 less than the fact that who created the situation and put
10 these people in that very difficult position was
11 Mr. Carpenter.

12 **MR. FISHMAN:** I -- again, Judge, I don't disagree
13 with that for a second. Not -- that the person who went --
14 sat at the table was Mr. Carpenter. He owns that. He has
15 never tried to point the finger at the other guys at all. In
16 fact, the only -- he didn't -- he did not get interviewed by
17 the --

18 *(Simultaneous crosstalk.)*

19 **THE COURT:** -- say they should have stopped me --
20 he's in his 30s. He's not a 21 year old.

21 **MR. FISHMAN:** That's -- that's me, Judge. That's not
22 him.

23 **THE COURT:** Okay.

24 **MR. FISHMAN:** That's me.

25 **THE COURT:** Okay.

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1 **MR. FISHMAN:** That's me. He has never said they
2 should have stopped me. That's me. I feel -- and the reason
3 that that's important is just, if they had done that, if they
4 had just said, stop, what are you doing --

5 **THE COURT:** That's what we would like, for colleagues
6 to be able to say --

7 **MR. FISHMAN:** Right. Exactly.

8 **THE COURT:** -- to each other --

9 **MR. FISHMAN:** And the --

10 **THE COURT:** -- hey, man, what are you doing?

11 **MR. FISHMAN:** Right.

12 **THE COURT:** It's time to stop. Let's go. I get
13 that.

14 **MR. FISHMAN:** Right. And the reason it's important
15 is because that two or three hours on that Saturday night was
16 a stunning aberration from who Scott Carpenter was until the
17 moment he walked into the Bellagio and since he got back to
18 New York. There's that one moment in his life that anyone has
19 ever pointed to in which he did something that was even
20 moderately wrong. [Indiscernible] his father was his father.
21 So his father may know about something when he was 12. But
22 you -- but that's the only time.

23 And I know the Court has read the information we
24 submitted from the military and the information from the FBI.
25 But the -- you know, in -- in the -- and I -- there's a

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1 letter, of course, from -- from -- from retired Colonel Pratt
2 who was -- who was -- who wrote a letter. But if the Court
3 looked -- and I'm sure you did -- at Exhibit A --

4 (Simultaneous crosstalk.)

5 **THE COURT:** -- 15 months together --

6 **MR. FISHMAN:** -- which was the contemporaneous --

7 **THE COURT:** -- within -- [indiscernible] --

8 **MR. FISHMAN:** -- evaluation, I've never seen an
9 evaluation of somebody quite like this. And I've been around
10 for a long time. I've done evaluations. I've been the
11 recipient of evaluations. This is an extraordinary testament
12 from who Scott Carpenter was during the five years he was
13 serving our nation in the military. And he was somebody who
14 wasn't just extraordinarily great at his job and has -- then
15 Major Pratt said had unlimited potential and I would fight to
16 serve with him again. But he also did it in a way that was
17 extraordinarily dangerous to himself. He -- you know, he did
18 two tours in Iraq, platoon leader jumper, ranger -- I mean,
19 really sort of an extraordinary group of things to do.

20 But the truth is, Judge, he came back from that
21 experience, from all that rocket and mortar fire during his
22 second tour in Iraq and the vehicle blowing up behind him in
23 the convey, he came home not quite right. And not -- not
24 quite right enough to become an extraordinary FBI agent and a
25 good husband. He came home with symptoms, as they were

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1 described in the letter from his therapist, of PTSD. Never a
2 formal diagnosis, to be fair, but symptoms.

3 **THE COURT:** He's never been evaluated or diagnosed
4 with gambling addiction. He's never been evaluated or
5 diagnosed with PTSD.

6 **MR. FISHMAN:** He was -- he was -- he was never
7 diagnosed, Judge. He -- I mean, the -- when he went -- in
8 2008 -- in 2017, on August 10th, he checked himself into the
9 Marlboro center for alcohol rehab. He was there for --

10 *(Simultaneous crosstalk.)*

11 **THE COURT:** -- days.

12 **MR. FISHMAN:** Yeah, exactly.

13 And then -- and then four months in outpatient rehab
14 through -- into December.

15 **THE COURT:** Weekly visits and then biweekly visits
16 and then monthly visits.

17 **MR. FISHMAN:** Well, so -- well, but that was for the
18 therapy. But the outpatient treatment before that from
19 September to December was a little more rigorous than that.
20 But then, starting in December of 2017, without anybody
21 telling him he had to do this but understanding that there
22 were issues in his life that he needed to resolve, things he
23 needed to address, having -- at least having -- having
24 addressed the alcohol issue, he continued voluntarily --
25 voluntary therapy, as the therapist said [indiscernible]

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1 quote, of his own accord, close quote, until April of last
2 year. And so that's a very important thing to explaining how
3 Scott got to where he is today.

4 **THE COURT:** Right. Not an official therapist but
5 with, you know, AA or something like that, like some --

6 *(Simultaneous crosstalk.)*

7 **MR. FISHMAN:** Right.

8 **THE COURT:** -- some kind of --

9 **MR. FISHMAN:** And look, Judge, I'm married --

10 **THE COURT:** -- self-help group --

11 **MR. FISHMAN:** -- to a psychoanalyst, so I -- so I --
12 so I --

13 **THE COURT:** His wife says that she hasn't seen him
14 drink since 2020. So I was wondering about what happened
15 between 2017 and 2020, whether he was still drinking. Because
16 dad said that he -- you know, he could smell vodka -- vodka is
17 [audio system interruption] vodka is the drink of choice for
18 Mr. Carpenter --

19 *(Simultaneous crosstalk.)*

20 **MR. FISHMAN:** Right, but that --

21 **THE COURT:** -- and that they --

22 **MR. FISHMAN:** Yes, but that --

23 **THE COURT:** -- it could be smelled on his breath.

24 **MR. FISHMAN:** -- that statement was back from
25 before -- I'm sorry, Judge. That statement was before -- he

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1 was describing Scott before this episode --

2 **THE COURT:** Right.

3 **MR. FISHMAN:** -- occurred. And I think he's had --
4 I've talked to him and his wife -- a couple of glasses of
5 wine, and that's it. He is not a drinker. We went out to
6 dinner last night. Nothing. I'm just -- not who he is. And
7 he knows the danger of -- of doing that.

8 But I think the reason that matters is -- you've been
9 on the bench, Judge, for more than a decade, and you've seen a
10 lot of defendants sentenced in your courtroom. You've
11 sentenced people. You've -- I mean, you've talked to your
12 colleagues about other sentencings. I've been -- I hesitate
13 to point to my age, but I've been either an assistant U.S.
14 attorney, a U.S. attorney or defense lawyer for almost 40
15 years, and -- and it is typically the case that people commit
16 crimes because they are bad people, because they're greedy,
17 because they want to exert their power, because they're
18 seeking revenge -- they're doing something.

19 This was an -- a bad impulse moment. This was not "I
20 want to steal money from the FBI." This was, "Hey, I'm drunk.
21 I can gamble. I think I can win something and then pay the
22 money back, and I'll have money." And it was just a stupid,
23 impulsive choice and -- and, as I said, just an aberration.

24 But the thing that I'm -- what matters is how he
25 responded when he got back to New York. And Mr. Schiess

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1 talked about it. He told his supervisors, the -- his group
2 supervisor, his squad leader who he thought already knew, but
3 told him and the assistant special agent in charge what he had
4 done. That was on Wednesday or Thursday, the 2nd and 3rd.
5 Within a week he had checked himself into rehab, and while he
6 was in rehab he asked his father, who's here, to send a
7 \$15,000 check. Because, honestly, whether it's \$13,500 or
8 \$14,700, to be fair, Judge, he had no idea exactly how much it
9 was; right? So he didn't know exactly how much he had lost.
10 And so he said to his father --

11 **THE COURT:** You know, that's interesting that you
12 bring that up. Because I looked at his assets and his
13 finances, and I don't understand why he's asking dad to
14 provide a check when, you know, he and his wife are making at
15 that time \$263,000 on their tax returns. You know,
16 eventually, by 2020, he's reporting \$411,403 on his tax
17 returns. He's got -- just in his TSP retirement fund he's got
18 \$385,400. You can take money out of your TSP. Yeah, there's
19 a penalty. But you can take money out of the TSP. There's
20 the mutual fund, \$230,000. My understanding is that this
21 was -- the check that I saw had both Scott Carpenter's name as
22 well as his mother's name. So it was money that was his but
23 was being handled by his mom.

24 **MR. FISHMAN:** So --

25 **THE COURT:** Is that right?

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1 **MR. FISHMAN:** So -- so --

2 **THE COURT:** So how does dad come into play?

3 **MR. FISHMAN:** So -- so the answer is his -- his
4 mother is -- his parents are his parents, and he called his
5 father from rehab and said you gotta send a check, I can't do
6 it from here basically. It was a logistical question. It
7 wasn't really that he wanted anybody else to bear the cost.
8 The issue was how am I going to get a check --

9 **THE COURT:** Because it looks like it's mom's
10 signature on the check.

11 **MR. FISHMAN:** But he called his father. His father
12 mailed it --

13 **THE COURT:** The check is in -- of an account that
14 belongs to Mr. Carpenter.

15 **MR. FISHMAN:** They're --

16 **THE COURT:** Meaning --

17 **MR. FISHMAN:** Yes.

18 **THE COURT:** -- the defendant I guess I should --

19 **MR. FISHMAN:** Yes.

20 **THE COURT:** The defendant, not the dad's money. It's
21 not like dad's paying.

22 **MR. FISHMAN:** No, his father was not paying. This
23 was -- this was money in which he has a joint -- he has a
24 joint account with his mother, as -- he's an only child. And
25 so -- and his parents --

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1 (Simultaneous crosstalk.)

2 **THE COURT:** -- am I, so I get that.

3 **MR. FISHMAN:** Yeah. And his -- and his parents are
4 people of some means. It's -- and so this was part of a sort
5 of gifting/estate planning thing. Some of the money was
6 Scott's, and he was in rehab. He had this attorney who was
7 recommended to him by the assistant special agent in charge of
8 the FBI --

9 **THE COURT:** So I'm going to interpret this
10 differently than how it appears in the PSR. I'm going to
11 interpret it that this is that Mr. Scott Carpenter, the
12 defendant, was trying to pay back the money, and that that
13 \$15,000 check was from money that belonged to Mr. Scott
14 Carpenter, not his --

15 **MR. FISHMAN:** That --

16 **THE COURT:** -- dad's money.

17 **MR. FISHMAN:** That's correct. And, in fact, Judge --

18 **UNIDENTIFIED SPEAKER:** [Indiscernible].

19 **THE COURT:** Go ahead. Mr. Fishman, if you want to
20 speak to -- to him and then back --

21 **MR. FISHMAN:** Mister -- let me -- yeah, let me talk
22 [indiscernible] --

23 **THE COURT:** Go ahead. Go ahead. Find out what...

24 (Pause in proceedings.)

25 **MR. SCHIESS:** Judge, I have a little -- I have an

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1 11:00 o'clock that we thought we had scheduled in front of
2 Judge Mahan, and I don't want to --

3 **THE COURT:** Well, I mean, I'm not -- it's
4 Mr. Fishman -- I don't know how much longer Mr. Fishman has,
5 so...

6 **MR. SCHIESS:** Whatever [indiscernible] do, it will
7 push us back 11:00 if -- and your courtroom deputy has sent an
8 e-mail to his courtroom deputy. We haven't heard. I'm
9 wondering if we should take a break and I run there and tell
10 him where I am or we should just plow ahead forward.

11 **COURTROOM ADMINISTRATOR:** I let her know, and she
12 said, "Thanks for the heads-up," and I'll let -- and I told
13 her, "I'll let you know when we're done."

14 **MR. SCHIESS:** Oh. They did get that e-mail? Okay.
15 Thank you.

16 **THE COURT:** Yeah.

17 **MR. SCHIESS:** Thank you.

18 **THE COURT:** So I think we're good.

19 **MR. SCHIESS:** I misunderstood.

20 **THE COURT:** Yeah.

21 **COURTROOM ADMINISTRATOR:** Okay.

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

23 So the answer is, Judge, I -- I was -- I was right.
24 They gift -- they gave the money to Mr. Carpenter -- to Scott,
25 and -- but his mother has signatory -- signatory power over

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1 the account because that's what parents do when they set up
2 accounts with their kids sometimes. And that was it. But it
3 was definitely his money to be or his money actually. And he
4 asked his parents to do it. How they took care of it, he was
5 in rehab, he didn't know exactly how the check was going to
6 get transmitted.

7 It turns out -- this isn't going to come as a big
8 surprise to the Court. And, in fact, I think Ms. Strome had
9 the same issue in her presentence report. She says, I don't
10 know who the -- it says, I'm paraphrasing, I'm not quite sure
11 who the restitution check should be made out to. And I think
12 that was Mr. [indiscernible] problem, too. The FBI -- because
13 they've known since we've been -- since I got into the case in
14 2000 --

15 **THE COURT:** Did his wife not know -- no, his wife
16 knew at the time; right?

17 **MR. FISHMAN:** Sure.

18 **THE COURT:** Okay.

19 **MR. FISHMAN:** Absolutely. But what I'm saying is
20 the -- you'll -- you're -- you're in the court system. You
21 know how the bureaucracy works. There's -- there's no one who
22 says, oh, yes, send the restitution to us. So even though the
23 first conversation I had in this case was with Mr. Schiess'
24 predecessor who [indiscernible] -- you know, the AUSA who left
25 and we talked about the prospect of restitution, there was

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1 sort of no mechanism, if you will, for anybody to actually
2 write a check to somebody. The Bureau couldn't take it. It's
3 complicated. But never unwilling as that -- as that episode
4 illustrates.

5 And so -- so the [indiscernible]. So he took all of
6 those steps, all of which I think contributes to Mr. Schiess'
7 view that probation is an appropriate sentence.

8 But let me also say this. The -- the -- the -- what
9 followed that is also, I think, pretty remarkable. And -- and
10 I know that there's a recommendation of probation for two
11 years, and I'm going to talk about the alcohol and gambling
12 counseling or oversight that Ms. Strome recommends. But, you
13 know, Judge, if -- two years doesn't seem like a long time. I
14 get that. If this were five years ago, a month or two after
15 the offense, and -- and we were here, four years ago or three
16 years ago, I would get the idea of two years, two full years
17 of probation. But as -- as the Court knows, having imposed
18 sentence before, as Ms. Strome alludes to or actually says in
19 her presentence report, there's sort of two purposes to
20 probation; right? One is for the court system, you, the
21 Probation Department -- not the Probation Department here.
22 Ultimately it would be the people in New Jersey -- to
23 basically keep an eye on Mr. Carpenter and make sure that over
24 the course of the next X number of years -- in this case,
25 maybe two -- he doesn't do anything untoward, he doesn't do

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1 anything that might damage himself reputationally or
2 economically or the public. He doesn't -- he doesn't do
3 anything that the Court would not approve of, that would be
4 inconsistent with how we want people to behave --

5 **THE COURT:** That's a good point. I actually have a
6 question for myself here on page -- paragraph 58 to ask --
7 follow up with the probation officer. It says that we
8 requested a collateral home inspection to the Probation Office
9 in the district of New Jersey but have yet to receive a
10 response. So have they conducted a home inspection?

11 **PROBATION OFFICER:** Not to my knowledge, Your Honor.
12 Mr. Carpenter would probably be able to let us know otherwise.

13 Our office has been in contact since with the
14 supervision side just to make sure that they would accept him
15 in his district. I have reporting instructions.

16 So if the Court was to grant him probation, I would
17 assume the office in New Jersey would then go out and do a
18 home inspection. But why they ignored our request for a
19 collateral home inspection initially when I was preparing the
20 report, I -- I don't have an answer to that.

21 **MR. FISHMAN:** So, Judge, when I saw that in the
22 presentence report, the first question I asked was: Did Scott
23 or Beth say you can't come? I was assured that that wasn't
24 the issue, and so I assume that the Probation Department's
25 working [indiscernible]. But I can tell the Court, I know

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1 well the chief probation officer in New Jersey, a woman named
2 Susan Smalley. I've known her since she was a brand-new
3 probation officer. They're strapped, and so it may simply be
4 that they didn't get to it. Any time anybody wants to look at
5 Scott's house, whether it's -- like, nobody's going to fly
6 from Nevada, but -- but it's totally fine. But I -- but I do
7 think that they are strapped, and --

8 **THE COURT:** Well, saying that he's going to be
9 supervised really I don't have any assurances that that's
10 actually going to be the case.

11 **MR. FISHMAN:** But -- but -- but let me make a
12 slightly different point, Judge, if --

13 **THE COURT:** On paper he'll be on supervision.

14 **MR. FISHMAN:** But -- but -- but I guess here's the
15 thing, Judge. When we -- when you impose probation, you know
16 something about somebody. And you do it because you're not
17 quite sure how they will behave over the next X number of
18 years. And so putting them on supervision is -- it's a
19 watchful eye. It's not a guarantee, of course, but it gives
20 everybody some comfort in the court system and in the public,
21 quite frankly, that the court system is keeping at least a
22 partially watchful eye on the behavior of someone who has been
23 convicted of a crime. I get that.

24 **THE COURT:** Yeah, he's no longer working with the
25 FBI; right?

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1 **MR. FISHMAN:** No, he was --

2 **THE COURT:** He was --

3 **MR. FISHMAN:** -- fired in May, Judge. Interestingly,
4 the FBI moved to take no action -- even though they knew about
5 this in August of 2017, they moved to take no action against
6 him until after he pled guilty in your court on Zoom on
7 February 22nd. And -- and --

8 **THE COURT:** He wasn't even placed on administrative
9 leave or anything. He kept his job all this time and got paid
10 all this time and was just moved over to the construction
11 side.

12 **MR. FISHMAN:** Correct, Judge. So -- and there are I
13 think two important -- there's like two or three important
14 points --

15 **THE COURT:** What is he doing now?

16 **MR. FISHMAN:** He's waiting for today, Judge. It's
17 very hard to go -- he got fired in -- he got fired in May.
18 It's very hard to go look for a job when you're about to come
19 to Las Vegas to find out what's gonna happen. And so it's
20 only been a few months, and I encouraged him to wait until
21 then. It's hard to -- honestly, Judge, I wish he was able to
22 show up in your court as a fully employed individual, but the
23 circumstances worked out the way they did.

24 But I guess -- but -- but I -- but my -- the point I
25 was trying to make and maybe not so effectively, was that when

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1 you typically impose probation it's because you don't know
2 what -- what the person's going to do five years after they do
3 what they did. Here you know exactly how Scott Carpenter
4 behaved after he did this. Aside from the things he did in
5 the fall of 2017, he was assigned to the facility squad
6 without whining, without objection -- and you read the
7 evaluation. He showed up every day for work. He may have
8 saved somebody's life. He certainly gave medical attention to
9 a guy who got hit by a live wire and had to be hospitalized.
10 He bandaged him before anything -- anybody else showed up.
11 It's not in this evaluation because it happened later, but
12 there was a fire in the asbestos containment zone, and Scott
13 went in to put out the fire and -- and had smoke inhalation
14 issues.

15 You -- you also know from his father's letter and his
16 wife's letter exactly how he has been as a son and a husband
17 for the last five years and what he's done for them to try to
18 apologize and compensate them for the hurt that he has caused
19 them.

20 The thing, I think, Judge, is actually in some ways
21 the most significant thing about what's happened over the last
22 five years but certainly -- is that in September or October of
23 2020, after three years of Scott being what I will call
24 modified duty -- he still had his badge, still had his gun,
25 still had his credentials -- was effectively a glorified

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1 elevator operator and security guard in the federal building
2 in New York while they were doing asbestos remediation, in
3 September of 2020 the people in the FBI who know him best, the
4 people in the FBI who were the most stunned professionally by
5 his screwing up the leadership of a very significant
6 investigation -- got pulled off. A lot of things had to
7 happen because of that. The people in New York reassigned him
8 to a foreign counterintelligence squad. Now, why is that
9 important? Because you are called upon today to make an
10 assessment of Scott Carpenter's character and an assessment of
11 his -- of his -- of his fitness as a human being, who he is,
12 what he's about, and whether you need to supervise him for two
13 whole years after this or that New Jersey does. The FBI says
14 we can trust him with a --

15 *(Simultaneous crosstalk.)*

16 **THE COURT:** -- intelligence investigation --

17 **MR. FISHMAN:** Right. Exactly.

18 **THE COURT:** -- because it's not going to be subject
19 to cross-examination in a courtroom, but on a criminal
20 investigation he would be. So we can't use him for that.

21 **MR. FISHMAN:** No -- that's totally right. Right. He
22 can't --

23 **UNIDENTIFIED SPEAKER:** [Indiscernible].

24 **MR. FISHMAN:** I'm sorry.

25 **THE COURT:** Oh, yes. There's two microphones. You

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1 can use one or the other. But if you stand in the middle for
2 some reason they don't pick it up.

3 **MR. FISHMAN:** Okay. Sorry.

4 **THE COURT:** Sorry.

5 **MR. FISHMAN:** Is that better? Thank you.

6 So -- so ordinarily people never have issues with my
7 ability to project, Judge, so I apologize.

8 So the -- the point is, yes, they -- it's a -- it's a
9 spot where he won't have to testify and get cross-examined
10 because he did something that was fraudulent. I get that. I
11 had lots of those kinds of issues when I was a prosecutor. I
12 know how that works.

13 But the -- but the -- but the point is, Judge, that
14 they know that they can give him -- they can use his top
15 secret security clearance to engage in activities that I don't
16 have the clearance to know about; right? So when I asked him,
17 so what are you doing? He said, I can't tell you.

18 And so the reason I bring it up is that the people
19 who -- who he's closest to in New York -- and don't get me
20 wrong, I know the FBI. I haven't asked this question, but you
21 know how law enforcement -- a decision like that doesn't get
22 made by a supervisor of the foreign counterintelligence squad.
23 That decision guess made at a relatively high level in the
24 New York office. They were comfortable with the idea that
25 they could trust Scott Carpenter, and they did that -- he had

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1 that position until about a week after he pled guilty in your
2 court when they stripped him of his security clearance because
3 he'd pled guilty to a crime.

4 But -- but the -- but the point is, if you're trying
5 to figure out what kind of person he has been in the five
6 years since he has -- since he did that stupid thing on that
7 Saturday night in Vegas --

8 *(Simultaneous crosstalk.)*

9 **THE COURT:** -- let's be honest, it's the same way we
10 can trust -- we can trust informants and send them to go do
11 undercover buys. You know, as long as you -- you watch him,
12 you don't give him money, you don't give him alcohol, don't --
13 I mean, yes, we use all kinds of people. So it doesn't mean
14 that he's of the utmost highest character just because he's
15 being used in --

16 **MR. FISHMAN:** So -- but --

17 **THE COURT:** -- an investigation. So I think that's
18 probably not your strongest point. I think your strongest
19 point is that he did right away realize what an incredibly
20 stupid mistake, as his dad says in all caps, "W-R-O-N-G,"
21 wrong --

22 **MR. FISHMAN:** Right.

23 **THE COURT:** Just -- I mean, I put myself in the place
24 of dad, too. And I think, oh my goodness, here's the son that
25 we raised to know so much better and who's done wonderful

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1 things and who's stood up for his country, stood up for his
2 family, for his community. What the -- were you thinking;
3 right? And so he had that same realization in the morning.

4 **MR. FISHMAN:** Right.

5 **THE COURT:** Or in the afternoon if he woke up at
6 noon, whatever it was, when you finally wake up with that
7 giant headache and has to make it -- has to make it better,
8 has to --

9 **MR. FISHMAN:** Right.

10 **THE COURT:** -- make it good.

11 **MR. FISHMAN:** Right.

12 **THE COURT:** And so, you know, I think maybe that
13 would be a better place to focus on. You're not defined by
14 the mistakes that you make, but you're defined by how you
15 handle them.

16 **MR. FISHMAN:** Right.

17 **THE COURT:** And what you do and how did you learn
18 from them, what do you do in the future now to make sure that
19 this incredibly stupid thing doesn't happen again.

20 **MR. FISHMAN:** Right. Yeah. And that's --

21 *(Simultaneous crosstalk.)*

22 **THE COURT:** -- human. We've all made mistakes.
23 Nobody can throw -- what is it? -- stones at glass houses,
24 whatever that saying is. But --

25 **MR. FISHMAN:** Right.

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1 **THE COURT:** -- what do we do to make it better?

2 **MR. FISHMAN:** And -- and -- and, Judge, I think
3 you -- you captured it exactly right. He's done everything he
4 could, both to make it better for his -- the people around him
5 but for himself. He has totally addressed the issues. No
6 one's ever perfect, of course, but he has totally addressed
7 the issues that brought him -- that brought him into this
8 courthouse to begin with. And that's why a two-year period of
9 probation strikes me as too long in this case. Because we --
10 we know now how he behaves when he's done something wrong.
11 He's not going to do anything like this again.

12 With respect to the alcohol and gambling
13 recommendations, he -- the -- the -- the line I'd like to
14 quote from Mr. Cocuzza's letter is he was fully compliant;
15 right? We have a -- we have a licensed professional who knows
16 Scott -- maybe with the exception of Scott's father --
17 probably better than anybody else in this courtroom. And --
18 and he's satisfied that Scott is on the right path and -- and
19 has never said to him you need some more -- you need
20 additional alcohol counseling or additional gambling counsel
21 or anything like that.

22 And I -- I don't -- don't get me wrong, I have
23 enormous respect for the Probation Department. I -- I have
24 worked with them for 40 years in New Jersey, and I know how
25 talented they are. But I don't know, Judge, that it serves

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1 any purpose now to tell Scott Carpenter that he can't have any
2 alcohol in his house, he can't bet on a football game with his
3 father. There's no evidence that he had a gambling addiction
4 except that statement to his supervisor which -- whose
5 credibility even Mr. Schiess is questioning on other issues.
6 So maybe -- and that statement -- and we -- we have to
7 remember, all of those conversations, Mr. Schiess interviewed
8 them all in 2021, three and a half years after the event, and
9 they remember [indiscernible] --

10 **THE COURT:** Explain to me, why does he care so much
11 if he has a gambling prohibition? How does that --

12 **MR. FISHMAN:** I just -- I just don't -- I -- the
13 answer is there hasn't been one for five years. Why do we
14 impose one now? There isn't been -- right? He was -- he was
15 being monitored and supervised by a professional therapist for
16 all -- for more than three and a half years. Isn't that
17 enough at this point? What is probation actually supposed to
18 do to enforce that requirement? Does it make any sense?

19 And does -- at this point, what -- what it does,
20 Judge, is, with all due respect to Mr. Schiess and to the
21 Probation Department and to the Court, Scott said it right,
22 the -- I don't think that we need collectively to watch Scott
23 Carpenter, to see whether he does something that he's not
24 allowed to do anymore. I think over the last five years he's
25 proven that from one mistake -- he has used that as a huge

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1 wake-up call with that one mistake and has totally
2 straightened himself out. I don't think we need to spend
3 time, energy, money watching what Scott Carpenter shouldn't
4 do. I think what we all should be doing, Judge, is saying we
5 should -- we should be looking out for what he does next
6 that's great. He's an extraordinary public servant. If
7 you -- he -- he's an incredible logistician than he -- you
8 know, he got -- he -- he basically ran the deployment to
9 Baghdad in 2007 and '8. He's a guy who wants to serve his
10 country. And I think the best thing we can do for him -- the
11 best thing honestly, Your Honor, with respect that you can do
12 for him is to do exactly what he asked: Close the door on
13 this. Let him get on with his life in a way that makes sense,
14 that doesn't make him feel that he's beholden to any us
15 anymore and can actually do something. As he said to
16 Ms. Strome in his interview, "I'm gonna find something to do
17 that furthers my mission of public service." I was at that
18 interview. It's in her report. We should support that and
19 not throw any more roadblocks in his path. It has been five
20 very long years for him and his -- and his wife. I cast no
21 blame on the IG or the U.S. Attorney's Office for this
22 purpose. It could have been faster. But here we are. It's
23 now five years. Honestly, Judge, it's enough. Thank you.

24 **THE COURT:** Thank you, Mr. Fishman.

25 Does the Probation Office have anything to add?

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1 **PROBATION OFFICER:** I just wanted to note earlier you
2 had mentioned whether or not Mr. Carpenter would be actively
3 supervised in New Jersey. It does look like a senior
4 probation officer has already been assigned his case, and
5 she's with the intensive supervision unit. So at this point
6 it looks like they do have an intention of actively
7 supervising him. Obviously that could change once he's
8 reported and -- and they've reviewed his presentence report
9 and whatnot. But we've been in pretty close contact with them
10 that they're aware of the circumstances of this offense,
11 his -- at that -- at -- I only recently found out that he lost
12 his employment. So I'll be sure to notify them following
13 sentencing that he is no longer with the FBI.

14 **THE COURT:** Right. I guess we probably need to
15 change that in the PSR and update that. Paragraph 61.

16 **PROBATION OFFICER:** Yes, Your Honor.

17 **THE COURT:** I'll order the Probation Office to revise
18 the presentence report and update paragraph 61 to show that he
19 has been now terminated from his employment as of May of 2022.

20 Well, I think that the presentence report captured it
21 properly when it said on paragraph 119: The FBI's mission is
22 to protect the American people, uphold the constitution of the
23 United States. The bureau is the United States' primary law
24 enforcement and domestic intelligence organization. The FBI
25 expects its employees to adhere to its core values, which

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1 include integrity, accountability, and leadership. Employed
2 in a field meant to thwart crime, the defendant committed one
3 himself using federal money at a casino, and consequently he
4 now faces potential incarceration and the loss of his federal
5 career. Corruption committed by law enforcement officers
6 hurts both law enforcement and the community. Criminal acts
7 such as the conduct in this case instant case committed by
8 officers of the law damage law enforcement's public image -- I
9 mean, just look at the paper today -- and undermines the
10 community's trust of law enforcement.

11 Wow. I thought that was really well said, so I
12 appreciate that from the Probation Office.

13 You know, I -- I -- I'm hearing Mr. Carpenter and his
14 attorney say -- and a little bit from the Government, too --
15 you know, lenience. We've already -- Mr. Carpenter, you've
16 already received a lot of lenience. It doesn't feel like it
17 as you sit here today, I'm sure, and probably didn't get any
18 sleep last night either because of what was coming today. But
19 I hope that you will understand so that your mind-set is in
20 the right place that what you have done in your past is not
21 for nothing. Obviously the reward is in itself having done
22 all the good deeds, getting the straight As in school, being
23 able to be productive as an ROTC trainer, being in the Army,
24 being promoted from, you know, lieutenant to captain, all the
25 fine work that you've done with the FBI for the community,

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1 those -- you know, those are rewards in itself. There's
2 nothing there to be mad about or bitter or regret about ever.
3 And it did help you even though that's not why you did it.
4 You didn't do it to help yourself, but it did. It helped you.
5 You did receive leniency. You were not fired that day. You
6 were not, as I've had to do with some people unfortunately who
7 stole money from the Court, you know, someone didn't call up
8 like I call up the marshals say -- you know, and have them
9 escorted out of the building ASAP, right now. You know, take
10 a box with you, you know, and take the person out. That
11 didn't happen to you. It's an incredibly embarrassing thing
12 to happen. That didn't happen to you. You didn't lose your
13 job. You kept your job for many, many, many years. I haven't
14 heard anything about any reduction in pay or anything. So I'm
15 assuming you got paid the same amount for many years, four or
16 five years. You were not arrested. And, yes, you were fired.
17 You were fired because you broke a rule -- an employment rule,
18 and anybody else who would have broken an employment rule
19 would probably get fired. Honestly, would probably get fired
20 sooner than you did. But that's what happens. You break a
21 rule of employment, you get fired.

22 The rule you broke was not just no-call/no-show or,
23 you know, something like that. The rule you broke was
24 actually a crime, and that's why we're here. It's two
25 separate and apart things, and we're here and you could have

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1 been charged with -- with a -- with a felony, and you weren't
2 and you got leniency. And -- and during your, you know, first
3 hearing, the detention hearing, you could have been detained
4 but you weren't. And I agree with that; you shouldn't be
5 detained. But, I mean, you could have been. Why weren't you?
6 Because of the things that you've done in the past. Because
7 you've been an upstanding individual. So please don't regret
8 that or think that that was all for nothing and nobody cares.
9 We do. We all do and we have cared, and it has been applied
10 to you as leniency.

11 You're not even on pretrial supervision. When I saw
12 that in the presentence report, I actually asked to call and
13 find out: Is that true? Is he really not on pretrial
14 supervision? I don't think I've ever had a defendant in the
15 last 12 years who wasn't on pretrial supervision. And when I
16 was an attorney before that, I don't think I ever had a client
17 who wasn't on pretrial supervision. Even if you had pretrial
18 diversion you're technically still on, you know, supervision.
19 But I've never seen that. You're not even on pretrial
20 supervision. You don't have any conditions whatsoever.
21 That's leniency. So you are receiving leniency. You have
22 received leniency. I don't want you to lose sight of that.

23 You got a plea agreement for a misdemeanor instead of
24 a felony with a stipulated sentence. So the Government's
25 hands are tied, I mean, you know, to an extent. They're not

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1 asking for any time. They're -- they've agreed to request
2 probation, and that's what they're requesting. They're
3 requesting probation.

4 So what you've done, you've done to yourself. You
5 put your co-workers in an incredibly different position. I'm
6 sure that you -- if everything I've read about you is true,
7 I'm sure they like you a lot, and it was very difficult for
8 them to figure out what are we going to do about Scott? Oh,
9 my God, look what he did. What should we do? How can we help
10 him without jeopardizing ourselves? You put them in that very
11 difficult position. Please don't be mad at them for how they
12 reacted. Because none of us know how we would react in a
13 situation like that. You know, they probably have families,
14 they have jobs, they have careers. You put them in that
15 situation, so don't be mad at them for how they reacted.

16 And what you did doesn't just jeopardize yourself and
17 your colleagues; it potentially jeopardized the investigation
18 you were working on and prior investigations I'm sure, too,
19 when they come back as some other investigations you're a part
20 of. I remember reading something about, so you were involved
21 with -- I don't remember now if it was the one with FIFA or
22 the basketball one after that and there was some concerns
23 because there was some -- some -- some -- some issues and
24 concerns with the U.S. Attorney's Office and with others about
25 whether or not there was, you know, [indiscernible] the travel

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1 expenditures were too much and this, that, and the other. You
2 know, that's the kind of stuff now -- we've seen it in trial.
3 Those defense attorneys, they're going to try to find out
4 about, oh, isn't that one of the people that was involved in
5 that case was that Carpenter guy who was taking money? Maybe
6 he was -- that was -- taking money in this other case. You
7 know, and I see it all the time.

8 And quite frankly, of all the cases that I've seen
9 with FBI agents or even ATF and other agencies, the defense
10 attorneys always try to prove that during the undercover
11 operation the agents, the federal agents, misused or
12 mishandled discretionary funding, and I've never seen them be
13 able to prove it. Never. So, I mean, you would think that
14 it -- that it would be common, but I have not seen that it's
15 something common. Sometimes they are able to imply to the
16 jury that the person was cheating on their wife during the
17 investigation and things like that, but not committing crimes,
18 not taking money. That -- that's a very rare, unique
19 circumstance that I -- I've never come upon. Not that it's
20 never happened before, but it's -- I'm -- they always try to
21 prove it in court, and I've never seen them be able to prove
22 it.

23 It bothers me that it -- that it looks like you were
24 thinking about covering this up, but I also tell myself that
25 was the first day and you kind of have to look at all your

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1 options and you're acting still under the -- the influence of
2 the effects of -- of making an incredibly stupid division --
3 decision and how am I going to fix this. So I'm not happy
4 with the information in the presentence report and in the
5 investigation's report about there being potentially a
6 cover-up. That does bother me a lot. I did think a lot about
7 that three months average, three months median in custody,
8 would that be better? Would that teach you a lesson? Does --
9 do you need to have a lesson? Even if you don't need to have
10 a lesson, does the community need for you to do time? Is
11 this -- is this the kind of case where the community is
12 looking at FBI agents, is looking at law enforcement, is even
13 looking at the court, just looking at our justice system and
14 wondering are the people who are involved in it really on the
15 up-and-up, or are they in it for the money? Are they in it
16 for the kicks? Are they abusing the public trust? You know,
17 do I need to send a message that's not tolerated? We've had a
18 lot of people lately who worked for the post office that are
19 involved in these PPP scams where they're getting involved in
20 taking a lot of money that doesn't belong to them with fake
21 businesses, with programs set up that are to help poor people.
22 You know, I -- so I -- that weighs heavily on me, too, as a
23 judge, you know, that -- that the sentence that I impose upon
24 you is not just retribution but also to send a message to the
25 community. So that does weigh heavy on me.

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1 The Court has considered the factors set forth in
2 Title 18 of the United States Code § 3553(a). I have reviewed
3 the contents of the presentence report with the exception of
4 the correction that I did order the Probation Office to make,
5 the presentence report is correct, and I do find the
6 calculation to be correct. I've also considered the factors
7 set forth in Title 18 of the United States Code § 3553(a).

8 And if you'll please stand, Mr. Carpenter. You are
9 hereby committed to the Bureau of Prisons for a term of three
10 months. This is a sentence the Court does find to be
11 sufficient but not more than necessary to comply with the
12 purposes of sentencing. There is a fine. There is a \$5,000
13 fine which will be added to the amount of restitution. The
14 restitution amount is \$13,500. And there's also a mandatory
15 penalty assessment of \$25, which is required by statute and
16 due immediately. Supervised release is imposed for a term of
17 one year, and the supervised release conditions are on
18 pages 21, 22, and 23 -- actually, it's only page 22 and 23. I
19 am imposing the standard and mandatory terms of condition --
20 the conditions there as well as the following two special
21 conditions: You must not use or possess alcohol during your
22 one-year of supervision, and I do want you to be evaluated for
23 a gambling addiction. If the -- if the evaluation shows you
24 don't have an addiction, then I'm not going to impose the no
25 gambling. But I'm going to -- so I'm -- I'm going to impose

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1 it today for purposes of it being on the record, but I'm going
2 to stay it pending the evaluation. So you must not engage in
3 any form of gambling, including but not limited to lotteries,
4 online wagering, sports betting, and you must not enter any
5 casino or other establishment except for the purpose of
6 employment as approved and directed by the probation officer
7 where gambling is the primary purpose. So if someone's
8 getting married, you know, someone's having a wedding at a
9 casino, just tell your probation officer it's a wedding, can I
10 please go, and they'll probably give you permission. If not,
11 you can have your attorney reach out to me because conditions
12 can be modified for certain things, and they'll probably say
13 you can only be there, you know, that night from this time to
14 this time, and then, you know, you can't -- you can't be there
15 and you can't go to the -- any areas where there's gambling.
16 But until we have an evaluation, I want to be careful with
17 that.

18 So then the issue becomes, because this is a Zone A
19 situation, do I want to convert that three months of custody
20 into house arrest? And I think I had that information here in
21 the presentence report... so, what I'm going to do is I'm
22 going to give you 90 days to self-surrender. During that
23 time, I do want to have a -- the house looked at. It's
24 probably fine. I do remember reading there was four firearms
25 and two German Shepherds. But if he can serve his three

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1 months of custodial time as house arrest in that home, I'm
2 willing to consider that and modify it. But I need to have at
3 least, you know, a home inspection before I can make that
4 determination. So I don't think that I can -- I don't feel
5 comfortable giving your house arrest until we have that. So
6 it's -- so it's 90 days to self-surrender.

7 Do we have a self-surrender date?

8 **COURTROOM ADMINISTRATOR:** Yes, Your Honor.

9 November 18th, 2022, by 2:00 p.m.

10 **THE COURT:** All right. So November 18th, 2022, by
11 2:00 p.m. is your self-surrender date unless we can get a
12 house inspection and I feel comfortable that we can convert
13 that three months of custodial time into house arrest. I need
14 to know that, if you're going to be on -- whether -- you know,
15 supervision, it's really going to be supervision. It's not
16 going [indiscernible] actually going to be supervising you
17 because everybody knows you and likes you and -- and then, if
18 you're not supervised, you end up doing another second stupid
19 thing. I don't want that to happen.

20 **MR. FISHMAN:** Judge, may I -- may I make a
21 suggestion --

22 **THE COURT:** Yes.

23 **MR. FISHMAN:** -- with the Court's indulgence?

24 **THE COURT:** Yes.

25 **MR. FISHMAN:** Obviously we're very disappointed with

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1 the result, but since the Court is willing to stay the
2 self-surrender for 90 days, may -- and is going to consider
3 whether that should be converted into a home confinement
4 pending the inspection, may I -- I want to consult with
5 Mr. Carpenter about this for a second, but may I suggest that
6 to the extent that there's going to be home confinement as an
7 alternative, he's willing -- I suspect -- I'm going to ask him
8 this -- he's willing to start it tomorrow. And so would the
9 Court then consider, if he doesn't leave the house effectively
10 for 90 days and you change your mind about whether he has to
11 go in, counting the 90 days starting right away, if you know
12 what I mean? I --

13 **THE COURT:** Well, I can't --

14 **MR. FISHMAN:** I didn't articulate that as well as I
15 could have, if you know what I --

16 **THE COURT:** Right. But I -- how do I know he
17 actually is? That's the whole point, is --

18 **MR. FISHMAN:** Well --

19 **THE COURT:** -- if he's not being supervised, how do I
20 know just --

21 **MR. FISHMAN:** Right. But you could --

22 **THE COURT:** I mean, that he is going to actually
23 impose on -- upon himself --

24 **MR. FISHMAN:** Right. So I guess the question --

25 **THE COURT:** -- house arrest? So that's --

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1 **MR. FISHMAN:** -- is how -- how --

2 **THE COURT:** -- that's my issue, is I need to have
3 someone who's actually checking on this. I thought what you
4 were going to recommend is that we set like a 30-day status
5 check date or something like that --

6 **MR. FISHMAN:** Well, I --

7 **THE COURT:** -- so that we have the information. I --
8 I don't know how long it will take for this home inspection to
9 actually happen. So I'm willing to set a 30-day status check,
10 and then, if it needs to be continued, then you-all can
11 stipulate to a continuance because a home inspection hasn't
12 happened. Does that work for you, Mr. Schiess?

13 **MR. SCHIESS:** Yes.

14 **THE COURT:** Okay. Let's do that then. Thirty-day
15 status check.

16 **MR. FISHMAN:** That -- that's fine, Judge. And if --

17 **THE COURT:** And you can -- we can do video. You
18 don't need to fly all the way over here.

19 **MR. FISHMAN:** Thank you. Thank you for that.

20 **COURTROOM ADMINISTRATOR:** Status check, Monday,
21 September 19th, at -- 2022, at 10:00 a.m.

22 **THE COURT:** Okay. So September 19th at -- did you
23 say 2:00 or 10:00?

24 **COURTROOM ADMINISTRATOR:** 10:00 a.m. Your Honor.

25 **THE COURT:** 10:00 a.m., September 19th we'll have a

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1 status check. If for whatever reason the house hasn't been
2 inspected yet and we can't -- and you don't -- and -- and it's
3 going to be bad news, if you want to stipulate another 30
4 days, we'll do that. But the self-surrender date still is
5 November 18th, 2022, at 2:00 p.m.

6 Is there any Final Order of Forfeiture in this case,
7 Mr. Schiess? I don't think there is.

8 **MR. SCHIESS:** No, there's not. It will be the order
9 of restitution, Your Honor.

10 **THE COURT:** All right. So I will ask the Probation
11 Office to please provide a copy of the conditions to
12 Mr. Carpenter. If you have any questions about those
13 conditions, please meet with the Probation Office or your
14 attorney to make sure that you understand what the conditions
15 are. Because if you violate a condition, the defense that "I
16 didn't know I couldn't do that" is not a defense. You know,
17 you need to understand what the conditions are so that you're
18 sure not to accidentally inadvertently violate them.

19 At your plea hearing, you did waive some of your
20 appellate rights, but there are other rights which can never
21 be waived. So I'm advising you now that, if you do wish to
22 file an appeal, you only have 14 days to file a notice of
23 appeal. And then, if you cannot afford an attorney to
24 represent you with that appellate process, let the Court know,
25 fill out a financial affidavit, and we'll appoint an attorney

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1 for you. Likewise, if you can't afford a copy of the
2 transcripts, discovery, things like that that you might need
3 for the appeal, we can make those available to you free of
4 charge at the Government's expense.

5 Any remaining counts to be dismissed?

6 **MR. SCHIESS:** No, Your Honor.

7 **THE COURT:** All right. And is there anything else I
8 missed? I'm sorry.

9 **COURTROOM ADMINISTRATOR:** Mr. Schiess indicated that
10 the restitution should be made payable to the -- to the
11 Government.

12 **THE COURT:** So would it go to the Treasury, United
13 States Treasury? How -- how is -- do we have a restitution
14 list?

15 **MR. SCHIESS:** No, the -- it will be to the
16 United States. I have reached out to the civil people in our
17 office who handle that, and they said if there's any
18 correction we will file a correction to that. But they said
19 it's to the U.S. Government.

20 **THE COURT:** Okay. So for right now the restitution
21 is paid to the Court because then -- and then the Court is the
22 one who sends out the restitution. So we need the restitution
23 list so that we can give that to the Finance Department so
24 they know what to do with the money. Otherwise, it becomes
25 unclaimed funds and then actually it goes back to the Treasury

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1 Department.

2 **MR. SCHIESS:** I --

3 **THE COURT:** So that's -- it will get there one way or
4 the other, but it takes a lot longer.

5 **MR. SCHIESS:** With that, Your Honor, after my hearing
6 in front of Judge Mahan --

7 **THE COURT:** Yeah.

8 **MR. SCHIESS:** -- that will be on my first order of
9 business to --

10 **THE COURT:** Okay. Thank you.

11 **MR. SCHIESS:** -- address that.

12 **THE COURT:** Yes. And we need that restitution list
13 that's attached to the Judgment of Conviction so the Financial
14 Department knows what to do with that money. So the payments
15 are made to the Court.

16 **MR. FISHMAN:** We'll just wait -- we'll just wait for
17 direction for where -- where to send the check for Mr. Schiess
18 and to --

19 *(Simultaneous crosstalk.)*

20 **THE COURT:** Right. And actually the Probation Office
21 can give you that information.

22 **MR. SCHIESS:** It will be here to the Court.

23 **THE COURT:** Yeah.

24 **MR. SCHIESS:** You're going to send it to the Clerk of
25 the Court --

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1 that the foregoing is a correct transcript transcribed from
2 the official electronic sound recording of the proceedings in
3 the above-entitled matter.

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/s/ Amber M. McClane 8/23/2022
AMBER MCCLANE, RPR, CRR, CCR #914 Date