

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW JERSEY  
3 Criminal No. 14-277(JLL)

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5	UNITED STATES OF AMERICA	:	TRANSCRIPT OF
6	-vs-	:	PROCEEDINGS
7	KIRK EADY,	:	SENTENCING
8	Defendant.	:	September 10, 2015
9	-----X	:	Newark, New Jersey

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12 B E F O R E:

13 THE HONORABLE JOSE L. LINARES,  
14 UNITED STATES DISTRICT COURT JUDGE

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20 Pursuant to Section 753 Title 28 United States Code, the  
21 following transcript is certified to be an accurate record  
22 as taken stenographically in the above-entitled proceedings.  
S/Phyllis T. Lewis, CCR, CRCR

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A P P E A R A N C E S :

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1 THE CLERK: All rise.

2 THE COURT: All right. In the matter of United  
3 States versus Kirk Eady, Counsel, your appearances.

4 MR. FOSTER: Good morning, your Honor.  
5 David Foster for the Government.

6 MR. WILLIS: Good morning, Judge.  
7 Peter Willis for Mr. Eady.

8 THE COURT: All right. Counsel, I have received  
9 and reviewed the Probation Department report in connection  
10 with this matter. I have also reviewed the transcripts of  
11 the trial. I have received and reviewed counsel for  
12 defendant's sentencing memorandum -- oh, you may be seated  
13 by the way.

14 I have received and reviewed the Government's  
15 sentencing memorandum and the Government's letter in  
16 opposition to defendant Eady's request for a downward  
17 departure for aberrant behavior. The Government has also  
18 requested a variance in connection with this matter because  
19 of the circumstances of the offense.

20 I note for the record that I have also received a  
21 letter from Mr. Eady himself that was submitted by defense  
22 counsel. I have read that letter and will consider same,  
23 and I have also the reviewed attachments that were submitted  
24 with the defendant's sentencing memorandum, which included  
25 several letters, of course, transcripts and other

1 attachments, all of which have been reviewed by the Court in  
2 preparation for this matter.

3 I guess the first order of business is to determine  
4 whether there are any guideline objections or objections  
5 that would affect the guideline analysis by the Court in  
6 connection with this matter with regard to the presentence  
7 report, first from the Government.

8 MR. FOSTER: No objections, your Honor.

9 THE COURT: All right.

10 Mr. Willis?

11 MR. WILLIS: No objections, Judge.

12 THE COURT: All right. I not for the record,  
13 though, that you did mention several objections that were  
14 non guideline objections, that you take issue with whether  
15 or not certain things were or were not said at the trial,  
16 but as I said, they are not going to affect the guideline  
17 calculations.

18 I think the real fight here with regard to the  
19 guidelines, and both of you can correct me, if you don't  
20 think I am right, has to do with whether or not the  
21 three-level enhancement should apply with regard to the  
22 issue of the direct or indirect financial gain. That is  
23 part of the offense. The battle lines have been drawn with  
24 regard to that.

25 There is also the Government's, of course, upward

1 variance request, and the defendant's downward departure  
2 motion. Those are the areas that I think would affect the  
3 guideline analysis.

4 Anything else, other than that? And, of course,  
5 the 3553 factors, which I will apply.

6 MR. FOSTER: Your Honor, I believe that the defense  
7 in their papers also objected to, I believe, it is two  
8 points for --

9 THE COURT: Abuse of trust.

10 MR. FOSTER: -- abuse of trust.

11 THE COURT: There is an objection to that, and that  
12 would affect the guideline analysis.

13 MR. FOSTER: Yes.

14 THE COURT: The Court recognizes that the  
15 guidelines are advisory in nature. They are not mandatory,  
16 but they do provide the Court with valuable information in  
17 determining what is an appropriate sentence in connection  
18 with a case like this and in every case.

19 I acknowledge that every case is individual in  
20 nature, Mr. Willis, as you mentioned in your sentencing  
21 memorandum, and you know, it is a specific study of the  
22 human failures that happen in connection with a case. I  
23 understand that, and I understand all of the 3553 factors of  
24 the goals of sentencing.

25 So taking all of that into account, I also know

1 that notwithstanding the fact that the guidelines are  
2 advisory, I should still have to first acknowledge the  
3 correct computation of the guidelines, which I don't think  
4 anybody takes issue with the way it was computed is where  
5 they arrived by virtue of the enhancement that everyone has  
6 a problem with, so I think that the guideline calculation of  
7 1114 in the enhancements that were used are appropriate.  
8 It's an appropriate calculation.

9 The next thing I have to do now is rule on the  
10 departure or variance motions, so I want to hear you on  
11 that, and then I will hear you on the 3553 factors, on  
12 leniency in sentencing at the end. That is the way that I  
13 intend to go about this.

14 So having said all of that, what I think we should  
15 do is we probably should address the Government's upward  
16 variance motion first, and let Mr. Foster argue that.

17 Then, Mr. Willis, you respond to that, and then we  
18 will move on then to your objections to the other two  
19 enhancements, and then finally we will get to your motion  
20 for aberrant behavior downward departure. Okay?

21 So the first one we are going to deal with is the  
22 Government's motion for the Court to vary. You are seeking  
23 a two-level upward departure --

24 MR. FOSTER: Yes, upward variance.

25 THE COURT: -- oh, variance, I'm sorry.

1           As we stand right now, the total offense level here  
 2           is 14, and the Criminal History Category is I. Under the  
 3           statute, I can sentence the defendant between zero and five  
 4           years. Under the guideline range, at Level 14 with a  
 5           Criminal History Category of I, the minimum is 15 months and  
 6           the maximum is 21.

7           The Government believes that under a variance, I  
 8           should sentence the defendant at a Level 16, so let's hear  
 9           from the Government.

10           MR. FOSTER: Yes, your Honor.

11           The Government is requesting the two upward  
 12           variance for numerous reasons using the 3553(a) factors as a  
 13           guide.

14           First, regarding the nature and circumstances of  
 15           the offense, this is a case where the defendant chose to  
 16           illegally wiretap several individuals, and it is almost  
 17           without dispute that privacy laws are some of the most  
 18           guarded and safer laws in this land, and what the defendant  
 19           did was to completely ignore those. And when you combine  
 20           the fact that --

21           THE COURT: Mr. Foster, hang on a second. I'm  
 22           sorry.

23           (Court and Clerk confer)

24           THE COURT: I am sorry, Mr. Foster. Go ahead.

25           I interrupted you. You were talking about the fact

1 that privacy laws are sacrosanct in our society, and then I  
2 cut you off.

3 MR. FOSTER: Yes, your Honor.

4 And that is something that we had discussed  
5 repeatedly during the trial, the seriousness of the privacy  
6 laws.

7 When combined with the fact that he did this  
8 against people in his own community, he did this against  
9 fellow correction officers, people that he had worked with  
10 for several years, and he did it to people that essentially  
11 he was responsible for as a Deputy Director of the jail, he  
12 should have been a role model and should have been someone  
13 that fellow correction officers could have looked up to as  
14 someone who had advanced in his career to a level -- to a  
15 fairly high level. And instead, he quite frankly  
16 embarrassed himself and committed a crime and invaded their  
17 privacy. He had the intent to find out what --

18 THE COURT: Why aren't all of those things that you  
19 are saying captured within the statute that creates the  
20 offense and captured within the guideline calculations in  
21 determining -- doesn't that really go to more where within  
22 the guidelines he should be sentenced, within the  
23 appropriate guideline range he should be sentenced, rather  
24 should we be varying in connection with that?

25 MR. FOSTER: Your Honor, I respectfully disagree,

1 because I don't think the guideline captures the  
2 relationship between the individuals.

3 I think there is a difference between a teenager  
4 wiretapping his best friend or because he wants to find out  
5 about a high school crush or something like that, or if it  
6 is somebody, one random individual wiretapping a telephone  
7 conversation of another random individual. Those are  
8 completely different from Mr. Eady and his situation and who  
9 he chose to wiretap.

10 It is significant, his position in the jail. And  
11 it is significant who he chose to wiretap, and it is  
12 significant that not only were they fellow employees, but  
13 that they were the heads of the respective unions, and that  
14 he was one of the negotiators for management, and it is  
15 significant that that played a part into why it occurred.

16 The guidelines do not specifically capture that.  
17 That is one of the things that I think is of utmost  
18 importance because I mean, it is clear that that is why he  
19 was doing it.

20 On the reportings, as defense pointed out, at one  
21 point in time he said that I was using this as a joke. But  
22 later on in the same conversation, he said, this has become  
23 a valuable resource.

24 So that is not captured in the guidelines, and that  
25 is one of the reasons why the Government says the two-point

1 upward variance is necessary in this case.

2 THE COURT: So let me ask you, you are not  
3 moving -- there is a section of the guidelines I was looking  
4 at, which really is grounds for a departure -- you are not  
5 moving under 5K2.0, correct, which is the departure based on  
6 circumstances of a kind not adequately taken into  
7 consideration, because that is not the way you phrased it in  
8 the brief --

9 MR. FOSTER: No.

10 THE COURT: -- but that seems like what you are  
11 arguing now.

12 MR. FOSTER: No, your Honor. We are not, no.

13 THE COURT: Okay. But the analysis seems to be --  
14 because in looking at 5K2.0, Section 2 talks about,  
15 identifies circumstances under which a Court can upwardly  
16 depart and indicates that circumstances under which the  
17 guidelines have not adequately taken into consideration  
18 things that determine that, you know, and they talk about  
19 invasion of privacy and other specific issues, so I was a  
20 little confused as to whether you were arguing for that or  
21 not.

22 MR. FOSTER: No, your Honor. I mean, the  
23 Government agrees that does also apply, but that wasn't our  
24 specific -- what we were referencing.

25 THE COURT: Okay.

1           MR. FOSTER: Now, in addition to the specifics  
2 behind the wiretapping and Mr. Eady's position in the jail  
3 and who he chose to wiretap and why he chose to wiretap  
4 them, there is also the surrounding conduct that was going  
5 on for several years. I think the Court is also allowed to  
6 consider that under 3553(a), and the Government tried to  
7 enumerate those acts as specifically as possible.

8           For example, basically the overall retaliatory  
9 nature of Mr. Eady towards the head of the union, the issues  
10 of the constant harassment of taking his authority, for  
11 example, to take somebody off full release and put them on a  
12 regular shift.

13           Yes, as a Deputy Director, he is allowed to do  
14 that. However, as it bore out in the trial that was  
15 unprecedented, and as the evidence showed, it was only done  
16 after one of the victims refused to do what Mr. Eady said as  
17 a clear example of retaliation against the victims because  
18 they wouldn't do his bidding.

19           Specifically, his bidding was they didn't like the  
20 fact that Ms. Patricia Akin -- he didn't like the fact that  
21 Ms. Patricia Akin had been hired by the union, and that Ms.  
22 Akin was saying mean things about him.

23           As a Deputy Director of the Jail, instead of  
24 speaking to Ms. Akin directly, he chose to threaten and  
25 harass the union leaders. And then when they didn't do what

1 he said, he punished them.

2 That is part of his character. That's part of the  
3 history of his conduct and his behavior, and those are  
4 things that I think are not captured in the guidelines  
5 themselves, and it does merit a two -- another reason why it  
6 merits a two-point upward variance. The fact that when that  
7 wasn't enough, there was evidence put forward that he went  
8 and spoke to the wives of the victims.

9 THE COURT: Where did that come out in the trial?

10 MR. FOSTER: Did it come out in trial?

11 THE COURT: You said there was evidence put forth.  
12 I know I read the transcripts, but can you point to me where  
13 that came out?

14 MR. FOSTER: There was testimony that the wives of  
15 Mr. Ocasio and Mr. Ortiz received several prank phone calls,  
16 that they received phone calls from an individual in a  
17 disguised voice claiming that their husbands had been having  
18 affairs, et cetera.

19 Now, because the voice was disguised, the  
20 Government can't say with a hundred percent it was the  
21 defendant. However, given the sequence of events, given the  
22 totality of the circumstances, I think that it -- that it  
23 was Mr. Eady.

24 So, once again, that is just another example of Mr.  
25 Eady's character of how once again, after one avenue of

1 attack didn't work, he now went further into the personal  
2 lives of the people he worked with and tried to reach out to  
3 their wives.

4 And then in going further beyond that, there was  
5 the testimony about Mr. Murray being signed up for the KKK,  
6 and how Mr. Murray didn't sign up for the KKK, and there was  
7 evidence put forth that suggested that was Mr. Eady.

8 Now, I know the defense disputes that, and they  
9 cited to the transcript. However, if the Court looks at the  
10 complete transcript of the testimony of Ms. Freeman, there  
11 is a point where she is hesitant to answer the question.  
12 There is a side bar taken, and Ms. Luria once again repeats  
13 the question about when Ms. Freeman spoke with law  
14 enforcement prior to trial and was talking about Mr. Murray  
15 being signed up for the KKK, what did she say.

16 And in her response, she mentions that Mr. Eady  
17 told her about it, and Mr. Eady told her in sum and  
18 substance, "Don't F with me."

19 Now, as the defense points out, Mr. Eady didn't  
20 clearly say yes, I was the person that did it. But when  
21 somebody poses a question like that, and your response is  
22 "Don't F with me," I think that strongly suggests that you  
23 are the person that did it.

24 So, once again, that goes into the history and  
25 characteristics of the defendant. It shows that this

1 incident, which on its face, which not speaking to the  
2 defense -- to the victims, to just maybe reading bald  
3 assertions on a piece of paper, it sounds like perhaps it's  
4 not that big of a deal.

5 You pick up the phone, and two people have a  
6 conversation, perhaps it was about nothing, and he listened  
7 to it. It sounds like it could be innocuous.

8 However, when the Government actually dove into  
9 facts of the case and spoke to the victims and learned about  
10 all of the surroundings, that is when it became clear that  
11 this was a much bigger picture. This was a history of  
12 harassment by somebody that was in charge of discipline.

13 It is the Government's position that that must be  
14 strongly considered, that he is a person, when all of the  
15 grievances, all of the issues and all of the problems in the  
16 jail, he was the one that was supposed to be handing out  
17 discipline, and behind the scenes he was revengeful and he  
18 destroyed marriages.

19 I mean, your Honor, I am sure that the Court has  
20 read numerous sentencing submissions, but we even have the  
21 submission of the ex-wife of the one of the victims talking  
22 about how in her opinion this affected her marriage.

23 Those are very strong and powerful statements, and  
24 I think that just the initial guideline calculation does not  
25 capture that. It does not capture the totality of the

1 defendant's actions and the effect that it caused on people.

2 THE COURT: Okay. Thank you.

3 MR. FOSTER: Now -- I'm sorry. Just one more, your  
4 Honor.

5 Also, in addition to the Government's also urging  
6 the Court to consider the need to protect the public from  
7 further crimes of this defendant, your Honor, when the  
8 defendant was initially made --

9 THE COURT: Doesn't that go to the leniency of  
10 sentence, rather than the motion for the variance, what you  
11 are about to tell me? That is one of the 3553 factors --

12 MR. FOSTER: Yes, yes, yes, correct.

13 THE COURT: -- and I understand that.

14 Okay. Because you are going to get an opportunity  
15 to speak again, this is only on your motion for an upward  
16 variance. That's it?

17 MR. FOSTER: Yes, your Honor.

18 Hum, just one moment.

19 Judge, I think that sums up the highlights of why I  
20 think the upward variance should be given, basically the  
21 seriousness of the offense, which is a violation of the  
22 privacy rights. The position that Mr. Eady had in his place  
23 of employment, who he chose to commit this crime against,  
24 why he chose to commit those acts, and the fact that those  
25 reasons are not -- are not considered in the guideline

1 calculation, and that those reasons do significantly  
2 distinguish this case from any case that does not have  
3 those. It is a significant difference that this was done  
4 for -- that this was done in this environment.

5 It is a significant difference that this was done  
6 by somebody who is in charge of a jail, and it is his job to  
7 keep the community safe from criminals, and while he is  
8 supposed to be doing that, he is committing a crime, and  
9 he's committing a crime against the same people who he is  
10 supposed to be working with to keep the community safe.

11 It is the Government's position that those factors  
12 cannot be ignored, and that for those reasons the two-point  
13 upward variance should be granted.

14 Thank you.

15 THE COURT: Mr. Willis, hang on one second.

16 MR. WILLIS: Surely.

17 (Probation Officer and Court confer)

18 THE COURT: Let me hear from Mr. Willis first.

19 MR. WILLIS: Good morning, Judge.

20 THE COURT: Good morning.

21 MR. WILLIS: Your Honor, I responded in writing in  
22 a letter, dated September the 8th, 2015, and in that letter  
23 I indicated to the Court that I believe that this request  
24 for an enhancement is vindictive, revengeful and without  
25 merit. It is our position, your Honor, that the statute

1           itself covers all of essentially the crime that was  
2           committed.

3                       There is nothing unusual. I have provided the  
4           Court with eight cases from various districts, none of which  
5           having to do with wiretapping, none of which did the United  
6           States Attorney ask for an enhancement.

7                       So this is the only case that I was able to find,  
8           cases involving Congress, people who wiretapped a  
9           congressional committee and a congressman, and in most of  
10          those cases the material that was recorded was published.  
11          That is not this case. It was published as public material.

12                      THE COURT: But it is a little different, right?

13                      I think you are referring to the case in Florida  
14          where the person with the radio intercepted a communication  
15          involving Gingrich and then gave it to the press.

16                      MR. WILLIS: You got it.

17                      THE COURT: Okay. But it is a little different.

18                      Isn't the Government's point that the nature of who  
19          he was doing it to as opposed to some concerned citizens  
20          saying, you know, and public officials are involved in  
21          trying to influence the ethics committee investigation or  
22          something, right?

23                      MR. WILLIS: That's correct.

24                      THE COURT: As opposed to somebody who had a  
25          personal reason for doing it and a personal animus towards

1 the victims in the case and a responsibility over those,  
2 isn't that different than those cases that you cited, where  
3 the third party just --

4 MR. WILLIS: It is a little different, Judge, but  
5 the principle is the same.

6 The principle is the Government through Mr. Foster  
7 is trying to enhance for this crime, for this crime, and I  
8 am not saying it is not a serious crime, but I also am  
9 saying my client isn't one of those dangerous criminals that  
10 ought to be taken care of as are reflected -- so much of  
11 this, Judge, is 3553. You know, they are really commingled  
12 in the facts that I want to present to you. Let me just be  
13 direct.

14 There is nothing extraordinary about this case.  
15 The statute, the sentencing guidelines, cover any sentence  
16 within ranges that would be acceptable. The presentence  
17 report has a range of 14, which is a range of 9 -- excuse  
18 me -- 14, which is a sentence --

19 THE COURT: A level of 14.

20 MR. WILLIS: -- level 14, which is a sentence of  
21 substantial time, if you were to follow it, if you were to  
22 follow it. This case doesn't deserve an enhancement.

23 There is nothing that Mr. Eady said, and let me put  
24 this right out to you directly before we even get into the  
25 other arguments, Mr. Eady's motivation was protect

1 self-preservation of what was being done to him.

2 THE COURT: Stop. That argument I am sure you are  
3 going to repeat it --

4 MR. WILLIS: Yes, it is.

5 THE COURT: -- during the argument as to whether or  
6 not there was a direct or indirect financial intent here,  
7 right?

8 MR. WILLIS: Part of that argument -- a lot of  
9 these arguments, Judge, really the facts lay over and go  
10 over into the other arguments, so it is hard to keep them  
11 exactly the same.

12 THE COURT: Well, the Government basically makes  
13 three arguments for their upward variance.

14 Number one, that this involves a right, which is  
15 very protected and important in our society, which is the  
16 right of privacy, the fact that by virtue of the type of  
17 position that Mr. Eady held, he wasn't some citizen with a  
18 radio, as the case that you cited, but he was the Deputy  
19 Director, second in command at the jail, which puts him in a  
20 different position in terms of what his responsibilities  
21 were with regard to the rights of others, and that the  
22 nature of the victims were people that were subservient to  
23 him. Some of the victims were --

24 MR. WILLIS: Where does all of that add up to?  
25 Does that add up to --

1           THE COURT: They said that that all adds up to,  
2 they would argue, that all would add up to making this case  
3 extraordinary under the statute.

4           MR. WILLIS: It doesn't. It is captured within the  
5 statute. Everything that they want to get in sentencing is  
6 captured within 2511 and the facts of this case, and an  
7 enhancement is simply not -- put it simple, it is simply not  
8 justified under the facts of this case, period.

9           I submitted a memorandum, a -- what is it, a  
10 six-page memorandum with an exhibit on this very subject  
11 matter of the request to the enhancement, and I repeat what  
12 I said.

13           I believe that the Government is wrapped up in the  
14 victims in this case, and they have lost their objectivity  
15 as a Government agent, and there is nothing more dangerous,  
16 nothing in my opinion, Judge, and I have only worked this  
17 system what, 48 years now, than an overzealous prosecution  
18 or an overzealous prosecutor. They want more out of this  
19 than they deserve. They want more out of this than they are  
20 entitled to, and an enhancement in a variance in this case  
21 is unjustified based on --

22           THE COURT: Why shouldn't a prosecutor be concerned  
23 about the victims and the impact on them?

24           Isn't that something that the Court should be  
25 concerned about?

1           We get impact statements from witnesses all of the  
2 time. In fact, the law gives them the ability to address  
3 the Court in writing or sometimes orally about the impact,  
4 so what is wrong about the Government being concerned about  
5 the impact and the nature of the victims?

6           MR. WILLIS: I will tell you what is wrong, Judge.  
7 You can't talk out of both sides of your mouth.

8           This case was prepared for trial. I had to receive  
9 five, six, seven phone calls from the Government, resolve  
10 this case. He can go on with his life. He doesn't need  
11 this. He can retire.

12           All of a sudden, you go to trial, and you exercise  
13 your constitutional right to a trial, and you exercise it  
14 because you believe there is a legal principle involved that  
15 needs to be resolved, the issue of a party, which came up  
16 during this trial, and now there is a 180-degree reversal on  
17 the Government's part. Why?

18           Because they accept the nonsense, the lies, the  
19 name calling, the taping of telephone calls, the phone calls  
20 to my client's wife that he lost his marriage over this.  
21 They have wrapped themselves around the complaints of the  
22 victims, but you have to either believe everything that the  
23 victim says, you have to believe that it is truthful, that  
24 Patricia Akin is so fearful of this man of what you now know  
25 of his background and the totality of this man, that she

1 locked her door and pulled the shades down and was afraid  
2 that he was going to come and attack her.

3 I mean, this thing has been blown out of  
4 proportion. You have to believe that Louis Ocasio --

5 THE COURT: Mr. Willis, is this going to -- this  
6 variance, because if it is, and you are making the  
7 arguments, I am not going to hear them again later, so if  
8 your idea is to repeat them again --

9 MR. WILLIS: Yeah, I'll finish.

10 THE COURT: -- on the variance issue because --

11 MR. WILLIS: Thank you.

12 THE COURT: -- I've had you before this Court  
13 enough times to know that I am going to hear them again, so  
14 I'd rather hear them all in one context.

15 (Laughter)

16 MR. WILLIS: Thank you, sir.

17 THE COURT: Okay. I am going to reserve decision  
18 on whether or not the Court will grant this enhancement.

19 You know, I think some of the points the Government  
20 makes are well taken in combination with the nature of the  
21 circumstances of the commission of the offense, but I also  
22 have to give it some thought.

23 I think Mr. Willis does make a good point that a  
24 lot of these things are already captured in the (A) in the  
25 other enhancements and in 2511, as well as the 3553 factors

1 in determining what is an appropriate sentence under the  
2 totality of the circumstances, so I have to give that some  
3 thought, so I am going to reserve on that for right now.

4 Let's proceed to the next motion, which is Mr.  
5 Willis' objection to the three-level enhancement, involving  
6 the three-level enhancement that got us to Level 14.

7 MR. WILLIS: Economic gain.

8 THE COURT: Economic gain.

9 So let's hear from I guess the Government first as  
10 to why this enhancement is appropriate. Mr. Foster?

11 MR. FOSTER: Yes, your Honor.

12 It is the Government's position that the  
13 three-level enhancement for direct or indirect commercial  
14 economic gain is appropriate in this case.

15 THE COURT: Okay. Let's begin here.

16 Do you agree or disagree that that analysis, and I  
17 view this as an important part, and I want to make sure you  
18 both address the Court, because I think that, you know, this  
19 one is giving me some thought for pause here.

20 In order to apply this enhancement, do I have to  
21 start the analysis by saying this was done for the purpose  
22 of some kind of direct or indirect gain, economic gain?

23 In other words, isn't that a fundamental fact that  
24 I must first find, and then if the answer is yes, then go  
25 ahead and say, then does it apply to the circumstances of

1 this case, right?

2 MR. FOSTER: The Government's position is that can  
3 either initially be the reason or it can develop into that.  
4 It can be -- if it was done, and now taking the case  
5 somebody does this, and they realize, oh, by doing this, I  
6 am gaining or I have the potential to gain, so it doesn't  
7 have to begin initially on the first decision.

8 THE COURT: Well, what is the language of the  
9 statute?

10 The statute says, let me just find it.

11 MR. FOSTER: The purpose of the offense was to  
12 obtain a direct or indirect commercial advantage --

13 THE COURT: The purpose of the offense was to  
14 obtain a direct or indirect advantage, so I think you need  
15 to convince me that the purpose of this offense was to  
16 obtain a direct or indirect advantage, and what direct or  
17 indirect economic advantage that was.

18 I think we can start by agreeing that Mr. Eady did  
19 not receive a personal economic gain in this, right?

20 MR. FOSTER: Correct.

21 THE COURT: So it is an indirect gain that we are  
22 talking about.

23 MR. FOSTER: Correct.

24 THE COURT: So I think the correct way to do this  
25 is for you to address the Court and tell me how he, where is

1 the evidence that the purpose of this offense was to obtain  
2 an indirect gain of some economic gain of some kind, and  
3 then what cases or law, if anything, is out there that would  
4 allow me to do that and apply this enhancement.

5 MR. FOSTER: Yes, your Honor.

6 It is the Government's position that Mr. Eady did  
7 want to obtain, I guess, an indirect economic gain through  
8 these acts. And if you remember during the trial, and also  
9 this is mentioned in the Government's submission, both  
10 Daniel Murray and Louis Ocasio testified about the  
11 difference between the union and the amount of grievances  
12 they filed prior to their involvement and post their  
13 involvement, and both of them testified that prior to Mr.  
14 Ocasio and Mr. Murray becoming the people in charge of the  
15 correction officers union, there were very few grievances  
16 that were filed.

17 However, when they became in charge, the grievances  
18 increased exponentially, and also in addition to that, they  
19 decided to hire Ms. Akin, whose job it was to basically make  
20 the union more efficient, help them file their grievances  
21 and help them find support for those grievances.

22 As a result of more grievances being filed, it was  
23 more work for Mr. Eady, and it was more work for the  
24 management.

25 There were several times during the recordings

1 where Mr. Eady expressed frustration over the fact that he  
2 had to deal with all of these grievances and deal with all  
3 of these annoyances, and he just did not like it.

4 During the testimony of the witnesses, they  
5 explained how in his interaction with them, once the  
6 grievances increased, his animosity towards them became  
7 apparent, and it became obvious.

8 Mr. Eady asked them to get rid of Ms. Akin. Mr.  
9 Eady was upset about all of the grievances being filed, and  
10 these are grievances, and the testimony was clear about  
11 this, these are grievances about work-related issues. This  
12 wasn't anything personal against Mr. Eady or -- these  
13 were --

14 THE COURT: All right. Let's play devil's  
15 advocate.

16 He is going to say, I think, based on everything I  
17 read here, that he was just upset with them about the  
18 personal attacks that he was receiving from Ms. Akin and  
19 Ocasio and Murray, and he was trying to just gather  
20 information about where the attacks are coming from, and to  
21 sort of fend off or prepare himself to address whatever  
22 allegations they were making against him, and that therefore  
23 this was personal in nature, not for the purposes of  
24 affecting the union or anything like that.

25 MR. FOSTER: If it was -- the Government disagrees

1 if it was personal in natural, then Mr. Eady certainly did  
2 things that affected the union and their ability to  
3 represent the workers.

4 When Mr. Eady put Louis Ocasio back on the shift  
5 and taken off full release, Mr. Eady knew full well that  
6 would prevent Louis Ocasio from doing union work.

7 I mean, it doesn't make sense that if he had a  
8 person -- and quite honestly, actually there is no evidence  
9 that I have ever actually heard that was ever presented in  
10 court, not that they had to produce any evidence, that Louis  
11 Ocasio, Omar Ortiz, or Daniel Murray ever attacked Mr. Eady  
12 personally. To this day, I have not heard it.

13 I have sat in the room. I have not heard anything  
14 about what Daniel Murray did to Kirk Eady, or what Louis  
15 Ocasio did to Kirk Eady, or what Omar Ortiz did to Kirk  
16 Eady. And so if Mr. Eady had a problem with Patricia Akin,  
17 I mean, he should have dealt with Patricia Akin.

18 Why did he involve these three fellow co-workers of  
19 his?

20 So it couldn't have just been personal. If it was  
21 personal, I am sure Mr. Eady would have gone straight to the  
22 person who he had a problem with, which by everything that  
23 we know --

24 THE COURT: I know that. Was it Ocasio who was the  
25 109, PBA leader?

1 MR. FOSTER: Yes.

2 THE COURT: What was Murray's position with the  
3 union at that time?

4 MR. FOSTER: Murray was the grievance chair of the  
5 109.

6 THE COURT: He was the previous chair?

7 MR. FOSTER: No, no. Grievance chair. He was in  
8 charge of helping Louis Ocasio file all of the grievances.

9 THE COURT: Oh, grievance chair.

10 MR. FOSTER: Grievance chair, yes.

11 So, your Honor, I mean, that to me supports the  
12 Government's point even more of the people that he attacked,  
13 the grievance chair and the president of the union.

14 THE COURT: So how does this directly give him an  
15 economic advantage?

16 What was the economic advantage?

17 MR. FOSTER: It doesn't directly. It indirectly  
18 gives him an economic advantage --

19 THE COURT: Or indirectly.

20 MR. FOSTER: -- because, first of all, there is a  
21 cost associated with all of these grievances. There is a  
22 cost because once grievances are filed, they must be dealt  
23 with. There's a backlog of grievances. Management has to  
24 meet. They have to deal with them. Perhaps they have to  
25 hire attorneys. It costs manpower. It costs -- it's

1           mentally taxing, at least according to Eady and his  
2           frustration in the recordings, so there is a cost to these  
3           grievances being filed. They don't just -- nothing happens.

4                     And by Mr. Eady choosing to try to reduce these  
5           grievances by whatever means, that indirectly is saving.  
6           That is an advantage to management. That's an advantage to  
7           management of less grievances to deal with, less meetings to  
8           have, less lawyers to potentially retain. It is a cost  
9           saving matter.

10                    And as Deputy Director of the Jail, indirectly --  
11           obviously, if you were able to help your organization run  
12           more efficiently or save money or cut costs, it is an  
13           advantage to you. It is an advantage that now maybe Oscar  
14           Aviles can say, wow, under Eady's watch, we were able to cut  
15           these costs because there were less grievances that were  
16           filed.

17                    I think it is not a stretch to know that that is a  
18           major issue, major issue in any labor negotiations is the  
19           amount of grievances that are filed and how quickly they can  
20           be dealt with. So I think that it is -- when one  
21           understands the complete nature of grievances and how they  
22           work, if you can reduce them, you are going to save your  
23           company or your agency or your side money.

24                    THE COURT: Okay. What case law do you want me to  
25           rely on?

1 MR. FOSTER: The case is -- just one moment, your  
2 Honor.

3 It was United States versus Christianson.

4 THE COURT: The 9th Circuit case?

5 MR. FOSTER: Yes.

6 THE COURT: That dealt with an attorney?

7 MR. FOSTER: Yes.

8 THE COURT: So I guess the economic advantage  
9 there, it would be your argument that the attorney got an  
10 indirect advantage because by gaining information on the  
11 litigation, he could do a better job for his client, and  
12 therefore, making the client happy was an indirect  
13 advantage.

14 MR. FOSTER: Correct, your Honor. Reap the  
15 benefits of that.

16 THE COURT: Okay. Any case other than that?

17 MR. FOSTER: No, your Honor.

18 It is the Government's position that was the most  
19 on point and close related --

20 THE COURT: Are there any Third Circuit cases  
21 dealing with this?

22 MR. FOSTER: No.

23 THE COURT: Look, I didn't find any either, but I  
24 want to make sure that the research was appropriate. I saw  
25 the 9th Circuit case, and of course, the notes in the

1 commentary as well.

2 MR. FOSTER: No, your Honor. We couldn't find  
3 anything in the Third Circuit. I think this is a fairly  
4 novel issue.

5 THE COURT: Anything else on this issue?

6 MR. FOSTER: Nothing from the Government.

7 THE COURT: Mr. Willis?

8 MR. WILLIS: Yes, Judge.

9 It is a novel issue, but the real question is:  
10 What was the purpose of Mr. Eady's phone calls?

11 What was the purpose of the interception?

12 You either accept one that it was personal and that  
13 it was done because Mr. Eady was being attacked by Patricia  
14 Akin on a regular weekly basis, personally attacked, family  
15 attacked, professionally attacked.

16 Mr. Eady was concerned with this vicious personal  
17 attack that was being leveled against him. It had nothing  
18 to do with the grievances. It had nothing to do with  
19 economic advantage. It had nothing do with --

20 THE COURT: Why can't it be both? Why can't it be  
21 both?

22 MR. WILLIS: I'm sorry, Judge?

23 THE COURT: Why under the facts of this case can't  
24 it be both personal and for the purposes of weakening the  
25 union?

1           MR. WILLIS: Because Eady's statements from the  
2 time he gave an interview to the United States Attorney's  
3 Office, which is in my paperwork, we gave very extensive  
4 paperwork in this, Judge, so that you would have the  
5 opportunity to reflect on most of these arguments before  
6 they were made.

7           Mr. Eady, there was no economic advantage. There  
8 was nothing.

9           In the telephone calls that Mr. Eady intercepted,  
10 we are talking about a 30 -- one phone call for 30 seconds.  
11 We have the recordings. The only thing that was discussed  
12 by Mr. Ocasio, by Omar, by any employees of the jail was  
13 Kirk Eady, not the union contract, not grievances. It was  
14 all Mr. Eady -- listen, the bottom line here is Mr. Eady  
15 lost his professionalism unfortunately. He got caught up --  
16 he got caught up in a personal, vindictive, revengeful  
17 attack on him, and his response was inappropriate, but it  
18 wasn't anything to do with taping to try to get economic  
19 advantage.

20           The statute itself, the guideline statute and  
21 what's written in the paragraph by the probation officer,  
22 this statute was essentially in a little footnote used for  
23 copyright infringement issues, not even to be applied in a  
24 case such as this. That is why there is very little, if  
25 any, case law.

1           The Government is stretching this and trying to get  
2 a three-level enhancement in an area, Judge, which is filled  
3 with uncertainty. They have to prove by a preponderance of  
4 the evidence that they are correct in their assertions.

5           Our position is, and we have laid it out, we have  
6 given you the recordings, we've given you quotes of  
7 everything that Mr. Eady has said. It all generates from  
8 his wanting to find out, quote, when the next attack is  
9 going to come.

10           That is what this case was about. They have  
11 stretched it, magnified it, enlarged it, and are trying to  
12 make more out of this than it really is. It is that simple.  
13 They are trying to find --

14           THE COURT: But isn't it finding out -- let's  
15 assume these attacks, as you are saying, were about him.  
16 They were about him in his position as Deputy Director of  
17 the Corrections Department, right?

18           MR. WILLIS: Correct.

19           THE COURT: And the attacks were coming from union  
20 people, union leadership --

21           MR. WILLIS: Well, it was coming from --

22           THE COURT: -- so if he then records them for the  
23 purpose of obtaining information from them about their  
24 attacks on him, and then takes steps and brags about the  
25 fact that he is going to take away, that he is going to

1 abolish, as he said, full release for the union leaders, so  
2 he can't go out there, and if he wants to go out there to  
3 the meetings, and so he has to come back to him, why in  
4 looking at the totality of the circumstances couldn't the  
5 Court conclude by a preponderance of the evidence that part  
6 and parcel of his purpose here wasn't just personal, it was  
7 also because they were union people that were attacking him,  
8 and he wanted to change the power structure within the  
9 union?

10 MR. WILLIS: Because you are reading into it --

11 THE COURT: How am I reading into it?

12 MR. WILLIS: You're taking it and reading into -- I  
13 think the Government says maybe -- I love when the  
14 Government uses the word "maybe". Maybe he did it to curry  
15 favor with Oscar Aviles.

16 Maybe?

17 Maybe he did. Maybe he didn't. Maybe this, but  
18 maybe not that.

19 They have to prove this by a preponderance of the  
20 evidence.. this isn't just you make an assertion.

21 If you read the rule, and what are we arguing here,  
22 some sort of indirect gain?

23 So now we are going to make law in the Third  
24 Circuit that this is an example of indirect economic gain by  
25 the Assistant Director of the Hudson County Jail?

1           THE COURT: Oh, no. We are not coming up with a  
2           concept of indirect gain. That's in the statute, direct or  
3           indirect.

4           MR. WILLIS: But I'm missing something. Judge, I  
5           am missing something.

6           You have to have a leap of faith in order to accept  
7           that this took place because the purpose was any purpose  
8           involving economic gain. They are interpreting it in such a  
9           way that you could say in hindsight, maybe it was indirect  
10          economic gain, but that is not proving it by a preponderance  
11          of the evidence, and there are --

12          THE COURT: If his purpose is to put himself in a  
13          better position vis-a-vis the leaders of the union, right,  
14          why isn't that an indirect gain for him?

15          MR. WILLIS: Because it has nothing to do with the  
16          labor negotiations. This whole concept of the grievances, I  
17          don't buy that argument. I don't even understand that  
18          argument. If it's to be made, what is it?

19          That he wanted to cut out the amount of grievances,  
20          they would have to hire a lawyer to represent them on it?

21          Well, maybe they would. Maybe they wouldn't.  
22          There is just no proof in this case. There isn't even proof  
23          in the extrajudicial information that we have.

24          This all started, your Honor, when Patricia Akin  
25          was hired, as mentioned by the prosecutor and as presented

1 to you. She was hired to personally attack Kirk Eady and to  
2 bring down Kirk Eady.

3 His response had nothing to do with economic --

4 THE COURT: Hired by who?

5 MR. WILLIS: -- nothing to do with economic --

6 THE COURT: Hired by who?

7 MR. WILLIS: -- I'm sorry?

8 THE COURT: She was hired by who?

9 MR. WILLIS: She was hired by the union to attack  
10 Kirk Eady, which she did regularly.

11 THE COURT: Okay.

12 MR. WILLIS: His response was a non economic  
13 response. There is nothing in what Kirk Eady did, other  
14 than to try to find out where these attacks were coming.  
15 They were personal. They were about his personal life.  
16 They about his wife. He was getting phone calls to his wife  
17 that he was cheating on her.

18 You have to understand the nonsense that was going  
19 on at this correctional institute. It was going on both  
20 sides. This was not done for any concept of economic gain.  
21 It was for self-preservation. They were going after Eady's  
22 job. They wrote to the Freeholders, Patricia Akin. I mean  
23 the whole thing got out of hand. But the last thing --

24 THE COURT: The union was going after his job, and  
25 he is doing this to obtain information to preserve his job.

1           Isn't that for an indirect economic gain?

2                   MR. WILLIS:  No, sir.

3                   THE COURT:  You just made the point.

4                   MR. WILLIS:  No.  Because his purpose was simply to  
5 protect himself.  There was no purpose for economic gain.  
6 That wasn't even in his mind.  That wasn't what he told the  
7 United States Attorneys.  That is not what Patricia Freeman  
8 testified to.  That is not what the testimony was.

9                   This is being created by the United States  
10 Attorneys Office wrapping themselves around the victims and  
11 trying to get him to do what the victim said.

12                   Yeah, a five-year sentence would be appropriate.

13                   Oh, it would be?

14                   Oh, it would?

15                   They are buying everything that the victims are  
16 telling them, and they are overlooking the facts that exist  
17 and the tape recordings.

18                   There was no economic gain.  There was no -- it  
19 wasn't financial.  It was self-preservation.

20                   If you have read the tapes, if you listen to the  
21 conversations, you will find out that those conversations  
22 were all about Mr. Eady, the president of the union, the  
23 vice president of the union, the president of the senior  
24 officers union, and Patricia Akin, they were conspiring on a  
25 weekly basis to bring him down.

1           His response was inappropriate, but it was a  
2           personal response, and that is what we are dealing with in  
3           this case. And to stretch it to economic -- indirect  
4           economic gain, they haven't proved by a preponderance of the  
5           evidence that that was anything that was in Eady's mind  
6           based on evidence. We are dealing with evidence, not with  
7           conjecture.

8           THE COURT: Okay. Any cases or case law that you  
9           want me to consider?

10          MR. WILLIS: What we did, Judge, we provided you  
11          with a number of cases. There are no cases that we found on  
12          the economic gain, but on other areas, yes, but not on the  
13          economic gain --

14          THE COURT: No, on the economic gain.

15          MR. WILLIS: -- because there isn't much out there.

16          THE COURT: Well, there is the 9th Circuit case,  
17          but that is it, it seems to be.

18          MR. WILLIS: Thank you, sir.

19          THE COURT: Thank you, sir.

20          MR. FOSTER: Your Honor, just -- just two quick  
21          points. The first regarding Patricia Akin, during the  
22          testimony, she testified that -- when she was first -- first  
23          of all, she attacked everybody and she admitted to it.

24          THE COURT: What?

25          MR. FOSTER: Ms. Akin.

1 THE COURT: You said, "First of all"?

2 MR. FOSTER: She attacked everybody on her website,  
3 not just Mr. Eady.

4 And during her testimony, she mentioned that when  
5 she was attacking or writing articles about other members of  
6 law enforcement, I mean, that was going on first. So the  
7 suggestion that she was hired to attack Mr. Eady, the  
8 evidence does not support that.

9 However, second and most important is the issue of  
10 what Mr. Eady's intent and the economic gain. I put  
11 portions of the transcript in my sentencing memo, but I  
12 would like to read it for the Court.

13 THE COURT: Which portion are we talking about?

14 MR. FOSTER: This is the part where Eady's  
15 referencing Oscar Aviles' brilliant idea of filing a  
16 defamation lawsuit --

17 THE COURT: \$4 million defamation suit --

18 MR. FOSTER: -- right, and which he talked --

19 THE COURT: -- right. But that's after the fact,  
20 though, right?

21 In other words, how does that inform me that the  
22 original purpose of the commission of the offense was  
23 economic gain?

24 MR. FOSTER: Well, your Honor, I -- I --

25 THE COURT: He said to the confidential informant:

1 Aviles came up with a great idea. We file a \$4 million  
2 defamation suit, and now they are going to have to pay the  
3 money directly, so it's going to affect -- I mean, I'm  
4 paraphrasing it.

5 MR. FOSTER: Right, exactly. Right, exactly.

6 Basically I don't like the union. We're going to  
7 break them.

8 So, your Honor, I think that, yes, even though this  
9 was done after the recordings, it wasn't done that long  
10 after the recordings, and there's nothing to suggest that  
11 that wasn't his mindset the entire time.

12 Like, what would have occurred, there's nothing to  
13 suggest anything occurred that all through his mindset from  
14 not being focused on the union to now he is focused on the  
15 union.

16 So, yes, your Honor, this happened afterwards, but  
17 I think it's right on point in terms of what -- at least one  
18 of the things was that Mr. Eady wanted to do. If there was  
19 some personal reasons in there, maybe, maybe not. That  
20 doesn't stop him from having multiple reasons for doing  
21 something.

22 THE COURT: All right.

23 Anything else on this issue?

24 MR. FOSTER: Nothing from the Government.

25 THE COURT: All right. Let's proceed to the next

1 issue. I am going to rule on all of them at one time, but  
2 let's go to issue number three, which is the two-level  
3 enhancement or abuse of trust.

4 Mr. Foster?

5 MR. FOSTER: Yes, your Honor.

6 The Government agrees with Probation that this  
7 two-level enhancement is appropriate because of Mr. Eady's  
8 position in the jail and the fact that he used that position  
9 to obtain information to help him in committing the crime,  
10 and the information was that he used his position to get the  
11 telephone numbers of the victims in the -- and that's what  
12 he used to go on the website and commit the crimes.

13 Now, during the trial, you heard from all of the  
14 victims, and they all said they had never given Mr. Eady  
15 their telephone number. They all testified to that, and  
16 based on both sides, based on the environment in the jail,  
17 it is pretty clear that at no point in time would anyone  
18 have voluntarily given -- the Government's victims would  
19 have given Mr. Eady their phone number. They were never  
20 friends in any way.

21 And so if there was any way that Mr. Eady obtained  
22 their telephone number, it was for -- it was through the,  
23 say, business relationship. The fact that he was the  
24 manager of the -- manager of the -- Deputy Director of the  
25 Jail, and as I'm sure as a Deputy Director, you have access

1 to personnel files, access to just general information,  
2 which you are supposed to use for business purposes, not to  
3 be taking information and using it to harass fellow  
4 employees and to commit crimes.

5 And also with the issue of Daniel Murray and the  
6 KKK, as Daniel Murray testified, he didn't sign up for the  
7 KKK. And Latonia Freeman told you -- or told the Court  
8 during her testimony that while Mr. Eady didn't directly say  
9 he did it, when she asked him about it, and there was a back  
10 and forth, he said to her, "Don't F with me," which the  
11 Government submits is Mr. Eady admitting that he did it.  
12 There is no other logical reading of that conversation.

13 If you had nothing to do with it, you wouldn't say,  
14 "Don't F with me."

15 What he said was actually a little bit longer and  
16 more -- and more impassioned than that.

17 So those are the two specific points that the  
18 Government is going to cite as to how Mr. Eady used his  
19 position to make the commission of his crime easier, and  
20 that is why he should get those two points.

21 THE COURT: Mr. Willis?

22 MR. WILLIS: There are so many maybes and  
23 possibilities here, that they are endless.

24 I would rest on the submission in writing on the  
25 public trust issue, and I have no oral argument to make,

1 Judge, and I will rest on the papers, which were briefed.

2 Thank you.

3 THE COURT: All right. We are now on the issue of  
4 defendant's motion for a downward departure for aberrant  
5 behavior.

6 Mr. Willis, you are up first.

7 MR. WILLIS: Yes, your Honor.

8 Just bear with me for one second, please.

9 In this application, Judge, you would have to  
10 accept as a predicate, and I admit this, you would have to  
11 accept as a predicate that these acts were one continuous  
12 occurrence because the predicate for this application is  
13 that the occurrence was a single criminal transaction,  
14 and --

15 THE COURT: How can I, under what evidence can I  
16 accept that premise when you have 12 different phone calls  
17 over a different period of time?

18 MR. WILLIS: Judge, I don't like to argue from a  
19 position of real weakness. Quite frankly, I think he is in  
20 a position of trust. I have other arguments to make, and I  
21 don't think that we would carry the day on this argument no  
22 matter what I said, so I will rest on the brief.

23 THE COURT: But this argument is not on the  
24 position of trust issue, aberrant behavior.

25 MR. WILLIS: This is the aberrant behavior, Judge,

1 in which the requirement was that there was a single  
2 transaction, that was committed without significant  
3 planning, was of limited duration, and represented a marked  
4 deviation by the defendant from an otherwise lawful abiding  
5 life.

6 He falls into two of the four categories. Quite  
7 frankly, we believe that this was one occurrence without  
8 significant planning. The App that was purchased was a  
9 public App available for your telephone usage. There wasn't  
10 any massive planning that took place in order to do this,  
11 and we believe that this was one continuous act.

12 If you don't view it that way, then we can't argue  
13 that aberrant behavior would apply, but our position is that  
14 even though it stretched for a period of time, it was a  
15 continuous act involving the same parties during this period  
16 of time.

17 THE COURT: I see.

18 MR. WILLIS: Thank you.

19 THE COURT: Thank you.

20 All right. So now we have come to that moment in  
21 the trial, where we are going to talk about the 3553  
22 factors. I intend to rule on the variance and all of the  
23 enhancements and the downward departure for aberrant  
24 behavior. I intend to rule on each one of those things, but  
25 rather than do that at this point, I would rather hear the

1 arguments now because I think a lot of these things are  
2 going to conflate anyway.

3 Let me hear your best arguments on 3553 and where  
4 you think the defendant under the 3553 factors of avoiding  
5 unwarranted sentencing disparities, providing appropriate  
6 punishment, protecting the public, providing the defendant  
7 with any type of needed mental health clinic or treatment,  
8 or education, vocational training, imposing a sentence that  
9 reflects the seriousness of the offense, deterrence,  
10 individual and general, all of those issues under 3553.

11 So why don't you argue that now and give me your  
12 position on where you think the Court should end up, Mr.  
13 Willis, and, Mr. Foster, and then I will make a decision,  
14 because at the end of the day it is about what is the  
15 appropriate sentence under all of those factors, even after  
16 all of the rulings by the Court on the motion since the  
17 guidelines are really advisory in nature.

18 So I will hear from you, and I will hear from the  
19 defendant, too, if he wants to address the Court at that  
20 point, although I do have his letter, which I will consider.

21 So, Mr. Foster, you are going to go second now.

22 Mr. Willis, I would like to hear from you, and then  
23 I would like to hear from the defendant, if he wishes to  
24 address the Court, and lastly I would like to hear from Mr.  
25 Foster.

1 MR. WILLIS: Yes, your Honor.

2 (Court and Court confer)

3 THE COURT: All right, Mr. Willis.

4 MR. WILLIS: Yes, your Honor.

5 Your Honor, if the Court please, I don't pretend to  
6 know a whole lot. I certainly don't pretend to know  
7 everything about the criminal justice system, but it has  
8 been part of my life, Judge, for 48 years.

9 I have had the honor to come before the District  
10 Court many, many, many, many times, over 20 federal trials,  
11 and thousands of investigations, State and Federal, and I  
12 have had the opportunity to go to many foreign  
13 jurisdictions.

14 Therefore, I feel that I am comfortable in telling  
15 you I still don't understand some aspects of the justice  
16 system. I don't even know the definition of justice, but I  
17 know when something is wrong, and I know when something  
18 smells, and I know when something is not right, and I know  
19 what has happened in this case.

20 If you have never been to the Hudson County Jail,  
21 if you have never been to the Essex County Jail or any one  
22 of the 21 jails, they are little cities onto themselves.  
23 The language is disgraceful. It is used by correction  
24 officers as well as inmates, disrespectful, non  
25 professional.

1           There has been a contentious relationship between  
2           the union and Kirk Eady, and the union and Oscar Aviles, and  
3           the union and management, and the union and the Freeholders,  
4           and the union and the Director of Public Safety.

5           Petty things go on at a jail, petty things. Name  
6           calling is a regular. Cursing is a regular.

7           Somebody has to explain to you what happened to  
8           Kirk Eady, and somebody has to put things in the context of  
9           what happened here, not by maybes, not by could be's, not by  
10          theories, not by asking for an enhancement. You have to  
11          talk about the real world.

12          What happened at that correctional institute  
13          involving Mr. Eady and these four individuals?

14          It was petty, disruptive, nonproductive, nonsense.

15          Now, we will get to that in a moment.

16          Who is Kirk Eady?

17          He didn't testify at the trial. You don't really  
18          know a whole lot about him.

19          I want to point out to you, Judge, and you probably  
20          enjoy seeing her, his mother is here. She is a very elderly  
21          lady. She is in the courtroom in the first row. She raised  
22          three men as a basically single parent. When Kirk lost his  
23          father to throat cancer, she raised them and educated them,  
24          and education was the most important thing that she could  
25          instill in the Eady children. Every one of them have told

1 me that, and every single one of them got a college degree  
2 and graduate degrees.

3 THE COURT: Did Kirk graduate from college?

4 MR. WILLIS: Yes, he did.

5 THE COURT: At Rutgers?

6 MR. WILLIS: At Rutgers.

7 THE COURT: Criminal justice major?

8 MR. WILLIS: Criminal justice major

9 Went and played basketball for Old Dominion,  
10 and after --

11 THE COURT: He went to Old Dominion for two years,  
12 and then transferred --

13 MR. WILLIS: That's correct, and transferred, got a  
14 job. Worked his job at the jail as a correction officer,  
15 and went to school at night to get his college degree  
16 because it meant everything to the Eady family.

17 Every single one of his brothers that sit in this  
18 courtroom today are productive citizens of this state  
19 because that is the way they were brought up.

20 So what happened?

21 Well, Mr. Eady pursued a career as a correction  
22 officer, became a sergeant after six years, became a  
23 lieutenant, became a captain, and in short order he became  
24 the Assistant Director of the Hudson County Jail, an  
25 honorable position that pays him \$120,000 a year, and he

1 worked, and he ran into the pettiness, the pettiness of the  
2 union representatives. And I say that carefully, and I  
3 choose my words carefully because you can protect the Akins  
4 and the Ocasios. You can protect the Ortizes and the  
5 Murrays.

6 What I find to be incredible are these, and I might  
7 say this to you directly, Judge, are the statements made by  
8 the victims in this case.

9 I mean, come on. Do you think they exaggerated?

10 Do you think that they put together these letters  
11 by themselves?

12 Do you think that these letters weren't put  
13 together by the civil attorneys representing them in a civil  
14 suit pending against Kirk Eady?

15 Who do you think wrote those letters or put them  
16 together with the exaggerations and craziness in those  
17 letters?

18 Patricia Akin's letter, it is nuts. It says  
19 everything. It ought to spell out for you with your  
20 experience on the bench and the many cases, these people are  
21 exaggerating.

22 I can't believe that Mr. Ocasio, who was attacked  
23 at the jail and beaten by inmates and was out of work for  
24 six months never suffered -- apparently never suffered as  
25 badly as he's suffering emotionally with post traumatic

1 stress syndrome from Kirk Eady, by the way, who they call  
2 the most dangerous type of criminal.

3 And who ate into that?

4 Mr. Foster.

5 Who accepts that?

6 Mr. FASTER.

7 That's why he asked for an enhancement. We have a  
8 completely different view of what is justice at sentencing.  
9 Thank God under Koon, it is a unique study in human failure,  
10 and each case is unique on to itself.

11 They made him into a monster. They made him into a  
12 terrible human being. Let me correct the record. Let me  
13 tell you a little bit about Kirk, about his upbringing,  
14 about what he's done.

15 A monster?

16 Someone that should go to jail?

17 I think one of the victims said, "Five years would  
18 be enough."

19 I mean, what are we turning into?

20 What did he do?

21 He violated an important right, no question about  
22 it, the right to privacy, but let's not make this a cause  
23 salem. Let's not make this more than it is.

24 Look at the cases in the United States where  
25 defendants have been sentenced under these crimes,

1 probation, fines. That is, the vast majority of these cases  
2 result in probation, which is a sentence onto itself.

3 What is the collateral damage before I talk to you  
4 about Mr. Eady's background?

5 What is the collateral damage, because you can  
6 consider that in sentencing.

7 Well, first of all, a \$120,000 a year job is gone.  
8 That nice pension that he spent 25 years working for, your  
9 Honor, that we all look forward to in our day of retirement  
10 is gone. The State of New Jersey through the Attorney  
11 General is going to take his pension. Gone. But that is  
12 not enough punishment.

13 You know, now the man is 50-some years old. He's  
14 got a two-year-old daughter, and he has no pension for 25  
15 years of work. That's not punishment?

16 He worked for the airlines. He had a  
17 ten-thousand-dollar a year job with United Airlines. He  
18 lost his security clearance. He lost a job. He's  
19 unemployed, and his pension is going to be taken from him.

20 How much punishment is enough in a case like this?

21 What are his personal characteristics?

22 What is it that makes a man a man?

23 What is it that makes a man a person of the  
24 community, a person that is worthy of saving, a person that  
25 shouldn't go to jail, because that is the type of person

1 Kirk Eady is.

2 Yes, your Honor, I said a person that shouldn't go  
3 to jail, because probation is a sentence in and of itself,  
4 and a five-year probationary, a three-year probationary  
5 sentence.

6 The Government has indicated to me that they are  
7 worried that Mr. Eady is going to repeat his conduct. That  
8 is absurd. That's the thinking of the Government, that this  
9 is a repetitive defendant. Those are the words of the  
10 Government.

11 Do you really think, your Honor, that Mr. Eady  
12 after the letter he wrote to you and having gone through  
13 this, and having lost all income, respectability, do you  
14 really think that he has says he has been a civil servant  
15 for 24 years, that he was a committed employee, what has he  
16 done for the community?

17 Did he just take his paycheck and go home?

18 That is not Kirk Eady. That's not what he did for  
19 the community. That is not what his mother taught him and  
20 raised him as a person to give back to the community that  
21 gave to you, and that is exactly what he did.

22 Six different community affairs. He ran the Sacred  
23 Straight Program known as More Than a Race at the Hudson  
24 County Jail on his own time, on his own time. This program  
25 enlightened many youths on how to become employed with the

1 Department of Corrections and help troubled youths to  
2 reenter society. This was not part of his pay. This was on  
3 his own time.

4 He served in the summer league for baseball  
5 tournaments, where he taught teenagers how to hone their  
6 skills while still acting as a personal mentor for many of  
7 these young men.

8 According to Mr. Mohammad Akil, who has known the  
9 defendant, and according to Joe Bacchio, an attorney who has  
10 known him, he has been very generous with his time over 15  
11 years, plus years directing troubled teens into a positive  
12 path, many of whom have no fathers.

13 This is the man you want to put in jail? You want  
14 to give him an enhancement? You want him to do prison time,  
15 a lot of prison time?

16 Do you think that is right, Judge, that this person  
17 should go to prison?

18 At the request of the Board of Education for the  
19 City of Jersey City, he designed the program on his own  
20 time, Judge. He didn't get paid for this, addressing the  
21 consequences of gang violence and how to handle gang  
22 violence. He did that and held a weekly seminar, where he  
23 went to all of the various schools in Jersey City and Hudson  
24 County.

25 Put him in jail, throw him away. He's no good.

1 He's bad. He is the worst type of criminal you could deal  
2 with. Why, he is bad, Judge,

3 Well, he is so bad, that what he did was, he went  
4 around to all of the public schools and middle schools and  
5 spoke to the students about gangs and violence on a regular  
6 basis on his own time. He became a symbol to these students  
7 of doing the right thing, of getting an education, of going  
8 to school, of making something of yourself. He spent the  
9 time with these people and tried to help them in their  
10 lives.

11 What did he do in terms of basketball, baseball?

12 He coached the junior varsity team at Hudson  
13 Catholic High School.

14 Here is a man who was involved in his community.  
15 He was a positive role model for his community, who has been  
16 brought down to his knees, all six-foot-four of him.

17 What do you want, Mr. U.S. Attorney, what do you  
18 really want?

19 Do you really think this is going to be one of most  
20 dangerous recidivist defendants that you are going to handle  
21 in that office?

22 To me, I look at it this way, Judge. It is  
23 serious, and the right to privacy is serious, and I could  
24 waste my time arguing that it isn't, but put it in the  
25 scheme of serious crimes.

1           My goodness, I have been out in this district on  
2 serious crimes my whole life. This is the least serious of  
3 all of the crimes that I ever had.

4           Ask yourself this, Judge: Would a probationary  
5 sentence with community service -- who better could do  
6 community service than Kirk Eady?

7           Why is it necessary to put Mr. Eady in jail?

8           What purpose does that serve to take this good man?

9           If I am not mistaken, if I am not mistaken, Judge,  
10 the collateral of consequences in this case, he has lost his  
11 wife. His marriage is in jeopardy. So what do you do?

12           You have a good man, obviously a good man, a very  
13 good man, who made a mistake. He made a mistake. It was  
14 wrong. You are talking about a total of about four minutes  
15 worth of conversation that was actually taped, four tapes,  
16 four. His total amount of conversations that he  
17 intercepted, four of them, one of them for 30 seconds, one  
18 of them for three minutes, one for them for two minutes and  
19 20 seconds, and I can't recall the amount of time on the  
20 fourth. That is what we are talking about.

21           And none of the intercepted calls of which we have  
22 the recordings, none of those intercepted calls involved  
23 union business. They all involved conversations between  
24 Ocasio.

25           Why did he tape Akin and Ocasio? Because he

1 thought that they were providing information to Ms. Akin  
2 about him. That was the reason why he taped them. That  
3 goes to the heart of the other arguments of what his purpose  
4 was. His purpose was to protect himself from these vicious  
5 attacks.

6 And were they vicious?

7 You better believe it.

8 What did they do to him?

9 Well, I will give you examples.

10 They wrote disparaging letters to the Freeholders  
11 attacking his character and his administrative skills at the  
12 jail. They sent letters to his wife accusing his wife --  
13 accusing him of being unfaithful to his wife.

14 They emailed. They harassed him. They  
15 disrespected him in front of the officers. They tried to  
16 bring him down.

17 You have to understand what was going on at that  
18 jail. This was all personal. This was Eady versus them,  
19 them versus Eady, and he got caught up in it. He got caught  
20 up in it.

21 Does he need to go to jail for this?

22 I suggest, your Honor, the answer is no, strongly  
23 no. Jail will serve no purpose. The purpose of punishment  
24 is general punishment -- general deterrence.

25 If Mr. Eady has lost what I told you he has lost,

1 the only thing he hasn't lost is his dignity. The necessity  
2 of putting him in jail and taking him away from his  
3 two-year-old daughter, who he cares for on a daily basis  
4 while his wife -- ex-wife to be works, is cruel punishment  
5 to take him and put him in jail after a career, a stellar  
6 career, other than this one incident that brought him down,  
7 a stellar career at the jail. No matter what anyone says,  
8 no matter what David Foster says, no matter what Mr. Ocasio  
9 says, no matter what Ms. Akin says, he had a stellar career  
10 at the jail. He went from a line officer to the Assistant  
11 Director of the Hudson County Jail.

12 Now, do you think he got that because he slacked  
13 off on the job?

14 Do you think he got that because he wasn't a good  
15 commander of the correction officers there?

16 This will never happen again. It is not the type  
17 of crime that would ever happen again. Punishing him  
18 severely, putting him in jail at this point in his life,  
19 he's stripped of everything. He has no money.

20 Putting him in jail, Judge, is harsh. It's  
21 unusually harsh treatment. Probation would be appropriate.  
22 Probation is punishment. Probation affects your life. It  
23 affects your daily life, what you can do, where you can go,  
24 where you can travel, who you can see.

25 Probation is a sentence in and of itself, and I am

1 asking this Court under 3553, we know the advisory -- the  
2 guidelines are advisory. This is a case where you can  
3 fashion a sentence, any sentence you want, and it could be  
4 justified. That is the way I feel. You could go this way.  
5 You could go down the middle. You could go and give him  
6 probation, if you felt it was appropriate.

7 Nobody could criticize a probationary sentence in a  
8 case like this, especially when it would be atypical if it  
9 wasn't, because most of the cases are probationary cases.

10 What makes this so different?

11 It is because it is driven by a civil suit that  
12 each one of these defendants has against Mr. Eady, a  
13 personal civil suit. You have to take that into account as  
14 to motivation, as to motivation of these individuals.

15 With that, your Honor, I said as much as I can on  
16 behalf of Mr. Eady. I think that it is a difficult  
17 sentence, I really do, and I mean that sincerely. I  
18 wouldn't want to be where you are at this moment, because  
19 those are not the easy decisions to make. But I am asking  
20 you to please in this case, under these circumstances and  
21 the unique profile of Mr. Eady and the good things he has  
22 done in his life and the achievements that he has made,  
23 don't put him in jail.

24 Thank you, sir.

25 THE COURT: Thank you.

1           Does Mr. Eady wish to address the Court beyond the  
2 letter that he wrote, Mr. Willis?

3           You do. Okay.

4           MR. EADY: Good day, your Honor.

5           I want to say I take responsibility --  
6 responsibility for my actions. I apologize to this Court.  
7 I apologize to the victims. I apologize to my family for  
8 putting them through this.

9           What I learned from this, an eye for an eye makes  
10 the whole world blind.

11           Like I said, I shouldn't have reacted with anger  
12 and frustration. I should have took it a different way, but  
13 that's what I got out of it. An eye for an eye makes the  
14 whole world blind.

15           Thank you.

16           THE COURT: Thank you.

17           Mr. Foster?

18           MR. FOSTER: Yes, your Honor.

19           Your Honor, Mr. Willis is correct. I don't think  
20 it is necessary or appropriate to go into negotiations, but  
21 I think it is -- plea negotiations, but I think in this case  
22 it is particularly relevant that I sat in a room with Mr.  
23 Willis and Mr. Eady, and I was like: Just take a plea. You  
24 might get probation. Put this behind you. And he chose not  
25 to. He had an absolute right to take the case to trial or

1 to take the plea.

2 But in making that pitch and making that offer to  
3 him, I actually failed as a prosecutor, and here is why.  
4 Because before doing that, what I should have done is I  
5 should have tried harder to get in contact with those  
6 victims, and I should have tried harder to get in contact  
7 with Ms. Brady.

8 But they didn't really want to talk to me. They  
9 didn't really want to get involved. Ms. Freeman didn't  
10 really want to get involved, and I just thought they just  
11 didn't care. So for me as a prosecutor in the case, okay, I  
12 can move on with this case and wrap it up and move on to the  
13 next thing.

14 And so the case didn't get wrapped up, even though  
15 I told -- I told Mr. Eady just to take the deal and move on  
16 with your life, et cetera, and so we ended up having to  
17 prepare for trial, and I am very grateful because I actually  
18 learned a lesson. I learned that the reason why those  
19 victims, and our main witness, Ms. Freeman, didn't want to  
20 get involved wasn't because they didn't care. It wasn't  
21 because it wasn't a big deal to them, because they were  
22 terrified. They were absolutely terrified of this man.

23 The Court had the opportunity to see Ms. Freeman.  
24 The Government sat across the table from her multiple times,  
25 crying, shaking, scared of him, scared to sit in the same

1 courtroom with Mr. Eady, scared to testify about the things  
2 that he did.

3 I met multiple times with the victims. I  
4 learned -- I saw grown men cry about this case, about what  
5 Mr. Eady did to them and the harassment. It was hard for  
6 everybody because of what he did to them and their families.

7 So, yes, the Government's position had absolutely  
8 changed, absolutely. It is the Government's position he  
9 deserves significant jail time, that he is a significant  
10 menace to society, that there is a significant chance that  
11 he will commit another crime again, that there is a  
12 significant chance that he has no respect for the law, that  
13 his nature and characteristics show that he is a problem,  
14 that deterrence is an issue because this was not a one time  
15 incident.

16 This was not just, oh, I am just annoyed and one  
17 day I'm lashing out. It was a planned attack and a series  
18 of planned events, not these specific illegal recordings,  
19 and all of the harassment that went on for years.  
20 Everything that must be considered.

21 Now, Mr. Eady and Mr. Willis just want to talk  
22 about, oh, I should have recorded them, and it was just a  
23 couple of phone calls and nothing on there.

24 What about everything else?

25 That wasn't just it.

1           Ms. Freeman wouldn't have been terrified to come up  
2 here, if it was just recordings. The witnesses and the  
3 victims wouldn't have been so traumatized by this, if it had  
4 been just the recordings.

5           He signed somebody up for the KKK. That is crazy.  
6 That is not random. That is not a random bad decision.  
7 That is someone who has a problem. That is somebody who has  
8 not learned his lesson. That is somebody who will not learn  
9 his lesson. He won't learn his lesson. Even after he --  
10 even after the search warrant, after he was arrested, he  
11 went to Latonia Freeman's broth -- he went to Latonia  
12 Freeman's son and confronted the son about why did -- why  
13 did your -- why did your mother rat me out.

14           He didn't learn his lesson then.

15           After the FBI went to him, and before he knew it  
16 was Latonia Freeman, he told Latonia Freeman, I am going to  
17 get Louis Ocasio for ratting me out to the FBI.

18           He didn't learn his lesson then. He didn't. I'm  
19 sure he hasn't yet.

20           Your Honor, with all due respect to Mr. Eady, I  
21 think his apology is fake. That is why I put, and I stand  
22 by that, he is one of the most dangerous criminals because  
23 he stands here. He can put on a nice suit. He had a nice  
24 job, well educated. I am sure his mother is wonderful. I'm  
25 sure his brothers are wonderful. But behind that, he has a

1 very evil mind, very vindictive personality, and that is a  
2 problem. That's a problem because you can't see that when  
3 you walk up to him. You can't see that a mile away.

4 Maybe a drug dealer or gang banger, you can see  
5 that coming. Somebody like him, when he's put up in the  
6 same position that he had, a position of authority, he  
7 abused that constantly. He took advantage of that  
8 constantly. He ruined the lives of people that were working  
9 under him. That is extremely serious.

10 And the defense wants to talk about the collateral  
11 consequences that he has lost his money, that he's lost his  
12 pension, and his family is in turmoil, and isn't that  
13 enough.

14 Your Honor, what that suggests is essentially like  
15 if you were rich, and this crime costs you money, well, then  
16 he you suffered enough. But if you don't have any money,  
17 then it is okay for you to go to jail.

18 That is not fair. That's not fair that his  
19 punishment should be different because he happened to have a  
20 wife that might no longer be with him, so therefore, if he  
21 did have a wife, it would change?

22 The fact that he has a pension that he might lose  
23 it, so if this was a case that involved somebody that didn't  
24 have a pension, the punishment should be different?

25 That is not fair.

1           He took on the responsibility of having a  
2           significant job, of having significant responsibilities, and  
3           you get significant benefits, but it works both ways. To  
4           get those significant benefits and you abuse it, there are  
5           significant losses as well.

6           Now, Mr. Willis talks about the civil suit as being  
7           some type of motivation. If you follow the sequence of  
8           events, that's actually -- that's really factually  
9           incorrect, because Mister -- the victims in this case, they  
10          weren't banging down my door to say, oh, prosecute this  
11          case, oh, go forward, no, don't given him a deal.

12          Nothing like that. That is typically the case. If  
13          somebody has a civil suit, and there's a pending -- there's  
14          also a criminal matter, then the victims are after the  
15          prosecutors, yes, go after that guy, go after him, go after  
16          him, because they want to reap the benefits on the civil  
17          side. That actually did not happen in this case at all, at  
18          all, so that is incorrect.

19          As far as my interaction with the victims, they did  
20          not have any motivation, and that was evidenced in their --  
21          and quite frankly, it was hard for me to get ahold of them,  
22          and I found out why when I finally did, when I learned about  
23          Louis Ocasio and how his treatment and how it affected him,  
24          how Mr. Eady affected him.

25          Now, in fashioning a sentence to reflect the

1       seriousness of the offense, to promote respect for the law  
2       and just punishment, it is the Government's position that  
3       significant jail time is necessary, and a jail time between  
4       the range of 21 to 27 months.

5               The seriousness of the offense, your Honor, I  
6       touched upon that earlier, how it involved privacy rights  
7       and how those are rights that are held very dearly in this  
8       country, to promote respect for the law. I think it is  
9       ironic that we are arguing about promoting respect for the  
10      law for somebody who was sworn to uphold the law. I think  
11      that that goes towards his history and characteristics. It  
12      goes to the type of person he is, that every day it is his  
13      job to uphold the law, for 20-odd years, that is what he was  
14      supposed to do.

15             And according to Mr. Willis, he actually went to  
16      the community and did other things to encourage other people  
17      to uphold the law. So all while doing that, he is breaking  
18      the law and planning to treat people harshly, planning to  
19      just do horrible things to people, so clearly there is an  
20      issue of promoting respect for the law.

21             To afford adequate deterrence in this criminal  
22      conduct, your Honor, I think that there is an issue of  
23      specific deterrence referring to the defendant as well as to  
24      a general deterrence.

25             Specific deterrence, I think that the recordings

1 bear out the fact that he is someone that is a vindictive  
2 person that will keep going and going and going until he is  
3 stopped. I think the fact that even after the case started,  
4 he reached out to Ms. Freeman's brother to find out -- to  
5 find out what Ms. Freeman was doing and why she passed on  
6 information, knowing that he's not supposed to do that, I  
7 think that shows he didn't learn his lesson.

8 I think that after the search warrant occurred, and  
9 he didn't know Ms. Freeman was involved, and he mentioned  
10 getting Omar -- getting Louis Ocasio for going to the FBI,  
11 that shows that he didn't learn his lesson. He is not going  
12 to learn his lesson, your Honor. That is just the type of  
13 person that he is.

14 Now, in terms of general deterrence, I think that  
15 is actually of particular concern, this issue, because as  
16 both sides agree, this was about management and about the  
17 union, and that whole jail is looking to see what's going to  
18 happen to Kirk Eady. Everybody wants to see. All right.  
19 Finally, finally, Kirk Eady got in trouble for what we all  
20 knew he was doing all of this time. Everything that he was  
21 doing, finally law enforcement stepped in, and they did  
22 something.

23 Now, let's see how is he going to be treated,  
24 because they know as the dean of discipline in that jail,  
25 Kirk Eady was quick to impose harsh discipline on people,

1           whether it was merited or not.

2                       Louis Ocasio, Foley's gone, just because I feel  
3           like it.

4                       Bringing water in, so you could have water on your  
5           shift, take that away.

6                       So there will be a lot of people looking to see  
7           what type of punishment does Kirk Eady get.

8                       Your Honor, to be quite frank, probation is a joke  
9           in this case. Probation -- if Mr. Eady gets probation, he  
10          will be smiling. He will be back at work, and he will be  
11          saying he beat the system. Guaranteed.

12                      Just one moment, your Honor.

13                      Your Honor, the defense is still saying that this  
14          was a personal issue, and it had nothing to do with the  
15          union, and I think that that should go towards his  
16          unwillingness to accept responsibility.

17                      I think it is quite clear that this was not  
18          strictly a personal issue. Then why was he talking about --  
19          why was he delighted by the idea of suing the union and  
20          breaking the union and making them spend money?

21                      That is not personal.

22                      Why did he choose to go after the grievance chair  
23          of the union?

24                      What did Daniel Murray personally do to Kirk Eady?

25                      Nothing.

1           The only thing Daniel Murray did was he was the  
2 grievance chair of the union that filed lots of grievances

3           What did Louis Ocasio personally do to Kirk Eady?

4           Nothing. He was just a president of a union that  
5 filed lots of grievances. It wasn't personal.

6           Patty Akin, what did she put on her website?

7           Work-related complaints or issues about Kirk Eady.

8           He took it personally. That's for sure. He took  
9 all of these things personally. That doesn't mean it was  
10 personal. Everything was about the union and management  
11 relations, and he refuses -- he still has not admitted it.  
12 He still has not.

13           And in his letter and what he just said, I  
14 apologize for my actions, et cetera, et cetera, but no  
15 mention of the fact that he got carried away or whatever in  
16 his zeal to try and deal with the union, or his anger about  
17 them filing grievances. He still won't -- he still won't  
18 say anything about it. That makes a big difference. It  
19 makes a big difference.

20           How is Mr. Willis going to stand up here and talk  
21 about probation, but still not even have him acknowledge  
22 what he did?

23           He is still hiding behind this, oh, they said mean  
24 things to me, so I got a little carried away.

25           It doesn't make any sense that -- how is he going

1 to get credit or ask for credit from your Honor for  
2 educating people, doing all of these wonderful things on his  
3 own time, helping the youths, et cetera, et cetera, but when  
4 it comes to his own actions, he still can't admit what he  
5 did.

6 Your Honor, it is quite -- it's also human nature.  
7 It's very easy to educate people, to stand up there, I am  
8 the Director of the Jail. Yes, you guys should be like me,  
9 and I will show you the right path.

10 That is good. It makes you feel good about  
11 yourself, of course. At the same time you are helping out  
12 others. But at the end of the day, he feels good about  
13 himself, he helped out the community, that's great.

14 But now when it comes to Mr. Eady acknowledging his  
15 own faults, and his own criminal acts, it is not same  
16 acknowledgement. It's a little hemming and hawing. I got a  
17 little carried away. I've now learned an eye for an eye  
18 makes everyone blind.

19 Admit the fact that you wanted to record them for  
20 union management issues, and you were annoyed about the  
21 grievances.

22 He will never do it. He's still holding on to that  
23 little bit of resistance. It is like, I am not going to  
24 admit it. I refuse to admit it, and that's why deterrence  
25 is an issue. That is why respect for the law is an issue.

1 That is why the seriousness of an offense is an issue.

2 Your Honor, I think that it is also a little bit  
3 ironic that Mr. Eady or through his attorney talks about his  
4 family and talks about his wife and talks about those  
5 things. And I understand at sentencing, the defense brings  
6 all of those things up, and they are allowed to do that, and  
7 out of respect for his family and out of respect for his  
8 wife, the Government consciously did not include all the  
9 recordings, and I told Mr. Willis that.

10 There are certain things in there that I think do  
11 go to Mr. Eady's character and Mr. Eady's respect or lack of  
12 respect for his family, that the Government did not include,  
13 and I am not going any further, but I will just note I think  
14 it's -- there are arguments, strong arguments on both sides  
15 about whether he respects his family or doesn't respect his  
16 family.

17 And now to talk about the victims, and whether or  
18 not they exaggerated, and how they embellished about the way  
19 things are, I think that all of us here, with the exception  
20 of the victims, have been fortunate to work in a situation,  
21 where you haven't been under someone that did the things  
22 that Kirk Eady did, and you haven't had to go to work and  
23 deal with that type of harassment and abuse.

24 It is the Government's position, it is really not  
25 fair to say, oh, these victims are embellishing, they're

1           exaggerating when you have not been in that position,  
2           because I think every day you have to go to work, and you  
3           are not sure what shift you are going to be on, you are not  
4           sure if just by doing your job, you are going to be treated  
5           fairly or unfairly, that by taking on the responsibility to  
6           represent your fellow co-workers, you are now being harassed  
7           even more. That's a big problem.

8                   THE COURT: But he is not convicted of harassment,  
9           though, right?

10                   MR. FOSTER: Right.

11                   THE COURT: He is convicted of violating the  
12           wiretap statute.

13                   MR. FOSTER: Right.

14                   THE COURT: You have spent a lot of talking about  
15           the impact on the harassment end of it --

16                   MR. FOSTER: Yes.

17                   THE COURT: -- and you are suggesting that I should  
18           take that under relevant conduct in terms of the appropriate  
19           sentence --

20                   MR. FOSTER: Absolutely, absolutely, your Honor,  
21           because I think that both sides agree, this was a -- this  
22           was a collection of events. I think it is impossible to  
23           just take on these particular days, did he commit this crime  
24           in a vacuum, because it wouldn't make sense.

25                   I think the Court must consider the reasons,

1       whether -- I mean, sensible or illogical as to why he did  
2       it, and also other surrounding events.

3               He didn't just pick this one way to attack these  
4       victims. There's several ways he attacked them, and the  
5       reason why is because they were heads of the union,  
6       grievance chair of the union, and they had the ability to  
7       essentially try to work for the union, do good things for  
8       the union, and it annoyed him, and they did nothing to him  
9       personally.

10              The witnesses testified that outside of union  
11       business, they never spoke to him. Patty Akin has yet to  
12       speak to him. He never even called Pat Akin.

13              This whole thing, oh, Patty Akin is harassing me  
14       and doing -- saying all of these horrible things, as was  
15       mentioned by defense countless times. Kirk Eady is  
16       six-foot-four. He couldn't have called Patty Akin and said,  
17       hey, what's going on? Can we meet? Can we talk about why  
18       you're saying all of these things or -- no. Instead he  
19       decides to intercept her telephone calls to find out where  
20       the next plot is coming from?

21              That's his mindset, his mindset. That's who he is,  
22       his character. Instead of sitting down and having a  
23       meeting, I am going to scheme and find a way to intercept  
24       their telephone calls to find out what is going on.

25              How about just ask?

1                   How about just try that first and see how that  
2 goes?

3                   There are probably a thousand other ways and things  
4 you can do before you get there, but he chose not to. He  
5 cut corners. He committed a crime, and that is who Kirk  
6 Eady is.

7                   Yes. Mr. Eady had 20 years of law enforcement  
8 service. Mr. Eady, I am sure, has done some good works, but  
9 I think that there are probably 95 percent of the defendants  
10 who appear before you have done something good at some point  
11 in time in their lives. I think it is very rare. There has  
12 probably never been someone who has never done anything good  
13 in their life, but that's not the basis as to whether or not  
14 someone -- it's not the sole basis as to whether or not  
15 someone should get probation or should go to jail. There  
16 are several other factors, and I tried to mention them.

17                   The fact that he has been in law enforcement for so  
18 long, it is the Government's position it cuts both ways.  
19 There should have been no doubt in his mind that what he was  
20 doing was wrong.

21                   As you pointed out, he graduated from Rutgers with  
22 a degree or from the Institute of Criminal Justice. So from  
23 the time he was 20 years old, he knew this was wrong. So he  
24 can't get the benefit of I have been in law enforcement all  
25 of this time. Oh, it was just a mental lapse, but not get

1 the burden of, you know, you are not 17. You're not 20.  
2 You are not somebody who had no interaction with law  
3 enforcement. All you do is interact with law enforcement.  
4 All you do is enforce the laws, and then when you break the  
5 law, that must be considered.

6 For all of those reasons, your Honor, that is why  
7 it is the Government's request that that two-point upward  
8 variance should be granted, that the guideline level should  
9 be a Level 17 -- a Level 16, with the range of 21 to 27  
10 months.

11 Thank you.

12 THE COURT: All right. Thank you.

13 I have considered the statements made by counsel  
14 today. Frankly, I came out with no preconceived notions of  
15 where I was going to go with this. Obviously, I had read  
16 the Probation Department report, the Government's  
17 submissions, the defense submissions, the letters, the  
18 victims' positions, the defendant's own letter to the Court,  
19 and the letters that were attached to the defendant's  
20 sentencing memorandum.

21 Certainly sentencing another other human being is  
22 not the easiest part of our job. In fact, it is probably  
23 the most difficult part of the Court's job. Nevertheless,  
24 it is a necessary part of the criminal justice system  
25 because when the law is broken and people are convicted of

1 committing a crime, there is a need to address that through  
2 punishment, through adequate deterrence, through sentences  
3 that reflect the seriousness of the offense and promote  
4 respect for the law in general among all of the other  
5 sentencing goals.

6 First, as I said, it is necessary that I rule on  
7 the defendant's and the Government's motions for the  
8 different relief that they sought within the guideline.

9 With regard to the defendant's motion for a  
10 downward departure for aberrant behavior --

11 MR. WILLIS: Your Honor, I apologize.

12 May I ask you permission, please, for a brief  
13 recess? I really need to use the men's room. I had some  
14 surgery done and I --

15 THE COURT: No problem --

16 MR. WILLIS: -- really need --

17 THE COURT: -- no problem, Mr. Willis. I am saying  
18 yes.

19 MR. WILLIS: Thank you.

20 THE COURT: Thank you.

21 THE CLERK: All rise.

22 (Recess taken)

23 THE CLERK: All rise.

24 THE COURT: All right. You may be seated.

25 Thank you.

1           So before the break, I was beginning to rule upon  
2 all of the different motions and then ultimately get to the  
3 sentence in connection with this matter. I am going to sort  
4 of do them in the reverse order that they were argued.

5           The defendant's motion for a downward departure for  
6 aberrant behavior, the defendant largely relied on the  
7 submissions. I have read the submissions and the arguments  
8 that were made at trial. Certainly, as Mr. Willis candidly  
9 admitted to the Court, I would have to start with the  
10 premise that this was one continuous occurrence of limited  
11 duration, and I find that that is not the case.

12           I don't think that in fairness to the system, that  
13 I could possibly find this under the circumstances. I can  
14 certainly understand why Mr. Willis would make the argument  
15 because of the length of the minutes involved and what  
16 transpired here, but this was 12 conversations over a period  
17 of time, certainly well planned and executed, which required  
18 the defendant to do certain of different acts to get there.  
19 He had to go into the website. He had to go to PayPal. He  
20 had to get the phone numbers. This was not aberrant  
21 behavior. It was not of limited duration, and it did take  
22 significant planning I think, so the defendant's motion for  
23 a downward departure for aberrant behavior is denied.

24           Also, with regard to the issue of the enhancement  
25 for abuse of trust, clearly the defendant was in fact the

1 second in command at the jail. He was in a position of  
2 trust. He was in a position of directing the activities of  
3 others. He was in a position where he could affect the  
4 lives and the job, the quality of the job life, the people  
5 that worked under him. He utilized the position not only to  
6 obtain personal identifiers on the employees, but also used  
7 the position to take action against them by way of, for  
8 example, altering their work requirements and duties, and I  
9 think that that is certainly an abuse of trust under the  
10 enhancements of the statute, and the two-level enhancement  
11 for abuse of trust is appropriate.

12 I am going to now jump to the Government's motion  
13 for the two-level upward variance. The Government talks  
14 about the circumstances of the offense, the individuals that  
15 were involved, and the fact that it involved the issue of  
16 the privacy interest, which is obviously something that is  
17 very sacred and important in our society, but that is what  
18 the statute is in fact about. The statute is a statute that  
19 addresses the issue of privacy, the very nature of the  
20 statute is that, and the nature of the circumstances the  
21 defendant did here.

22 The other issues that the Government wants me to  
23 take into account are the same type of actions that the  
24 Government wants me to take into account under the 3553  
25 factors in determining the appropriate place to sentence him

1 within the guideline suggested range.

2 I think that certainly the Court has discretion  
3 under 3553, but that the two-level upward variance that the  
4 Government seeks, I think is inappropriate in this case  
5 because it really seems to be captured both by the nature  
6 and intent of the statute and also by the consideration of  
7 relevant conduct in determining where to sentence the  
8 defendant within the applicable guideline range.

9 I also note for what it is worth that even were I  
10 to grant the Government a two-level departure, he would have  
11 ended up at a Level 16, and that there is somewhat of an  
12 overlap between Level 16 and Level 14 anyway, where the  
13 Court could sentence the defendant, were the Court to decide  
14 that under the totality of the circumstances here, a  
15 sentence at the top of the range is appropriate. So I deny  
16 the Government's motions for an upward variance in  
17 connection with that matter.

18 The Court also does note, though, by the way, that  
19 although the Government did not move under the other  
20 guideline section, which I spoke about, under Section 5K2.0,  
21 departures based on circumstances of a kind not adequately  
22 taken into consideration by the guidelines, I do note that  
23 that was something that was noticed by the Probation  
24 Department in their report, and so everyone is on notice  
25 that that is something that the Court could have considered.

1 I am not -- well, I just put it out there on the record  
2 because a substantial invasion of a privacy interest was in  
3 fact involved here and potentially the Court could have  
4 utilized that for an upward departure, even though the  
5 Government did not move on it, but I think it is related to  
6 this issue of economic gain. I think that the economic gain  
7 enhancement is an issue that the Court did wrestle with, as  
8 I said originally, because of the fact that we were devoid  
9 of any cases in the Third Circuit specifically addressing  
10 it. There is one case in the 9th Circuit Appeals Court,  
11 which does address the issue.

12 In that case there was an attorney, who was the  
13 defendant in the case, and he was involved in the illegal  
14 wiretapping for which he gained a litigation advantage,  
15 which inured to the benefit of his client, thus, making the  
16 client happier, and the Court interpreted that as an  
17 indirect advantage for the defendant in that case.

18 I think in this particular case, when one reads all  
19 of the transcripts and the circumstances of the case, it is  
20 certainly one that was inextricably related to union  
21 activity.

22 The defendant admits or mentions in their arguments  
23 that Mr. Eady was being attacked by these union people by  
24 virtue of his job, that they were going after his job, that  
25 they were criticizing him, that they wrote letters to the

1 Freeholder Board, and through Ms. Freeman, who had been  
2 hired by the union and who the union refused to fire, that  
3 they were constantly going after him in connection with his  
4 job and in connection with the job that he did as  
5 management.

6 Certainly, taking retaliatory actions against these  
7 people as part of the relevant conduct and changing the job  
8 performance, for example, of the union leader, so he would  
9 not put him in uniforms, and he would not have the ability  
10 to go do union activity inured to the benefit of management,  
11 which in turn would create an indirect economic benefit upon  
12 the defendant because he would then be (a) in a better  
13 employment position vis-a-vis management, a better  
14 reputation for the way he handled things, and more job  
15 security, because as counsel has argued, they were attacking  
16 him and going after his job, so I think that the enhancement  
17 for indirect economic gain does apply.

18 As an aside, as I said earlier, I believe that the  
19 enhancement under substantial invasion of privacy based on  
20 the specific circumstances and facts of the case would have  
21 enabled the Court to upwardly depart in any event, something  
22 that I am not doing, but I think that were this enhancement  
23 not to apply and the Court had not applied for legal  
24 reasons, the Court could have departed under the facts of  
25 this case on this other theory, which I am not going to do

1 because I find that this enhancement, in fact, legally  
2 applies.

3 So I think that that rules on all of the motions,  
4 so I end up at the level originally calculated by the  
5 Probation Department, and the question then becomes where  
6 within that level is the defendant appropriately to be  
7 sentenced in connection with this case.

8 I have taken into consideration the fact that this  
9 is a Criminal History Category of I. This is defendant's  
10 first criminal conviction, although not necessarily his  
11 first involvement with the criminal justice system. There  
12 have been other brushes with the law that did not end up in  
13 a conviction and involved things like restraining orders,  
14 numerous motor vehicle issues, et cetera, but not something  
15 that would affect the Criminal History Category.

16 It is important to the Court to realize that the  
17 defendant was in fact in a position of law enforcement, that  
18 he was entrusted with the handling of a large number of  
19 employees and a large number of inmates. Predictability,  
20 reliability and trust in the criminal justice system depends  
21 on people like Mr. Eady, who are in a position of trust and  
22 in a position of authority to conduct themselves in a  
23 particular way, so as to promote respect for the law and  
24 promote the reliance of the public that those entrusted with  
25 that kind of power were utilized appropriately, something

1 that the defendant in this case failed to do.

2 He was the Deputy Director of the Hudson County  
3 Correctional Facilities and had to know by virtue of his  
4 training and position that secretly recording these  
5 correction officers' and other individuals' conversations  
6 without their permission was a serious violation of their  
7 privacy.

8 And then under the relevant conduct in this case, I  
9 think that a lot of the comments made by Mr. Foster were  
10 correct and came through in the conversations that he had  
11 with Ms. Freeman, which were consensually recorded, where he  
12 often bragged about in very graphic clear terms, not only  
13 about the fact that he was recording them, but what  
14 specifically he was going to do to these people, and that he  
15 would do it because he can, he said, or he could on  
16 occasion.

17 Taking all of these items under consideration and  
18 understanding that the sentence should at the end of the day  
19 reflect the seriousness of the offenses, and this the Court  
20 views as a serious offense, promote respect for the law and  
21 for others similar situated in law enforcement and in  
22 positions of power and responsibility, the Court should  
23 understand that that is important.

24 Yes, I understand that Mr. Eady also has a good  
25 side to him. My heart goes out to his family. They appear

1 to be a family that is close and that is supportive of each  
2 other, and there are fallouts when people get involved in  
3 crime, and a lot of times the families are the recipients of  
4 that fallout, as I am sure is the case here.

5 Yes, Mr. Eady has sustained some additional  
6 punitive things that have happened to him, such as the loss  
7 of his job, his pension, et cetera, but these were  
8 occasioned by virtue of his own actions. I do agree with  
9 Mr. Foster that a message to other people in the law  
10 enforcement community and in the correctional facility  
11 community, that a sentence has to be appropriate and afford  
12 adequate deterrence to those people and protect the public  
13 and other employees from these types of actions is needed.

14 The defendant did come across with a certain amount  
15 of anger, I guess is the best adjective that can be used, in  
16 describing the defendant's actions in connection with this  
17 matter, a vengefulness, and I think there is an issue with  
18 mental health here that I think the sentence should also  
19 address.

20 So having taken all of these things into  
21 consideration, it is the judgment of this Court pursuant to  
22 the Sentencing Reform Act of 1984, that the defendant, Mr.  
23 Eady, be committed to the custody of the Bureau of Prisons  
24 to be imprisoned for a term of 21 months. I think a  
25 sentence at the upper part of the guideline range is

1 appropriate under the circumstances of this case, the  
2 position of Mr. Eady, the nature of the way that this crime  
3 was committed, and the fallout to the victims.

4 Upon release from imprisonment, he is to be placed  
5 on supervised release for a term of three years.

6 Within 72 hours of release from the custody of the  
7 Bureau of Prisons, he is to report in person to the  
8 Probation Department in the district to which he is  
9 released.

10 While on supervised release, he is not to commit  
11 another federal, state or local crime. He is prohibited  
12 from possessing a firearm or other dangerous device, and is  
13 not to possess any illegal controlled substance and is to  
14 comply with the other standard conditions that have been  
15 adopted by this Court.

16 Based on the information that I have before me, it  
17 appears that the defendant is not involved in drug abuse or  
18 drug use, or substance abuse, so I am going to excuse him  
19 from mandatory drug testing. However, he could be requested  
20 to submit to drug testing during the period of supervision,  
21 if the Probation Department determines that he's a risk for  
22 substance abuse.

23 In addition, he is to comply with the special  
24 conditions regarding mental health treatment, as well as  
25 self-employment business disclosure, and cooperate with the

1 Probation Department in the investigation and approval of  
2 any position of self-employment or any independent  
3 entrepreneurial or freelance employment or business activity  
4 in connection with this matter.

5 I am going to also issue a special condition of an  
6 occupational restriction as far as working for any local,  
7 state, federal or private correctional services, whether  
8 public or private, without specific permission from the  
9 Court. I think that there is a reasonable direct  
10 relationship between the defendant's occupation and business  
11 in this case, and the conduct that was relevant to the  
12 conviction, and it is for the period of probation, so it is  
13 for a period that is of a minimum time frame and to a  
14 minimum extent necessary to protect the public.

15 There is an issue of the fine. You are prohibited,  
16 Mr. Eady, from incurring any new credit charges or  
17 additional lines of credit or getting any loans or  
18 obligations by whatever known means without the approval of  
19 the Probation Department, and you are not to liquidate any  
20 interest in any assets unless it is in direct service of any  
21 fine that the Court may issue in connection with this  
22 matter.

23 I am also issuing a special provision that you are  
24 not to contact any of the victims of this offense, and that  
25 includes any direct or indirect contact with the identified

1 victims.

2 I am going to order that a fine in the amount of  
3 \$4,000 be paid. I find that the defendant does not have the  
4 ability to pay the fine in one lump sum at this time within  
5 the guideline range. That fine, however, is due  
6 immediately, and I recommend that the defendant participate  
7 in the Bureau of Prisons' Inmate Financial Responsibility  
8 Program to pay the fine. If he does participate in that  
9 program, the fine is to be paid from those funds at an  
10 equivalent rate of \$25 every three months.

11 If the fine is not paid prior to the commencement  
12 of supervision, then he is to satisfy the amount due in  
13 monthly installments of no less than \$250 commencing 30 days  
14 after he is released from confinement.

15 He is also to notify the United States Attorney of  
16 this District within 30 days of any change of mailing or  
17 residence address that occurs while any portion of the fine  
18 remains unpaid.

19 There is a one-hundred-dollar assessment that has  
20 to be paid in connection with this matter.

21 Mr. Foster, what is your position on voluntary  
22 surrender?

23 MR. FOSTER: Your Honor, the Government really -- I  
24 mean, to be fair to Mr. Eady, there hasn't been any  
25 indication of --

1           THE COURT: Has there been any indication during  
2 the period between the conviction and today --

3           MR. FOSTER: No.

4           THE COURT: -- that he has contacted the victims,  
5 harassed the victims, threatened the victims, anything like  
6 that?

7           MR. FOSTER: No, your Honor.

8           THE COURT: All right.

9           Obviously, that is a special condition of the  
10 voluntary surrender. Were you to find that anything like  
11 that has occurred, I certainly would entertain changing  
12 that. But I think voluntary surrender is appropriate in  
13 this case, and I am going to let him surrender himself to  
14 the institution designated by the Bureau of Prisons, and I  
15 am also going to recommend that he be designated to a  
16 facility for service of his sentence that is as near as  
17 possible to his home address to facilitate visitation of his  
18 young daughter and family.

19           Mr. Willis, you know that there is a right to  
20 appeal in connection with this matter, and that if your  
21 client cannot afford it, he can ask the Clerk of the Court  
22 to file a Notice of Appeal on his behalf.

23           Will there be anything else for me to decide?

24           MR. FOSTER: Nothing from the Government.

25           MR. WILLIS: No, your Honor.

1 THE CLERK: All rise.  
2 (The matter concluded)  
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