

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
WESTERN SECTION

United States of America )  
 ) 20cr30018-MGM  
 vs )  
 ) February 15, 2022  
 John Michael Rathbun )  
 \_\_\_\_\_ )

SENTENCING HEARING HELD BEFORE THE  
HONORABLE JUDGE MARK G. MASTROIANNI.

APPEARANCES:

On behalf of the government: Steven H. Breslow, Assistant  
United States Attorney, 300 State Street, Suite 230,  
Springfield, MA 01105-2926.

On behalf of the defendant: Timothy G. Watkins, Esq., 51  
Sleeper Street, 5th Floor, Boston, MA 02210.

Forest J. O'Neill-Greenberg, 51 Sleeper Street, 5th Floor,  
Boston, MA 02210.

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1       **(Hearing commenced at 11:05.)**

2       **(The defendant is present.)**

3               CLERK RIVERA: Your Honor, the matter before the  
4 court is criminal case 20-30018, the United States of  
5 America versus John Michael Rathbun.

6               Counsel, can you please identify yourself for the  
7 record starting with the government?

8               ATTORNEY BRESLOW: Steven Breslow for the United  
9 States. Good morning, Your Honor, and with me at counsel  
10 table is Megan McKenna.

11              THE COURT: All right.

12              ATTORNEY O'NEILL-GREENBERG: Good morning, Your  
13 Honor. Forest O'Neill-Greenberg for Mr. Rathbun.

14              THE DEFENDANT: Good morning.

15              ATTORNEY O'NEILL-GREENBERG: With me is Attorney  
16 Watkins also for Mr. Rathbun.

17              THE COURT: Very good.

18              CLERK RIVERA: We have our court reporter  
19 appearing remotely, judge.

20              THE COURT: All right. Mr. Rathbun, I need to  
21 ask you and your attorneys, have you reviewed the  
22 presentence report?

23              THE DEFENDANT: Yes, Your Honor.

24              THE COURT: Okay. Have your attorneys explained  
25 it to you and answered all the questions you might have

1 had about it?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Do you have any questions about it  
4 or are you confused about it in any way, including the  
5 guideline calculation or the historical information about  
6 your life or the explanation and description of the  
7 charges?

8 THE DEFENDANT: No, I understand, sir.

9 THE COURT: Now there are objections, correct?  
10 Defense filed objections, Attorney Watkins, of the  
11 presentence report?

12 ATTORNEY O'NEILL-GREENBERG: We did.

13 THE COURT: Who's going to argue them?

14 ATTORNEY O'NEILL-GREENBERG: I am, Your Honor.

15 THE COURT: All right.

16 The government filed no objections?

17 ATTORNEY BRESLOW: Correct. There was an  
18 addendum, but no objections. That's at page 45.

19 THE COURT: All right. So we will talk about  
20 the objections in a minute. I've reviewed the presentence  
21 report. Of course, I have a very good memory of the trial  
22 and the proceedings, and I also reviewed the docket  
23 history.

24 As I said, I've reviewed the presentence report, the  
25 guideline calculations, the historical information. I

1 reviewed the paperwork submitted for objections and the  
2 addendum from the government.

3 I reviewed the government's sentencing memorandum. I  
4 reviewed the defendant's sentencing memorandum as well as  
5 the attachments by way of letters. I'm just looking to  
6 make sure I have all the letters attached here. They are  
7 all family letters other than the one from Deborah  
8 Goldfarb.

9 ATTORNEY O'NEILL-GREENBERG: And also from the  
10 substance use counselor at Opportunity House.

11 THE COURT: That is Ms. Potee was her name?

12 ATTORNEY O'NEILL-GREENBERG: Desiree Pelletier.

13 THE COURT: Pelletier.

14 ATTORNEY O'NEILL-GREENBERG: Exhibit C.

15 ATTORNEY BRESLOW: And I believe a friend.

16 THE COURT: Excuse me?

17 ATTORNEY BRESLOW: And I believe a friend.

18 THE COURT: All right. I have Jeff Rathbun  
19 which I've reviewed. Oh, yes, Desiree Pelletier. I did  
20 review Ms. Pelletier, Ms. Goldfarb, the social worker;  
21 Daniel Fagan, Curtis Rowe, Sheila Rathbun. All right.

22 Why don't we start with the objection.

23 ATTORNEY O'NEILL-GREENBERG: The PSR references  
24 that he was convicted of a second statement. We object to  
25 that and that's in paragraphs 13, 21 and 22, and 32

1       referencing the statement that he's unfamiliar with the  
2       location on Converse Street where the fuel can was  
3       located, as he was only convicted of statement two, that  
4       he had not left his house in the past two weeks because of  
5       the pandemic.

6               THE COURT: All right. So this reference in the  
7       presentence report doesn't affect the guideline  
8       calculation?

9               ATTORNEY O'NEILL-GREENBERG: No, it does not.

10              THE COURT: It's just a factual correction that  
11       you'd like to be clear about?

12              ATTORNEY O'NEILL-GREENBERG: That's right.

13              THE COURT: All right. So as a technical  
14       matter, I'm going to overrule it as an objection because  
15       it's not changing the guideline calculations, but it does  
16       serve the purpose of notifying the court of your issue  
17       with the facts and getting the facts accurate and clear  
18       for the court's purpose of sentencing.

19              All right. Objection No. 2?

20              ATTORNEY O'NEILL-GREENBERG: Objection No. 2 is  
21       our objection that does affect the guideline calculation.

22              THE COURT: Right.

23              ATTORNEY O'NEILL-GREENBERG: And that's whether  
24       to do the base offense level of 2K1.4(a)(1) or Subsection  
25       A or Subsection B which gives a base offense level of 24.

1 Our objection is that he more appropriately is in  
2 2K1.4(a)(1)B. Because, to begin, Subsection A requires  
3 actual knowledge of serious bodily injury or death, and  
4 the actual knowledge is defined as being practically a  
5 defendant's objective state of mind. That he or she is  
6 practically -- that the results are practically certain to  
7 result from the conduct.

8 In Mr. Rathbun's case the facts simply don't support  
9 that finding, that his subjective state of mind at the  
10 moment the risk was created was such that he would have  
11 been aware that it was practically certain for death or  
12 serious bodily injury to occur.

13 In all the cases that find an enhancement is  
14 appropriate under the subsection, they involve three --  
15 I'll categorize them as three markers, factual markers  
16 that indicate that there's no other way that someone would  
17 be able to not be aware that this was going to be result  
18 in a massive disaster of serious bodily injury or death;  
19 and that is very large amounts of gasoline or explosive;  
20 explosive or gasoline that is placed inside a building or  
21 inside -- or inside a building that is adjacent to  
22 residences where people are living and sleeping; or that  
23 there's some other exacerbating circumstances happening,  
24 such as someone has specific knowledge that their conduct  
25 would create this practical certainty of risk.

1           In the example I'm talking about here is when there's  
2           a firefighter who sets two fires or forest fires, that's  
3           U.S. v. Sprouse, and not only do they have the unique  
4           knowledge being a firefighter but they set it in these  
5           exacerbating conditions that heighten the risk of fire  
6           which was that there was a serious draught conditions  
7           happening.

8           So there are no external physical conditions that  
9           would exacerbate the risk. Mr. Rathbun doesn't have any  
10          specialized knowledge of fire or explosives. He has no  
11          education or training in fire or explosives or gasoline or  
12          their flammability. He never had a job working in that  
13          field.

14          This can was placed in the early morning hours during  
15          the pandemic next to the wooded curtilage outside in a  
16          well ventilated area, a small amount of fuel. Not in any  
17          residence or in any sort of -- any building that was next  
18          to a residence. So it doesn't have any of these  
19          exacerbating factors that the courts have found fit it  
20          appropriately into Subsection A.

21          And then for Subsection B, again there's no evidence  
22          here that there was -- he had the intent to destroy a  
23          place of public use.

24                 THE COURT: So in that case the presentence  
25          report was talking about the placement on a sidewalk.

1           ATTORNEY O'NEILL-GREENBERG: That's correct, and  
2 in the PSR it states that the can was placed on the  
3 sidewalk which is factually incorrect. It wasn't placed  
4 on the sidewalk. It was placed on the wooded curtilage.

5           The placement of the can suggests the intent -- to  
6 the extent we can infer an intent to destroy anything from  
7 where it was placed, it wasn't placed on the sidewalk; it  
8 wasn't placed in any place of public use. It was again in  
9 the woods or on the curtilage of the woods. The  
10 commentary to the guidelines don't define what destruction  
11 is but just using the common --

12           THE COURT: It was near the sidewalk, but you're  
13 correct in how you're characterizing where he placed it.  
14 I don't think -- I'm not giving much consideration to that  
15 second argument.

16           ATTORNEY O'NEILL-GREENBERG: Okay. If he had  
17 had intent to destroy the sidewalk, he would have put it  
18 on the sidewalk.

19           THE COURT: I don't think that argument carries  
20 it. So let's talk about the first prong that perhaps I  
21 think requires more discussion.

22           So you're saying in order to satisfy this  
23 enhancement, number one, you needed more gas, not just the  
24 amount that was in a container that you can just carry.  
25 You say the case law says you need more?



1           ATTORNEY O'NEILL-GREENBERG: That's correct. In  
2 all the cases I cite in our sentencing memorandum they  
3 include or they involve large, very large amounts of  
4 either gasoline or some sort of explosive. Large, very  
5 large amounts, gallons.

6           THE COURT: And your second argument is closer  
7 to the building, because we can argue about placement but  
8 it wasn't outside the front door there.

9           ATTORNEY O'NEILL-GREENBERG: No. Again, in all  
10 the case I reviewed and cited, they're either in a  
11 building, such as a bank that is sharing a structural wall  
12 with a residence or condos, or they're in the basement of  
13 place where people are living, or they're in a vehicle  
14 that is right next to the place where people are living.

15           In contrast to that, there's a case where there was a  
16 fire set in a church in the early morning hours when the  
17 church was closed and no one was there, and the court  
18 found that there was no subjective awareness that was  
19 practically certain that death or serious bodily injury  
20 would occur because this was placed not near -- not in a  
21 building where people were living or adjacent to a place  
22 where people were living or involving such a massive  
23 amount of explosive that it could somehow affect where  
24 people were residing.

25           THE COURT: About what time -- we have early

1 morning hour placement, right?

2 ATTORNEY O'NEILL-GREENBERG: That's right. In  
3 the case of the church, it was early in the morning when  
4 people were not at services.

5 THE COURT: Well, in this case I'm remembering  
6 the facts. It seemed to be an early morning time where  
7 there was not a lot of -- I mean, that's an area where  
8 there was a lot people. It's a neighborhood. Not only  
9 are there these buildings associated with the facility  
10 that was at issue here, but it's a neighborhood and it's a  
11 public sidewalk and a lot of people I think use that area  
12 to walk, but it didn't seem like the timing of the  
13 placement was at a time when it was getting much use from  
14 the public.

15 ATTORNEY O'NEILL-GREENBERG: In our case, Your  
16 Honor or?

17 THE COURT: Your case.

18 ATTORNEY O'NEILL-GREENBERG: Yes. I believe and  
19 my memory of the testimony was that around seven or eight  
20 that's when traffic was picking up. People were coming  
21 into work, and we know that this was placed much earlier  
22 in the morning.

23 In the video we were watching where we sort of  
24 narrowed down the very narrow time period it could be  
25 placed, it's dark out. There's no one there. And to the

1 extent it also happening in that unique period of time,  
2 when it's the pandemic, when the town had issued a stay at  
3 home order for people I think that reduces the risk. To  
4 the extent there was a risk at all, it reduces the risk  
5 even more.

6 But I think, most importantly also, for Mr. Rathbun  
7 -- for this subsection to apply, Mr. Rathbun would have to  
8 have the -- he himself would have to have the actual  
9 awareness in that moment the subjective intent, the  
10 awareness that he was creating -- that it was practically  
11 certain that he was creating this very dangerous risk,  
12 And we know that Mr. Rathbun at that moment was in the  
13 throngs of incredibly serious substance use disorder. He  
14 was using multiple substances. He was as deep in the  
15 throng of his drug use as I think he's ever been, and that  
16 also would I think incredibly cloud any subjective intent  
17 he would have.

18 First, I'm saying I don't think he had it from all  
19 the facts. But then since we have to look at his  
20 subjective intent, there's no way he could have formed  
21 that given the fact that he is under the influence of  
22 drugs. He's deep in his substance use disorder and his  
23 behavior is erratic. He would not be contemplating the  
24 risks of anything at that time.

25 THE COURT: Well, it's kind of a hard argument

1 to make that you're not contemplating the risks of trying  
2 to ignite a gas can.

3 I mean, I understand your argument that he was under  
4 the influence and that he had a serious drug addiction,  
5 absolutely. But, you know, he has the wherewithal of  
6 twisting up a wick and putting it in a gas container,  
7 placing it and trying to ignite it.

8 I don't think you need any particularized special  
9 training regarding gasoline and containers to know danger  
10 -- the dangers, the common sense danger associated with  
11 gasoline and its vapors, flammability, issues like that.  
12 Those things are all common knowledge.

13 I mean, I'm hearing you on some of your arguments.  
14 I'm just saying some of your arguments are stronger than  
15 others. I understand the cases that talk about you need  
16 generally there's more gas; generally they're closer to  
17 buildings; generally someone with just a common  
18 understanding of gasoline would look at the amount of gas  
19 and the placement and think this is -- how is this not  
20 going to create that substantial risk of death or bodily  
21 injury? I understand your argument.

22 I guess I'm just telling you the weaker part of your  
23 argument, as I look at it, is I don't think you need any  
24 specialized training to know what -- for him to have known  
25 what he was doing or what could happen by igniting that

1 container. But I understand your argument.

2 ATTORNEY O'NEILL-GREENBERG: And I'll just add  
3 that I think that the standard of he should have known and  
4 any rational person in their regular life would see the  
5 warning on the gas can and know these basic things or that  
6 he should have had the awareness, that's not -- that's  
7 doesn't rise to the standard for this subsection.

8 THE COURT: Right.

9 ATTORNEY O'NEILL-GREENBERG: And I believe  
10 that's what we're talking about when we say lighting a  
11 wick on fire and putting it in an open can, you should  
12 have known. There was a warning. You should have known  
13 that's not enough for this. And then on top of that --

14 THE COURT: But can I infer that he did know?  
15 Can I infer that, number one, a person with common life  
16 experience would know about the danger involved with  
17 gasoline, but let's switch directly to Mr. Rathbun. We  
18 know from his work, his work about him being a contractor,  
19 you know, doing things like that, clean out work, multiple  
20 gas cans at his home in the shed, power equipment, things  
21 like that.

22 There was testimony about mixtures of straight  
23 gasoline for some types of engines and a mixture of oil  
24 and gasoline for other engines and keeping them in  
25 separate containers. Things like familiarity with gas and

1 storage of gas and gas tanks, gas storage tanks that he  
2 had. He specifically had. Not just every person who has  
3 a lawnmower should know this, right? But that he had.  
4 There was evidence regarding that, his use regularly  
5 because of his work with gas.

6 ATTORNEY O'NEILL-GREENBERG: I see his work with  
7 gas and his interaction with the flammability of diesel  
8 or gas as more just sort of a layperson's interactions  
9 with it.

10 I don't think it's -- it doesn't rise to that  
11 technical specialized knowledge where we could then take  
12 the leap into his subjective state of mind and infer that  
13 from his actions there is a practical -- he knew he had an  
14 awareness at that moment of a practical certainty of death  
15 or serious bodily injury.

16 I think that his substance use disorder stops any  
17 subjective finding that he was thinking. To the extent he  
18 could think rationally, I certainly don't think he was.  
19 He wouldn't have been able -- even if we were to say it  
20 was involving a huge amount gasoline, I don't think he  
21 would have had the subjective state of mind at that moment  
22 because we know he was under the influence and he was  
23 completely off the rails with his substance use disorder  
24 at that moment. And because we're required to find this  
25 subjective state of mind, we have to actually try to go

1 into what he was thinking, and I don't think the external  
2 facts support it and I think because of his drug use that  
3 finding is impossible.

4 I think that's why the guidelines have that lower  
5 offense level of 20, which is still an enhancement but  
6 it's a step down from the most extreme situations where  
7 it's so much gasoline and so much explosives, there's just  
8 no way anyone no matter what was going on would not be  
9 able to know this was going to be a huge disaster. So  
10 it's still an enhancement but it's a little bit less, and  
11 I think that's most appropriately where Mr. Rathbun  
12 fits.

13 THE COURT: Okay. Thank you.

14 Attorney Breslow.

15 ATTORNEY BRESLOW: Yes. So there's been some  
16 discussion regarding the standard. I just want to start  
17 by pulling back and saying that at sentencing the standard  
18 for any enhancement, any guidelines calculation is a  
19 preponderance of the evidence. That's simply more likely  
20 than not. That's the standard that the court should be  
21 keeping in mind here.

22 With respect to what Ms. Greenberg just said  
23 regarding the difference between the two enhancements, the  
24 difference there between Subsection (a)(1)(A) and  
25 (a)(2)(A) is simply that the risk was created knowingly.

1 And that Your Honor recognized is the weakest part of Ms.  
2 Greenberg's argument.

3 I'd like to state that, factually speaking, the  
4 device was left at the driveway entrance just feet from a  
5 sidewalk that the testimony established at trial was  
6 heavily trafficked, both the sidewalk and the road and  
7 Chaïm Kosofsky, the neighbor who lived directly across the  
8 street from the location where the device was placed,  
9 testified that there was traffic in and out of that  
10 driveway at all hours of the day and night. And that  
11 makes sense because it was a very large nursing home  
12 complex where people were getting sick and/or dying.

13 In fact on this very night, Your Honor may recall, at  
14 approximately 4:30 in the morning, a police officer drove  
15 down that driveway shortly before -- at some point before  
16 the device was placed because somebody had died that  
17 night. And so by a preponderance of the evidence, I think  
18 the court can find that there was very clearly a  
19 substantial risk of death or serious bodily injury to any  
20 person who may have been walking on that sidewalk or  
21 driving in a car down that driveway.

22 I'll note that with respect to that the risk was  
23 created knowingly, again that's the phrase that  
24 distinguishes between the two enhancements. Your Honor  
25 indicated that this was Ms. Greenberg's weakest argument.



1 I think Your Honor is absolutely right there.

2 I don't think that there is any need for specialized  
3 training or education to understand that gas and in  
4 particular gas vapors, not the liquid, but the vapors are  
5 extremely flammable. That they can explode and cause a  
6 flash fire.

7 I'll note that what I just said was printed in bold  
8 letters and stamped on the very canister that Mr. Rathbun  
9 handled. So the canister said very clearly, "vapors can  
10 explode when ignited by a spark or flame source many feet  
11 away. Petroleum fuel extremely flammable. Vapors may  
12 cause flash fire."

13 So I agree, Your Honor, that it's a matter of simple  
14 common sense. Anybody knows don't put a flame source near  
15 an open container of gasoline. But to the extent that  
16 there was any doubt as to what common sense may yield, the  
17 warnings are stamped very clearly on the container itself.

18 With respect to the defendant's state of mind, and  
19 again this is the clause that risk was created knowingly,  
20 the defendant, at least in his testimony in both trials,  
21 was extremely clear to the court and to the jury.

22 He knew exactly what he was doing that night. He had  
23 a clear state of mind. He was job searching. He was  
24 texting. He was driving and he had a clear intent, and  
25 that was to seek drugs. He was not under the influence of

1 drugs. He testified that the drugs had worn off and that  
2 he was in an extreme state of desire for more drugs, but  
3 he wasn't under the influence of drugs where he didn't  
4 understand where he was doing.

5 I'll submit that Your Honor was completely correct in  
6 stating that he had the presence of mind to drive to that  
7 location, get out of his car, place a container that was  
8 partially filled with highly flammable gasoline on that  
9 spot, take a wick, crumple it up, put it into an open  
10 nozzle and light it on fire. And I'll suggest that doing  
11 all of that, the defendant knew very well, or at least the  
12 court can find by a preponderance of the evidence, that  
13 the defendant knew very well that he was creating that  
14 substantial risk.

15 THE COURT: Thank you for the arguments.

16 I'm going to find that -- I'm going to overrule the  
17 objection and find that the facts do support a substantial  
18 risk, and I am satisfied by the applicable standard that  
19 the facts do support a substantial risk of death or  
20 serious bodily injury has been established. So that  
21 objection will not affect the guidelines as they were  
22 calculated.

23 Objection No. 3?

24 ATTORNEY O'NEILL-GREENBERG: Our Objection No. 3  
25 just relates to the criminal history that is included that

1 doesn't result in convictions. I believe all of Mr.  
2 Rathbun's prior criminal history, he has one conviction  
3 from Connecticut. Everything else in Massachusetts is not  
4 a conviction. But to the extent they are included in the  
5 PSR and they are not convictions, it's just an objection  
6 to that. I can rest on the argument we put in our  
7 objections to the PSR.

8 THE COURT: All right. I understand probation's  
9 inclusion of this to give me as whole a picture as they  
10 can, but any information that we could not corroborate or  
11 that couldn't be corroborated and it is not an official  
12 conviction, I'll allow this objection and just inform the  
13 parties that I wouldn't consider any nonconviction  
14 materials in my sentencing.

15 There's an Objection No. 4. I'm not sure that  
16 requires argument. You're simply stating that there are  
17 factors that could warrant a downward departure.

18 ATTORNEY O'NEILL-GREENBERG: That's right.

19 THE COURT: So as a technical objection I'm  
20 overrule it, but you're correct. You can make that  
21 argument.

22 The government by addendum did file an objection. Is  
23 there any reason you want to be heard on that?

24 ATTORNEY BRESLOW: No, Your Honor. Like I said,  
25 it's not a formal objection. It was simply an

1 amplification of an argument in response to the  
2 defendant's objection regarding the enhancement.

3 THE COURT: Right. It appears as an objection  
4 in the presentence report. First of all, as a technical  
5 matter I won't recognize it as one.

6 ATTORNEY BRESLOW: Yes. You don't have to.

7 THE COURT: I will overrule it to the extent it  
8 is an objection, but absolutely wide open. You've  
9 delivered the message. You've conveyed your point by  
10 drafting it.

11 After having gone through the objections, the  
12 presentence report assigned a total offense level of 26, a  
13 criminal history category of three. That is a guideline  
14 range of 78 to 97 months, and I will find that is  
15 technically correct in its calculation to reach that  
16 number. I will adopt it noting the objection placed,  
17 which would have affected that guideline and made it  
18 lower. I note the objection. The objection was  
19 overruled.

20 ATTORNEY O'NEILL-GREENBERG: Thank you.

21 THE COURT: Now also we have on Count 2, Count 2  
22 is a minimum of 60 months, and so that's also a fairly  
23 significant factor to consider at sentencing. We have  
24 that minimum sentence in Count 2. All right.

25 Mr. Rathbun, you will have an opportunity to speak if

1 you want to. You don't have to say anything. I won't  
2 hold it against you if you don't want to make any comment,  
3 but if you wanted to make any type of statement to the  
4 court for me to consider in imposing a sentence, you will  
5 have that right. I will let you know when you need to  
6 make that decision. Do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Okay. Attorney Breslow,  
9 I'll hear from you first.

10 THE COURT: Yes, Your Honor.

11 Your Honor, we are recommending a sentence of 78  
12 months in prison. I want to underscore that that is the  
13 absolute bottom of the advisory guidelines range that Your  
14 Honor just calculated, and so it's the flat minimum of  
15 what the guidelines are recommending.

16 We are also recommending that the defendant -- that  
17 Your Honor recommend that the defendant receive the  
18 benefit of the residential drug abuse treatment program  
19 that is offered by the Bureau of Prisons to the extent  
20 that he can because we feel that rehabilitation must,  
21 particularly in this case, be an element of the  
22 defendant's sentence.

23 We are asking for 36 months of supervised release  
24 again with special conditions that require that he  
25 participate both in substance abuse and mental health

1 treatment for that reason. That the sentence be fashioned  
2 to encourage his rehabilitation.

3 We're not asking for any fine, and we're not asking  
4 for any restitution or forfeiture, just a \$300 special  
5 assessment as is required by the law.

6 The sentence that the government is asking is  
7 warranted by application of all of the Section 3553(a)  
8 factors, but most particularly here the seriousness of the  
9 offense, which Your Honor is very familiar with based on  
10 having presided over not one but two trials.

11 Secondly, general deterrence which we feel is  
12 particularly important in this current climate of extreme  
13 political and religious polarization.

14 Third, to protect the public from further crimes of  
15 the defendant. It seems very clear that he is highly  
16 likely to recidivate if he returns to drug abuse.

17 And lastly to promote respect for the law and we feel  
18 that this element, this statutory element is particularly  
19 salient here where the defendant repeatedly lied after  
20 committing his most serious offense, the gravaman of the  
21 case, the arson; where he repeated lied to the  
22 investigating federal agent, and then even worse under  
23 oath in not just one but two separate federal trials in  
24 this very courtroom.

25 And lastly, we feel that this sentence is warranted

1 by the importance of rehabilitating the defendant, to the  
2 extent that he can be rehabilitated particularly through  
3 drug treatment both in prison and on supervised release.

4 I don't want to belabor the seriousness of the  
5 offense, Your Honor. I think it's beyond doubt now that  
6 in spite of the defendant's repeated denials under oath at  
7 trial that in the early morning of April 2, 2020, at the  
8 height of the pandemic, as the pandemic was raging through  
9 nursing homes, in a state of emergency, the defendant  
10 placed and attempted to light a homemade firebomb at the  
11 driveway of the Jewish Geriatric Services Nursing Home  
12 complex in Longmeadow. And that less than two weeks later  
13 when federal agents executed a search warrant at his  
14 house, the defendant chose to commit further crimes by  
15 repeatedly lying to a special agent with the FBI.

16 Now, Ms. Greenberg is correct that the defendant was  
17 convicted -- he was charged with three separate lies, one  
18 of which the court severed because it was not related to  
19 the two arsons. The defendant was convicted at the first  
20 trial of one of those lies but not the second. But  
21 nonetheless, the court presided over the trial both times  
22 and I think the court should find that he lied repeatedly  
23 to the special agent concerning both statements that were  
24 charged. The first, that he was not familiar with the  
25 location on Converse Street where the device had been

1 placed; the second, that he had not left his house during  
2 the past two weeks including on April 2nd, which was the  
3 specific inquiry that Special Agent McGonigle made of the  
4 defendant less than two weeks later on April 15th at his  
5 home.

6 And thirdly, that he lied by stating, although this  
7 was not charged, that he had never even seen the yellow  
8 fuel container much less handled it with his bloody hands  
9 when he placed it outside the Jewish Nursing Home complex.

10 And further, I think even more seriously the  
11 defendant lied again and demonstrated further disrespect  
12 for the rule of law when he chose to testify under oath in  
13 two separate trials to a jury in this court. He lied by  
14 claiming that his blood had gotten on the fuel container  
15 when he cut his hand while doing a trashout in Chicopee.

16 Now, he also lied by denying flatly that he had  
17 placed the device. Instead he insisted that he drove  
18 right by JGS; did not stop to place the device; did not  
19 place the device, but instead drove through Converse  
20 Street past JGS simply to seek drugs.

21 Notably at both trials, even though the defendant had  
22 the opportunity to fully explain his side of the story and  
23 why his blood had gotten not on just the container but  
24 also the pamphlet, he did not explain how his blood had  
25 gotten on the pamphlet, many pages of the pamphlet that



1 had been stuffed into the container as the wick.

2 Now, in the second trial the government flatly  
3 refuted the defendant's claim that he had gotten his blood  
4 on that container by doing the trashout by calling the  
5 homeowner, the person whose home the defendant claimed to  
6 have cleaned out. And that homeowner testified that there  
7 was no yellow fuel container and the defendant had not cut  
8 his hand. The homeowner knew this because the defendant  
9 paid -- the defendant was paid by the homeowner by  
10 receiving cash in his very hands.

11 So what this case establishes is not just that the  
12 defendant committed a momentary act of arson, but that two  
13 weeks later he essentially doubled down on that crime by  
14 obstructing the investigation and lying to the FBI, and  
15 then months and months later, in not one but two trials,  
16 lying under oath by denying that he committed the crime at  
17 all.

18 Looking to the defendant's personal history and  
19 characteristics, which is another important statutory  
20 factor, from the government's perspective the most salient  
21 features of the defendant's personal history are his  
22 persistent substance abuse which I don't think is in  
23 dispute by anybody here in court; his criminal history  
24 that resulted from the drug abuse in part, and what the  
25 government considers to be his intrenched dishonesty,

1 including denials of responsibility for the crimes for  
2 which he was convicted which apparently persists to this  
3 day.

4 Now I read the defense sentencing papers fairly  
5 carefully and there appear to have been statements in  
6 which the defendant has expressed regret, regret for his  
7 situation. But nowhere in the defendant's sentencing  
8 papers did I see any expression of remorse, contrition, or  
9 apology to the victims, the primary victims of the arson,  
10 which were the staff and residents of Jewish Geriatric  
11 Services, the target of the homemade firebomb. I may have  
12 missed it, but I didn't see anything that remotely  
13 resembled an about face from the defendant's position at  
14 trial, which was that he did not commit any of the charged  
15 offenses.

16 Turning to the defendant's criminal history, the  
17 defendant has, by my Count 13, prior convictions. I will  
18 accept that most, if not all of these, are likely tied to  
19 the defendant's longstanding drug abuse. But the current  
20 federal convictions are a serious escalation from that and  
21 what they demonstrate, from the government's perspective,  
22 is that despite his many convictions, he remains or has  
23 remained unable to control his behavior, a fact that the  
24 defendant's mother conceded in a post-arrest telephone  
25 call to the defendant in which both she and he agreed that

1 he was better off in jail because he needed a timeout  
2 because he was out of control.

3 Turning to the defendant's drug abuse, it's very,  
4 very clear that the defendant suffers from a horrible  
5 history of drug abuse. And that is why the government is  
6 strongly recommending that treatment, both in prison and  
7 on supervised release, be an essential component to  
8 whatever sentence Your Honor must fashion.

9 So I'll just end by where I started by emphasizing  
10 that the government is recommending a guideline sentence  
11 but a sentence at the very bottom of the guidelines, and  
12 that is based on the entire circumstances of the  
13 defendant's life and the defendant's offenses as we  
14 explained in our sentencing memo and I've summarized now.  
15 And also to reflect that although the defendant's crime  
16 seems inextricably intertwined with religion, meaning the  
17 target of the offense was the Jewish Geriatric Services  
18 campus and the device consisted of a religious pamphlet  
19 stuffed into a gasoline fuel container and lit on fire,  
20 there appears to be, in spite of the government's  
21 exhaustive investigation, no other anti-Semitic or white  
22 supremacist inclination.

23 And so only the defendant really knows why he  
24 committed the crimes that he did commit on the early  
25 morning hours of April 2nd, but the absence of any other

1       aggravating evidence warrants a sentence at the bottom of  
2       the guidelines, as does the defendant's long time and very  
3       unfortunate history of drug abuse. As does the fact that  
4       even though this was an extremely dangerous crime, no one  
5       ultimately was harmed fortunately. So for those three  
6       reasons, Your Honor, we are recommending a guideline  
7       sentence but a sentence at the very bottom of the  
8       guidelines.

9               THE COURT: All right. Thank you.

10              ATTORNEY O'NEILL-GREENBERG: Going off what the  
11       government just said, I think it's incredibly important to  
12       say that nothing about this crime was motivated by  
13       anti-Semitic animus or any kind of racial or cultural  
14       animus whatsoever.

15              I agree with the government when they say only --  
16       when you're looking at this and after we've had two  
17       trials, when the government says only John Rathbun knows  
18       why he did this it's because it doesn't make any sense.  
19       And that is because it is the result of erratic,  
20       impulsive, nonsensical behavior of somebody who was in the  
21       deepest throngs of a substance use disorder, still using  
22       crack cocaine, using heroin, seeking more drugs, and in  
23       this perfect storm of the worst drug use you could  
24       imagine, this event happened.

25              We are not here sentencing somebody who has religious

1 animus or hatred toward Jews or had some bone to pick or  
2 vendetta against JGS or anyone who worked there or lived  
3 there.

4 This wasn't some meticulously planned, long drawn out  
5 idea to do this. This was just the perfect storm of  
6 someone who is acting erratically because of the deepness  
7 of his substance use disorder, and that's very important  
8 when we're thinking about what is the appropriate sentence  
9 to give him that is going to meet all the goals of  
10 sentencing and for Mr. Rathbun 60 months we're requesting,  
11 which is the minimum mandatory, coupled by three years of  
12 supervised release, with the special conditions that he  
13 get substance use treatment, intensive substance use  
14 treatment along with mental health treatment both through  
15 RDAP, which I believe he qualifies for, and after while  
16 he's on special supervised release.

17 That is going to be -- that is the key to his  
18 rehabilitation. That is also the key to deterrence for  
19 him because his recidivism risk is intricately linked to  
20 his sobriety.

21 And as terrible as Mr. Rathbun substance use disorder  
22 has been, he has never had all the boxes ticked with the  
23 many issues he has dealt with in his life. I know the  
24 court is intimately familiar with his substance use  
25 disorder and how serious it is and that it's

1 poly-substance use disorder and then he has his mental  
2 health issues in addition to that, but he's never gotten  
3 long-term treatment for all of those things at the same  
4 time. That is shocking to me but that is what he needs  
5 long term to ensure that he remains the sober, helpful,  
6 friendly, productive, kind John Rathbun that can go back  
7 out into the community and be a successful member of  
8 society for himself, for his family, and for his  
9 community. I say that in our sentencing memo and when you  
10 hear from Mr. Rathbun, he certainly has those three goals:  
11 To become sober and to be a productive member of society  
12 for himself one, for his family, and most importantly for  
13 his daughter, two, and for his community.

14 This incident happened in the community he was born  
15 and raised in; that his family lives in; that his daughter  
16 lives in. This is his own back yard. This is a place  
17 that he cares about, and the only way to make -- to the  
18 extent he can make whole what happened, that is  
19 intricately linked to his rehabilitation, his sobriety,  
20 and his treatment.

21 For Mr. Rathbun, he doesn't have 13 convictions. He  
22 has a criminal history that I would say is reflective of  
23 someone struggling with a substance use disorder. One old  
24 conviction from Connecticut. The longest prison sentence  
25 he ever served before now is a year. So the requested

1 sentence we're asking for is four times that, which is  
2 very significant and I think reflects the seriousness of  
3 the crime in relation to him. And then three years of  
4 supervised release after that, which again is a much  
5 longer term of supervised release in the community that  
6 he's ever received.

7 I think there's no doubt that the extent of the  
8 supervised release and what is going to require of him is  
9 going to be much more intense than anything he's ever  
10 received, and that's really where the rubber hits the road  
11 for Mr. Rathbun is when he is out on supervised release.

12 By the time he returns back to the community, he's  
13 going to have five years of sobriety. He's right now  
14 almost at the two-year mark since this incident happened.  
15 So two years of sobriety is basically the longest period  
16 of sobriety he's ever had in his entire adult life since  
17 he started drug use as a young teenager. By the time he  
18 is finished, he will have five years. He will be starting  
19 out on his period of community release with that sobriety  
20 behind him, and I think primed with the mental health  
21 treatment and the substance use treatment to be able to  
22 chart a different path for himself for his family and for  
23 his community.

24 If we're talking about the difference between a year,  
25 we're requesting five years, they're requesting six and a

1 half years, a year and a half certainly would exist to  
2 incapacitate to him longer, but I don't -- at what cost?

3 I say that because we have all the research and  
4 social science that says punishment, the certainty of  
5 punishment has a deterrent effect but the length of the  
6 sentence doesn't. An extra year and a half doesn't have  
7 any greater deterrent effect.

8 What Mr. Rathbun needs, besides the RDAP program and  
9 the treatment he's going to do in the Bureau of Prisons,  
10 he needs to be back out into the community with those  
11 restrictions from probation doing his mental health  
12 treatment, doing his substance use treatment, so that he  
13 can reintegrate back into the community and essentially  
14 pay back the community for what he has done. And that is  
15 by being someone who is productive and law abiding and  
16 assuming the roles of his family and his daughter that he  
17 wants to do.

18 I think it's important to note that his confinement  
19 from the time this incident started until now has been  
20 much harsher than it would have been otherwise. It's been  
21 a harder time for him to do, and that is because of the  
22 pandemic and the time that he was incarcerated on this  
23 case.

24 He was incarcerated both at Hampden County and at  
25 Wyatt at a time when he was subjected to serious



1 lockdowns, no programming, no visits, unable to use the  
2 phone. Locked down 23 hours a day. That is a much more  
3 onerous period of confinement than he would have otherwise  
4 had had he been -- had this case happened at a different  
5 time.

6 Not only that but he contracted COVID-19. He went  
7 through that. Being sick is difficult in itself but being  
8 sick in a prison when you're on lockdown for 23 hours a  
9 day in a tiny cell is an incredibly difficult thing to go  
10 through. I think that also has a significant deterrent  
11 effect, because he knows the period of incarceration he's  
12 had throughout this case is only because of his actions,  
13 but I think that drives the deterrence home in a way that  
14 it wouldn't otherwise.

15 Mr. Rathbun has also -- when he transferred to Wyatt  
16 in June, he was taken off the medically-assisted treatment  
17 he had been on, the Suboxone, at Hampden County. He was  
18 just taken off it. He was forced to go through withdrawal  
19 at Wyatt, and he has been without that medically-assisted  
20 treatment since June. That is a denial of basic medical  
21 care. It is a violation of the Americans with  
22 Disabilities Act. It is something that has made his time  
23 since June much harsher, and I think our requested  
24 sentence reflects that.

25 I will say that Bureau of Prisons is now doing two

1 things for people who have opiate use disorders. If they  
2 have -- if they enter the Bureau of Prisons while they are  
3 still on medically-assisted treatment, then there's  
4 maintenance; the Bureau of Prisons continues them.

5 If there is somebody who needs to be placed on it and  
6 has been placed on it in the past, then they'll do what's  
7 called induction. They're doing that because they  
8 recognize now to not do so would be a serious violation of  
9 the Americans with Disabilities Act because a substance  
10 use disorder is a categorized disability, but it's denying  
11 essential medical care. It would be the same as if  
12 someone came in with serious diabetes and they just said,  
13 sorry, we're not going to give you insulin.

14 In the time that Mr. Rathbun has had to be without  
15 his medication for his opiate disorder, his risk of death  
16 or overdose skyrockets, in addition to the physical hell  
17 that he has to go through when he had to withdrawal  
18 without any sort of help and he's been without that  
19 medical treatment.

20 One of the requests we're making of Your Honor is  
21 that you designate -- that he be placed in -- that he be  
22 evaluated for his substance use disorder and placed on  
23 medicine for opiate use disorder in the Bureau of Prisons,  
24 in addition to RDAP, because Mr. Rathbun recognizes that  
25 he needs to be back on that medicine as soon as possible

1 and stay on it for the long term.

2 So I think I'll end just by saying for Mr. Rathbun,  
3 the test for him really will be the period of supervised  
4 release. You'll hear from him in a minute but he realizes  
5 -- when you're at the lowest of the low, that's when you  
6 can -- when you really hit rock bottom, that's when you  
7 sometimes will have an epitome and realize things have to  
8 be done differently, and that's exactly what happened for  
9 Mr. Rathbun throughout this case and it's where he is now.

10 He also -- I'll share with the court -- applied to be  
11 part of the Restorative Justice Program which is being run  
12 at Wyatt. He made it to the preliminary list and  
13 unfortunately there were more applicants than could be on  
14 it. Depending on how long he stays at Wyatt, he may  
15 actually be able to participate but that's something he  
16 wanted to do.

17 At Wyatt during the pandemic he's had no ability to  
18 do any kind of programming, not just mental health stuff  
19 but nothing. But he has wanted to do something to be able  
20 to take some very serious steps to work on his own  
21 rehabilitation and to figure out a way to make what is  
22 wrong right, and he wanted to be a part of that program.  
23 He's very interested in it. I don't know if he's going to  
24 be able to apply, but I think his interest in it, his  
25 application, his being put on preliminary list shows how

1 genuine he is about change and that this has been the  
2 hugest wake up call for him and he's ready to change and  
3 he has the capacity to change. Thank you.

4 THE COURT: All right. Thank you.

5 Mr. Rathbun.

6 THE DEFENDANT: Yes, Your Honor.

7 Hello. My name is John Rathbun. I would like to  
8 thank the court for this opportunity to speak.

9 I have struggled with drugs and alcohol my entire  
10 life. Since I was 15, I have put myself and my family  
11 through hell. I have tried getting clean many times but  
12 have failed every time.

13 I have been clean now for about two years. It feels  
14 great. But the question I ask myself is, what's going to  
15 be different this time when I get out? How am I going to  
16 stay clean? The answer is NA and counseling. I have  
17 tried NA in jail and found it to be very helpful. This is  
18 just one of many tools I will need to stay clean. I also  
19 need to find a sponsor and a group of people to surround  
20 myself with that will help me stay clean.

21 I ask the court that I be put at a facility where I  
22 can participate in the RDAP program. The person I was  
23 when I was on drugs is somebody that I am really ashamed  
24 of. The person I want to be in the future is a sober,  
25 responsible, normal citizen.

1 I plan to make the most of my time while I am  
2 incarcerated and use all of the programs to help me. I  
3 take full responsibility for the crime that I have been  
4 found guilty of. I ask the court for leniency on my  
5 sentencing. I apologize to my family and this court for  
6 my actions. Thank you for your time.

7 THE COURT: All right. Thank you.

8 All right. Considering the 3553(a) factors, I am  
9 going to impose a sentence that I think provides just  
10 punishment that will reflect the seriousness of the crime  
11 and deter any criminal conduct in the future by Mr.  
12 Rathbun or the general public who would observe the  
13 sentencing for a crime under this fact pattern.

14 I've considered the nature and circumstances of the  
15 offense and the history and characteristics of Mr.  
16 Rathbun, including his drug addiction and how that drug  
17 addiction started at a very young age with prescription  
18 medication in the family home.

19 When assessing the key component under 3553(a) of a  
20 sentence that is sufficient, sufficient but not greater  
21 than necessary, I think it's very important for the court  
22 to consider what this sentence is going to be and what it  
23 would be. And both parties have talked about the  
24 motivation, like what was behind this.

25 Was there animus towards this Jewish facility or

1 Jewish people generally or some type of anti-semitic, as  
2 Mr. Breslow pointed out, anti-semitic, political-related  
3 messaging or violent activity related to some similar  
4 motive? And there was none, and the government has  
5 conceded it. Although the government thought there was  
6 and investigated it, the government has conceded there was  
7 no evidence of that. That certainly would have increased  
8 -- been a factor that weighed towards increasing a  
9 sentence.

10 Nonetheless even without -- I mean, how do you talk  
11 about a motive? What world would motivate someone to do  
12 this, to try to ignite a gas can anywhere in public?  
13 Never mind at the corner of a facility that cares for  
14 people in the middle of a neighborhood, it's outrageous.

15 I don't know, I don't know what was going on in Mr.  
16 Rathbun's mind. I know he was really under the grips of a  
17 terrible, terrible drug addiction. I know he had some  
18 family history with that facility regarding his  
19 grandmother and knowing that that facility has been part  
20 of his family.

21 I don't know what was going on in his mind with his  
22 thoughts about his own religion and his family's efforts  
23 to use religion to try to help him with his drug  
24 addiction. I don't know how that all interplays or is  
25 thrown into the mix.

1 But whatever happened, Mr. Rathbun was a disaster and  
2 that played out in this scenario which was just very  
3 dangerous behavior; very, very dangerous behavior that  
4 cannot be tolerated.

5 So also considering under 3553(a) the desire to  
6 promote rehabilitation, there is every indication that Mr.  
7 Rathbun would be amenable to very rigorous rehabilitation  
8 efforts. He didn't have much rehabilitation efforts that  
9 worked. He never really bought into it or wanted it, but  
10 he was never really given rigorous rehabilitation and this  
11 will give him the opportunity. His being sentenced to  
12 incarceration will give him the opportunity to  
13 rehabilitate himself, and there's every indication that he  
14 would be amenable to that and that that would work.

15 I agree with you a hundred percent, Attorney  
16 O'Neill-Greenberg, that the difference between you and the  
17 government's recommendation in the big picture is not that  
18 different because Mr. Rathbun is going to be back out in  
19 the community. And unless Mr. Rathbun is back out in the  
20 community as a rehabilitated individual not using drugs,  
21 then -- if he's not rehabilitated, there's going to be a  
22 problem whether he stays in jail an extra year or not. So  
23 the rehabilitation here is absolutely key.

24 I'm going to impose a sentence of 60 months, so a  
25 five-year sentence of incarceration, which I really do

1 think is significant and I also think that it's  
2 sufficient. I think it's sufficient but not greater than  
3 necessary.

4 I think the government's recommendation is absolutely  
5 well thought out and fair in their role and their  
6 citations to the reasoning behind it, but I think anything  
7 beyond the 60 months is greater than necessary because I  
8 don't really know what it accomplishes other than just  
9 pure incarceration for incarceration's sake.

10 So I think a sentence of 60 months is sufficient but  
11 not greater than necessary and will accomplish all the  
12 other goals of sentencing. I will absolutely make it part  
13 of the sentencing that he be designated to a facility with  
14 a residential drug treatment program.

15 I also think it would be important for him to be at a  
16 facility that also utilizes medication, including Suboxone  
17 and other medications, to try to help individuals with  
18 serious drug addictions deal with that. I don't know what  
19 facilities use that. Does probation know?

20 I would imagine a facility that offers the  
21 residential drug treatment program would be more informed  
22 on medical treatments and may have that available. Does  
23 the defense know?

24 ATTORNEY O'NEILL-GREENBERG: It's my  
25 understanding in talking to the point person at the Bureau



1 of Prisons who's overseeing this that there aren't  
2 specific facilities that are doing it. It seems like all  
3 facilities have the capacity to do it in the same way or  
4 -- the way it was told me, in the same way as if someone  
5 came in and needed insulin or some other medicine every  
6 day.

7 THE COURT: All right. And the nearest drug  
8 treatment, is that Devens?

9 PROBATION OFFICER: I believe it's back down to  
10 Fort Dix. Devens doesn't have the RDAP.

11 THE COURT: They don't have the RDAP?

12 PROBATION OFFICER: I don't believe so.

13 THE COURT: All right. Well, I would recommend  
14 that a facility, number one, the first consideration is a  
15 facility with the RDAP program. The next facility is --  
16 the next recommendation would be a facility that's closest  
17 to his home with the RDAP program.

18 The RDAP program is really the very important  
19 component, and I would make a recommendation that the  
20 facility that he goes to be one that supports the use of  
21 medical assistance with drug treatment issues. I just  
22 find it hard to believe that anyone who does the RDAP  
23 program wouldn't be informed about that so I think that's  
24 one in the same.

25 Probation, the length of supervised release?

1 PROBATION OFFICER: One to three years.

2 THE COURT: Three is the max?

3 PROBATION OFFICER: Yes, sir.

4 THE COURT: So it's three years' supervised  
5 release. No fine. No restitution. There's \$300 due and  
6 payable as a special assessment.

7 The conditions of supervised release are the standard  
8 conditions of not committing any state, federal, or local  
9 crime; not using or possessing any controlled substance;  
10 being subjected to not more than 104 random tests per year  
11 to make sure you are not using any substances. You will  
12 have to submit to one drug test within 15 days of your  
13 release from prison. You will have to cooperate in the  
14 collection of a DNA sample.

15 The special conditions will include your successful  
16 treatment -- enrollment and successful treatment of any  
17 programming to deal with your substance abuse issues, any  
18 programming that the probation department enrolls you in.

19 Also you need to successfully complete any mental  
20 health or emotional health treatment that the probation  
21 department enrolls you and directs you in.

22 You are prohibited from consuming any alcoholic  
23 beverages at all, and obviously you're prohibited from  
24 using any illegal substances.

25 All right. So drug treatment, mental health

1 counseling. At the discretion of probation any job  
2 training or educational endeavors that could be useful to  
3 Mr. Rathbun, programming that you can get him into.

4 PROBATION OFFICER: The only other thing was the  
5 victim in this matter. I didn't know if there should be a  
6 prohibition against his frequenting the grounds of the  
7 nursing home.

8 THE COURT: Well, I will order him to stay away  
9 from -- to the extent that I want him to stay away from  
10 the facility, I'm not going to prohibit him from using the  
11 public road, the very public road in that town that kind  
12 of intersects and drives back and forth. But there will  
13 be no reason at all for you to ever enter upon that  
14 campus. There is never a reason to take a left or a right  
15 into any of those parking lots.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: If you think there ever is a reason  
18 or something develops because a family member is at the  
19 facility being cared for or something, you have to talk to  
20 your probation officer. All right?

21 All right. Attorney Breslow, I take it that you  
22 spoke for the victim or victims of JGS?

23 ATTORNEY BRESLOW: Yes. I've consulted with  
24 them. They are aware of our recommendation, and they have  
25 -- they just want this matter put behind them.

1 THE COURT: But there was no letter or  
2 statement?

3 ATTORNEY BRESLOW: No, for the reasons that I  
4 just explained.

5 THE COURT: All right. Thank you.

6 All right. Mr. Rathbun, you do have the right to  
7 appeal. Do you understand that? You can discuss your  
8 rights and options to appeal with your attorneys. Do you  
9 understand?

10 THE DEFENDANT: I understand, Your Honor.

11 THE COURT: Anything else from probation?

12 PROBATION OFFICER: No, sir.

13 THE COURT: From the government?

14 ATTORNEY BRESLOW: Yes, Your Honor. We move to  
15 dismiss the third charge, false statement in count -- in  
16 the 1001 count.

17 THE COURT: That motion to dismiss is allowed  
18 that third count in the indictment. All right.

19 ATTORNEY O'NEILL-GREENBERG: Nothing else from  
20 us, Your Honor.

21 THE COURT: Okay. All right. Remanded.

22 **(Hearing concluded at 12:14.)**

23 -----

24

25

C E R T I F I C A T E

UNITED STATES DISTRICT COURT )  
DISTRICT OF MASSACHUSETTS )

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/s/ Alice Moran  
Alice Moran, RMR, RPR  
Federal Official Court Reporter

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