

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA,)	Criminal Action
)	No. 14-107
vs.)	
)	Washington, D.C.
NICHOLAS ABRAM SLATTEN,)	August 14, 2019
Defendant.)	10:09 a.m.
)	

* * * * *

**TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE ROYCE C. LAMBERTH,
UNITED STATES DISTRICT COURT SENIOR JUDGE**

APPEARANCES:

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Official Court Reporter
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P R O C E E D I N G S

1
2 THE DEPUTY: Good morning, everyone.

3 We are here for Criminal Matter 14-107,
4 United States of America versus Nicholas Abram Slatten.

5 If counsel, as well as probation, will please
6 approach the lectern and identify yourselves for the record.

7 MR. MARTIN: Good morning, Your Honor.
8 Patrick Martin and Alexandra Hughes for the Government.

9 MS. COMMONS: Good morning, Your Honor.
10 Krystal Commons, Dane Butswinkas, Tobin Romero,
11 Simon Latcovich, and Amy Saharia for the defense; and
12 Mr. Slatten is present.

13 PROBATION OFFICER: Good morning, Your Honor.
14 Kathy McGill from the probation office on behalf
15 of Kelly Kraemer-Soares.

16 THE COURT: I take it there is no dispute over the
17 final presentence report.

18 Are there any further arguments that need to be
19 made about the presentence report before I adopt it? Or can
20 I take it that everything is set forth in the report, and I
21 can finalize the report as written?

22 MR. MARTIN: No further objections, Your Honor.

23 MR. BUTSWINKAS: Same.

24 THE COURT: All right. So I will adopt the report
25 as written; and the calculations in the report will be

1 utilized by the Court in sentencing. Then both sides are
2 prepared to go forward today; is that correct?

3 MR. MARTIN: Yes, Your Honor.

4 MR. BUTSWINKAS: Yes, Your Honor.

5 THE COURT: In light of the new Court of Appeals'
6 opinion on the sentencing recommendation, has the -- I don't
7 know if the defendant has seen the sentencing recommendation
8 by probation. I have no objection to your seeing it, if you
9 haven't seen it.

10 MR. BUTSWINKAS: Yes. We have seen it.

11 THE COURT: Okay. Then I take it the Government
12 will allocute first and then the defendant?

13 MR. BUTSWINKAS: Yes, Your Honor.

14 MR. MARTIN: Your Honor, I will be short.

15 The jury so found that Mr. Slatten killed and
16 committed first degree murder when he took the life of
17 Mr. Ahmed Al Rubia'y.

18 The statute provides two sentences: Death, which
19 the Government did not seek; and life imprisonment. The
20 Government is respectfully requesting that the Court
21 sentence Mr. Slatten to life. We will reserve, to the
22 extent the Court would like to ask us questions about Eighth
23 Amendment.

24 THE COURT: I'm sorry?

25 MR. MARTIN: We will reserve, to the extent the

1 Court would like to ask further questions on Eighth
2 Amendment challenge by the defendant.

3 THE COURT: You can go ahead and argue it now.

4 MR. MARTIN: Okay. The short form, Your Honor, is
5 threefold. One is that the defendant waived or forfeited
6 that argument when he did not raise it to the D.C. Circuit's
7 attention in his first appeal; we cited case law to that
8 effect.

9 The other two points which are in our papers, Your
10 Honor, is that, one, there is nothing that's grossly
11 disproportionate about a life sentence in a first degree
12 murder case versus what the prior Slatten circuit court was
13 addressing; manslaughter and attempted manslaughter.

14 The third point is on these facts, as must have
15 been found by the jury, including the fact that this was in
16 a war zone but that there were no mitigating circumstances.
17 The only conclusion is that Mr. Slatten shot unprovoked; he
18 did so with all the requisite mens rea of first degree
19 murder. And, therefore, on the facts alone, the Court
20 should also find that the Eighth Amendment has not been
21 violated should the Court impose the life sentence required
22 by the statute.

23 THE COURT: Thank you, Mr. Martin.

24 MR. BUTSWINKAS: Dane Butswinkas for Mr. Slatten.

25 Good morning, Your Honor.

1 THE COURT: Good morning.

2 MR. BUTSWINKAS: May it please the Court.

3 We have some family and friends of Mr. Slatten
4 that would like to be heard; and Mr. Slatten would like to
5 be heard. And I have a very brief set of points that I
6 would like to make that are relevant both to the sentencing
7 and the Eighth Amendment argument if I may, Your Honor.
8 Just three points.

9 One is that the Court should take into
10 consideration that Mr. Slatten volunteered to serve his
11 country. I grew up, as you know, Your Honor, in a military
12 family, much like Nick's, on and around bases for 25 years.
13 My father served in the Navy, and in Vietnam. His best
14 friend was killed by a land mine in Vietnam.

15 I know all well the contributions that our
16 veterans around the world make. And we owe so much to our
17 veterans; veterans like Mr. Slatten whose family, as you
18 know, Your Honor, has made it a number one priority to serve
19 this country for generations.

20 Mr. Slatten's dad, as you know from the record,
21 was in the Army Reserve for over 20 years, following in the
22 footsteps of his father, who served in World War II,
23 alongside five of Mr. Slatten's great-great uncles. He had
24 cousins in the Korean war, in Vietnam, in the Air Force, the
25 Marines, and the Army National Guard.

1 Anyone left in the dark about Mr. Slatten's
2 motives for serving his country, in my view, respectfully,
3 is not paying close attention to his military record. And
4 he didn't just serve, Your Honor, he was decorated.

5 He had a spotless military record after two tours
6 of duty. He had the highest recommendations that you can
7 have from his commanding officer. And he earned, by his
8 early 20s, a number of commendations that kids around the
9 Washington area will never achieve.

10 The Combat Infantry Badge for service and combat,
11 the Army Achievement Medal, the Iraqi Campaign Medal, medals
12 for his participation in the Global War on Terrorism, the
13 Global War on Terrorism Medal -- the Global War on Terrorism
14 Service Medal. Significantly, the Army Good Conduct Medal.
15 And probably most significant, in that array of
16 commendations, was his Army Commendation Medal for
17 meritorious services, all speaking to Mr. Slatten's good
18 character.

19 Anyone wondering --

20 THE COURT: Right. I appreciate seeing that
21 DD 214 which you attached with the sentencing memo, too. I
22 had not seen that before.

23 MR. BUTSWINKAS: Yes. Thank you, Your Honor.

24 In my view, again respectfully, anyone wondering
25 how he conducted himself as a soldier representing our

1 country abroad should take a close look at this record,
2 should look at the fact that he was leading peacekeeping
3 missions in Northern Iraq; that he did over 100 joint tours,
4 joint patrols with the Kurds; and that he spearheaded, at
5 odds with, the entire complexion of this case, care packages
6 being sent from him so that he and his colleagues could
7 distribute them to Iraqi children. He was a decorated
8 veteran who served our country; and we owe -- and I owe --
9 him a debt of gratitude.

10 Second, Mr. Slatten is a person of high integrity.
11 I wanted to be a lawyer since 1969, 50 years, since I was 8.
12 And for 30 years I have practiced; and I have always worked
13 hard at it. I have tried cases now, as I think Your Honor
14 knows, in 25 states, federal and state courts around the
15 country. And I always leave every case with a little bit
16 more passion for the next one because I always leave my
17 cases inspired, either because of my colleagues or my
18 co-counsel or the Court or even, on occasion, opposing
19 counsel. But most of all, I am inspired by a system,
20 however imperfect, that ultimately serves democracy; a
21 system that protects our citizens like Mr. Slatten from
22 unfair oppression, one that does its level best to ensure
23 that justice is served.

24 And it's a system that works the hardest in the
25 most unpopular case, the cases most prone to bias,

1 prejudice, politics, and even error.

2 As I left this case this past winter I, for the
3 first time in 30 years, questioned whether I belonged as
4 part of this system. And so I even, for a brief period, as
5 Your Honor knows, stepped aside from this position. But I
6 could hear my late mother saying: Think something positive,
7 and do your part. Even my mom would have been challenged
8 with this chronology.

9 But I do offer this: I have been inspired by
10 Mr. Slatten. I personally vouch to this Court for his
11 character and integrity, not just for his service to this
12 country which I think a great deal of, but his unbroken
13 faith in a system that, from his vantage point, probably
14 hasn't earned it; for the strength of his human spirit to
15 endure what he has endured; for his friendship; for his --
16 and I am not a religious person, but his -- what I have
17 seen, his devotion to and faith in God.

18 When I asked this Court on repeated occasions to
19 release Mr. Slatten during the trial to my house, it wasn't
20 because I am reckless and a risk taker, it's because I was
21 willing to open my home to a person of honor, of character,
22 and integrity; a person today who I consider a friend; to
23 someone I respect and appreciate; someone who will always be
24 a member of our family; and someone that we will stand
25 proudly beside until the day when, in our view,

1 respectfully, until justice is done.

2 Number three, there is a mitigating circumstance
3 here that comes into play both in sentencing and in Your
4 Honor's consideration of our Eighth Amendment argument, and
5 that is residual doubt. There is substantial residual doubt
6 in this case that, in my view, respectfully, demonstrates
7 that Mr. Slatten is innocent. And I will not belabor the
8 Court because I know Your Honor is intimately familiar with
9 the record, but just 30 seconds: There are four
10 eyewitnesses who had no relationship with Mr. Slatten who
11 said he was innocent. There was a Raven 23 member who
12 admitted to this incident four times almost
13 contemporaneously with the incident. There was ballistics
14 and reconstruction evidence that suggests he's innocent;
15 there were members of the State Department who said so; the
16 top career former FBI polygraph expert said so. And the
17 Government said so to the victim's father so poignant that
18 he refused, as you know, to be part of this trial when asked
19 by the Government.

20 I would never be so presumptuous to predict how
21 history will look at this set of cases; that's the job of
22 historians, not lawyers, not even courts. But I will say
23 this: History often sees things a little differently with
24 the floodlight of hindsight and detachment. History has a
25 way of slowly getting it right. My only hope is -- and,

1 again, I say this respectfully -- is that we won't have to
2 wait for history to get it right.

3 Thank you, Your Honor.

4 And then, with the Court's permission, we have
5 some friends and family that would like to be heard.

6 I would like to start with Ms. Judd.

7 Your Honor, may they come to the lectern?

8 THE COURT: Yes.

9 THE DEPUTY: When you approach the lectern, each
10 witness, please state your name for the record.

11 MS. JUDD: I am Whitney Judd.

12 Good morning, Your Honor, and thank you for
13 allowing me to speak on behalf of Nick.

14 I am a high school agriculture education teacher,
15 so I spend a lot of time with high school kids helping shape
16 them into what I hope are productive citizens; citizens who
17 are future leaders, members of Congress, the military,
18 businessmen, and everything in between.

19 Kids or young adults are at the most pivotal
20 points in their lives; kids who ask daily about Nick. They
21 ask how and why our country would prosecute and convict a
22 veteran for something that happened in the midst of a war
23 zone. They ask because they don't understand it. And,
24 quite frankly, it's difficult for me to explain to them
25 because he didn't commit a crime. Because to them Nick is

1 an American hero who has fought to defend us all.

2 Nick's character and leadership traits are traits
3 that I pray my students develop before they leave the walls
4 of my classroom. Nick's been painted as a villain, but
5 that's not who he is.

6 Honesty, courage, compassion, reliable,
7 respectful, empathetic, sincere, virtuous, faithful, and
8 loving -- all these words describe Nick and the type of
9 person that he is; for that's the person that I have come to
10 know and to love.

11 Some people have overlooked these characteristics
12 because they're blinded by the gray area that surround the
13 events of September 16th, 2007, blinded by the details they
14 have been told, details that lack factuality, and then added
15 to the fact that they don't know Nick.

16 Twelve years ago I was a senior in high school
17 whose biggest concern was what college I was getting
18 accepted into. Nick was a 23-year-old veteran in the midst
19 of a firefight on the other side of the world. We were at
20 two drastically different points in our lives doing
21 drastically different things. However, we were connected by
22 one common bond: Our hometown. I didn't know then that
23 that event would impact my life the way in which it has, an
24 event that has forever changed all of our lives. I didn't
25 know then that I'd be standing here today pleading for the

1 Court's mercy not to take an innocent man's life from him,
2 but here I stand.

3 They say that love can be blinding, but I beg to
4 differ. Loving Nick Slatten has removed those blinders that
5 I have worn all of my life; the blinders that we're born
6 with, the blinders that we're taught to wear. Loving him
7 has made me a more compassionate individual. It's changed
8 the person that I am, the way in which I teach my students,
9 the way in which I value my friendships, the way in which I
10 simply look at the world. He's taught me not to take
11 anything for granted and to always be thankful, to always
12 find the blessings in the midst of the storms.

13 Simply put, Nick makes me a better person. He
14 adds to everyone's life; but without him home, there is a
15 void. Nick truly makes a positive difference in the lives
16 of others, his life has purpose, and he deserves so much
17 more than being confined behind bars for actions that were
18 not his. Thank you.

19 THE COURT: Thank you.

20 MR. BUTSWINKAS: Your Honor, may I introduce the
21 Court to Ms. Barbara Jared.

22 THE COURT: Yes.

23 MS. JARED: Good morning.

24 THE COURT: Good morning.

25 MS. JARED: My name is Barbara Jared. I am

1 Nicholas Slatten's aunt -- proud aunt, I might say.

2 I have known Nick since the day he was born, and I
3 have had the privilege to watch him grow into the amazing
4 man that he is today. He grew up in a very small rural
5 community with his parents and his sister, surrounded by
6 aunts and uncles and many cousins. He was raised to work
7 hard. He was raised to do his very best at any job that he
8 attempted. He was taught to be honest. He was taught to
9 take responsibility for his actions and his behavior. He
10 was taught to respect authority, which I think we have seen
11 on many occasions.

12 While most 18-year-old boys were busy thinking
13 about getting a job or running off to college or starting a
14 family, he chose to give his life to the service, for his
15 country; and that is what he did. It was a choice that made
16 us at home anxious for his safety; but we were proud of him,
17 and continue to be proud of him today.

18 That became his life's work; it wasn't just a
19 short-lived fad. It became his life's work, a life of
20 service. He has sacrificed his physical and his emotional
21 well-being for the good of others, for the good of every one
22 of us sitting in this room today.

23 It's important to our family and to our friends
24 that you understand that he is this man that we're
25 describing. We have spent a lot of time in this building,

1 multiple proceedings over the last few years.

2 I have had an opportunity to reflect on a lot of
3 things. But there is just one reflection today that I would
4 like to share with you, and that is my reflection of this
5 man that Nicholas Slatten has become.

6 I see a man who has suffered at the whim of
7 others, a man whose every American freedom has been taken
8 away from him, the very freedom that he fought so
9 sacrificially to preserve for us all. I see a man who has
10 fought to ensure justice for others, but who has had justice
11 denied to him.

12 In light of all of that, I see and I know that he
13 is amazing. He is a man of tremendous faith, a man of
14 integrity, a man who maintains commitment to what is right
15 and what is just. He is a man who has stood unwavering --
16 unwavering for 12 years by the same truth related to these
17 events leading to these proceedings. I see a man of honor
18 who could teach all of us a thing or two about sacrifice and
19 integrity.

20 My hope for Nick is justice -- unbiased, true
21 justice based on the fact that, at this point in time, only
22 you, Judge Lamberth, have the authority to assign.

23 I have seen this Government, with its limitless
24 resources, pursue this private citizen over and over and
25 over across the years, even though we all know that he is

1 innocent. What a tremendous tragedy and what a misuse of
2 our justice system for this man to be incarcerated for
3 something we all know he did not do.

4 May God have mercy on all of us, and may you have
5 mercy, Judge Lamberth, on Nick today by recognizing, at the
6 very least, a mandatory sentence -- life sentence has no
7 place in this case. Thank you.

8 MR. BUTSWINKAS: Thank you, Your Honor.

9 May I introduce the Court to Ms. Holly Barnes.

10 THE COURT: Yes.

11 MS. BARNES: Hi, Your Honor.

12 THE COURT: Good morning.

13 MS. BARNES: My name is Holly Hughes Barnes. And
14 I have known Nick since we were kids back when he had blond
15 hair over where that bald spot is. We were neighbors for
16 many years --

17 THE COURT: We all did.

18 MS. BARNES: Yes.

19 We were neighbors for many years. And Nick, his
20 sister Jess, and I spent a lot of time together. We went to
21 the same school; we rode the same bus. And we went back and
22 forth to each other's houses very often. I have sat at
23 their family dinner table many times, and they have sat at
24 mine.

25 I know Nick; I know his roots. I know what kind

1 of family he comes from. I know the values they hold dear,
2 a lot of which you have heard already. They value home,
3 they value their country, and they value family. And they
4 believe in protecting those ideals and the people they love.
5 And as I watched Nick grow up, I saw those values grow
6 stronger every day.

7 I watched him go from being a towheaded kid,
8 playing like he was He-Man defending Grayskull, to a real
9 life defender when he enlisted in the 82nd Airborne. And
10 once his military service ended, he took those same values
11 with him and became a Blackwater guard; once again, putting
12 the safety of American diplomats and dignitaries above his
13 own. And then I watched, horrified, as the Government who
14 hired Nick to protect them accused him of premeditated
15 murder in a war zone, which I would find an accusation
16 implausible even if Nick were a stranger. And then I
17 watched as media reports shifted American public sentiment
18 very negatively toward Nick, just like when honest soldiers
19 survived Vietnam but they came home to cold shoulders and
20 cries of "baby killer."

21 Media reports painted Nick as a hired gun for sale
22 to the highest bidder; nothing but a cold-blooded mercenary;
23 in it for the money; Iraqi hater; and that is not Nick. But
24 those kinds of negative sentiments have pervaded the entire
25 trial, it seems to me like; so much so that statements from

1 another guard declaring he fired the first shots that day
2 were ignored. So Nicholas Slatten did not fire the first
3 shot, much less premeditated murder.

4 And while I know you have to uphold the jury's
5 verdict, I would ask that you not make Nick serve a life
6 sentence for a murder he did not commit. Thank you.

7 MR. BUTSWINKAS: Your Honor, Ms. Tracy Hughes is
8 next.

9 MS. HUGHES: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MS. HUGHES: My name is Tracy Hughes.

12 My family and I live in Sparta, Tennessee, the
13 same town that Nick is from. I have known the Slatten
14 family for approximately 27 years.

15 When my husband and I got married, I became
16 neighbors with the Slatten family. And my husband had been
17 neighbors for many years with the Slattens prior to that.

18 Nick's mom Reba was even our nursery nurse when
19 our son Gunner was born. They're truly salt-of-the-earth
20 people, and it's our privilege to consider them family and
21 not just friends.

22 Excuse me.

23 Nick, in particular, held a special place in our
24 family's heart. And I believe my husband, who is also a
25 veteran, held a special place in Nick's heart as well.

1 Nick has spent many days at my home as a guest, as
2 well as training in martial arts under my husband's
3 direction. We are so proud of Nick's dedication and his
4 time spent in the 82nd Airborne, and also with Raven 2-3
5 serving his country.

6 We are now just as proud of Nick in the
7 unfortunate circumstance that he finds himself in in
8 defending himself against his country.

9 My husband, my son, and myself have all attended
10 Nick's proceedings throughout this process. It saddens my
11 heart that my 11-year-old son, who also looks up to Nick,
12 has had to witness the corruption in our country's judicial
13 system when he witnessed an innocent man being charged with
14 a crime that he did not commit.

15 We know this because of statements made by others,
16 forensic evidence which prove it was impossible for Nick to
17 engage the driver of the white Kia from his position in the
18 convoy. And although Nick has spent five years in prison
19 for a crime he did not commit, in every phone call or
20 interaction that we have with Nick, he always has a positive
21 attitude and he remains trusting that God has a plan.

22 It's inhumane to impact a family in a community so
23 great to require Nick to spend any more time in prison for a
24 crime that doesn't exist. And, with that, I respectfully
25 ask you that on behalf of Nick, his family, and his friends

1 that you consider these points when you are making your
2 final decision.

3 THE COURT: Thank you.

4 MR. BUTSWINKAS: Your Honor, I would like to
5 introduce the Court to Johnny Ivanovich.

6 MR. IVANOVICH: Good morning.

7 My name is Johnny Ivanovich Nuñez. I am Nick's
8 brother from another mother; I am sure you guys can tell the
9 resemblance.

10 I am here to share a few words in support of Nick
11 Slatten who was my team leader in the Army in 2005. We have
12 been close ever since.

13 At the present, he calls me at least twice a month
14 to check on me, my family, make sure we're doing all right;
15 and he has been doing this every since we have been
16 separated.

17 He is a caring, responsible, and honorable man.

18 While we are from very different backgrounds, we
19 quickly created a bond while serving in the military.

20 Nick is a man of character and principles who does
21 the right thing even in the face of intense pressure. For
22 example, during my time in the military I was -- some of the
23 soldiers tried to haze me; Nick prevented this. He told
24 them that this would not happen. Even when higher ranking
25 soldiers tried to intervene and pulled rank on him, he

1 prevented it. He stood there. He stood his ground and
2 said: This will not happen under my watch.

3 Excuse me.

4 When it comes to Nick's principles, he is
5 unwavering. Nick is a caring, spiritual person; and
6 throughout this challenging process, he has continued to
7 show empathy and love for others.

8 Nick and I are from very different backgrounds;
9 again, different ethnicities, political views, and even
10 religious beliefs; but he is my brother. We love him -- and
11 we all love him. Thank you.

12 THE COURT: Thank you.

13 MR. BUTSWINKAS: Your Honor, next is Mr. Rich
14 Elliott.

15 THE COURT: Okay.

16 MR. ELLIOT: Your Honor, my name is Richard
17 Elliott. I have actually spoken in your courtroom before on
18 behalf of Evan Liberty; so thank you for allowing me to
19 speak.

20 So I will get straight to the point.

21 In 2007, January 23rd, about eight months before
22 this incident happened, Blackwater helicopters were flying
23 over Baghdad and guiding a team to venue. And one of the
24 gunners in a little bird helicopter got shot in the head.
25 He fell out of the helicopter, but his lanyard kept him in.

1 That helicopter went back to the cache, back at the green
2 zone, to drop him. In the meantime, it left that other
3 helicopter out there all by itself, and that one got shot
4 down. The four guys inside -- we had no clue what happened
5 to them. The Blue Force Tracker that should tell us where
6 they are was turned over or the batteries were dead, or
7 something.

8 So, basically, a helicopter of ours, a State
9 Department helicopter, was crashed in the middle of the city
10 with four men inside, and Raven 23 was tasked with going out
11 and finding it. We were stationed at administrative
12 interior waiting in the city for something bad to happen
13 because just about every day something bad happened.

14 Nick and I, and the rest of the team, we mounted
15 up, started driving around the city. It's packed: Traffic,
16 people, markets -- all kinds of stuff, like normal.

17 We get on this one street. We had been there like
18 a million times. And it's so crazy, I noticed that, all of
19 a sudden, there's no people -- there's no people on the
20 sidewalks, there's no people on the street, no car traffic.
21 There are just a few cars on the right-hand side of the road
22 and that's it.

23 So I like -- I am in the lead vehicle, I am the
24 gunner facing rearward; and Nick is in the second vehicle
25 facing front, he is in the back of me. As I leaned down to

1 yell inside to my driver: Jam, hurry up, pick up the speed,
2 this can't be good, there is nobody around -- I picked my
3 head up and, all of a sudden, I hear gunfire. But it's not
4 like when you are being shot at from a long distance and
5 hear the snap going past when you can kind of take cover.
6 It was like when you are at the gun range, like it's going
7 off right next to you.

8 So, like, I knew I was being engaged, but I
9 couldn't see where and I didn't know where because the
10 buildings are tall; it vibrates the sound just like in here.
11 As I was picking my head up in like these split seconds, the
12 tires underneath me were shot, and these big vehicles just
13 like rocked the vehicle when the tire went out.

14 I see Nick picking up his gun and he's aiming in
15 like this direction (indicating), which is behind me where,
16 like, his sector is. He's looking forward, and I'm looking
17 back. So as I was able to turn, and he engaged, the rounds
18 started to climb up the truck. And, finally, because we
19 were still moving forward, the threat was basically right
20 next to me, so I was able to engage. We were able to get
21 out of there. But they didn't end there.

22 We were engaged in firefights for four, five hours
23 that day trying to find these guys who were shot down.
24 Eventually, after multiple engagements -- after six years in
25 the Marine Corps -- after five years in the Marine Corps,

1 five years working for Blackwater, Triple Can -- I have
2 never been in a firefight that had the volume of fire like
3 that; it was just intense. All we were trying to do was
4 just take these dead guys that crashed in their helicopter
5 and extract them, and we couldn't do it. It was just
6 intense.

7 The Army came. Apache gunship came in. It wasn't
8 until then that we were actually able to extract the bodies
9 of our guys. And it wasn't like they just -- they didn't
10 just die, like they got executed once the helicopter
11 crashed.

12 I guess all of that to say: I would have never
13 even experienced that -- I wouldn't have experienced the way
14 I'm experiencing life now. I just graduated college, GI
15 Bill. I have got two kids at home. And Nick doesn't get to
16 experience that. He literally saved my life. If it wasn't
17 for his quick, decisive action, I wouldn't be standing here
18 today. I am proud to be here for him. I am honored to be
19 here to speak on his behalf because I know -- I spent a lot
20 of time with him in Baghdad. And it was no -- it was no
21 awesome place. And he -- it's hard for me to see him
22 sitting on that side of the table.

23 The other thing that has been hard about this, if
24 I can just take one more second, is that -- so my time in
25 the Marine Corps, I spent just seven months in Iraq in

1 Al Anbar Province. It's crazy hard for me to sit here as I
2 watched some of this trial is that my squad leader sits on
3 this side of the room; one of the FBI agents that testified
4 here. So it, like, puts me in this crazy position that
5 somebody that I know also saved my life on multiple
6 occasions by decision-making is sitting on the opposite side
7 testifying against the guy who also saved my life. Like I
8 am in such a weird position, but I am very honored to speak
9 on his behalf. I think he's a man of honor, too. Thank
10 you.

11 THE COURT: Thank you very much.

12 MR. BUTSWINKAS: Your Honor, next is Mr. Ryan
13 Haynes.

14 MR. HAYNES: Good morning Your Honor.

15 THE COURT: Good morning.

16 MR. HAYNES: My name is Ryan Haynes. I am a
17 former Marine, MP, kennel master. I worked for Blackwater
18 as an explosive detector, dog handler, and as a K-9 trainer.

19 I eventually became one of two shift leaders for
20 Blackwater K-9 in Iraq, and was responsible for assigning
21 K-9 teams to clear venues as an advance to the Raven teams
22 arriving on these venues. We are a much smaller team as an
23 advance team. We typically are on our own while conducting
24 explosive searches, wherever the diplomats want to head.

25 Our lifeline and only real protection while

1 conducting our sweeps is what a designated marksman does.
2 Nick was a designated marksman. He would study our routes,
3 find strategic area. Nick could provide us with the best
4 overwatch capabilities. They were the only line of defense,
5 and we would not be able to ensure the safety of these
6 diplomats without them, period. We trusted them with our
7 lives in a combat environment. In five years, they never
8 failed me one time.

9 Being a designated marksman requires an immensely
10 stable, calculated, really trained mind; an incredible calm
11 under pressure and ability to adapt to all fluid situations.
12 That is who Nick is. That's exactly who Nick is. He is
13 that guy, and he is amazing at it.

14 I am a father of two beautiful baby girls who are
15 four and six. The two little girls write Nick at least once
16 a month. They innocently ask me why he's in jail. I
17 haven't been able to come up with an honest answer. I now
18 tell them politics is why Nick is incarcerated; four and
19 six, politics.

20 I don't know what else I can tell them to keep my
21 integrity intact as a Marine. I will never lie to them, try
22 to paint a picture of some false reality. If this same fact
23 pattern was presented to any other body, we would not be
24 here today; I wholeheartedly believe that.

25 I have looked around the room today and I wonder

1 how many people have been first responders in a combat
2 environment. How many people have seen that beautiful
3 protected gate open, and you are going into the fight, the
4 unknown, knowing that you are the target; that is a very
5 real feeling.

6 Fast forward today, civilians, they have got to
7 dissect this for 12 years, a split-second decision that
8 highly trained men have to make in a very tough environment;
9 that is simply unfair. Even worse, an innocent man will be
10 behind bars for life.

11 I have given most of my adult life to serving this
12 great nation in hopes of making it a better place to live
13 for my kids and others. Guys like Nick give everything, and
14 this is how he is treated.

15 I went to visit Nick in prison in Florida; walking
16 up, processing through the prison felt so wrong. Seeing him
17 in a jumpsuit with real criminals was an atrocity. When
18 friends or family found out I was visiting a federal
19 penitentiary, they said: Who on earth would you visit
20 there? The only response I had for them was an honorably
21 discharged decorated combat veteran.

22 Thanks for your time this morning, sir.

23 MR. BUTSWINKAS: Your Honor, I think the Court has
24 met Jessica Slatten.

25 THE COURT: Yes.

1 MS. J. SLATTEN: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MS. J. SLATTEN: I am Jessica Slatten.

4 Nick Slatten is my younger brother and only
5 sibling. Like many kids, Nick and I fought like cats and
6 dogs as kids, only to become the best of friends as adults.

7 Even though Nick is in his 30s, has been to
8 combat, and has experienced more danger and hardship because
9 of his service to our country than I can ever imagine, I
10 will always think of him as my little brother; the
11 quick-witted kid who loved impersonating Jim Carey's Ace
12 Ventura Pet Detective; the justice-seeker who loved the
13 Ninja Turtles, and who was the first to stand up for anybody
14 who needed it; the big-hearted kid who cared for the
15 equivalent of a circus of pets -- all the expected ones,
16 plus a bearded dragon named Ernest. There was never a dull
17 moment.

18 And in the midst of all the hard work that goes
19 along with growing up on a farm, there was always laughter
20 at the family table, and the expectation of greatness where
21 Nick was concerned.

22 By enlisting to fight for our country and serving
23 it in a time of war, Nick became not just a hero in our
24 small town, but one of the best among us.

25 It is for good reason that Nick is loved and

1 respected by so many who truly know him. People who know
2 that Nick is not the caricature of a racist, soulless
3 mercenary painted by the Government in these proceedings.
4 The court has heard from many of those people here today and
5 has read even more of their letters, including from fellow
6 soldiers and teammates who know Nick as a great leader and
7 consummate professional.

8 As a sister to a little brother who spent his
9 entire life serving our country, I have spent most of my
10 career as an attorney serving two state Supreme Court
11 justices. So my -- this setting is familiar to me, but the
12 situation is far from it. As an attorney who knows that
13 justice cannot exist divorced from the truth, it is doubly
14 devastating to be here as Nick's sister and also being an
15 attorney today.

16 The devastation is not an unfamiliar feeling for
17 the Slatten family. It is devastation that has taken my
18 brother Nick's place at the family table. Over the last 12
19 years, it is with devastation that we have watched Nick be
20 vilified and tried and convicted and imprisoned for Paul
21 Slough's shots.

22 Today it is not only with devastation, but with
23 total disappointment that we watch an innocent man face the
24 mandatory life sentence for shots that simply were not his.
25 But as devastated and as disappointed as we are, we are also

1 not without hope -- not just for the future, but also for
2 today.

3 My hope for the future lies in the fact that I see
4 our appellate system work every single day. That is the
5 only way I can even try to explain to family members who
6 have lost all confidence in our justice system; that the
7 battle is only beginning; that the D.C. Circuit will write
8 the true history of Nick's case as one of wrongful
9 conviction.

10 But my hope for the sentencing decision being
11 handed down today lies in the undeniable differences of
12 Nick's case. I know the Court is aware there has never been
13 another case like Nick's in any other court ever. I also
14 know the Court is aware that regardless of the merits of how
15 we got here, the only reason we are talking about a
16 mandatory life sentence is because of what can be described,
17 at best, as Government incompetence which no court should
18 ever reward.

19 I also know that the Court is aware that in just a
20 few weeks others whom the Government always intended to
21 accuse of more -- again, regardless of the merits, face much
22 less; none of them are going to die in prison. The
23 differences in proportionately that exist in Nick's case
24 give me every hope that if true justice is for another day
25 in another court, that mercy can still be for today in this

1 one. Thank you.

2 MR. BUTSWINKAS: Your Honor, I would like to
3 reintroduce the Court to Nick's father, Darrell Slatten.

4 MR. D. SLATTEN: Good morning, Judge.

5 THE COURT: Good morning.

6 MR. D. SLATTEN: I am Darrell Slatten.

7 And if I yell, I apologize right now. Okay? I
8 don't hear the best, so I guess my tone and volume is going
9 to be high. If you just give me a thumbs up if I'm too
10 high, I will tone it down. Okay?

11 THE COURT: You are fine.

12 MR. D. SLATTEN: Okay. Thank you, sir.

13 When I look at my son Nick, I see someone that
14 this Court, these prosecutors, and the jurors that are not
15 here fail to see; I see an innocent man. I see a patriot.
16 I see a soldier, and a protector of our great America.

17 I see a man unlike many in here, including this
18 Court and the jury that are not here today, that have never
19 been down a range, have never been in combat, ain't got a
20 clue. It's tough. It's tough to watch our system at work.

21 I see a man who went to war for our country. I
22 see a man that served two combat tours in Iraq serving in
23 one of America's most elite divisions, the 82nd Airborne. I
24 see a man that watched many of his brothers be wounded and
25 die at the hands of Iraqi insurgents, most of whom didn't

1 even wear a uniform. One minute they were your friend, the
2 next minute they shot you in the back.

3 Yeah, I watched our court system use Nick's
4 honorable service against him time after time.

5 Nick, please accept my apologies for what your
6 country has done to you. The country and people that you
7 were willing to die for. I know you're innocent, this Court
8 knows you are innocent; and the jury would know you were
9 innocent if they had been allowed to hear and see all of the
10 evidence.

11 Rest assured, my son. Rest assured, we will fight
12 until hell freezes over to correct this total failure and
13 travesty of justice.

14 Nick, thanks for your service; and I love you.

15 Thank you, Judge.

16 MR. BUTSWINKAS: I believe, Your Honor, you have
17 met Ms. Reba Slatten, Nick's mom. She will be next up.

18 THE COURT: Good afternoon.

19 MRS. R. SLATTEN: Judge Lamberth, thank you for
20 allowing me to have some time to talk today. My voice isn't
21 strong.

22 My name is Reba Slatten. I am blessed and very
23 proud to say that I am the mother of Nicholas Abram Slatten.

24 On a cold, snowy day in December of 1983, I
25 brought home this precious infant to our home in a small

1 country town in Tennessee. Awaiting the arrival of the very
2 first and only grandson for the Slattens was the
3 grandparents. Granny Betty was in here a lot.

4 And the other person so anxiously awaiting was our
5 precious baby girl Jessica. And she said: The day has
6 finally come that I get to hold my baby brother. Years go
7 by. Time goes on, sir, and it's creeping by very slow for
8 my son. Nicholas, an innocent man that is sitting in a
9 prison for a crime he did not and he could not have
10 committed.

11 Without your intervention today, Judge, for a true
12 justice, we're going to have to be headed back to the Court
13 of Appeals again.

14 Oh, my gosh. Time is fleeting for Grammy Betty.
15 She spent about half of her last year in this courtroom.
16 She prayed so hard every day to just get to wrap her arms
17 around him. She wanted to hug her only grandson and to
18 bring him home where he belongs. She turned 81 this summer.
19 And she would be here today if her health would allow it.

20 Nick's dad and I were told a long, long time ago:
21 You might not live to see your own son's freedom restored;
22 but we know it's going to happen. We have got some
23 fantastic attorneys that have promised they're not ever
24 going to stop fighting for Nicholas.

25 Nick was doing the job that the State Department

1 hired him to do. Nick is innocent. Everyone knows he did
2 not kill that driver of the white Kia.

3 May I please look at Nick and talk to Nick?

4 THE COURT: I'm sorry?

5 MS. R. SLATTEN: May I look at Nick and talk to
6 Nick?

7 THE COURT: Yes.

8 MS. R. SLATTEN: Nicholas, I love you.

9 THE COURT: You need to do it in the microphone
10 though.

11 MS. R. SLATTEN: Okay. Nick, I love you. And I'm
12 grieved that your constitutional rights as an American
13 citizen who served our great country so honorably in the
14 82nd Airborne has just been stripped away.

15 We're not ever going to stop praying and we're not
16 ever going to stop fighting; and we're going to bring you
17 home. That's where you belong, not in a prison.

18 We're hoping, Your Honor, that, at the very least,
19 you'll just recognize that this is all wrong. A mandatory
20 life sentence for an innocent man is so wrong; Nick didn't
21 do this. Thank you for your time.

22 THE COURT: Okay.

23 MS. R. SLATTEN: I love you, Nick.

24 MR. BUTSWINKAS: Your Honor, Mr. Slatten requests
25 to be heard next.

1 THE COURT: Okay.

2 THE DEFENDANT: The Court knows I am Nick Slatten,
3 right?

4 THE COURT: Good morning.

5 THE DEFENDANT: God is good. If you put your
6 faith in Jesus, anything is possible.

7 I want to thank my friends and family for their
8 support and prayers.

9 Life, liberty, and the pursuit of happiness is
10 what this unjust prosecution has taken from me since 2009.

11 I am innocent. I did not shoot the driver of the
12 white Kia. I never shot at his car. In this trial he was
13 not the only victim, I am a victim.

14 The father of the driver of the white Kia refused
15 to testify against me saying that he knew I did not kill his
16 son. The U.S. Government investigators told him someone
17 else killed his son. He refused to lie on these
18 prosecutors' behalf. My jury did not get to hear this. The
19 truth was kept from my jury at every turn.

20 I am a victim of these prosecutors who know I am
21 innocent, yet, in fear of losing, they are willing to kill
22 me for something I did not do. I passed the polygraph which
23 proves I am innocent. All the eyewitnesses say I am
24 innocent.

25 The prosecutors offered me a manslaughter charge

1 which I refused because I am innocent. The prosecutors know
2 I am innocent, yet they insist on killing me. This case is
3 not just about me.

4 I have learned that no American is safe when the
5 justice department abuses its power; this is why we have
6 judges in positions of power. The prosecutors' misconduct
7 in my case cannot go unchecked. Judge, if you allow this,
8 you are emboldening these prosecutors' disregard for the
9 Constitution.

10 I am calling on all veterans to speak out and
11 protest. Our oath of enlistment has no expiration date. If
12 they prosecuted me for something I did not do in a war zone,
13 they can do it to you. And why do our fighting men and
14 women have to choose between a casket and a prison cell?

15 The Government admits there was evidence of
16 incoming fire; this is a fact the Government likes to leave
17 out, and the media will never report on. The Iraqi police
18 was run by terrorists; and eyewitnesses saw these same
19 terrorists shoot at us. These same terrorists were allowed
20 to conduct an investigation that our government and news
21 media adopted as the truth.

22 I'm calling on all patriots to demand that the
23 classified information that proves there were terrorists in
24 Nisur Square during the fire fight be released to the
25 public. This information was kept from my jury.

1 No 12-year-old classified information is worth
2 keeping decorated veterans locked in prison. Everything
3 that proves we were being shot at by terrorists was
4 destroyed or kept from my jury.

5 Does the truth matter?

6 The members of my jury have never been to combat,
7 so there was no way for me to get a fair trial, especially
8 when prosecutors and key witnesses were allowed to lie to my
9 jury. This is a miscarriage of justice that will not stand.

10 Judge, you know I am innocent. I am asking you to
11 throw out this case. If you don't, Judge, I forgive you for
12 killing me for something I did not do.

13 May the Lord bless you, sir.

14 MR. BUTSWINKAS: Judge, that concludes our
15 submission. Thank you.

16 THE COURT: All right.

17 The statements of the family members and friends
18 of the defendant are powerful and important to the Court. I
19 don't say that very often in this courtroom, obviously.

20 At the same time, I have to reject the statements
21 that the defendant himself makes that he is innocent. The
22 Court's own view of the evidence is in accord with that of
23 the jury. The Court's view of the evidence is the same as
24 that of the jury; that, in fact, the defendant committed
25 this offense; the defendant is guilty of this offense; the

1 defendant, in fact, committed this crime and fired this shot
2 into the white Kia and shot the decedent, Ahmed Al Rubia'y
3 between the eyes, and killed him before that car ever moved
4 forward; that the statements of Mr. Slough that he did it
5 were fictitious, and were in an effort to mislead
6 authorities and were never true and did not constitute the
7 truth of the matter and were an effort to mislead
8 authorities at the time as to what was going on; and the
9 Court is in full agreement that the defendant is in fact
10 guilty of the offense.

11 The Court sees no basis for -- even if the Eighth
12 Amendment claim was not waived, which the Court actually
13 holds it was waived by the failure to raise it on the
14 original appeal. Even if it was not waived, the Court does
15 not believe that the Eighth Amendment claim is appropriate
16 or possible to grant it on a first degree murder charge. It
17 would not be an Eighth Amendment violation in a premeditated
18 murder charge such as this, so it's rejected. So that the
19 Court really has no discretion, in its view, as to the
20 sentence in the case.

21 I understand that many of the witnesses who
22 appeared before the Court this morning believe in the
23 defendant's innocence; they did not see the entire trial.

24 The defendant's father made a statement that the
25 Court has no experience with combat. I served a year myself

1 in Vietnam; I do know the situation in combat. And I reject
2 the idea that I don't know what I am doing; that I don't
3 understand combat situations. I do. And I know that it's a
4 different situation in combat. I did serve in the general
5 corps, but I was in an area with the First Cavalry Division
6 where there was active combat every day in my division where
7 I served. And I was in many situations myself that were
8 very dangerous. But I was in a situation where we depended
9 upon each other to carry out our orders and to ensure that
10 innocent people were not needlessly killed, and we followed
11 the combat rules. And it was clear that in this situation,
12 on this occasion, this was not a defensive operation. There
13 was no necessity for Ahmed Al Rubia'y to be killed. The
14 defendant killed him. And it was -- there was no incoming
15 fire at the time that shot was fired. There was no basis
16 for firing the shot. The jury got it exactly right, and
17 this was murder. It meets any definition of murder.

18 I agree that it's unfortunate that there is a
19 disparity in the sentence of the other defendants. I agree
20 that, were this an ideal world, manslaughter might have been
21 a better outcome. The defendant had the opportunity for
22 that and turned it down and went on to gamble and take all
23 or nothing, so he gets what he gambled for.

24 The defendant will come forward. I will impose
25 the sentence at this time.

1 Pursuant to the Sentencing Reform Act of 1984 in
2 consideration of the provisions of 18 U.S.C. 3553, as well
3 as the sentencing guidelines, it's the judgment of the Court
4 that you, Nicholas Slatten, are hereby committed to the
5 custody of the Bureau of Prisons for the term of life on
6 Count I.

7 You are further sentenced to serve a three-year
8 term of supervised release as to Count I. In addition, you
9 are ordered to pay a special assessment of \$100 required to
10 be imposed in accordance with 18 U.S.C. Section 3013.

11 While on supervision, you shall abide by the
12 following mandatory conditions, as well as the standard
13 conditions of supervision which are imposed to establish the
14 basic expectations for your conduct while on supervision.
15 Those conditions include: One, you must not commit another
16 federal, state, or local crime; two, you must not unlawfully
17 possess a controlled substance; three, you must refrain from
18 any unlawful use of a controlled substance. You must submit
19 to one drug test within 15 days of placement on supervision,
20 at least two periodic drug tests thereafter, as determined
21 by the Court; four, you must cooperate in the collection of
22 DNA as directed by the probation office.

23 And you must comply with the following special
24 conditions: One, you shall participate in a mental health
25 treatment program which may include outpatient counseling or

1 residential placement, as provided and directed by the
2 probation office. That's all.

3 The Court finds you do not have the ability to pay
4 a fine and, therefore, waives the imposition of a fine in
5 this case.

6 The probation office shall release the presentence
7 investigation report to all appropriate agencies which
8 includes the probation office in the approved district of
9 residence in order to execute the sentence of the Court;
10 treatment agencies shall return the presentence report to
11 the probation office upon the defendant's completion or
12 termination from treatment.

13 Pursuant to 18 U.S.C. 3742, you have a right to
14 appeal the verdict and the sentence. If you choose to
15 appeal, you must file any appeal within 14 days after the
16 Court enters judgment. If you are unable to afford the cost
17 of an appeal, you may request permission from the Court to
18 file an appeal without cost to you.

19 As defined in 28 U.S.C. Section 2255, you have a
20 right to challenge the conviction entered or sentence
21 imposed if new or currently unavailable information becomes
22 available to you or on a claim that you received ineffective
23 assistance of counsel in entering your plea of guilty to the
24 offense or conviction in connection with sentencing. If you
25 are unable to afford the cost of appeal, you may request

1 permission, as I said, to file an appeal without cost to
2 you.

3 Pursuant to the D.C. Circuit opinion in *U.S. v*
4 *Hunter*, are there any objections to the sentence imposed
5 that are not already noted on the record?

6 MR. BUTSWINKAS: No, Your Honor.

7 MR. MARTIN: No, Your Honor.

8 THE COURT: All right. Good luck to you,
9 Mr. Slatten. The Court will be in recess.

10 THE DEFENDANT: God bless you, sir.

11 THE DEPUTY: All rise.

12 (Whereupon, the proceeding concludes, 11:11 a.m.)

13 * * * * *

14 **CERTIFICATE**

15
16 I, ELIZABETH SAINT-LOTH, RPR, FCRR, do hereby
17 certify that the foregoing constitutes a true and accurate
18 transcript of my stenographic notes, and is a full, true,
19 and complete transcript of the proceedings to the best of my
20 ability.

21
22 Dated this 16th day of August, 2019.

23
24 /s/ Elizabeth Saint-Loth, RPR, FCRR
25 Official Court Reporter