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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

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2

3 UNITED STATES OF AMERICA

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4 v. 09 Cr. 414 (RJS)

4

5 JAMES NICHOLSON,

5 Plea

6 Defendant.

6

7 -----x

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8 New York, N.Y.

8 December 11, 2009

9 12:00 p.m.

9

10 Before:

10

11 HON. RICHARD J. SULLIVAN

11

12 District Judge

12

13

13

14 APPEARANCES

14

15

15 PREET BHARARA

16 United States Attorney for the

16 Southern District of New York

17 JOSHUA I. KLEIN

17 MARIA E. DOUVAS

18 AMY R. LESTER

18 Assistant United States Attorneys

19

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20 ERIKA M. EDWARDS

20 VINO P. VARGHESE

21 Attorneys for Defendant

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1 (Case called)

2 MR. KLEIN: Good morning, your Honor. Joshua Klein
3 and Maria Douvas as well as Amy Lester on behalf of the
4 government.

5 THE COURT: Good afternoon each of each of you.
6 For the defendant?

7 MS. EDWARDS: Good afternoon, your Honor. Erica
8 McDaniel Edwards and Vinoo Varghese on behalf of Mr. Nicholson.

9 THE COURT: Good afternoon. Mr. Nicholson, good
10 afternoon as well.

11 I will note for the record we have a crowded
12 courtroom, as we have for many of the proceedings in this
13 matter. I understand, Ms. Edwards, that you have an
14 application to make today, is that correct?

15 MS. EDWARDS: I do, your Honor, yes. After several
16 conversations with Mr. Nicholson and the government, Mr.
17 Nicholson wishes to plead guilty today pursuant to a plea
18 agreement, which I believe your Honor has, dated December 9 of
19 2009, signed today.

20 THE COURT: Mr. Nicholson, before I accept your guilty
21 plea, I'm going to ask you certain questions so that I can
22 satisfy myself that you are pleading guilty because you are
23 guilty and not for some other reason. In addition, I'm going
24 to ask you questions to make sure that you fully understand
25 your rights, including your constitutional right to a trial.

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1 If at any point you don't understand my questions, let
2 me know, and I'll try to rephrase it. If at any point you wish
3 to confer with your lawyer or lawyers, that's fine, let me
4 know, and I'll give you as much time as you need. But don't
5 make any false statements here today, because in a moment I'm
6 going to ask my law clerk, Mr. Brownell, to administer an oath
7 to you. That's an oath that you will truthful will you answer
8 my questions in this proceeding.

9 If, after taking that oath you were to make false
10 statements, then you could be separately punished and charged
11 for perjury or for making false statements or obstruction of
12 justice. That would carry penalties separate and distinct from
13 any penalties you're facing for the charges in the indictment.
14 Do you understand?

15 THE DEFENDANT: I understand.

16 Mr. Brownell, please administer the oath.

17 Please stand, Mr. Nicholson.

18 (Defendant sworn)

19 THE COURT: Have a seat.

20 Mr. Nicholson, would you tell me your full name.

21 THE DEFENDANT: James Michael Nicholson.

22 THE COURT: How old are you?

23 THE DEFENDANT: 43.

24 THE COURT: How far did you go in school?

25 THE DEFENDANT: College graduate.

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- 1 THE COURT: Where was that?
- 2 THE DEFENDANT: Stony Brook University.
- 3 THE COURT: Are you now or have you recently been
- 4 under the care of a doctor or psychiatrist?
- 5 THE DEFENDANT: No.
- 6 THE COURT: Have you ever been treated or hospitalized
- 7 for any type of addiction?
- 8 THE DEFENDANT: No.
- 9 THE COURT: Any type of mental illness?
- 10 THE DEFENDANT: No.
- 11 THE COURT: Have you taken any medication, any pills,
- 12 or drunk any alcohol in the past 48 hours?
- 13 THE DEFENDANT: No, your Honor.
- 14 THE COURT: Is your mind clear today, Mr. Nicholson?
- 15 THE DEFENDANT: Yes, it is.
- 16 THE COURT: Do you understand the nature of this
- 17 proceeding, what's going to take place here today?
- 18 THE DEFENDANT: Yes, I do.
- 19 THE COURT: Ms. Edwards, do you have any doubt as to
- 20 your client's mental competence or his ability to enter an
- 21 informed plea at this time?
- 22 MS. EDWARDS: No, I don't, your Honor.
- 23 THE COURT: Mr. Klein or Ms. Douvas or Ms. Lester?
- 24 MR. KLEIN: No, your Honor.
- 25 THE COURT: No doubt as to the mental capacity of Mr.

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1 Nicholson?

2 MR. KLEIN: No doubt.

3 THE COURT: Very well. On the basis of Mr.
4 Nicholson's responses to my questions thus far, my observations
5 of his demeanor both today and at other proceedings we have
6 had, and on the representations of counsel, I find that Mr.
7 Nicholson is fully competent to enter an informed plea at this
8 time.

9 Mr. Nicholson, as I understand it, you wish to plead
10 guilty today, is that correct?

11 THE DEFENDANT: Yes, it is, your Honor.

12 THE COURT: Have you had enough of an opportunity to
13 discuss this matter, including any possible defenses you may
14 have, with your attorneys?

15 THE DEFENDANT: Yes, I have.

16 THE COURT: Are you satisfied with your attorneys'
17 representing representation of you?

18 THE DEFENDANT: Yes, I am.

19 THE COURT: I want to explain to you your
20 constitutional rights, and I'm going to do that in two ways.
21 First of all, I'm going to ask you some questions about a
22 document that you should have reviewed and discussed with your
23 attorneys. It is an advice of rights form that should have
24 been provided within the last few days.

25 I'll also going to ask you in open court certain

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1 questions about many of the rights that have been summarized in
2 that document. I do it that way for the simple reason that
3 it's imperative that you understand these rights and waive
4 these rights before I accept your guilty plea. It is also to
5 make sure that if you have questions, that you then can ask me.
6 I don't want to leave anything to chance. These rights are so
7 fundamental that I think it is best to do it in this two-step
8 approach.

9 Let's start with the document. Do you have it in
10 front of you there?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: Is that your signature on the second page?

13 THE DEFENDANT: Yes, it is.

14 THE COURT: Before you signed that document, did you
15 read it carefully?

16 THE DEFENDANT: Yes, I did.

17 THE COURT: Did you have a full opportunity to discuss
18 that document with your attorneys?

19 THE DEFENDANT: Yes, I did, yesterday afternoon.

20 THE COURT: Ms. Edwards, is that your signature on the
21 last page?

22 MS. EDWARDS: Yes, it is, your Honor.

23 THE COURT: Before you signed it, did you have an
24 opportunity to review it carefully with your client?

25 MS. EDWARDS: Yes, your Honor.

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1 THE COURT: You gave him an opportunity to ask you any
2 questions he may have about those rights?

3 MS. EDWARDS: Yes.

4 THE COURT: I'm going to mark that as a court exhibit.
5 I'll mark it as Court Exhibit 1, I'll date it, and I'll put my
6 initials on it.

7 I will note for the record that there are crossed-out
8 portions on page 1, 2, and 3. I'm going to put my initials
9 next to them just so it is clear they were there before and
10 they were added after the signature.

11 Mr. Nicholson, you saw what was crossed out before you
12 signed, is that correct?

13 THE DEFENDANT: Yes.

14 MR. KLEIN: Your Honor, I'm looking at page 1. Under
15 subsection (b) I don't know whether there was a portion --

16 THE COURT: That's what I'm referring to.

17 MR. KLEIN: That's the crossout?

18 THE COURT: Yes.

19 MR. KLEIN: Thank you, your Honor. OK.

20 THE COURT: The second sentence of (b) I think should
21 cut out altogether.

22 MR. KLEIN: I just didn't have a copy with the
23 crossout. But thank you, your Honor.

24 THE COURT: I'm going to hand this back. Why don't I
25 have you initial next to what I have initialed, Mr. Nicholson.

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1 Thank you.

2 Let me go over some of these rights now, Mr.

3 Nicholson. Under the Constitution and laws of the United
4 States, you are entitled to a speedy and public trial by a jury
5 on the charges contained in the indictment in this case. Do
6 you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: At trial you would be presumed to be
9 innocent and the government would have to prove you guilty
10 beyond a reasonable doubt by competent evidence before you
11 could be found guilty. Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: A jury of 12 people would have to agree
14 unanimously that you were guilty before you could be found
15 guilty, do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: You would not have to prove that you were
18 innocent if you went to trial, do you understand?

19 THE DEFENDANT: Yes.

20 THE COURT: In fact, you wouldn't have to prove
21 anything if you went to trial, you wouldn't have to do a thing.
22 The burden would always be on the government, as it has been
23 since the founding of this country. It is the government's
24 burden to prove its case beyond a reasonable doubt. That's
25 something the jury must decide unanimously. So a defendant has

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1 no obligation to put on a defense whatsoever. Do you
2 understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: At trial and at every stage of your case,
5 you would be entitled to be represented by an attorney. And if
6 you couldn't afford an attorney, one would be appointed for you
7 at no cost to you. Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: In this case Ms. Edwards and Mr. Varghese
10 have been appointed to represent you, is that correct?

11 THE DEFENDANT: Yes.

12 THE COURT: Now, if you were to go to trial, the
13 witnesses for the government would have to come into this
14 courtroom and they would have to testify in your presence. Do
15 you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: They would sit right here in this witness
18 box, and you would be able to see them as they testified and
19 you would be able to hear them as they testified, and they
20 would be able to see you, too. Do you understand that?

21 THE DEFENDANT: I understand, yes.

22 THE COURT: That's required under the Constitution.
23 In addition, if you wished, you could have your lawyers cross-
24 examine those witnesses, if you wished. As I said, you
25 wouldn't have to put on any defense, but that is something you

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1 could do. Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: In addition, your lawyers could object to
4 the government's evidence at trial. Do you understand that?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: Now, if you wished, you could put on a
7 case of your own. You could introduce evidence, you could call
8 witness on your own behalf. Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: You wouldn't have to, but you could. Now,
11 if there were witnesses that you wished to call and they
12 expressed to you that they didn't want to come testify, then
13 you could have subpoenas issued or other process used to compel
14 those people to come into court and testify truthfully under
15 oath. Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: At trial you yourself would have the right
18 to testify if you chose, but you would also have the right not
19 to testify. And if you chose not to testify, then no one,
20 particularly the jury, could draw any negative inference or any
21 suggestion of your guilt by virtue of the fact that you chose
22 not to testify. Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: That's an important principle. It's a
25 fundamental concept of our system of justice. So I would tell

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1 the jury, if there were a trial, at the beginning, at the end,
2 and maybe once more for good measure, that they could draw no
3 negative inference or no suggestion of your guilt simply
4 because you chose not to testify. I would remind them that you
5 have no obligation to do anything at a trial.

6 Now, if you were convicted at trial, you would then
7 have the right to appeal the jury's verdict. Do you understand
8 that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Even now, as you're getting ready to enter
11 this plea, you can change your mind. You haven't crossed the
12 point of no return yet. Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: If you were to tell me right now, I've
15 decided I'd like to go to trial after all, that's your right.
16 Your lawyers won't be unhappy with you, the government won't be
17 unhappy with you, I won't be unhappy with you. We would all
18 understand and respect that it's your right to go to trial and
19 it's your decision ultimately as to whether you go to trial and
20 whether you plead guilty. Do you understand?

21 THE DEFENDANT: I understand, your Honor.

22 THE COURT: Do you nevertheless wish to go forward
23 with a guilty plea at this time?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: Do you understand that if I accept your

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1 guilty plea, there will be no trial? Do you understand that?

2 THE DEFENDANT: I understand.

3 THE COURT: I'll adjudge you guilty and then I'll
4 sentence you on the basis of your plea and some other things
5 I'll talk about later, but there will be no trial. Do you
6 understand that?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: In fact, your right to a trial and all the
9 other rights that I have just mentioned you would have waived
10 by pleading guilty. Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: The only exception to that would be your
13 right to counsel. That right would continue through the plea,
14 through sentencing, and through appeal if there were to be an
15 appeal. But the other rights would be waived. Do you
16 understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: In addition, you would not be able to
19 appeal whether or not you committed this crime if I accept your
20 guilty plea. So if you plead guilty and I accept your plea,
21 you won't be able to later say, oh, I didn't do those things.
22 You might be able to challenge the sentence, but you certainly
23 wouldn't be able to or almost certainly wouldn't be able to say
24 I didn't do those things. OK, do you understand that?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: In addition, if you plead guilty you would
2 also have to give up your right not to incriminate yourself,
3 because I'm going to ask you questions about what it is that
4 you did that makes you guilty of the crimes charged in the
5 indictment. Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: I said before that at trial you would have
8 a right not to testify. Of course that's true. But if you're
9 going to plead guilty, then I'm going to need to hear from you
10 what it is that you did. That is so that I can assure myself
11 that you are pleading guilty because you are guilty, not for
12 some other reason. All right?

13 THE DEFENDANT: I understand, your Honor.

14 THE COURT: Do you understand each and every one of
15 these rights, Mr. Nicholson?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Are you willing to waive your right to a
18 trial and all the other rights I just mentioned?

19 THE DEFENDANT: Yes, I am.

20 THE COURT: I assume you received a copy of the
21 indictment in this case.

22 THE DEFENDANT: Yes, I did.

23 THE COURT: It's been out for several months now.
24 Have you read it?

25 THE DEFENDANT: Yes, I have.

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1 THE COURT: Have you discussed it with your attorneys?

2 THE DEFENDANT: Yes, I have.

3 THE COURT: Do you understand that you are charged in
4 three counts, that you have offered to plead guilty to the
5 three counts that I will summarize now?

6 Count One charges you with securities fraud in
7 violation of Title 15 of the United States Code, Sections 78(j)
8 sub (b) and 78 (ff), as well as Title 17 of the Code of Federal
9 Regulations, known as the C. F. R. sometimes, Section
10 240.10(b)(5), as well as Title 18, United States Code, Section
11 2. That's Count One. Do you understand that?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: Count Two charges you with investment
14 adviser fraud in violation of Title 15 of the United States
15 Code, Section 80(b)(6) and 80(b) (17), as well as Title 18 of
16 the Code, Section 2.

17 Count Three charges you with mail fraud in violation
18 of Title 18 of the United States Code, Section 1341 and Section
19 2. Do you understand those are the charges?

20 THE DEFENDANT: Yes, I do, your Honor.

21 THE COURT: Now I'm going to ask the government -- Mr.
22 Klein, will it be you?

23 MR. KLEIN: Yes, your Honor.

24 THE COURT: I'm going to ask Mr. Klein to summarize
25 the elements of these three counts. When I say elements, these

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1 are the things the government would have to prove beyond a
2 reasonable doubt if the case were to go to trial before you
3 could be found guilty, and these are the things I will have to
4 be persuaded have been demonstrated before I will accept your
5 guilty plea.

6 The elements are sort of the requirements or the
7 building blocks of a criminal charge, so each of these elements
8 would have to be established. Listen very carefully to Mr.
9 Klein as he summarizes the elements for each count.

10 Mr. Klein.

11 MR. KLEIN: Yes, your Honor, thank you. With respect
12 to Count One, the government would have to prove beyond a
13 reasonable doubt three elements:

14 First, that in connection with the purchase or sale of
15 securities the defendant did one or more of the following: (1)
16 employed a device, scheme, or artifice to defraud, or (2) made
17 an untrue statement of a material fact or omitted to state a
18 material fact which made what was said under the circumstances
19 misleading, or (3) engaged in an act, practice, or course of
20 business that operated or would operate as a fraud or deceit
21 upon a purchaser or seller;

22 The second element is that the defendant acted
23 knowingly, willfully, and with the intend to defraud; and

24 Third, that the defendant knowingly used or caused to
25 be used the means or instruments of transportation or

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1 communication in interstate commerce or the facilities of a
2 national securities exchange or the use of the mails in
3 furtherance of the fraudulent conduct.

4 With respect to Count Two, the investment adviser
5 fraud count, the government would have to prove beyond a
6 reasonable doubt four elements:

7 First, that the defendant was an investment adviser;

8 Second, that the defendant either (a) employed a
9 device, scheme, or artifice to defraud, (b) engaged in a
10 transaction, practice, or course of business which operated as
11 a fraud or deceived clients or prospective clients, or (c)
12 engaged in an act, practice, or course of business that was
13 fraudulent, deceptive, or manipulative;

14 The third element the government would have to prove
15 is that the defendant advised or participated in the device,
16 scheme, or artifice to defraud; and

17 Fourth, the government would have to prove that the
18 defendant used the mails in the course of engaging in or
19 furthering the fraud.

20 Count Three is the mail fraud count. The government
21 would have to prove the following four elements beyond a
22 reasonable doubt:

23 First, that there was a scheme or artifice to defraud
24 in order to obtain money or property by false and fraudulent
25 pretenses, representations, or promises;

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1 Second, that the false or fraudulent statements and
2 representations concerned material facts;

3 Third, that the defendant knowingly and willfully
4 devised or participated in the scheme with knowledge of its
5 fraudulent nature and with specific intent to defraud; and

6 Fourth, that the United States mails were used in
7 furtherance of the scheme.

8 THE COURT: Mr. Nicholson, you heard Mr. Klein?

9 THE DEFENDANT: Yes, I did, your Honor.

10 THE COURT: Do you have any questions about any of
11 those elements?

12 THE DEFENDANT: No. I fully understand.

13 THE COURT: I want to go over the maximum possible
14 penalties you face for each of these counts. Count One carries
15 a maximum term of imprisonment of 20 years, a maximum term of
16 supervised release of 3 years, a maximum fine of the greatest
17 of \$5 million or twice the gross pecuniary gain derived from
18 the offense or twice the gross pecuniary or financial loss to
19 persons other than yourself resulting from the offense. There
20 is also a mandatory spent of \$100.

21 Count Two carries a maximum term of imprisonment of 5
22 years, a maximum term of supervised release of 3 years, a
23 maximum fine of the greatest of \$250,000 or twice the gross
24 gain or twice the gross loss as I described before, as well as
25 another mandatory special assessment of \$100.

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1 Count Three carries a maximum term of imprisonment of
2 20 years, a maximum term of supervised release of 3 years, a
3 maximum fine of the greatest of 250,000 or twice the gross loss
4 or twice the gross gain to yourself, loss to persons other than
5 yourself, and a mandatory special assessment of \$100.

6 In addition, as part of your sentence, I can order for
7 each of the counts that you pay restitution to any person or
8 entity that was injured as a result of your action. That would
9 be separate and apart from any fine or special assessment.

10 In addition, for Counts One and Three I can also order
11 that you forfeit the property that was derived from those
12 crimes or any property that was used to facilitate those
13 crimes. That also will be separate and apart from any fine or
14 any special assessment or any restitution.

15 Do you understand those are the maximum possible
16 sentences?

17 THE DEFENDANT: Yes, I do, your Honor.

18 THE COURT: Taken together, I could stack those
19 penalties, so the maximum penalty that I could impose is a term
20 of 45 years' imprisonment. Do you understand that?

21 THE DEFENDANT: I understand, your Honor.

22 THE COURT: Are you a United States citizen?

23 THE DEFENDANT: Yes, I am.

24 THE COURT: Do you understand that as a result your
25 guilty plea, you could lose certain valuable civil rights,

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1 including your right to vote, your right to hold public office,
2 your right to serve on a jury, or your right to possess a
3 firearm? Do you understand?

4 THE DEFENDANT: I understand, your Honor.

5 THE COURT: With respect to supervised release, I want
6 to explain a few things about that. You should be aware that
7 there are terms and conditions that are associated with
8 supervised release. If you were to violate those terms and
9 conditions, then you could be re-sentenced to prison for the
10 full term of your supervised release, and you would get no
11 credit for the good time that you had served on supervised
12 release before the violation. Do you understand that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: Do you understand that parole has been
15 abolished, so you wouldn't be released any earlier as a result
16 of parole?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: I sometimes wonder why I still say that,
19 because parole has been abolished for probably 25 years now.
20 But other systems, state systems and other countries, still use
21 parole.

22 The way parole works typically is that a person would
23 be sentenced by the judge perhaps to an indeterminate sentence,
24 5 to 10 years, and then someone else, a parole board typically,
25 would decide during the sentence whether or not the defendant

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1 was ready to be released. That is a system that has been used
2 at various times by the federal government, it is still used in
3 certain state systems, including New York. But it is no longer
4 a part of the federal system. So whatever sentence I impose is
5 the sentence that you will serve. Do you understand that?

6 THE DEFENDANT: Yes, I do, your Honor.

7 THE COURT: The only exception to that is that you
8 could receive some time off for good behavior. But that would
9 not be more than 15 percent of the total sentence, and that is
10 a determination that would be made by the Bureau of Prisons,
11 not by me. Do you understand?

12 THE DEFENDANT: I understand, your Honor.

13 THE COURT: A couple of other things about sentencing.
14 First of all, are you serving any other sentence at this time,
15 state, federal, or local?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: I want to make sure you understand that
18 whatever sentence you receive will be determined by me, by the
19 Court, and no one else. Do you understand that?

20 THE DEFENDANT: I understand, your Honor.

21 THE COURT: So no matter what anyone else may have
22 told you, whether it's your lawyers or the government or anyone
23 else, that's not binding on me. Do you understand?

24 THE DEFENDANT: I understand.

25 THE COURT: I will not sentence you today. I will not

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1 sentence you for several months. And I will sentence you only
2 after I have reviewed a pre-sentence report that will be
3 prepared by the probation department. I'll talk more about
4 that later.

5 There are various things that I am required by law to
6 consider in imposing a sentence. These are the objectives of
7 sentencing that Congress has identified as appropriate for
8 courts to consider. They include, among other things, your own
9 personal history, the facts and circumstances that make up your
10 life. In addition, I need to consider the facts and
11 circumstances of the offenses to which you have pled guilty.

12 I need to fashion a sentence that reflects the
13 seriousness of those offenses and that promotes respect for the
14 law. Another objective of sentencing is deterrence. So I'm
15 required to fashion a sentence that will deter you and others
16 from committing crimes of this sort in the future. That's an
17 objective certainly that I will take seriously.

18 Another objective of sentencing is to take into
19 account your own personal needs, your medical needs, your
20 psychiatric needs, your needs for treatment or job training or
21 education. Every defendant needs to have their sentence
22 tailored to their own circumstances. So I will do that, to be
23 sure.

24 Something else I have to consider and will consider in
25 imposing sentence is the United States sentencing guidelines

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1 manual. Are you familiar with the sentencing guidelines?

2 THE DEFENDANT: Yes, I am, your Honor.

3 THE COURT: I won't belabor this, but the sentencing
4 guidelines is a big book. It comes out each year, a new
5 edition does. This is, I think, actually last year's edition.
6 This year's edition is sort of the color of a taxi, a bright
7 yellowish-orange. Mr. Klein has it there.

8 These guidelines are lengthy, about 600 pages long.
9 I'm not going to go through it in any kind of detail. The
10 point I want to stress is the guidelines are, as the name
11 suggests, guidelines. They are advisory. They are not
12 mandatory. I don't have to follow them. But I am required to
13 consider them, and I will.

14 What these guidelines attempt to do is to provide
15 objective guidelines and transparent criteria by which the
16 defendant's conduct can be assessed. What the guidelines
17 basically do is they have the court make two inquiries and two
18 sets of calculations.

19 The first is a calculation called the offense level.
20 The guidelines have a chapter or a section for each offense or
21 titled offense. In the case of a fraud, there is a section
22 that has various criteria for which numbers are assigned
23 depending on the amount of loss to victims, depending on the
24 whether it was a sophisticated fraud, depending on whether the
25 person charged was a leader or organizer of the fraud. All of

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1 these things would add points in this calculation. So
2 ultimately the Court would make a calculation and come up with
3 an offense level.

4 The Court would then do a separate calculation about
5 criminal history. Not surprisingly, a person who has committed
6 crimes in the past, been convicted and sentenced, will be
7 treated more harshly than someone who was not. So the
8 guidelines have a section that directs the court to assign
9 certain numerical values to certain prior convictions. By
10 going through the guidelines, the Court will come up with a
11 number which will then inform the criminal history category, I
12 being the lowest, VI being the highest.

13 On the basis of those two calculations, the offense
14 level and the criminal history category, the guidelines then
15 assign a range in terms of months that in the view of the
16 sentencing commission, who prepared this manual, would be
17 appropriate for a defendant who meets that offense level and
18 that criminal history category.

19 I will do all that math and you will see, if you
20 haven't already learned, that it's sort of like accounting,
21 it's simple arithmetic really. We will go through that
22 process, as will the probation department, and I will make a
23 finding as to what the guidelines range was. But then I'm free
24 to go higher or lower as I see fit. I would have to explain
25 myself, but I have that freedom.

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1 Do you understand?

2 THE DEFENDANT: Yes, I do, your Honor.

3 THE COURT: Mostly I want to stress that no matter
4 what sentence I impose, no matter how unhappy you may be with
5 it, you will not be free at that point to withdraw your guilty
6 plea. Do you understand?

7 THE DEFENDANT: Yes.

8 THE COURT: I said before that you haven't crossed the
9 point of no return. That is true, you haven't yet crossed it.
10 But once you have and once I have accepted your plea, then it
11 will be too late. So on the day of sentencing, if you conclude
12 that I was too harsh, you certainly would be entitled to that
13 opinion, but you would not be entitled to withdraw your guilty
14 plea at that point and say, I'd like to go back to December and
15 go to trial after all. That will be too late. Do you
16 understand?

17 THE DEFENDANT: I understand, your Honor.

18 THE COURT: All right. Now, there is a plea agreement
19 that was referred to before that I received a draft of.

20 MR. KLEIN: Your Honor, I provided your Honor's clerk
21 with the original actually.

22 THE COURT: Is this the original?

23 MR. KLEIN: Yes. I believe it says "original" on the
24 upper right-hand corner.

25 THE COURT: It does. Let me hand this back, then, to

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1 Mr. Nicholson.

2 Mr. Nicholson, is that your signature on the last page
3 of that document?

4 THE DEFENDANT: Yes, it is, your Honor.

5 THE COURT: Before you signed it, did you read it
6 carefully?

7 THE DEFENDANT: Yes, I did, your Honor.

8 THE COURT: Did you have a full opportunity to discuss
9 it with your attorneys?

10 THE DEFENDANT: Yes, I did, your Honor.

11 THE COURT: And to inquire of them and to ask them any
12 questions that you wished?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Ms. Edwards, is that your signature on the
15 last page as well?

16 MS. EDWARDS: Yes, it is, your Honor.

17 THE COURT: Before you signed it, did you carefully
18 review the document and go over it with your client?

19 THE DEFENDANT: Yes.

20 THE COURT: I will mark that as a court exhibit. I
21 will mark it as Court Exhibit 2, I'll date it, and I will
22 initial it as well. Just so the record is clear, this an
23 8-page document, single-spaced. It's from the United States
24 Attorney's office, signed by -- Mr. Klein, is that your
25 signature?

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1 MR. KLEIN: It is, your Honor.

2 THE COURT: I recognize the K, that's about it. It is
3 addressed to Ms. Edwards and is signed by Mr. Nicholson and Ms.
4 Edwards. I'm not going to go through this document in any
5 detail, but there are a couple of things I do want to go
6 through in open court with you about it.

7 First of all, I want to make sure you understand this
8 agreement may be binding on you and it may be binding on the
9 government, but it is not binding on me. Do you understand
10 that?

11 THE DEFENDANT: Yes, I do, your Honor.

12 THE COURT: I will make my own determination as to
13 what the guidelines are and what is the proper sentence here.
14 Do you understand?

15 THE DEFENDANT: Yes, I do, your Honor.

16 THE COURT: One of the features of this agreement is
17 that there is a stipulation between the parties, or at least a
18 stipulation of sorts, about the guidelines in this case. In
19 essence, you have agreed on most things.

20 The one thing you don't agree on is the amount of the
21 loss, but the agreement lays out what each party's position is
22 with respect to the amount of loss. So I want to make sure
23 that you understand that you folks have agreed to a guidelines
24 calculation with a key variable that you don't agree on, but
25 I'm not bound by any of it. Do you understand?

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1 THE DEFENDANT: Yes, I do, your Honor.

2 THE COURT: In addition, there is a waiver provision,
3 a waiver of appeal provision in this agreement, whereby you
4 have agreed that if I sentence you to in essence I think less
5 than 45 years, which is the maximum, that you will not appeal
6 the sentence. Do you understand that?

7 THE DEFENDANT: I understand, your Honor.

8 THE COURT: Ms. Edwards and Mr. Klein, I haven't
9 gotten that wrong, have I?

10 MR. KLEIN: You have not, your Honor.

11 MS. EDWARDS: You are correct, your Honor.

12 THE COURT: You are free to make arguments at
13 sentencing as to what the guidelines are and what the sentence
14 should be, but in the event that I sentence you to anything
15 less than the statutory maximum, you will have waived your
16 right to appeal the sentence. Do you understand?

17 THE DEFENDANT: I understand, your Honor.

18 THE COURT: In addition, I should note that this
19 agreement has a stipulation with respect to forfeiture. It's
20 at page 2 and turns on to page 3. I just want to make sure
21 that you understand that you have agreed that you will forfeit
22 your right and title to all the properties that are laid out in
23 the agreement, subparagraphs (a) through (n). Do you
24 understand?

25 THE DEFENDANT: Yes, I understand, your Honor.

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1 THE COURT: I want to make sure that this agreement is
2 one that you entered into freely and voluntarily. Let me ask
3 you, did anybody threaten you in order to get you to sign that
4 agreement?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Has anybody threatened you to plead guilty
7 today?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Has anyone made any promises to you, any
10 promises of something of value to get you to plead guilty or
11 sign that agreement?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Has anyone made any promise to you as to
14 what your sentence will be?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: You signed this agreement of your own free
17 will?

18 THE DEFENDANT: Yes, I did, your Honor.

19 THE COURT: Ms. Edwards, do you know of any valid
20 defense that would prevail as a matter of law or any other
21 reason why Mr. Nicholson should not be allowed to enter a plea
22 to Counts One through Three at this time?

23 MS. EDWARDS: No, your Honor.

24 THE COURT: Very well. Mr. Nicholson, at this point
25 I'm going to ask you to stand, and I want you to tell me in

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1 your own words what it is that you did that makes you guilty of
2 the crimes charged in Counts One through Three. I'm going to
3 stop you to ask some questions along the way.

4 THE DEFENDANT: I was the president of Westgate
5 Capital Management, with our main offices in Pearl River, New
6 York, and we were in the process of opening a second office in
7 New York City, both which fall in the Southern District. I was
8 responsible for managing several hedge funds.

9 At some time during 2004 until my arrest on February
10 25, 2009, I engaged in securities fraud, investment adviser
11 fraud, and mail fraud. I made material misrepresentations to
12 some of our clients, potential clients, regarding the amount of
13 money we had under management, our investment track record, and
14 the independent nature of the audits and accounting for some of
15 our funds. I sent out false statements or caused false
16 statements to be sent out through the United States mail to
17 shareholders of our funds from our office in the Southern
18 District.

19 I stand before you a man who is greatly ashamed.
20 Words cannot express how sorry I am. And I take full
21 responsibility for my actions.

22 THE COURT: Let me back you up a bit. You said that
23 you made certain documents that contained false statements,
24 correct?

25 THE DEFENDANT: Correct.

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1 THE COURT: Tell me about the documents and tell me
2 about the statements.

3 THE DEFENDANT: They would primarily be monthly
4 account statements with rates of return to clients showing
5 their rates of return for the month.

6 THE COURT: You had clients who invested money with
7 you, correct?

8 THE DEFENDANT: Correct.

9 THE COURT: Those clients expected and were promised
10 monthly statements?

11 THE DEFENDANT: Correct.

12 THE COURT: In those statements you sent statements
13 that included false information?

14 THE DEFENDANT: Correct.

15 THE COURT: False in what way?

16 THE DEFENDANT: Not the proper rates of return.

17 THE COURT: You mean the rates of return were lower?

18 THE DEFENDANT: Correct, yes.

19 THE COURT: Were the funds invested as was represented
20 in the statements?

21 THE DEFENDANT: For the most part until the end. They
22 were not at the end, no.

23 THE COURT: Mr. Klein?

24 MR. KLEIN: Your Honor, could you clarify, when you
25 asked whether the rates of return were lower, I just want to

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1 clarify that the Court was asking whether the actual rates of
2 return were lower than the rates of return set forth in the
3 documents.

4 THE COURT: Yes, I think that was implicit and I think
5 Mr. Nicholson understood it that way, but let me be explicit.

6 The account statements that you sent to investors
7 stated on their face that the rate of return was higher than
8 the actual rate of return, is that correct?

9 THE DEFENDANT: Yes, your Honor, that's correct.

10 THE COURT: This continued for a period of years, is
11 that correct?

12 THE DEFENDANT: Yes.

13 THE COURT: Other than the account statements, were
14 there other documents that were mailed or sent to investors
15 that were false?

16 THE DEFENDANT: There were other false documents. I
17 don't think they are mailed, but there were other false
18 documents, yes.

19 THE COURT: Tell me about those.

20 THE DEFENDANT: False account statements, brokerage
21 account statements, showing the amounts of money that were
22 invested, the statements were not true statements.

23 THE COURT: That the funds had under investment?

24 THE DEFENDANT: Correct. They were brokerage account
25 statements showing dollars in the brokerage account statements.

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1 They were not actual statements. They were fictitious
2 statements.

3 THE COURT: They were counterfeits?

4 THE DEFENDANT: Correct.

5 THE COURT: You had prepared those?

6 THE DEFENDANT: Correct.

7 THE COURT: What was the purpose of preparing those?

8 THE DEFENDANT: When we were questioned about assets
9 under management, they were prepared to show that we had more
10 assets under management than we actually did.

11 THE COURT: So the goal was to persuade investors that
12 you had more assets under management and therefore were more
13 secure?

14 THE DEFENDANT: Correct.

15 THE COURT: More secure and more leveraged or what?

16 THE DEFENDANT: To show that we had those assets under
17 management when in fact we did not have the amounts that we had
18 represented that we did.

19 THE COURT: Tell me specifically, how much did you
20 have under management in general terms?

21 THE DEFENDANT: Over the years it varied. But, you
22 know, probably about 50 million, 60 million at the height.

23 THE COURT: What were the representations made in
24 these counterfeit documents?

25 THE DEFENDANT: In the counterfeit documents --

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1 (Counsel and the defendant conferred.)

2 MS. EDWARDS: Your Honor, if I may, it was the
3 government's paperwork that said misrepresentations were made
4 upwards of 600 to 900 million. We are not clear right now
5 whether anything was actually in writing to that amount. I
6 don't believe he can really answer that question, because we
7 believe they were probably more verbal.

8 THE DEFENDANT: That was verbal representations.

9 MS. EDWARDS: Representations and not something
10 actually in writing.

11 THE COURT: I was going to ask you, in addition to
12 documents, whether you also made verbal misstatements or false
13 statements to investors.

14 THE DEFENDANT: Yes, I did.

15 THE COURT: Tell me about those.

16 THE DEFENDANT: When asked the assets under
17 management, at the end we had told people 600 to 900 million,
18 when in fact it was not.

19 THE COURT: It was less than that?

20 THE DEFENDANT: Correct.

21 THE COURT: This was all designed to persuade
22 investors that you were able to invest their money and to keep
23 their money with you after they had invested?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: You said this went on from 2004 until

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1 about 2009 or 2008?

2 THE DEFENDANT: Correct. In large part, for the most
3 part, after Lehman Brothers declared bankruptcy, we took grave
4 losses, and most of those misrepresentations were made
5 following the losses in Lehman Brothers.

6 MS. EDWARDS: Judge, I just want to make sure we are
7 clear. It's not every fund. Some of the misrepresentations in
8 terms of the false account statements were dating back for
9 years, but some of the stuff really just started after
10 September 15, 2009, once Lehman Brothers went under. 2008, I'm
11 sorry, Judge. It's not everything was back to 2004.

12 THE COURT: I think the counts in the indictment talk
13 about a longer period, 2004 until February of 2009. What is in
14 the indictment is really relevant for purposes of the
15 allocution.

16 MS. EDWARDS: Yes. It is just not every account, not
17 every fund. That's what I wanted to make sure of.

18 MR. KLEIN: Your Honor, just to be clear, my
19 understanding of what the defendant said is that there were
20 some misrepresentations that were made that did date back to
21 2004 and there were some misrepresentations that were made in
22 2008 that were different from the misrepresentations that were
23 made earlier on.

24 THE COURT: I think that's what Mr. Nicholson said.
25 That's certainly what I understood.

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1 You indicated that the mails were used. You indicated
2 the time frame this took place and where it took place. You
3 summarized the scheme or artifice to defraud that is relevant
4 for each of the counts.

5 Mr. Klein, is that a satisfactory allocation?

6 MR. KLEIN: It is, your Honor.

7 THE COURT: Ms. Edwards, do you agree?

8 MS. EDWARDS: Yes, I do, Judge.

9 THE COURT: At this point, Mr. Nicholson, have a seat.
10 I'm going to ask the government to summarize the evidence that
11 they would present were the case to go to trial. I want you to
12 listen very carefully to --

13 Mr. Klein, you are going to do this?

14 MR. KLEIN: Sure, your Honor.

15 THE COURT: I want you to listen very carefully to Mr.
16 Klein, because when he is finished I'm going to ask you if you
17 disagree with or take issue with any of his characterizations.
18 All right?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Mr. Klein.

21 MR. KLEIN: Your Honor, the evidence would consist
22 principally of documents and witnesses. The documents would
23 entail the account statements that were mailed to investors
24 that showed certain returns. Then we would provide testimony
25 from individuals that had examined the bank records and

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1 brokerage records and Westgate's internal records, and they
2 would provide testimony as to what the actual returns were and
3 how the actual returns were lower than what the returns were in
4 the statements that were made to investors.

5 The government would also provide evidence of some of
6 the other falsified documents, including falsified or
7 fictitious brokerage statements from Merrill Lynch, among other
8 firms, and then show how what was in those fictitious
9 statements contrasted with the amounts that were actually in
10 those accounts.

11 The government would also offer recordings, including
12 at least one recording of the defendant himself essentially
13 impersonating an officer. We would offer evidence in the form
14 of account statements, brokerage records, the testimony of
15 victims, and the testimony of others who could provide some
16 additional color with respect to the scheme.

17 THE COURT: Did you hear what Mr. Klein just said?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Is there any part of what he said that you
20 disagree with or thinks needs to be qualified?

21 THE DEFENDANT: No, I don't.

22 THE COURT: Just so I'm clear, how many investors were
23 sent fraudulent invoices, account statements, or other
24 documents?

25 THE DEFENDANT: Over 250.

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1 THE COURT: Over 250?

2 THE DEFENDANT: Right.

3 THE COURT: All right.

4 Mr. Nicholson, let me ask you to stand again. Mr.
5 Nicholson, how do you now plead to the counts in the
6 indictment, Counts One through Three, guilty or not guilty.

7 THE DEFENDANT: Guilty.

8 THE COURT: Are you pleading guilty because you were
9 guilty?

10 THE DEFENDANT: Yes, I am.

11 THE COURT: Did you do the things that you are charged
12 with in the indictment?

13 THE DEFENDANT: Yes, I did, your Honor.

14 THE COURT: Are you pleading guilty of your own free
15 will and voluntarily?

16 THE DEFENDANT: Yes, I am, your Honor.

17 THE COURT: When you did the things that you
18 described, did you know that what you were doing was wrong and
19 illegal?

20 THE DEFENDANT: Yes, I did, your Honor.

21 THE COURT: Before I accept your guilty plea, I want
22 to see if there is any victim here who wishes to be heard with
23 respect to the sole issue as to whether I should accept the
24 guilty plea. Have a seat. Let me address those who are
25 present here today who may be victims.

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1 The law requires, as it should, I think, that your
2 interests be taken very seriously. That's why it's required
3 that you be notified as to the proceedings that take place and
4 that you be allowed to be heard with respect to what is taking
5 place in those proceedings.

6 What you have seen now is a guilty plea. I have not
7 yet accepted it. Before I do accept it, I want to see if there
8 is any victim who wishes to be heard as to whether or not I
9 should accept the guilty plea. Today, as I said before, is not
10 sentencing. I'll set a sentencing date once I have accepted
11 the guilty plea. Certainly at that point victims would have
12 another opportunity to be heard or to make submissions.

13 On the sole issue as to whether or not I should accept
14 the guilty plea, is there anyone who wishes to be heard? All
15 right. I'll note for the record that no one has indicated that
16 they wish to be heard, and that is consistent with what was
17 reported before the proceeding.

18 In light of that, I will accept the guilty plea. Mr.
19 Nicholson, because you acknowledge that you are guilty as
20 charged in Counts One through Three of the indictment, because
21 you know your rights and are waiving those rights, because your
22 plea is entered knowingly and voluntarily and is supported by
23 an independent basis in fact for each of element of the
24 offense, I accept your guilty plea and I adjudge you guilty on
25 Counts One through Three of the indictment.

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1 Now let's talk a little bit about sentencing.
2 Sentencing would typically not take place for three or four
3 months after a plea or after a trial, and that is so that the
4 probation department will have enough time to prepare the
5 report that they do in virtually every case.

6 The report they will prepare is called a pre-sentence
7 report. It's quite lengthy. It will provide a lot of
8 information about the crimes in this case as well as your own
9 personal history. So there will be a lot of information that
10 the probation report will include.

11 One of the ways that the probation department will
12 collect information is by interviewing people, including
13 yourself. I will ask that you cooperate and be truthful in
14 your interview with the probation department. I assume, Ms.
15 Edwards and Mr. Varghese, you wish to be present at any
16 interview?

17 MS. EDWARDS: Yes, your Honor.

18 THE COURT: I will direct that no interview take place
19 until your lawyers are present. If, for some reason, the
20 probation department representative shows up and says, I'm here
21 to interview you, and your lawyer is not there, just say,
22 politely, that the judge has instructed that I not proceed
23 without my lawyers. I don't think that will happen, but if it
24 does, that's what you should say.

25 Obviously, if your lawyers direct you not to answer

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1 certain questions, then you should listen to your lawyers. But
2 do not make any false statements to the probation officer. If
3 you were to do that, that could be a separate offense, separate
4 and beyond what we have been talking about here today. It
5 would carry additional penalties. It also could be deemed
6 obstruction of justice in this case, which would carry an
7 enhancement in this case. So certainly I think it would be
8 advance no one's interest if you were to do that.

9 Once the report has been prepared, a draft, an initial
10 draft, will be sent to you and your lawyers and to the
11 government. If you object to any of the facts contained in the
12 draft report, you can let the probation department know. They
13 may revise the draft.

14 They will eventually issue a final draft, which will
15 come to me as well as to you and the lawyers. You still have
16 an opportunity to object to anything that is in there. If
17 there is a need for me to resolve any of the disputes relating
18 to what is contained in the pre-sentence report, then we will
19 either have a hearing or we can have argument if testimony or
20 evidence is not necessary. But I will resolve any disputes.

21 In addition to that report, which I will read very
22 carefully I can assure you, I will also consider any other
23 submissions made by the parties. Your lawyers and the
24 government will have an opportunity to make submissions.
25 Victims will have an opportunity to make submissions. It's not

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1 uncommon for family members or others whom you would like to
2 make submissions to make submissions as well as, to speak to
3 who you are as a person.

4 It's very clear that I'm sentencing an individual.
5 Individuals are complicated and have many facets of their
6 lives. So all of the submissions are designed, I think, to
7 inform the court of who the person is before the court.

8 You yourself will have an opportunity to address the
9 Court before I impose sentence. You are not required to, but
10 you certainly have a right to and you will be welcome to. At
11 that time I will then impose sentence. I will take into
12 account the various factors that I have described and I'll
13 explain the sentence and why I'm imposing it.

14 The fact is that every case affects more than just one
15 person, more than just the defendant. It affects family
16 members, it affects the community, it affects the victims. So
17 the sentencing process is designed to take all that into
18 account, and that's why it can take some time.

19 I would propose putting this over for about three or
20 four months.

21 MR. KLEIN: That sounds right, your Honor.

22 THE COURT: Do we need more time in light of some of
23 the financial documents involved?

24 MR. KLEIN: I've spoken to Ms. Edwards about this. We
25 would propose at least for your Honor's consideration setting a

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1 date at which we could argue, maybe a briefing schedule and a
2 date at which we could argue the loss issue and the amount of
3 forfeiture, which may or may not be in dispute depending on how
4 we resolve loss.

5 Ms. Edwards and the government will have continued
6 discussions. It may be that we can argue the loss issue on the
7 papers or it may be that we are going to need to have a
8 hearing. But I would suggest setting a date for loss. The
9 government will be prepared to present a witness on that date
10 should there be a need for a hearing. We could set a date for
11 sentencing to follow.

12 THE COURT: Let me interrupt you for a moment.

13 MR. KLEIN: Sure.

14 THE COURT: I think that is sensible. Just so
15 everyone who is here understands, one of the disputes between
16 the parties is the amount of loss, with the government
17 believing that the loss is greater than \$100 million but not
18 more than \$200 million, and the defense articulating a belief
19 that the loss is greater than \$7 million but not more than
20 \$20 million. That finding would have an impact on the
21 guidelines that I talked about.

22 I think it does make sense to have submissions from
23 the parties on that. If it looks like we need to have a
24 hearing, then I'd like the parties to summarize in the
25 submissions what witnesses and what testimony and evidence

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1 would be introduced.

2 My question to you, Mr. Klein and Ms. Edwards, is
3 should we wait for the initial pre-sentence report or should we
4 schedule that component of the sentencing before we get the
5 pre-sentence report?

6 MR. KLEIN: I would propose, your Honor, scheduling a
7 date to address loss approximately three months from now, and
8 then scheduling a sentencing date two or three weeks
9 thereafter. I anticipate we will get the PSR in advance of the
10 three-month deadline, and I think we will be able to proceed.
11 Should there be a problem with that, we will notify the Court.
12 But that would be my suggestion.

13 I would ask that restitution be deferred for the
14 sentencing, but I think we are going to need more time to
15 gather the relevant information.

16 THE COURT: The restitution will be deferred until
17 after sentencing?

18 MR. KLEIN: At least until the sentencing date. We
19 will let the Court know if we need more time. We don't intend
20 to resolve restitution at the time that we resolve forfeiture
21 and loss.

22 MS. EDWARDS: I would agree with that, Judge. I think
23 that is probably the best way to proceed at this time.

24 THE COURT: All right. So about three months is your
25 thinking?

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1 MS. EDWARDS: I'm sorry, Judge. Can you give me one
2 moment?

3 THE COURT: Yes.

4 MS. EDWARDS: Yes, Judge, that's fine.

5 THE COURT: What I would propose is a date for
6 argument and perhaps a hearing on loss Friday, March 26th.

7 MS. EDWARDS: I'm sorry, your Honor, which date?

8 THE COURT: The 26th of March, which is a Friday.

9 MS. EDWARDS: That's fine, Judge.

10 THE COURT: Why don't we say 10 o'clock. If we need
11 to go into the afternoon, we can do that. I'd like submissions
12 well in advance of that so I know what to expect. If I could
13 get submissions three weeks before that, March 5th. Do you
14 want to do it in stages, the government makes its and the
15 defendant makes its later, or should they just be parallel?

16 MS. EDWARDS: I think that's fine, your Honor. It's
17 not necessarily to bifurcate it. We could have one date.

18 THE COURT: So March 5th for all submissions. Let's
19 schedule sentencing for April 30th at 2:30: Mr. Nicholson is
20 detained and he will continue to be detained pending
21 sentencing.

22 MR. KLEIN: Your Honor, just to clarify so I
23 understand, the March 5th date is for submissions on loss and
24 forfeiture?

25 THE COURT: That's right.

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1 MR. KLEIN: I guess we could discuss at that date when
2 the Court wants submissions for the April 30th date?

3 THE COURT: I will. I would presume is it will be at
4 least two weeks before sentencing. I think you all know this.
5 I take sentencing very seriously, I think most judges do, so I
6 want to make sure I have plenty of time to read all submissions
7 from everybody.

8 MR. KLEIN: Understood, your Honor. As a technical
9 matter, even though the defendant has been detained, there is
10 actually a bail package in place which the defendant has been
11 unable to meet. So at this time the government would move to
12 revoke bail in light of the fact that the defendant has now
13 pled guilty.

14 THE COURT: Ms. Edwards?

15 MS. EDWARDS: No objection, your Honor.

16 THE COURT: That's fine. I will revoke bail, which is
17 somewhat academic anyway. Certainly post-plea the standard
18 changes, Mr. Nicholson. So it would be a different analysis
19 with respect to bail at this stage than it was when you were
20 initially presented. I will revoke bail and order that Mr.
21 Nicholson be detained pending sentencing.

22 Anything else we need to cover today?

23 MR. KLEIN: Not from the government, your Honor.

24 MS. EDWARDS: Nothing further, your Honor. Thank you.

25 THE COURT: Let me thank all who took time out of
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1 their day to be here today. I have told you the dates as to
2 the next proceedings. Everything should be proceeding I think
3 very publicly in this case. If there are changes, I will
4 direct the parties to make that very clear and to notify the
5 victims, who have a right to be advised. Mr. Nicholson,
6 obviously you will be talking to your lawyers. If any of those
7 dates change, they will let you know.

8 Let me thank the marshals as well and the court
9 reporter. Thank you all.

10 (Adjourned)

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