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Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA,

5 v.

09 CR 414 (RJS)

6 JAMES NICHOLSON,

7 Defendant.

8 New York, N.Y.
9 October 29, 2010
3:25 p.m.

10 Before:

11 HON. RICHARD J. SULLIVAN,

12 District Judge

13 APPEARANCES

14 PREET BHARARA,

15 United States Attorney for the
16 Southern District of New York

17 DAVID S. LEIBOWITZ

18 AMY RUTH LESTER

Assistant United States Attorney

19 STILLMAN FRIEDMAN & SCHECHTMAN PC

Attorneys for Defendant

20 JAMES ALFRED MITCHELL

21 ERIK M. ZISSU

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1 (In open court)

2 THE DEPUTY CLERK: This is United States versus James
3 Nicholson 09 CR 414. Counsel, please state your appearances.
4 For the government?

5 MR. LEIBOWITZ: Good afternoon, your Honor, David
6 Leibowitz for the United States of America. With me at counsel
7 table is AUSA Amy Lester.

8 THE COURT: All right, Mr. Leibowitz, Ms. Lester, good
9 afternoon.

10 MS. LESTER: Good afternoon, your Honor.

11 THE COURT: And for the defendant?

12 MR. MITCHELL: Jim Mitchell, Stillman Friedman &
13 Schechtman, and my colleague Erik Zissu.

14 THE COURT: Hello, gentlemen. Thank you. All right,
15 Mr. Nicholson good afternoon to you.

16 THE DEFENDANT: Good afternoon.

17 THE COURT: We have a large number of visitors here
18 today -- some victims, some family members -- so I want to
19 thank them for being here. I want to thank you for your
20 patience. We're getting a later start than I had expected. We
21 wanted to be able to accommodate everyone, and I think we have,
22 so hopefully that has worked out.

23 We're here for the sentencing of Mr. Nicholson.
24 Mr. Nicholson pleaded guilty before me back in, I guess it was
25 December of 2009. We then had a sentencing hearing on May 28th

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1 of this year, at which time I made certain findings. And so
2 we're now ready to proceed with sentencing. I want to review
3 with the parties and all who are here what I have reviewed in
4 connection with sentencing. And if anything is missing, then
5 by all means let me know.

6 First of all, I have the presentence report, which was
7 prepared by the probation department on October 8th of this
8 year. It also includes a recommendation as well as an
9 attachment of the victims and the victims' names and amounts
10 that they lost as a result of the schemes in the indictment. I
11 have reviewed the memorandum in connection with sentencing
12 submitted by the government that includes well over 100 letters
13 from victims. I have read those letters carefully, I've read
14 them more than once actually, so I won't name them all -- it
15 would take too long -- but I have certainly read the letters of
16 the victims.

17 I have received the sentencing submission of
18 Mr. Mitchell. And let me thank Mr. Mitchell on behalf of the
19 Court. Mr. Mitchell was appointed after the guilty plea and
20 after the sentencing hearing, and has stepped in to what is a
21 complicated case, on relatively short notice and has done an
22 admirable job. So I thank you for that, Mr. Mitchell. I've
23 received your sentencing submission, which is a 17-page --
24 Mr. Zissu as well -- 17-page double spaced submission with
25 Exhibits A through P, I believe, which mostly consist letters

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1 from family members and a letter from Mr. Nicholson. I've read
2 all these letters as well, which are extremely heartfelt and
3 moving, including the letters from Mr. Nicholson's children,
4 which were both heartfelt and heartbreaking.

5 I've read the sentencing submission of the government,
6 which is dated October 15th. It is a 25-page double spaced
7 submission, responding to many of the points -- well,
8 responding to many of the points that Mr. Mitchell's submission
9 but some other points as well. I then received, I guess it was
10 yesterday, a letter from Mr. Mitchell that's a short letter,
11 two sentences, three sentences, but it attaches another letter
12 from Mr. Nicholson responding to some of the points or
13 assertions made in the government's assertion. So I've read
14 that.

15 I have also received the proposed forfeiture orders
16 that were prepared by the government. And you've seen those,
17 Mr. Mitchell?

18 MR. MITCHELL: I believe I have, Judge, yes.

19 THE COURT: So that's what I have reviewed.

20 Is there anything else that anybody believes has been
21 submitted that I haven't referenced?

22 MR. LEIBOWITZ: No, your Honor.

23 THE COURT: Mr. Mitchell?

24 MR. MITCHELL: No, Judge.

25 THE COURT: I did have one question about the

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1 forfeiture order. The proposed order has a forfeiture
2 provision seeking \$131,103,399. The presentence report talks
3 about a number that is a loss that is 140 million, almost
4 141 million. What accounts for that difference, Ms. Lester?

5 MS. LESTER: Your Honor, the \$131 million number is
6 the net cumulative contributions received by the defendant. So
7 it credits him with investor payments; to the extent that
8 investors were paid back and made a gain, that money is
9 credited against the loss amount.

10 THE COURT: For forfeiture purposes?

11 MS. LESTER: For forfeiture purposes only.

12 THE COURT: And not restitution purposes?

13 MS. LESTER: Correct.

14 THE COURT: All right. We'll talk more about that as
15 we go. I just wanted to make sure I wasn't missing something.

16 So let's start with the presentence report. And for
17 those who are here and perhaps unfamiliar with how sentencings
18 work, we generally start with the United States Sentencing
19 Guidelines, which I'll explain in a moment. But one of the
20 documents I referenced was the presentence report prepared by
21 the probation department. It's a very lengthy document and it
22 reflects many of the facts related to the crime as well as the
23 victims as well as the defendant, so I want to make sure the
24 parties have reviewed it. And if they have objections to it, I
25 want to make sure I understand those objections and rule on

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1 those objections, all right.

2 So, Mr. Mitchell, you've seen the presentence report,
3 correct?

4 MR. MITCHELL: I have, Judge, and I have discussed it
5 with Mr. Nicholson.

6 THE COURT: All right. And do you have any objections
7 to it?

8 MR. MITCHELL: No, other than the ones we raised with
9 probation and they were included in the commentary we had and
10 other than my remarks generally today about what is recommended
11 in the report for sentencing purposes, but no specific other
12 comments or objections.

13 THE COURT: All right and Mr. Leibowitz, do you
14 have -- you have reviewed the presentence report as well?

15 MR. LEIBOWITZ: Yes, your Honor.

16 THE COURT: And do you have any objections to it?

17 MR. LEIBOWITZ: No, your Honor.

18 THE COURT: No objections, OK. Well, let me just make
19 findings with respect to the sentencing guidelines. And before
20 I do that, let me explain what I'm talking about.

21 The United States Sentencing Guidelines are a large
22 book. And this book is prepared by the United States
23 Sentencing Commission to provide guidance to courts in imposing
24 sentence. They used to be mandatory; they're now advisory. So
25 I don't have to follow the guidelines but I do have to consider

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1 them. And what these guidelines attempt to do is provide some
2 criteria that courts should consider and make findings on
3 before imposing sentences. And for every crime or type of
4 crime, there's a chapter or a subchapter in this book that
5 requires the Court to make certain findings for enhancements or
6 reductions. And so in a financial crime, the loss amount is
7 typically one of the biggest drivers of the sentencing
8 guidelines. There are other factors that are brought into
9 play, including number of victims, for example, and the nature
10 of the fraud. So I'm going to go through the guidelines
11 calculation as they apply in this case. There's really no
12 objection, the parties are in agreement as to what those
13 guidelines are.

14 I made a finding with respect to loss, so you're not
15 waiving that objection?

16 MR. MITCHELL: No, your Honor. I should have amend
17 what I said before: To the degree the argument was made as to
18 our position on loss, we maintain that.

19 THE COURT: Yes, but I've already ruled on that.

20 MR. MITCHELL: Correct.

21 THE COURT: So I'm prepared to find that the base
22 offense level under guidelines section 2B1.1A1 is 7, that the
23 amount of loss exceeded \$100 million but was less than
24 \$200 million, and so the offense level is increased by 26
25 levels. That's pursuant to 2B1.1B1N. There's another

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1 six-level enhancement because this offense involved more than
2 250 victims. There's another two-level enhancement because the
3 defendant derived more than a million dollars in gross receipts
4 from one or more financial institutions as a result of the
5 offense. There's a four-level increase because the offense
6 involved a violation of securities law and at the time of the
7 offense the defendant was an investment advisor. So that's an
8 increase of four levels, pursuant to 2B1.1B17A3. That yields a
9 total offense level of 45 because Mr. Nicholson pleaded guilty
10 and accepted responsibility for the offense. Because he did so
11 in a timely manner, a three-level reduction is warranted, and
12 that's pursuant to Section 3E1.1A and B. That yields a total
13 offense level of 42. And all of this sounds a lot like
14 accounting or math, but 42 is the offense level.

15 Mr. Nicholson has no prior criminal history, so he's
16 in Criminal History Category I. Based on an offense level of
17 42 and a Criminal History Category of I, that yields a
18 guidelines range of 360 months to life imprisonment. However,
19 because of the offenses to which Mr. Nicholson pleaded guilty
20 are capped at 45 years, the guideline range is 30 to 45 years,
21 so 360 months, which is 30 years, to 540 months, which is 45
22 years. OK? Everybody agrees with my math so far?

23 MR. LEIBOWITZ: The government concurs, Judge.

24 THE COURT: Mr. Mitchell?

25 MR. MITCHELL: Yes, Judge.

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1 THE COURT: So that's the starting point. There are a
2 number of other factors that a Court has to consider in
3 addition to these guidelines, and those factors include the
4 history of the defendant, the facts and circumstances of the
5 defendant's life, there's a recognition of course that every
6 defendant is unique, that they have a life history -- good,
7 bad, in between -- that reflects the individual nature of the
8 sentencing. So the sentencing guidelines take that into
9 account to some extent. But Congress, in a different statute,
10 has directed courts to consider carefully the individual
11 characteristics of the defendant.

12 The Court also has to consider the nature of the
13 crime, so the facts and circumstances of the crime is something
14 the Court has to consider as well. The Court has to fashion a
15 sentence that will reflect the seriousness of the crime. I
16 have to fashion a sentence that will promote respect for the
17 law and that will provide a just punishment for the crime.

18 I have to consider the need to deter both the
19 defendant and others from committing crimes of this kind in the
20 future, specific deterrence which is directed at the defendant
21 and general deterrence, which is directed more broadly at a
22 larger audience. It's the hope that a sentence in one case
23 might influence -- discourage -- people from committing crimes
24 in the future because they see the penalties and costs
25 associated with the crime. So I will take that into account.

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1 I have to consider the defendant's own needs while in
2 custody -- needs for medical care, for psychiatric care, for
3 substance abuse, if appropriate, for vocational and educational
4 training, things like that; the need to be near family members
5 while in custody, that's something the Court will consider.

6 And then I have to consider, of course, the need to avoid any
7 unwarranted disparity between sentences of similarly situated
8 defendants.

9 So those are all factors that a court has to consider,
10 has to weigh, and ultimately try to arrive at a just sentence
11 in light of all those considerations.

12 So, Mr. Mitchell, I know you spoke to many of these
13 factors in your submission. I read it carefully more than
14 once, but I'm happy to hear from you. And as you know, I don't
15 shortchange anybody at sentencing; it's just too important.

16 MR. MITCHELL: I very much appreciate that, Judge, and
17 I do have some remarks. May I use the podium?

18 THE COURT: Yes. You can use the lectern.

19 MR. MITCHELL: Your Honor, Jim Nicholson has hurt many
20 people. His conduct over the period that he ran Westgate has
21 been devastating to victims and his family, some of whom
22 actually fit in both categories. Significant punishment is
23 warranted here. Of that, your Honor, there is no question.
24 But, your Honor, there has to be some check, some regulation of
25 that punishment to ensure that the sentence here is a fair one

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1 and a just one and one that is not more than necessary to meet
2 the purposes of the sentencing. Most respectfully, this Court
3 is the check against the system where sentencings in financial
4 loss cases such as this one have too often become an arithmetic
5 process driven almost completely by the dollar amount involved.
6 Now, your Honor has mentioned you have our earlier submission.
7 My goal this afternoon is to emphasize a few of the significant
8 points from that submission and talk a little bit about the
9 government's submission that was submitted after ours.

10 Your Honor, the government has advised us that they
11 are seeking a punishment here of 45 years, the statutory
12 maximum for the crimes to which Mr. Nicholson pleaded guilty.
13 Frankly, to this lawyer, the fact that I have to stand here and
14 address such a request highlights to me that the sentencing
15 guidelines for these financial crimes with such high loss
16 amounts are frankly well beyond what is sufficient but no more
17 than necessary for the purposes of sentencing. I start by
18 reminding your Honor and the Court, this is not a case where
19 the government was put to its proof and had to have a trial.
20 Jim Nicholson voluntarily accepted responsibilities for his
21 actions and he pleaded guilty to three separate counts, opening
22 himself up, your Honor, to where we find ourselves today, my
23 arguing to this Court why a guideline range of 30 to 45 years
24 is substantially greater than what is necessary.

25 As part of his plea agreement, Mr. Nicholson also

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1 voluntarily forfeited his interests in all of everything he
2 owned so those assets could be used for restitution purposes.
3 I believe that process has been ongoing -- I've actually
4 participated in it -- I think it is complete today or near
5 complete. And Mr. Nicholson's actions since his arrest, your
6 Honor, with those letters he sent to your Honor which you
7 mentioned, I would submit, demonstrate that it is a man who has
8 accepted responsibility for his conduct and a man who has come
9 to a difficult realization, that he has terribly harmed many
10 people. Finally, those actions of his demonstrate that there
11 is an individual who has dedicated himself to do anything he
12 can to right the wrongs he has done.

13 I want to turn now to the loss issue because obviously
14 that is a significant one here and it's one that has been the
15 subject of a fair amount of examination in this court. As I
16 know, the Court mentioned, and I'm sure recalls, the loss issue
17 was the only one left unresolved by Mr. Nicholson's plea
18 agreement. The issue was ultimately briefed and your Honor
19 held an argument with prior counsel back in May on the issue.
20 And at the hearing, Mr. Nicholson's counsel at the time
21 addressed a bunch of topics, but two in particular, the
22 motivation of Jim Nicholson in creating the various funds at
23 Westgate that he did, and the fact that there was actually real
24 substantial trading activity that went on over the life of his
25 misconduct. At the time, your Honor indicated its view that

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1 the arguments that were being made were perhaps better directed
2 to the sentencing, not to the issue of calculating loss under
3 the guidelines. I agree, and frankly, we are back here now and
4 I am prepared to discuss them in a little more detail.

5 Let me be clear: We are not here, your Honor, to
6 justify Jim Nicholson's conduct. His fraudulent conduct was
7 extensive. False account statements were made over many years.
8 He created fictitious auditing firms, he lied to investors.
9 All of that, your Honor, clearly adds up to significant crime.
10 Our point is that they don't add up to someone who set out to
11 steal his victims' money. The circumstances here, your Honor,
12 are an individual who had a completely misguided and wrong view
13 of his ability to run a hedge fund.

14 Starting out in the year 2000, approximately, he began
15 investing other peoples' money; and almost from the git-go,
16 your Honor, he was terrible. Investments began losing money.
17 So what did he do? Rather than the right thing, disclosing the
18 losses to the investors and making clear what had happened, he
19 begins what I have characterized, and I think best can be
20 characterized, as a vicious cycle, a cycle of deceiving the
21 investors as to how their investments were actually doing,
22 ultimately starting up new funds, losing more money, and doing
23 it all again and again.

24 This is not, however, a situation where the money was
25 never invested. The government, I believe, itself recognizes

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1 that over the eight-year period that Westgate operated,
2 approximately \$76 million was lost in trading. This is rather,
3 your Honor, a situation where Mr. Nicholson, due to or through
4 whatever character flaws he had, kept believing that the next
5 trade, the next fund, that was the one that was going to get
6 him out of the hole. That was the one to get him out of the
7 hole he dug for himself and he dug for all those people who
8 trusted their money to him. As Mr. Nicholson described in his
9 own letter to your Honor, whatever this was, hubris, whatever
10 he had in his head, would not let him tell those investors --
11 many of them his own friends and family -- that he had let them
12 all down. What he did in his mind, felt it was easier to lie
13 to them and keep trying to dig out of that hole. The hole,
14 your Honor, however, just kept getting deeper and deeper and
15 deeper. Ultimately, in 2008, the economy, as we all know, fell
16 off the table. And even then, with his misguided view of what
17 he should be doing, Mr. Nicholson had to come to the
18 realization that he wasn't going to dig out of that hole.

19 Now, we recognize your Honor that over the course of
20 this period of time, Mr. Nicholson took some of those invested
21 funds and did use them personally. That too was inexcusable,
22 but you have to recognize -- and there is no dispute -- that
23 the lion's share of the money he did receive from investors he
24 did invest and he lost.

25 Now, the government, your Honor, in its recent

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1 submission to you argues that -- and I'm quoting -- some of the
2 most probative evidence of Nicholson's criminal mindset, end
3 quote, is that his victims included members of his own family.
4 It's on page 11 of the government's memo.

5 THE COURT: Yeah, I recall.

6 MR. MITCHELL: I would submit your Honor that the
7 government has it wrong. The reality, to me, and I submit to
8 the Court, is that Mr. Nicholson's including his own family,
9 people he loved -- his parents, his cousins, his extended
10 family -- in this conduct reflects not somebody who's coldly
11 calculating to harm the people he frankly feels the closest
12 too; rather, it's someone who is so desperate to dig out of
13 this hole he's created, that he's just not even seeing the
14 devastation he's leaving behind. For him, "I just needed funds
15 for the next trade, the next fund, the one that was going to
16 solve all my problems."

17 Now, the point in going through this, your Honor, is
18 not to justify the conduct but it is to make the point that the
19 size of the loss, which is significant and tremendous, does not
20 tell the whole story here. And as a consequence, the resulting
21 sentencing guidelines, so driven by that loss number,
22 substantially overstate the nature of the conduct.

23 Now, there's been a lot of back-and-forth and a lot at
24 the hearing about whether this was or wasn't a Ponzi Scheme. I
25 really don't want to get caught up in what the definition of a

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1 Ponzi Scheme is here, but I think the most salient point here
2 is that, unlike so many frauds -- where the wrongful conduct
3 is, tell a lie, get the money, don't do anything with it, and
4 keep it -- Mr. Nicholson's goal, again as misguided as it was,
5 was to actually try to trade this money and make money. It
6 doesn't make it right, your Honor; it just makes it, we submit,
7 more understandable and, frankly, more appropriately outside
8 the extraordinary guideline range that is so driven by the loss
9 number.

10 In our submission to your Honor, we cited a number of
11 cases where judges have recently seriously questioned the
12 extreme nature of those loss guidelines for financial crimes.
13 Judge Lynch, for example, in the case we cite, U.S. v.
14 Emmenegger stated, quote, the excessive weight, end quote,
15 placed on the single factor -- that's the lost -- is an attempt
16 to, quote, fit the infinite variations on the theme of greed
17 into a limited set of narrow sentencing boxes. The government
18 responded to our submission by asserting, well, Mr. Nicholson's
19 case is nothing like the ones that you've cited, and it engaged
20 in some comparison of the various facts.

21 We did not cite those cases for that purpose, your
22 Honor. Our point, as Judge Lynch expressed, I think, fairly
23 eloquently, is that each case should not be stuck in a box
24 based exclusively on that loss amount involved. One point the
25 I do want to talk about is the Adelson case, your Honor,

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1 because we did cite that case and obviously Judge Rakoff had
2 some commentary about the loss guidelines, and it's quoted
3 often by defense counsel. They say, the government, that
4 that's nothing like our case.

5 Well, I took occasion then to go back and look from
6 Pacer at the government's submission that was made prior to the
7 sentencing in that case. There are quotes -- and I just sort
8 of picked a few of them -- quote, Adelson betrayed the trust of
9 public investors, auditors, bank lenders, Adelson lied to
10 public investors about the financial and operational
11 performance of the company. They cite language from a letter
12 about the extraordinary, devastating and far-reaching
13 significance of the crime. The government called the loss in
14 that case staggering. It said that Mr. Adelson had defrauded
15 close to 10,000 individuals. They argued ultimately for a loss
16 amount of \$200 million. Ultimately, the guidelines, like here,
17 contained the possibility of life, bounded by the statutory
18 maximum of 85 years.

19 The government had asked for a sentence, initially,
20 consistent with the guidelines, saying, quote, that
21 Mr. Adelson's conduct was, quote, deep ethical depravity, end
22 quote. Now, today, in an effort to distance this case from
23 Adelson, the government says that, quote, we cannot credibly
24 suggest that Mr. Nicholson sits in a similar moral position as
25 did Adelson.

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1 Now, your Honor, I'm not trying to compare these two
2 cases, but I think what I'd like to say, and our goal is to
3 demonstrate that, as Judge Rakoff said in that case, an
4 automatic adherence to the sentencing guidelines, as I submit
5 the government did in Adelson and is doing here, is driven so
6 extraordinarily by the loss amount is not a reasonable basis to
7 submit what should be the sentencing.

8 In thinking about this, your Honor, I want to suggest
9 to the Court two examples that hopefully make my point, one
10 perhaps in this case, one in a more hypothetical situation.
11 Perhaps -- obviously the conduct of Mr. Nicholson extended over
12 about an eight-year period. If you are to suppose that
13 Mr. Nicholson engaged in the very same conduct that has led to
14 him pleading guilty -- lying to investors, making
15 misrepresentations about the funds' performance over the period
16 the funds were being invested -- but instead of the economy
17 falling apart in 2008, it fell apart in 2002 or 2003, I would
18 suggest to the Court that the conduct is not so morally better
19 in that case than in this case, but the sentencing guidelines
20 are two decades more lower. I submit that that's an example,
21 if you will, of how the guidelines -- and one reference by
22 Judge Lynch in Emmenegger as an example of a circumstance where
23 the guidelines don't fully account for the specifics of each
24 case.

25 Another example, your Honor: If, for example,

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1 Mr. Nicholson engaged in the very same conduct, same number of
2 victims over the same period of time, but for whatever reason
3 the victims who were the subject of his misconduct did not have
4 the means of people he did defraud here, the number would also
5 be lower. Some would suggest that it's equally or more a
6 serious crime. In that case, again the guidelines would be
7 decades lower because of the nature of the loss amount,
8 although the conduct is virtually the same.

9 In sum, your Honor, what I'm trying to bring home is
10 that the Sentencing Commission's mathematical dependence on a
11 loss amount, we submit, does not reasonably account for the
12 variations of conduct in financial loss cases. And for the
13 reasons I've stated before, and I think are evident in our
14 prior submissions, under the circumstances here, those
15 guidelines do substantially overstate what should be a fair and
16 just sentence here.

17 If I can, your Honor, I want to turn to some of the
18 personal characteristics with respect to Mr. Nicholson and the
19 positive side of him that I believe is so evident in the
20 letters to the Court from family and friends.

21 Virtually every letter your Honor has mentions Jim
22 Nicholson's relationship with his three young sons and how his
23 incarceration already has and will have a profound effect on
24 them. For example, the letter from Jim's brother describes,
25 far better than I ever could, the toll that incarceration has

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1 already taken on his young son Patrick. Now, there's no
2 question that Jim Nicholson shares a very special bond with
3 each of his three sons. We recognize, of course, that the
4 separation and the pain associated with that separation while
5 someone is in prison is part of punishment. Nevertheless, your
6 Honor, whatever sentence this Court issues today means that
7 Mr. Nicholson will miss much of those kids' childhood. That
8 punishment is in and of itself severe.

9 The letters, your Honor, also reflect that there is a
10 lot of good in Jim Nicholson, the letters from neighbors of his
11 family who saw Jim grow up, from his family members, from
12 people who worked at times for the Nicholson family. They
13 describe an individual, your Honor, who despite the conduct
14 that brings him to this courtroom today, was always a devoted
15 family man and someone willing to help a friend or a neighbor
16 in need. None of this, your Honor, again, excuses his conduct.
17 For that Jim Nicholson has fully accepted responsibility. And
18 while that conduct took place undoubtedly over a number of
19 years, I think it's important to recognize it is still a first
20 offense, a nonviolent crime, and that the almost two years that
21 he has been in custody have already done much to make him
22 recognize his mistakes and want to do whatever he can to make
23 up for them.

24 Your Honor, in our sentencing submission, unlike the
25 government, I did not ask for a specific sentence to this

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1 Court, but I actually am prepared to do that today. I would
2 respectfully suggest to this Court that a decade in jail is
3 more than sufficient to meet the purposes of sentencing. Your
4 Honor, the conduct is egregious. Punishment should be
5 substantial. A decade in jail will mean, as I said before,
6 that Mr. Nicholson is separated from his sons for basically
7 their childhood. It is by any definition, your Honor, a severe
8 punishment.

9 As to deterrence, I submit that there is no person for
10 whom ten years in jail, as opposed to 30 or 45, means that that
11 person would be willing to engage in the kind of conduct that
12 brings us to the courtroom here.

13 Finally, your Honor, I respectfully suggest that such
14 a sentence will offer Mr. Nicholson a realistic chance to
15 demonstrate, one, that this conduct will not be repeated and,
16 two, that he is firmly committed to making up in any way he can
17 for that conduct. Thank you.

18 THE COURT: Thank you, Mr. Mitchell.

19 Mr. Leibowitz.

20 MR. LEIBOWITZ: Thank you, your Honor.

21 Your Honor, I will not repeat what I wrote to you --

22 THE COURT: Well, you can. Look, I don't tell people
23 they can't repeat. Some of these things are worth repeating
24 perhaps, and what you wrote to me is not necessarily something
25 that others here have seen or heard. So I won't tell you what

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1 to say but you don't have to feel you need to tailor your
2 remarks to me simply because you know I've read your
3 submission.

4 MR. LEIBOWITZ: I thank the Court for that. I would
5 like to start by saying, Judge, that I do this understanding
6 the seriousness and the extraordinary fraud case that you have
7 before you. And I will speak to you as a prosecutor in this
8 building of seven years. And I have spoken at sentencing, in
9 all of my cases, on less than one hand. And I have done that,
10 except for addressing specific questions of the judge, because
11 when I started here, another federal judge who's now the chief
12 judge of this courthouse very early on said to me, except in
13 extraordinary cases, Assistant United States Attorneys at
14 sentencing should speak less, if at all, because it makes you
15 look young and when a judge takes the bench, it's the most
16 serious thing we think about. With that in mind, Judge, I'm
17 going to speak today. This case merits it, and I'm going to
18 ask for a little time.

19 Defense makes representations in their papers. And
20 with all due respect, Mr. Mitchell is a gentleman -- we have
21 met, we have spoken to each other many times, Mr. Zissu as
22 well, this is not personal, they are officers of the court,
23 they are gentlemen, their reputations precede them -- what they
24 say simply cannot comport with the facts before your Honor and
25 in this PSR. I'm not going to use words like "staggering"

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1 except now. This is \$140 million. This is hundreds of people.
2 Phrases like "vulnerability of the victims" get said very
3 quickly; and with all due respect, it's not in any guideline
4 calculation. 3A1.1B could add two to four points. It's not in
5 this case at all, and I am sure, from what your Honor has
6 already said about reading what you've read, before you hear
7 what I'm sure you will hear, that alone is a reason to think
8 about the range.

9 I have never asked for the top of the range in my
10 career. It is not done lightly in our office. We ask for it
11 today because we believe that in the range of the people that
12 fall in the range, it is merited today. And I don't do so
13 joyously, but I believe it is merited.

14 Westgate was not a Ponzi Scheme. There has been a
15 flavor of that throughout the litigation before today, before
16 my arrival in the case. Westgate was not a Ponzi Scheme
17 because 35 percent or so of the money was put into trading.
18 Your Honor knows, Charles Ponzi, at the start of the 20th
19 Century, he actually did buy postage stamp labels when he
20 pulled people in. I don't dispute, I don't dispute that this
21 is a man before you that fancies himself as a trader. He in
22 his own submissions to you before sentencing -- I would use the
23 word "temerity" -- he has the word temerity to suggest and
24 compare himself to Warren Buffett when he was getting the
25 AlixPartners losses that he was getting. And with all due

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1 respect to Mr. Mitchell, the years don't work for his argument.
2 In 2002, it is a fact that Mr. Nicholson lost \$3.4 million of
3 these people's money; and he told them, he told them -- excuse
4 me, your Honor, he lost \$9.1 million of these people's money,
5 and he told them that he earned 3.4 million. That's a swing of
6 \$12.5 million. That's 2002. Arguments of the dot-com bubble,
7 your Honor? That's March of 2000. Anyone knows, anyone that
8 can go to Google and look at the NASDAQ composite the middle of
9 2002, the dot-com bubble is over and it is climbing up for the
10 next four years.

11 And you've seen the AlixPartners, your Honor. The
12 facts don't comport with allowing counsel to suggest and jump
13 from 2000 to 2002 to 2006 to 2008, and all of a sudden we're at
14 Lehman Brothers and it doesn't get any better in terms of the
15 3553(a) factors for this defendant when we get to Lehman
16 Brothers, and thereafter.

17 That's the big point, your Honor. The big point is
18 that in fact Mr. Mitchell is wrong -- we are not slavishly
19 following loss numbers and saying that drives this. First of
20 all, your Honor knows the loss, the 26 points, that's
21 100 million or more. He gets the last 40 million for free,
22 under the guidelines, and it doesn't include in any way
23 vulnerability of the victims. That is a phrase that is passed
24 over.

25 Now, your Honor, on the cases -- because this gets

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1 down to it -- on the cases and the policy disagreements about
2 Adelson and Emmenegger, Adelson was an accounting fraud. That
3 is a fact, that very same judge sentenced Marc Dreier to 20
4 years, and in doing so, stated from the bench that the
5 actuarial table played a role. He knew what he was doing to
6 Mr. Dreier. Mr. Dreier, much more analogous to what this
7 defendant did -- and in fact this defendant has aggravating
8 factors that Mr. Dreier didn't have; he dealt with hedge funds,
9 he dealt with lawyers, Mr. Dreier. This man looked at a golf
10 pro and took his money. He fooled him early, and then he just
11 kept fooling him.

12 I'll give you the greatest example. I was sitting in
13 my office three days ago. The only difference between this man
14 and Mr. Dreier his top people. Here's a man, I'm not going to
15 say his name -- he didn't want to speak today -- but it is a
16 fact he lost \$15 million to Mr. Dreier; he can take the hit.
17 He told me, you know, what he was concerned about were victims
18 in this scheme that couldn't take the hit as well as him. But
19 he said to me, he met Mr. Nicholson because of that golf pro,
20 he didn't do his due diligence early -- that was about 2007 --
21 he gave him millions of dollars and after Lehman, in November,
22 after Lehman, he gave him millions more. He gave him millions
23 more because it was face to face. This is a very successful
24 man. He runs a very successful company just north of this
25 city. He's no idiot. This crime makes people distrust

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1 themselves, makes them distrust the system, cannot regulate.
2 General deterrence, your Honor? Statements made by this Court,
3 this is the case.

4 There have been other suggestions, your Honor: The
5 defendant has a gambling problem. It's actually been stated.
6 If you read the PSR carefully, you read the defense papers
7 carefully, there is simply zero in this record to suggest that
8 that should mitigate his intent and his culpability. A
9 gambling problem -- I'm sure you know them, your Honor, I
10 certainly do -- a gambling problem is a guy that makes \$400 a
11 week and he gets on the bus for Atlantic City on a Friday and
12 he blows \$350 of it. The only evidence of gambling in this
13 case that Mr. Nicholson has before this Court at this moment is
14 when he's gambling other people's money. When he's gambling
15 other people's money.

16 As for the hard facts of this case of what was
17 personally converted, what was used in the marketplace, it is a
18 fact that this man converted to his personal use \$36.9 million.
19 And that excludes -- just because we're fair and we're
20 precise -- it excludes \$11.7 million, which is considered
21 Westgate-related expenses. Of course, all of that appearance
22 of that office, it inures to his benefit, it's why
23 philanthropic organizations and schools let him speak to them,
24 because he runs that office. But your Honor understands this.
25 You've seen the submission. I would suggest, respectfully, it

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1 is not that we are slaves to the guidelines; this is a case
2 that is talked about, about lawyers, defense and prosecutor
3 alike, ever since Booker was decided. 3553(a) is not a one-way
4 ratchet, it is not the bottom of the range and then you just go
5 down, you just mitigate. This is the one, one of the rare ones
6 that I've seen, 3553(a) works both ways.

7 It's his first criminal offense, it's his first
8 criminal conviction; Mr. Mitchell is literally correct. In
9 April of 2001, the State of New York said very clearly to this
10 man that anything that he would do -- anything that he would
11 do -- with investment advising activity is considered fraud
12 under New York law. The NASD ripped his ticket away from him.
13 And the AlixPartners forensics, I mean even under the most
14 generous and given benefit of the doubt, the presentation of
15 counsel cannot account for anything close to after 2003.

16 There's only one last point, your Honor -- and I don't
17 think it's fair -- one last substantive point, and your Honor
18 says it, it's a very important point, avoid disparities, avoid
19 unwarranted disparities. With all due respect to the Honorable
20 Judge Block in the Parris case -- there's been a lot of
21 commentary about the table in the Parris case, it was submitted
22 by defense attorneys -- it is just simply wrong to put before
23 the Court a wide variety of financial cases. And respectfully,
24 Adelson and Emmenegger fit very nicely into that model; just
25 throw them all in and avoid the factual differences and we

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1 count accounting frauds that are taken in some building with
2 completely impersonal institutional investors, and judges, when
3 considering moral culpability should just treat that the same,
4 as a guy that looks these people in the eye for ten years.

5 It is a fact that I could cherrypick recent Ponzi
6 Schemes, just Ponzi Schemes, and I could put seven of them up
7 to the Court and they would be commensurate with what we're
8 asking for. But that would be unfair too. The fact of the
9 matter is, Judge, we ask you -- and I know you will do this,
10 whatever your number is, whatever your sentence is -- we ask
11 that you consider the actual crime, the actual man, the actual
12 record, and similarly situated, when you apply sentence. But
13 respectfully, Adelson and Parris and Emmenegger, there's great
14 lines in there, and they're smart judges they're great judges,
15 they don't do that, they don't do it.

16 Finally, Judge -- and this is the toughest thing for
17 me to do, speaking as a father, it's not fun to ask for this --
18 there are many that say this man behind me is 44 years old,
19 what's the point, once we get -- I'm going to speak bluntly,
20 Judge -- once we get to 30, what's the point? When we pull out
21 the tables, what's the point? There are judges in this
22 courthouse that have said it better than me: The point is,
23 that symbolism is important. Judge Chin, in a very similar
24 case, morally, not too long ago said the symbolism matters
25 because the reason why the victims all come to you and ask for

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1 this is not because they're a mob, it's because the only thing
2 they have to cling to is this system. And saying to them, we
3 will impose the toughest sentence that the law permits, it says
4 something to them, it says something to anyone that would think
5 to do what this man did. That matters, and it's part of
6 3553(a). It is what is known to philosophers as the moral
7 worth of retribution, and it is not something that I do
8 lightly, but it is, I'm sure, something that your Honor has
9 thought of, and I would urge your Honor to think of it today.

10 Unless the Court has additional questions, I thank the
11 Court for the time.

12 THE COURT: I have a question as to whether you can
13 tell me what has been recovered from properties forfeited and
14 sold.

15 MR. LEIBOWITZ: Yes, Judge. Just one moment.

16 Judge, I've spoken to the attorney for the receiver in
17 this matter. And as of October 12th -- and your Honor knows
18 better than me, I'm going to use crude terms here -- what they
19 call in-the-door gross recovery, which does not include
20 clawbacks and attempts at clawbacks in the future, is
21 \$26.09 million. That's the number. Obviously, your Honor, I
22 can make that more precise if your Honor wishes, but the
23 in-the-door is \$26.09 million as of October 12th.

24 THE COURT: But nothing has been distributed at this
25 point?

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1 MR. LEIBOWITZ: Correct; not to my knowledge, no,
2 Judge.

3 THE COURT: OK, thank you, Mr. Leibowitz.

4 Mr. Mitchell, is there anything you'd like to say in
5 response? You don't have to.

6 MR. MITCHELL: No. I appreciate that, Judge. I think
7 all I would like to say in response, Judge, is, I've heard what
8 Mr. Leibowitz has to say, I've heard that. I imagine I will
9 hear the anger in the voices of the people who will come to
10 speak here today. They speak to one aspect of sentencing,
11 punishment, retribution. This is a serious crime and it must
12 be punished, but there are other reasons that this Court must
13 issue a sentence. It's sufficient but no more than necessary.
14 The purposes of deterrence, purposes of offering this
15 gentleman, this person next to me, a light at the end of the
16 tunnel, no matter how far that tunnel is, so that he can use
17 that time in jail to make himself better and to come out of
18 jail and be there for some part of his family's life and make
19 up for what he has done. That I did not hear in
20 Mr. Leibowitz's comments. It's not just about punishment,
21 Judge; there are other pieces of this sentencing. Thank you.

22 THE COURT: All right, thank you.

23 I know there are a number of victims who wish to
24 address the Court, as is their right. So I will hear from them
25 now. Did you want to say something?

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1 MR. MITCHELL: Your Honor, I don't know your Honor's
2 order, but Mr. Nicholson's mother also would like to address
3 the Court. I advised your Honor's clerk of that earlier.

4 THE COURT: OK.

5 MR. MITCHELL: I apologize, your Honor.

6 THE COURT: That's OK.

7 MR. MITCHELL: Just based on what I --

8 THE COURT: That's fine. Not all judges do this. I
9 typically allow family members to address the Court because I
10 recognize that a sentencing does not affect just one person, it
11 affects a much broader community of people; and families in
12 particular feel the sting of a sentence. So that's fine, I'm
13 happy to hear from Mr. Nicholson's mother. I will hear from
14 the victims as well. There is a very broad community that's
15 present in this courtroom here, and I hope we'll all treat each
16 other with respect. This is a sad day, I think, for everyone.
17 I think we should all at least recognize that much, OK.

18 MR. MITCHELL: Judge, Kathy Nicholson.

19 THE COURT: All right, Ms. Nicholson, you may proceed.

20 MS. K. NICHOLSON: Thank you Judge Sullivan, for
21 allowing me to say a few words with my son Jimmy. In this
22 statement I am conveying the feelings of his father, his
23 brother Kevin, and sister Donna. I struggled to write this
24 statement. I want to tell everyone how much I love my son, how
25 much he means to me, what a wonderful person he is, but that

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1 seems like it would only fall on deaf ears.

2 I remember Jimmy for his positive attitude, his
3 kindness, his sense of humor, and most of all, how he treated
4 his family and friends. This is what makes this mess so
5 confusing for so many of the people who knew him. This is not
6 who he is. I do not want to diminish the victims' suffering
7 and hurt over what Jim has done. His actions severely hurt
8 many people. I am also a victim of Jim's wrongdoings. We were
9 investors in Westgate too. Over the past year and eight months
10 that he has been away, I have tried to make sense of it. I
11 can't comprehend how he got to this point. I don't know what
12 made him do the things he has done, but I understand he must
13 pay for his mistakes. He has paid dearly. He has lost
14 everything -- his wife, his family, his friends, his freedom
15 and respect of others. He has expressed to me deep sorrow for
16 hurting so many people. He is truly sorry and is ashamed of
17 what he has done. I believe he is very sick and needs help and
18 guidance.

19 Many of you came here today to condemn, vent your
20 anger, hope for closure. I know many of Jim's victims see him
21 as a monster. It would be easier to think of him this way.
22 But he is not a monster; he is a very flawed person who hurt
23 most of the people who loved and admired him. Closure will not
24 happen for me today. It most likely will not happen for
25 anyone. Money will not be returned and trust will still be

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1 broken. Everything will remain the same.

2 Please take into consideration Connor, Ryan, Patrick,
3 who love and miss their father like crazy. If you got to see
4 them day after day, you'd know what I mean. People say that
5 they feel for the children, but I know that is not so. I hope
6 and pray that my daughter-in-law does not have to tell them
7 their daddy will be away for most of their life.

8 Judge Sullivan, when you are deciding on a sentence, I
9 ask you to please take Jim Nicholson, the person we all loved
10 and admired, into consideration. Please see that he can do
11 something good with the rest of his life. There is goodness
12 there. If you would give him a chance, he could get back to
13 that goodness that was always there and somehow got lost along
14 the way. Thank you for your time.

15 THE COURT: Thank you, Ms. Nicholson.

16 Mr. Mitchell, any other family members who wish to
17 address the Court?

18 MR. MITCHELL: No, Judge. Thank you.

19 THE COURT: I'll now hear from the victims. There are
20 nine, I gather. I thought there would be ten but there are
21 nine.

22 MR. LEIBOWITZ: I gave your deputy a list of 11 but,
23 yes, your Honor, there are only nine presently.

24 THE COURT: OK. I'm happy to hear from them. I
25 received a list which wasn't alphabetical, so I don't know if

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1 there's an order in which they're prepared to speak or if I
2 should just call names.

3 MR. LEIBOWITZ: There's been no order decided, your
4 Honor. We did this for the convenience of the Court and for
5 the victims to be close to your Honor to speak.

6 THE COURT: Yes. All right, well, why don't we just
7 start. We can start with the person closest to the lectern, if
8 he wouldn't mind coming down and using the lectern. It's not
9 an easy thing to speak in court, even for lawyers, so certainly
10 it's understandable if you feel a little nervous. But take
11 your time, take a deep breath, go slow. And if you would state
12 your name and spell your name, first and last, for the record.

13 MS. MAST: My name is Linda Mast, L-I-N-D-A, Mast,
14 M-A-S-T.

15 THE COURT: All right, Ms. Mast.

16 MS. MAST: If I may, your Honor, I wrote a letter
17 dated February the 22nd of this year. If I may read the same
18 letter that I had written to you?

19 THE COURT: That's fine.

20 MS. MAST: Dear Judge Sullivan -- I'm going to start
21 with two small items at the beginning, and then I'll explain.

22 THE COURT: OK, yes.

23 MS. MAST: Mr. James Nicholson stole \$511,183.32 from
24 me. My dearest mom, my best friend and confidante, passed away
25 suddenly six years ago, all by herself, alone. That day, I

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1 found my mom dead on the floor. I suffer each and every day
2 with my loss. These two statements, apart from each other seem
3 worlds apart, but please let me explain.

4 After the untimely death of my mom and the ultimate
5 settlement of her estate, I received a substantial amount of
6 money. These monies were not only from years and years of her
7 hard work and savings for her children and her grandchildren,
8 but also from the same hard work and savings of my dad, who has
9 passed away, and my loving grandparents who are also deceased..
10 With my own savings and the monies from my mom's estate, I
11 invested in Mr. Nicholson's Westgate Capital Management. These
12 monies were invested for my two sons' college education and my
13 retirement. At this point, retirement is out of the question,
14 but I will move heaven and earth to make sure my sons receive
15 their college education. They are two fine young men and I
16 will take care of them despite my huge financial loss at the
17 hands of Mr. Nicholson. I too have children that need to be
18 taken care of.

19 Not only is this a monetary loss but holds a huge
20 psychological and physical impact, crying, nonending tears,
21 kicking, throwing, throw things, vomiting and forget about
22 sleep. Depression set in for quite some time. I eventually
23 spoke to a professional, which I had to pay for out of my
24 pocket because my insurance, working at a small firm, does not
25 cover it. There were times for weeks I was not even able to

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1 drive my children to school, I was not able to get out of bed.
2 Mr. Nicholson knows nothing of these life-altering reactions to
3 his crime, nor does he care.

4 Almost two years ago, I received the phone call:
5 Ms. Mast, the manager of Westgate Capital Management has been
6 arrested by the FBI, your money is gone.

7 My mother died all over again. I plead, Judge
8 Sullivan, for Mr. Nicholson to be sentenced to the maximum time
9 allowed by law, 45 years with no chance for parole. I
10 respectfully thank you for your time.

11 THE COURT: All right, thank you, Ms. Mast.

12 Ladies and gentlemen, this is a courtroom, OK? I'm
13 going to ask you to treat it like a courtroom; it's not a
14 theater. The emotions here are very real -- I understand that
15 and I respect it -- but I'm going to ask you to refrain from
16 those kinds of outbursts. All right? Do we understand each
17 other?

18 OK, next.

19 MR. McGRATH: My name is Bernard McGrath,
20 B-E-R-N-A-R-D M-C-G-R-A-T-H.

21 THE COURT: Mr. McGrath.

22 MR. McGRATH: I'm here speaking on behalf of my wife,
23 who was a joint investor with me, and my daughter, who was a
24 separate investor. I myself, I look back now, I didn't do my
25 own due diligence that I should have done with the background

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1 that I have in accounting. I should have done it, I didn't.
2 My stupidity. When the market was going down and I received
3 the statement that showed we were still making money, I
4 thought, this isn't good, I should get out. I talked to my
5 wife about it. Now, my wife's cousin, Donna, is married to
6 Jim. Her comment to me was, no, family wouldn't do this. I
7 said, I don't know, when it comes to a buck, family doesn't
8 mean anything, they're out for themselves. So on behalf of
9 myself and my wife we were stupid, we should have done our due
10 diligence, we didn't, we take a loss. What does bother me --

11 THE COURT: Take a minute.

12 MR. McGRATH: My daughter, she lost her husband in
13 June of that year. She got a life insurance settlement of
14 \$200,000 that was intended to pay off or pay down towards her
15 mortgage. She didn't do that. She has two young children, at
16 that time four years old and two years old. She says, if
17 anything happens to me, I want the children taken care of, I
18 want to put the money in an investment and make sure that the
19 children are taken care of. Jim knew this when he took the
20 money. I think anybody with a heart would have -- no matter
21 what, your husband just died, she's got too little kids --

22 THE COURT: Is your daughter Kerry Ann Fox?

23 MR. McGRATH: Yes. I think anybody with a decent
24 heart would have said, hold on to your money for a little bit,
25 I'll get back to you.

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1 Your Honor, I ask that you take this into
2 consideration. Jim is concerned about his children. I
3 wouldn't think so, when he did the crimes that he did. I'm
4 concerned about my grandchildren. I'm hoping that they're
5 going to be able and that my daughter will be able to recover
6 from her loss and be able to provide for her children properly.

7 I thank you for the time, your Honor Sullivan.

8 THE COURT: Thank you, Mr. McGrath, I appreciate it.

9 OK, next.

10 MS. WILLIAMSON: I'm going to try to remain calm. My
11 name is Colleen Williamson, C-O-L-L-E-E-N W-I-L-L-I-A-M-S-O-N.

12 THE COURT: All right, Ms. Williamson, good afternoon.
13 Thank you.

14 MS. WILLIAMSON: On December 17th of last year, I was
15 diagnosed with cancer, at the age of 37. The doctors tell me
16 that the cancer invaded my body years ago and slowly but
17 steadily grew undetected into a malignant tumor that ultimately
18 revealed itself. A cancer diagnosis is shocking. The
19 uncertainty that it causes is crippling. The toll it has taken
20 on my body and my psyche is devastating. I live in fear every
21 day that I won't recover.

22 What I have written and what I am speaking here today,
23 as dramatic as it may sound, is exactly how I feel about James
24 Nicholson and his Westgate Capital Management. Mr. Nicholson
25 is a cancer that invaded my life and grew undetected into a

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1 malignancy that ultimately devastated my world and the world of
2 my family. With surgery, chemotherapy, and radiation, I am
3 fighting and believe I will ultimately beat cancer. But how do
4 I survive Mr. Nicholson? I quite literally lost everything.
5 And I'm not even speaking financially, because Jim is also a
6 member of my family. Birthdays, graduations, communions and
7 Christmas, Mr. Nicholson was there with his charming smile and
8 stories to everyone about how great his business was and how
9 fast the money was growing. I can never express in words what
10 this has done to my family. There is no price tag for the toll
11 this has taken on my relatives.

12 Family, your Honor, is what gets you through the hard
13 times. But what do you do when the family that's supposed to
14 get you through the hard times is the cause? There are
15 consequences for our actions and decisions, and I accept full
16 responsibility for my decision to invest with Westgate Capital.
17 I live with the consequences of that decision every day and
18 will continue to do so for the rest of my life.

19 And with that said, I realize that I'm one of the
20 lucky ones. I don't want people to feel sorry for me; I will
21 no longer cry over this and after today, I will no longer be
22 one of Mr. Nicholson's victims. I'm young enough to come up
23 with a backup plan for my life, I have years to make up for
24 some of the money I lost. I will play the cards that I have
25 been dealt because I have no choice. But Mr. Nicholson did

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1 have a choice. Every day since 2000, when this particular
2 fraud began, Mr. Nicholson chose to manipulate, deceive, lie,
3 and steal. He made a conscious decision to do this for years
4 on end. I hear people describe Jim as sick and lost, needs
5 guidance. It's a simple way to explain away his behavior, and
6 it is unacceptable to me.

7 There is no psychological deficiency in Mr. Nicholson.
8 There's a famous line of a very popular movie in which Michael
9 Douglas character says to Charlie Sheen: Greed, for lack of a
10 better, is good. This is how Jim chose to live his life. It
11 was his personal mission statement, the motto by which he
12 decided to live his life. Good old fashioned greed is what
13 drove Mr. Nicholson. And now it's time for the defendant to
14 pay for that greed.

15 When we hear what he's guilty of, it somehow doesn't
16 sound that bad. Securities fraud, investment advisor fraud,
17 and mail fraud don't have the same punch as murder, aggravated
18 assault, and armed robbery. But what does that make it any
19 less of a crime? The victims he left in his wake hear words
20 like foreclosure, frozen accounts, debt collector, and
21 bankruptcy on a daily basis. A trip to the mailbox causes
22 anxiety and fear because you don't know what you're going to
23 find. And as crazy as it may sound, Jim has a more secure
24 future than some of us that he's left behind. He has a roof
25 over his head, he will be clothed and fed, and he will have

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1 access to medical and dental care. He won't be in the
2 surroundings that he grew accustomed to, he won't be where he
3 wants to be, but neither am I, and neither is my family.

4 As I said before, I consider myself one of the lucky
5 ones. Many of the victims are far worse off than me. And for
6 myself, I would ask the Court -- but for those left with no
7 means with support or income, I beg this Court -- to impose the
8 maximum sentence allowed by the guidelines.

9 Through all of this, I have very little trust left in
10 people. But I am going to rely on the judicial system and I am
11 going to trust that you will do the right thing. I have
12 nothing to say to Mr. Nicholson directly, but I would like him
13 to know one thing: I believe in God and I believe that when we
14 leave this life we move to another. And with all due respect
15 to this Court, it is my sincere hope that when he leaves this
16 earth he will sit and be judged a far greater power and he will
17 be given a sentence far more severe than any that can be
18 imposed on him here today. May God have no mercy on his soul
19 and may this Court have no mercy with regard to his sentence.
20 Thank you, your Honor.

21 THE COURT: Thank you, Ms. Williamson.

22 Let me hear from the next speaker.

23 MS. C. NICHOLSON: My name is Christine Nicholson,
24 C-H-R-I-S-T-I-N-E N-I-C-H-O-L-S-O-N.

25 THE COURT: All right, Ms. Nicholson, good afternoon.

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1 MS. C. NICHOLSON: Good afternoon, Judge Sullivan.
2 Thank you Judge Sullivan and members of the court for this
3 opportunity to speak to you on my behalf. I never thought I
4 would have to write or read a victim statement, especially one
5 regarding family member. Jimmy is my first cousin; his father
6 and my father are brothers. They have worked hard all their
7 lives to provide for their family and save for their futures.
8 My father and uncle unfortunately do not speak any longer.
9 Maybe it's out of pride or shame but there is no communication.
10 The families don't talk to each other anymore, our family, his
11 family; everything has ceased after February 25th.

12 This has been a huge void in my life that is very hard
13 and something I don't think I can ever get over. I think about
14 it constantly. It has negatively affected the last 20 months
15 of my life. I do fortunately have a good support system and
16 hopefully at some point will be able to grasp the realm of this
17 and be able to move on.

18 After his arrest in February, my family, who I'm
19 representing, my parents and cousins who also invested, are
20 going through great shock, stress and pain. The man we once
21 knew is not at all who we thought he was. Jimmy lied to us,
22 cheated us, disgraced us, and we have no answer. Simple
23 events, because we have the same last name and because we've
24 lived in the same area, have become horrible. A year after his
25 arrest, I went to a gas station to get gas. When I handed the

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1 gentleman my credit card, he looked at it, and he went into the
2 office. I figured he was just running it through. He came out
3 with an article from the Record and showed me the article and
4 said, are you related? Because this man scammed friends of
5 mine. I got back into my car and answered no, because I don't
6 know how to answer because I don't know what's going to go
7 further, is he going to interrogate me more. It's horrible
8 repercussions.

9 This has gone on for our family for the past 20
10 months. I know in my heart that I loved him. We were close.
11 All the cousins were always there for each other, for
12 celebrations, disappointments, sickness and deaths. We had
13 holidays together, we are each other's godparents, we were
14 together, and that's what makes this so hard. That is all gone
15 because of what Jimmy has done.

16 We've invested and we've lost money, which is a major
17 issue, but it's not the only issue. To know that my father was
18 planning to retire, and after this can no longer honestly feel
19 he can leave work leaving something for my mother and himself,
20 breaks my heart every day. To know that people came to my
21 father's work for no reason other than to harass him, because
22 he was Jimmy's uncle and to ask questions of what he knew and
23 how he was related, without stating who they were, is
24 devastating. My father has no reason to be interrogated by
25 people we don't even know who they are.

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1 To read also on a blog that we have all become members
2 of, or most of us, which has helped us throughout these last 20
3 months, that one of the members' daughters who worked her whole
4 high school career to get into the college that she wanted,
5 couldn't go because there was no money left, stays with me
6 forever. I have no trust. I fear for what my and my parents'
7 future is going to be. The family never questioned any of his
8 actions, because every time, we were told he was moving up the
9 corporate ladder.

10 Not knowing this -- it wasn't until we read the
11 articles that his deceit went on for years, years before we
12 even knew. Gone is the Nicholson's family name and the family
13 name that was made for us. Unfortunately I work in a town that
14 neighbors the town that he last moved to. The towns in the
15 area are very small and everybody seems to know each other. I
16 have worked hard for the past 11 years to be a respected
17 pediatric nurse and have met many, many families over the
18 course of those 11 years. No one understands how many
19 investors, friends and neighbors of Jimmy have come through my
20 office and have wrongfully and misguidedly accused me of
21 knowing things and profiting from him. I honestly cannot wear
22 a name badge any longer because of our last name. It surprises
23 everyone when they ask me how did I not know, when they ask
24 others and they accept it. The only fortunate thing I have is
25 that my office is very supportive.

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1 Unfortunately, I'm not alone. One of my sisters also
2 works in the financial industry. The day after his arrest, my
3 sister went to her bosses and explained to them that they were
4 cousins and solely that, they had no interaction whatsoever,
5 she did not know anything about Jimmy's investments. Her
6 bosses sat down with her in a meeting and tried to discuss with
7 her what to do because people were going to question, when she
8 used her last name. Unfortunately her office wasn't as
9 comforting. They left repeated articles all around the office,
10 emails, everything to interrogate her and also taunt her, why
11 she didn't know what was going on and how she didn't profit.
12 Conveniently, six weeks after his arrest, she was laid off, not
13 to find a job again for over another six months. She is still
14 in the financial business and still now this office has its
15 pros and cons. She will never ever be able to erase what has
16 happened because she carries the Nicholson last name.

17 Your Honor, I realize that things very tough for
18 everybody here and behind me, and it's a devastating loss for
19 everybody, and I'm not demeaning anything, but I also feel in
20 my heart that what his lawyers are saying is not going to --
21 ten years is not, I believe, going to change a man who is
22 certifiably sick. If he would have portrayed to us things that
23 were different -- he sat with my father and planned his
24 financial future and life. My father held him in a regard that
25 a father would hold a son. And to then hit my father up five

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1 weeks before he was arrested to give him another offer of
2 \$25,000, and my father took it, purely tells me he wasn't
3 looking for my father or my family's best interests.

4 So I ask you, Judge, to please consider everything
5 that these poor people and everybody behind me are saying and
6 that you take into consideration not just the aspect of losing
7 money but the aspect of, losing my life as I know it as a
8 Nicholson will no longer be the same. Thank you, your Honor.

9 THE COURT: Thank you, Ms. Nicholson.

10 All right, the next speaker.

11 MS. LEY: Good afternoon. My name is Mary Kay Ley
12 M-A-R-Y K-A-Y L-E-Y.

13 THE COURT: All right, Ms. Ley, if you could keep your
14 voice up a little louder, perhaps.

15 MS. LEY: Yes. Thank you.

16 Mr. Nicholson, you do not know me; I don't go to your
17 church, my children don't play sports with yours, I don't play
18 golf, and I don't even live in northern New Jersey. So how did
19 I get mixed up in all of this? I trust people.

20 I hear what some say about you and the names that
21 they've called you. They can do that because they know you and
22 I don't. But I will say that you have no idea who I am, what
23 you have done to my daughter and what you have done to my son
24 and to me. My husband worked hard for his children and to
25 support his family. He was fortunate that he worked full-time,

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1 but all the extras came from part-time jobs that he took so his
2 children would be able to have something better. His father
3 was not present during his childhood and into his adult life.
4 He saw his mom struggle with five boys. He was a great dad, a
5 great friend and a wonderful husband to me. But my husband
6 died in 2007, and for some reason I feel as though I did too.

7 So who are we? We are a simple family, but today I
8 feel as though I have failed my family. My son Austin is 21.
9 He graduated high school, and I remember his dad saying that he
10 just wanted to see him play another year of baseball. That
11 made me so sad. You have no idea what it was like when he took
12 his chemo and he would get rides to the baseball field and
13 people would put his wheelchair in their car, but he did get to
14 see his son get to play another game.

15 Doctors were baffled that he was still hanging in
16 there, but seeing his son play gave him his will and his
17 passion, and that's what gave him purpose to keep looking to
18 another day. That same year, my son did graduate from high
19 school but his dad wasn't there. I tell you this because you
20 need to hear it as a dad who will not see his kids play ball
21 and graduate from high school. Your children will be thinking
22 of you and they will be wondering why are you not here.

23 The high school my son went to named batting cages
24 after my husband, the booster club established a scholarship in
25 his name; and just this past year, three years after he died,

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1 the little league established a scholarship in his name. He
2 was an outstanding coach and mentor and still to this day is
3 missed.

4 My son now plays baseball for a college in
5 Pennsylvania. He studies psychology and made the dean's list
6 for the first time this last semester. He had an open tryout
7 for a Major League Baseball team but he wants to be a high
8 school guidance counselor and teach kids how to play and
9 understand the game of baseball. He wants to give back.

10 My husband took part-time jobs so that our daughter
11 Morgan, who is 23, would be able to swim year round. He saved
12 for the Elite bathing suits and the travel trips, he packed his
13 lunch, he drove an older car and he went without so that she
14 could be the best. Morgan was recruited and competed in an
15 NCAA Division I swimming for four years at a major southern
16 university. He saw her swim once at a college meet, and I can
17 still hear him say, Go, Morgan. Ted didn't get to see her
18 graduate with top honors and start the beginning of her life as
19 a young adult.

20 He was a proud dad, he loved his children, and he was
21 unselfish, patient and kind. He gave his time to read to them
22 when they were young, and helped with projects and homework.
23 He was always there for them. But my husband Ted died of a
24 rare form of bone cancer in 2007. He was diagnosed terminal,
25 and that's when my life began to spin. After 23 years of

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1 marriage, I needed to take the lead, take control, and comfort
2 him. At that point in my life, I understood what my purpose
3 was; I was strong and stoic and humbled, I appreciated life. I
4 remember saying to him, I will love you and honor you all the
5 days of my life. And it was hard to see this wonderful man
6 fade. And now, I feel like I have failed him. I trusted, I
7 did not do my due diligence.

8 Every day goes by and I hear him say to me, it's, OK,
9 it's only money. But he doesn't know what every day can be
10 like when it's a struggle. We were a two-income family; that's
11 what made it work. I was told that the life insurance that was
12 meant to supplement the income that wasn't there -- I was told
13 that investing with you, we could still draw monthly what we
14 needed to maintain our livelihoods. But our lives changed
15 since Ted died and we invested with you.

16 I don't have my husband and my friend and I don't have
17 the support that he left us, and sometimes I feel I have
18 nothing. My children are young and they will grow and they
19 will love life, they will miss their dad every day. They will
20 not have the security that their dad left for them, the support
21 that his father didn't do for him as a youngster. For me,
22 every day I try and step out of this horrible place. I am not
23 young, I will grow old, but I will love life and I will live
24 life, and I will live for him.

25 I am sorry for your family, for your mom and your dad,

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1 your wife and your children and for what you have put them
2 through because of your selfish behavior. I am sorry that you
3 will not be able to be there to experience what dads get to do
4 with their kids. You will not see how your family grows and
5 live life, and you will not be there when they die.

6 Thank you.

7 THE COURT: All right, thank you, Ms. Ley.

8 We can hear from the next speaker. You can come
9 around that way, sure.

10 MS. SIDOTI: My name is Jeannie Sidoti, J-E-A-N-N-I-E
11 Sidoti S-I-D-O-T-I.

12 THE COURT: OK, Ms. Sidoti, good afternoon.

13 MS. SIDOTI: Good afternoon.

14 THE COURT: If you can keep your voice up a little
15 louder.

16 MS. SIDOTI: I'm sorry.

17 Thank you to the court and your Honor for allowing me
18 the opportunity to address the deplorableness of the defendant,
19 Jim Nicholson, someone I used to call a friend, and how those
20 actions have impacted my life. It's difficult to put my
21 thoughts in order as his blatant disregard for the people he
22 victimized by his greed overcomes me all at once. The loss and
23 devastation that Jim brought so many people is truly
24 unforgivable. His actions were sneaky, underhanded and
25 deliberate. Really, how could someone unintentionally take

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1 huge sums of money from over 400 people, promising a good
2 return to each one, and then lose every dime to him in good
3 faith?

4 I have friends that have lost their homes, had to
5 uproot their children and had to reconstruct their lives. He
6 betrayed his wife, my oldest and dearest friend, and hurt her
7 so badly leaving her to raise three beautiful boys on her own.
8 His kind, supportive step-parents and siblings have been
9 disgraced, not to mention the irreparable damage his actions
10 caused my family, but I'll address that in a moment.

11 I wonder, was it all worth the pain and suffering he's
12 caused everyone? Where did his conscience and values go? I
13 wonder when everything changed for him. When did money and
14 power take over his soul? When and why did it suddenly become
15 OK to abandon everyone and everything? I just don't
16 understand.

17 Jim was someone I looked to for advice about money and
18 so-called investing because I knew nothing about it. He was my
19 friend. I was his maid of honor. So, of course, I completely
20 trusted him. Now I feel a fool, as it's obvious that his
21 friendship was all a big scam, just as my investment with
22 Westgate Capital was. He took monies from babies and the
23 elderly, namely my son and my mother. My son's small college
24 fund started with the money that he received from his
25 christening, to which Jim attended, and from his modeling is

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1 now gone. Now that my son is four, my husband and I have been
2 able to put away a whopping \$225 towards his college fund in a
3 savings account. When I was unsure of what to do with my
4 401(k) rollover, the defendant gladly took my money and advised
5 me that he would not be too aggressive with it as he knew that
6 was the only thing I could contribute towards my husband's and
7 my retirement.

8 Now, I thank God for my husband's pension and annuity
9 but feel guilty that I have nothing to put towards our golden
10 years. But by far, the worst pain suffered from the
11 defendant's malicious tactics is what he did to my mother Marie
12 Donnelly, an 82-year-old widow.

13 I digress to when my father was alive. He and I had
14 so many conversations during which he would say that if
15 anything ever happened to him, just be sure I took care of my
16 mother. I took care of her all right; I invested all of her
17 money with a thief: Money earned by my father who worked as a
18 steamfitter in a nuclear reactor while also working constant
19 side jobs; and money earned by my mother who reentered the
20 business world before I even turned six to help support a
21 family with five children; money received after my dad passed
22 away and they had to sell their very modest retirement home in
23 Florida that they loved so much and their small trailer in
24 Pennsylvania used as a summer home; and money from his life
25 insurance -- all totaling about \$89,000.

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1 How I look back now and wish I hadn't put all of my
2 parents' eggs into this defendant's one basket with the hole in
3 it. My mother should be living comfortably, able to spend
4 money without having to worry about going overboard once in a
5 while. Now, she cannot even get the dentures she needs and has
6 to worry about medicine, which medicine not to take at the end
7 of every year when Medicare runs out.

8 How has Jim Nicholson's greed affected my life? Well,
9 I have friends that no longer talk anymore because of the
10 conflict he has subjected his wife, my best friend, to. My
11 son's college education fund is virtually nonexistent. I live
12 with the guilt day in and day out that my mother and father's
13 70 years of hard earned money is gone and she has very little
14 to live on because she listened to me about investing with my
15 quote-unquote friend. My poor father is probably rolling over
16 in his grave. My siblings are not all too pleased with my
17 management of our parents' money. Lastly, my hard-working
18 husband has to continue breaking his back working construction
19 as long as he possibly can bear because all we have to live on
20 is his retirement pension and annuity.

21 Your Honor, I plead with you to keep my story in mind
22 when handing down the sentence for my dear old pal, James
23 Nicholson.

24 THE COURT: Thank you very much, Ms. Sidoti.

25 All right, let me hear from the next speaker.

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1 MR. GOLDEN: My name is Jeffrey Golden, G-O-L-D-E-N.

2 THE COURT: Mr. Golden, go ahead, please proceed.

3 MR. GOLDEN: They say that time heals all wounds. And
4 so I wasn't sure if that same sickening feeling in the pit of
5 my stomach that I felt when I first wrote this impact statement
6 one year ago would return when I revisited it today. Sadly,
7 that feeling has come roaring back with an unforgiving
8 vengeance.

9 Remember your last bout with severe nausea? It's much
10 like that. Just when you thought you might be done with it,
11 another wave would hit. In what seems like a lifetime ago, one
12 morning my wife and I awoke to read the latest article in the
13 local paper, about how little has been found of the bulk of our
14 life savings that we had entrusted to Nicholson. We chatted
15 about it for a few minutes and she left to drive to work. This
16 was good, we were both coming to terms with this disaster
17 pretty well. Ten minutes later, she called me from the car
18 sobbing uncontrollably; another wave had just come rolling in.

19 When I took the oath 28 years ago, I promised to love,
20 honor and obey. I also made an oath to myself that I would
21 protect her. I failed here, and that's my greatest source of
22 pain. I once had a small sailboat and was anxious to try it
23 out. So I convinced Vicky to come along on the maiden voyage.
24 With my zeal to impress her with my newfound sailing ability,
25 it never occurred to me that I should actually learn how to

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1 sail. How hard could it be? Raise the sail, turn the rudder,
2 got it. It was a beautiful day. Winds weren't strong. We
3 were sailing straight towards the inlet to the ocean. I had
4 taken a lesson and knew that to turn the boat, you proclaim,
5 "Prepare to come about," everyone ducked, I turned the rudder.
6 What was supposed to happen was, the boat was to turn as the
7 sail was blown to the other side and we would be sailing in the
8 opposite direction. Except in this case it didn't happen. I
9 said, "Prepare to come about" once again, and once again the
10 boat kept sailing towards the outlet to the ocean. I thought
11 this was a good time to share the news with my wife; and when I
12 did, she acted unconcerned. My throat felt as if I had
13 swallowed a cup of sand and she was calm. When I told her this
14 would be a good time to panic because we were heading for the
15 open ocean and I hadn't yet figured out how to turn around, she
16 replied, as she had many times before, that she had complete
17 faith in me and nothing bad could happen to her as long as I
18 was around. Talk about pressure. And right then, as if out of
19 a movie, it came to me that I needed to release the retractible
20 centerboard to gain control and turn the boat, which I did and
21 once again delivered her out of harm's way. My reputation
22 remained intact.

23 As this relates to Mr. Nicholson: I had never tried
24 harder in my life to regain control of the centerboard. But
25 because I trusted him and got too comfortable, I let him take

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1 it and he never gave it back. It wasn't a fair fight, I know;
2 I'm just a regular guy who's worked all of his life, played by
3 the rules, always gave the benefit of the doubt. How could I
4 stand a chance against this creature? I feel like Captain Kirk
5 would have felt they tried to explain to Spock what human
6 emotion is. If only I had some warning. But everyone infected
7 by him knows that's what made him so insidious. He seemed so
8 sincere, just like he did on December 11th, 2009, when he pled
9 guilty and told the judge how ashamed he was of what he had
10 done. He seemed so sincere, just like he did when I asked him
11 a year earlier in December 2008, if my 88-year-old widowed
12 mother living on a fixed income in an assisted living facility
13 in Florida should entrust her life savings of \$50,000 to him.
14 This was December 2008. He already knew his scheme was
15 unraveling. What difference could another \$50,000 possibly
16 make in his \$140 million-plus fraud? And he took her life
17 savings anyway.

18 Like an addict scoring his next fix, my friend Jim
19 told me that he would take good care of her and invest it in
20 his strategic fund. He agreed that he would send her \$500 rent
21 money each money. The first check came in January. It
22 bounced, everything is gone. I now help her out as much as I
23 can.

24 The defense attorney alluded before to Jim's special
25 relationship with his children. He seemed very sincere, just

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1 like he did when I came to his home on February 22, three days
2 before his arrest and he showed me his phony Merrill Lynch
3 statement reflecting a Westgate balance of \$172 million. I am
4 chilled to this day remembering standing in his vestibule and
5 asking him to take an oath on the lives of his three precious
6 children that our money was safe and accounted for. He looked
7 me straight in the eye and actually seemed hurt that I would
8 ask such a thing. He told me, you know, there is nothing more
9 precious to me than my three boys and on their lives I take an
10 oath that your money is safe and accounted for.

11 I was so relieved, that my feet barely touched the
12 ground leaving his house. After all, the lowest scum would
13 never say that if it wasn't true. They might make up another
14 excuse but they couldn't swear on the lives of their children.
15 I couldn't wait to call the three friends that I had referred
16 to Nicholson to tell them the good news, that even though it
17 looked bad, I was now convinced that his stories about moving
18 to the new office and changing banks must certainly be true and
19 our money was safe. He swore on the lives of his children.

20 He seemed so sincere, just like he did when he sent
21 out his personal letters from jail in which he told us how he
22 wanted to contact us sooner but his lawyer had told him not to
23 but he didn't want to wait any longer to tell us he was sorry.
24 The gall of this man was glaring as he closed with, I look
25 forward to the day when I can begin making restitution. Yeah,

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1 Jim, me too. Me too.

2 He disregarded the pain, havoc, destruction, of
3 375-plus trusting families that he would leave in his wake in a
4 way that only someone at the far end of the human spectrum
5 could, all the time giving you the feeling that he was your
6 best friend and should be trusted to stand as the guardian of
7 the gates of your future. He was good. He was good at
8 selfishness and evil, not so much in investing.

9 I am not particularly religious; somebody referred to
10 God a little bit earlier. I too believe in God and I believe
11 that whatever punishment Jim gets on this planet pales in
12 comparison to what waits for him on the other side.

13 In the meantime, I need a game plan. I need to focus
14 on what's left. It may not be much compared to what we had
15 before, but no matter how sorry I feel for myself or how much
16 rage I have, what's left is what's left. Everyone has their
17 own way of coping. My way is to rationalize that the bastard
18 took only my money, I will not let him steal anything else. My
19 family is healthy, we love each other, we have a few dollars
20 left, and we will get through this. We have but one choice to
21 get through this, and that choice is how. While I'm not
22 consumed with revenge, I have the normal emotion of wanting to
23 see justice for the guy who violated my family and stole money
24 representing two lifetimes of hard, honest work. This
25 experience has been a nightmare, the ending of which is the

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1 financial well-being of my family will not be as my wife and I
2 had a right to expect.

3 Jim will have to answer to his crimes with Judge
4 Sullivan now and most assuredly to the final judge at a later
5 date. Your many victims will go on with their lives with
6 varying degrees of recovery. You, however, are forever
7 branded, and we can only hope for some degree of justice that
8 will see you languish in prison for the better part of the rest
9 of your live. As the saying goes, maybe some day God will
10 forgive you, but I don't think many of your victims ever will.

11 I wish for you that every day from this day on, you
12 feel the same enduring daily pain that you've inflicted upon
13 us. If there's a God, and I'm pretty sure there is, then you
14 surely must be the poster boy for judgment day with him.
15 Talking directly to you makes me feel unclean. So that's the
16 last thing I'll ever say to you.

17 Judge, I reserve my closing comments to you. The
18 victims in this case have lost so much, many have lost
19 everything -- elderly people who entrusted their children to
20 invest their life savings, dreams for sending our children to
21 college, comfortable retirement earned by lifetimes of hard
22 honest work, inheritance for our children, all gone.

23 Allow me to share a universal concern: Because this
24 is a white collar crime with no physical violence, it's
25 possible that this might not seem so horrendous in your Honor's

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1 eyes. While your Honor, along with many others, surely
2 sympathizes with our pain, with all due respect, it is
3 impossible for you to feel the level of betrayal, devastation,
4 despair and debilitating fear of the future felt by so many
5 caused by this one man.

6 If he is sentenced to 20 or 30 years and gets out in
7 some fraction of that time, he'll undoubtedly flee quickly to
8 where many believe he has hidden some of our money and live out
9 his life in luxury. If that were to happen, we would all be
10 victims all over again. Please, please, put this criminal away
11 for 45 years so that we at the very least can take away from
12 this tragedy that he will never again live this counterfeit
13 life and luxury with other people's money. Thank you.

14 THE COURT: Thank you, Mr. Golden.

15 MS. CHAMBERLIN: Is it OK? It's 5:00 o'clock.

16 THE COURT: It's all right.

17 MS. CHAMBERLIN: That's fine?

18 THE DEFENDANT: Yes.

19 MS. CHAMBERLIN: Stephanie Chamberlin

20 C-H-A-M-B-E-R-L-I-N.

21 THE COURT: All right, Ms. Chamberlin.

22 MS. CHAMBERLIN: Honorable Judge Sullivan, I stand
23 here today before you not on behalf of myself but on behalf of
24 my 9-year-old daughter and 11-year-old son. My children have
25 been hit the hardest by the inner criminal working activities

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1 of Jim Nicholson's horrific plan. They have had to sit by for
2 the past two years and watch their parents struggle with the
3 daily repercussions of Jim Nicholson's greed. You see, your
4 Honor, my husband and I had the children's college funds
5 invested with Westgate. Our investment with the firm began in
6 October of 2008. We were a post-Lehman Brother investment, so
7 we painfully realized on December 11, when Jim finally pled
8 guilty, that the kids' college funds never even got put into a
9 fund, as the falsified statements had reflected. He just stole
10 it, and then proceeded to spend the money of a 9-year-old and
11 12-year-old. The thought of that today is still
12 incomprehensible.

13 Our investment started after the collapse of the stock
14 market in 2008. Like many other people, we got scared and we
15 took the college funds out of the brokerage firm that it was
16 in. Unfortunately, we listened to the advice of the VP of
17 marketing at Westgate Capital Management, Phil Rutigliano. We
18 liquidated the kids' accounts and sent the checks right over at
19 Phil at Blue Hill Plaza. We had absolutely no reason to
20 mistrust him. He went to our church and was always speaking
21 about what a genius Jim was. What we didn't realize was that
22 Jim wasn't a genius at being a hedge fund trader, he was
23 actually a genius as contriving deceptive scams to steal
24 people's money, hard-working honest people's money, innocent
25 children's money. That became quite clear when his

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1 professional record was made public in July 2009, that this was
2 not his first offense.

3 Creating Westgate was a genius plan of Jim's, to keep
4 Westgate as an unregistered fund. Ingenious. I will never
5 forget the time and place that I was when my brother called me
6 with the horrifying news. When the news broke on the 26th of
7 February, at 4:45 p.m., I had to actually sit down and try to
8 just breathe. My son looked at me as I held the phone and I
9 started to hyperventilate, and he said, Mommy, what's wrong?
10 Did somebody die, Mom? No, I replied. Mom, just breathe, it
11 will be OK. What happened? Well, a very, very bad man stole a
12 lot of money from our family. With that, my son looked in my
13 eyes in complete befuddlement and said, why would someone do
14 that to our family, Mom? Those words will resonate loud and
15 clear for many years to come. You can only imagine my inner
16 angst and sadness when he uttered those words. I had no answer
17 for him: In fact, the only one who can answer that would be
18 Jim himself. Maybe some day he can explain to my 12-year-old
19 why he found it perfectly acceptable to rob him, his 9-year-old
20 sister, his parents and many other family members. I just
21 broke down in tears.

22 My children have had to sit by and watch their parents
23 reconfigure a lifetime of savings that was blatantly stolen
24 from them. I am a teacher, and that profession is never going
25 to make me rich. In knowing that, my husband and I are in a

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1 very specific savings plan which really we don't veer from.
2 Even when my husband was out of work for over a year, we never
3 missed a college payment. Some months are bigger than others
4 but still we worked hard each and every day because that's what
5 we do for our children. I worked two jobs to contribute to
6 their funds. This is what honest, decent human beings do for
7 their flesh and blood; they don't steal, they don't throw them
8 to the side for the sake of bigger houses, more country club
9 memberships or private jets. I do not expect Jim to understand
10 that because clearly he doesn't.

11 I'm kind of skipping around because I can't -- I'm
12 sorry.

13 To be honest, your Honor, Jim doesn't realize that he
14 has affected generations of lives. My only hope for my
15 children is that in the next few years, which is really all the
16 time my husband and I are going to have, that we can scrape
17 together enough money to send our kids to college with
18 something, anything, to lessen their burden. In the short
19 period of time we will never be able to replace that Jim -- the
20 money that Jim stole and spent on his own children, his wife,
21 multiple real estate purchases, et cetera. The thought of that
22 is sickening.

23 I'm one of four children in a Catholic Italian family.
24 Two of my four siblings were involved in the scheme. One of
25 the most tragic losses that have been suffered, in my opinion,

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1 is that my children are no longer able to see family members
2 who don't live in this area. The money to jump on a plane for
3 a quality visit with families -- not there. My children miss
4 these quality visits and, quite honestly, your Honor, can you
5 really put a price tag on those?

6 There are now decisions to be made, not decisions that
7 we make, decisions that Jim forced my husband and I to make.
8 It saddens me that I'm forced to make decisions about visiting
9 my family because the money to go and visit with them now has
10 to either go to rebuild their college funds, put money back
11 into a pension, and that money has to be earmarked to rebuild
12 the funds that Jim simply just robbed my family of. He stole
13 so much more than just money from my children, it's just too
14 painful to put into words. The arguments, the stress that he's
15 personally caused in my own life is incomprehensible. The
16 sleepless nights, embarrassment and shame that my husband and I
17 have had to go through, and he's caused my children to sit by
18 and watch, is horrific.

19 My children have had to watch their parents and other
20 family members suffer all because of Jim Nicholson's greed and
21 overindulgence in the things in life that are so unimportant
22 and hopefully have been now been stripped from him, his wife,
23 his own children, just as he stripped them away from me and
24 mine. It saddens and angers me each and every day when we're
25 forced to alter our decisions because of the pathetic choices

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1 that he made. Jim's scheme affected both investors as well as
2 their families. He really has no idea of the intricate web of
3 lives that he has affected and will continue to affect.

4 Your Honor, as I see it, Jim's future rests in your
5 hands. I wish it rested in mine but it doesn't and clearly
6 you've earned it. Bernie Madoff received 150 years in prison.
7 Even though you can't compare the amounts of money that were
8 stolen, it's only because Jim had a lot less time to accumulate
9 money to and to actually steal it. But don't forget that
10 someone's hundred thousand dollars is someone else's
11 \$2.2 million. The monetary value in what Jim stole, it doesn't
12 matter, it's inconsequential at this point. It's the crime
13 that matters. Rest assured, with his work history as proof, he
14 and his employees Phil Rutigliano and Robert Lee, who nobody
15 has heard from, would still be reaping the benefits of our
16 labor if Bernie Madoff had not been discovered. Who would have
17 ever thought that Bernie Madoff would turn out to be a blessing
18 in disguise?

19 Jim and his wife, who I don't think for a minute is
20 innocent either, would still be buying up properties,
21 disposable goods and living in a mansion, that they bought with
22 stolen money, in Saddle River. All the while, innocent
23 investors would be going off to work to earn money and feed
24 into his funds each and every month.

25 I'm asking you today to please sentence Jim to the

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1 maximum years that can be applied minus one day so that he
2 cannot appeal. I am asking you this not on behalf of myself
3 because that would be selfish. I'm asking you this on behalf
4 of my children and my family. I want to be able to go home
5 tonight and feel like a proud American again, in these troubled
6 time, knowing that people are rewarded and criminals are
7 punished justly. Make no mistake, I'm aware that there are
8 news reporters among us who are following this case and your
9 Honor's decision. I hope they notify the people that what
10 James Nicholson has done to innocent children's futures, senior
11 citizens, and the average hard-working American is immoral and
12 heinous and it penetrates every level of what this country was
13 founded on, stands for, and strives to be. I want the future
14 of this country to know that America is still America and
15 behaviors like this won't be tolerated.

16 The decision ahead of you is a weighty one. It will
17 not only affect one person; it the ripple on and it will affect
18 the many investors as well as Jim's own family. Jim is
19 someone's son, father, brother, friend, and husband. And
20 believe me, your Honor, I get that. I have each one of those
21 in my lives.

22 Just remember that as Jim was stealing from all of his
23 investors represented here today, both in and outside the
24 courtroom, he chose greed and deceit over all of those other
25 roles in life. He sold his rights when he stole from his own

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1 family members. He sold his rights as a father when he decided
2 that his children's future was less important than the millions
3 of dollars in real estate and NetJet shares that he squandered
4 our money on and his own children's future on. He took a
5 gamble with his family's future. I guess now he'll have to
6 figure out what the cost is.

7 No one in his world was untouchable, not his friends
8 not his families and not his employees. I hope that you
9 sentence Jim Nicholson to the punishment that you think he
10 deserves. And my hope is that my victim impact statement
11 today, along with the other investors, will make your decision
12 a very easy one today, and I say this on behalf of my two
13 children. Thank you.

14 THE COURT: All right, thank you.

15 MS. DONNELLY: Your Honor, my name is Marie Donnelly,
16 M-A-R-I-E D-O-N-N-E-L-L-Y.

17 THE COURT: All right, Ms. Donnelly, good afternoon.

18 MS. DONNELLY: I forgot to bring my written statement
19 with me but I just wanted to say that my daughter Jeannie
20 Sidoti covered very much of what I wanted to say in it. My
21 husband passed away four years and seven months today, and he
22 worked hard all his life for the \$89,000 that I would have had.
23 And it hurts me that I can't help my family out at this time in
24 these times, that they could use some of that money, my
25 children and my grandchildren. And I just want to say that I

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1 feel sorry and I feel so sorry for all the Nicholson family
2 because they're all wonderful people, including his beautiful
3 wife and three children.

4 And as far as Mr. Mitchell said, about Jimmy wanting
5 to pull himself out of that hole, I just wonder how he thinks
6 we're all going to pull ourselves out of holes from now on.

7 Thank you, your Honor. That's about what I have to
8 say.

9 THE COURT: All right, thank you very much,
10 Ms. Donnelly, I appreciate it. Mr. Nicholson, you have a right
11 to address the Court. You don't have to but you certainly have
12 the right to if you'd like.

13 THE DEFENDANT: Your Honor, thank you for giving me
14 the opportunity to speak.

15 I listened to all the victims, and their words remind
16 me of what I already know: I have hurt so many people whose
17 lives will never be the same because of me. I have no excuse
18 for my conduct, just regret and remorse, and it will carry with
19 me forever. I apologize again to the people I've hurt, though
20 I know that may give them no solace. I apologize to my family,
21 my parents, my wife, my three boys, who now suffer so much
22 because of me. The shame I feel from what I have done to them
23 will never leave me. Westgate Capital did not start with a
24 criminal purpose. I dreamt of running a world-class asset
25 management firm. My intentions were good but unfortunately,

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1 when we suffered losses, my actions became criminal. I feel
2 the responsibility for the harm I have caused and I will, and I
3 hope to, in some measure attempt to repair that.

4 I know my actions must be punished. All I ask your
5 Honor is that you find a sentence that's fair and just. Thank
6 you.

7 THE COURT: Thank you, Mr. Nicholson.

8 All right, I've told you before the factors that a
9 court is required to consider in imposing a sentence. Those
10 factors are often in tension with each other; you can see that.
11 Some of those factors might argue in favor of leniency; others
12 in favor of a much more draconian sentence. I'll disagree with
13 one thing that Ms. Chamberlin said, which is that nothing that
14 anyone has written makes sentencing easy. The sentence I
15 impose is going to have a huge impact on Mr. Nicholson, on his
16 family on his children, and on a larger community, including
17 the victims who are here today. I'm mindful of that. It's
18 difficult to impose a sentence that will satisfy all the people
19 who will be affected by this. In fact, it's more likely that
20 it will satisfy none. I don't expect anyone to leave this
21 courtroom feeling closure, feeling vindicated or feeling
22 triumph. The loss will continue, the losses are real, and they
23 will not be repaired easily. That is a fact.

24 Our system of justice exists for many reasons. It's
25 mostly to protect the innocent. It's to promote respect for

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1 the law, because the law is ultimately what makes this society
2 one worth living in. It is to reflect also the possibility of
3 redemption for an individual but at the same time has to be
4 able to make a statement about the damage that was done.

5 So, none of these things is easy to reconcile, and I
6 have thought about this very hard for many days. I will tell
7 you, candidly, late at night I look at my own children, and I
8 think of Mr. Nicholson's. It's hard to read the letters that
9 they wrote in which they express their absolute puzzlement and
10 pain at the loss of their father. These are innocent victims,
11 they're as innocent as any victim in this room, perhaps more
12 so, and they will feel the consequences of the sentencing more
13 than anyone. I understand that.

14 I look at the individual. That's one of the things I
15 have to look at. Mr. Nicholson, I look at you and I don't know
16 what to make of this. I really don't. You are a man who was
17 born to a good family, better than a good family. The way they
18 have stood behind you through all of this is something that I
19 think is very moving; it really is a tribute to them. But you
20 had all the advantages of life. You had family, you had great
21 health, you had a good education, you had intelligence,
22 opportunity, good looks, charm, charisma, you had so much. And
23 yet you used many of these qualities to victimize people whose
24 only error in judgment was trusting you.

25 I've looked also at the victims' statements. Many of

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1 you today have read what you submitted to me. Believe me, I
2 read them. Others made some variations but there are many who
3 didn't speak today but their statements speak very eloquently.
4 The victims of these crimes were not banks, they were not large
5 corporations, they were not governments, they weren't
6 institutional investors; these were individuals who basically
7 gave Mr. Nicholson everything they had, they entrusted their
8 whole lives to him. They couldn't diversify; they were not
9 sophisticated investors. And it seems very clear that
10 Mr. Nicholson played on those relationships and cultivated
11 them, encouraged them, to invest their last pennies with him
12 even when it was clear that there was no opportunity for any of
13 that money to be recovered, it was just being taken away. You
14 encouraged them to take second mortgages, to sell homes, to
15 roll over IRAs, to entrust it all to him, knowing, as he must
16 have known, certainly in the last months, that they would never
17 see a penny of this.

18 So it's hard to understand that at a time when the
19 world was collapsing, when there was no possibility of paying
20 back this money, Mr. Nicholson was buying a home worth over
21 \$25 million in the Hamptons. I still don't understand that.

22 My heart breaks for Mr. Nicholson's family, to hear
23 his mother speak. Well, it's something no mother should ever
24 have to do. And anyone who here is a parent can understand
25 exactly what she has said, the need to stand by one's child

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1 even when they face the future that Mr. Nicholson faces here.

2 I'm sympathetic to Mr. Nicholson, I really am. He has
3 always been respectful in the court to me. He's always taken
4 this process seriously; he pled guilty in advance of this
5 crime, he accepted responsibility early, he didn't go to trial,
6 agreed to forfeiture. Those are things that are to be
7 encouraged, they are. But I keep coming back to the victims, I
8 do. Mr. Mitchell has urged that I not slavishly follow the
9 guidelines, and he's right to say that. The guidelines,
10 there's no magic in them, not at all. And I think we can be
11 seduced sometimes, by the mathematical precision of them, to
12 think that there is something that is perhaps wiser than is
13 really the case in those guidelines. The dollar amount doesn't
14 do justice to loss. It's a crude measure, it really is.

15 But in this case, I don't know that it's an overstated
16 measure, I really don't. I've looked at these victim
17 statements. And as I said, there are well over a hundred. And
18 a couple of them just really stand out.

19 This was a letter from Mr. John Ferrara, a friend of
20 Mr. Nicholson's from college, who lost \$100,000 which he
21 thought was really closer to \$200,000 based on the statements
22 he had received. He has two children. He was hoping to put
23 those children into college. And all of that is gone.

24 I looked at a man named William Fitzgerald, who's
25 written about how, not only did Jim Nicholson steal a majority

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1 of my family's life savings that took 25 years to earn but he
2 also stole our future. That's the statement you hear again and
3 again throughout these statements.

4 I looked at -- there was a statement from Donald Rath.
5 76 years old. Lost his wife in July of 2008, and then had most
6 of his life savings stolen. He's 76 years old and he finds
7 himself looking for a job because of Mr. Nicholson.

8 I look at the letter of Nadine Gross, a 62-year-old
9 widow. Her husband was a county employee, a police officer for
10 28 years. He sometimes worked three jobs to provide for his
11 family. As Ms. Gross says, we're honest hard-working people,
12 Mr. Nicholson robbed me not only of my financial future but my
13 children's as well.

14 I looked at the letter of Bill Karpowitz: I worked
15 for over 30 years to build a retirement fund for my wife. All
16 of my 401(k) savings were stolen as well as all of my original
17 investments. I will now have to work until I die. The worst
18 thing about my loss is that he has also stolen something that
19 can never be recovered, time. I don't have the luxury of 30
20 more years to earn and replace the money that was stolen.

21 A letter from Lawrence and Deborah Kennison, a couple
22 in their fifties with two children in college. 30 years of
23 saving and living modestly and honestly were wiped out by this
24 greedy and selfish creature.

25 A letter from Mike Malone: He went after individuals

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1 who had money but not institutional money. Average investors
2 Jim quoted were not sophisticated enough to investigate his
3 track record. And I think you see that. Mr. Malone talks
4 about how his little girls' college education is now in
5 question.

6 Joan T. Moran: 24 years of hard work to accumulate
7 \$92,000 for retirement money, it's all gone. She would live
8 now, she believes, on Social Security.

9 A letter from Suzanne and Vincent Papke, 60 and 67
10 years old: Mr. Papke worked for 48 years they lost \$300,000.
11 That's not a princely sum but that's the measure of a person's
12 life, that's a life savings, honestly earned.

13 Lorraine Riley, like Mr. Golden, talked about
14 Mr. Nicholson's swearing on his children that the money was
15 safe and after that, buying a \$25 million home in South
16 Hampton.

17 There was a letter -- it's the letter from Mr. and
18 Mrs. Papke which talked about meeting with the other victims
19 and they said, whether it was several million dollars or
20 several hundred thousand dollars, it was what they had, what
21 they had worked for; most of the people in these funds were not
22 large investors, they were normal people, like us, who played
23 by the rules, we didn't expect big things, just safe things,
24 and what we lost was all we had, what we worked for, what we
25 saved for. We are normal investors, not big-league investors.

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1 Many people think that it was about the returns. No, it was
2 about the trust. We were just normal people saving for our
3 retirement or our children's college our lives will never be
4 the same, our future is filled with hardship and
5 disappointment, our hearts are broken and we are too old to
6 start again. It's common sentiment; you read it throughout.

7 I think this is the last one I'll mention -- and I
8 could do this for hours, it's really heartbreaking -- the
9 letter from Kerry Ann Fox. And her mother spoke here today.
10 It really is moving because she lost her husband at the age of
11 30 and with the insurance money invested with Mr. Nicholson,
12 and it was for her children that she invested. She wanted to
13 set this up so they'd be taken care of, especially with respect
14 to college, and Mr. Nicholson took that money and lost it all
15 and spent it all and of course was buying a luxury mansion at
16 the same or several months after that. I don't understand
17 this, Mr. Nicholson, I don't.

18 So, look, I derive no joy from this, I really don't,
19 but it's my intention to sentence you to 40 years in prison.
20 That's not 45 years, and many of you have asked for that as the
21 symbol that Judge Chin talked about. I'm resisting that
22 because I think a 40-year sentence allows Mr. Nicholson at
23 least the hope of living the last years of his life as a free
24 man. And I think I do believe that kind of redemption at least
25 it needs to be held out as a possibility, some hope. It's not

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1 much hope; it's very slim hope. I also believe, however, that
2 even in prison a person can redeem themselves and can restore
3 relationships and can find themselves and make a positive
4 contribution, even in prison.

5 I will certainly recommend that Mr. Nicholson be
6 housed at a facility near his children so that they can visit
7 him, Fort Dix perhaps. Is that what you were going to say
8 Mr. Mitchell?

9 MR. MITCHELL: Yes, Judge.

10 THE COURT: So I will make that recommendation. I'll
11 make it a very strong recommendation to that effect. It's up
12 to the Bureau of Prisons but I will make that recommendation
13 more forcefully than I normally do, because I feel very badly
14 for those poor boys. But I think any lesser sentence would be
15 inappropriate, it would be unfair to the victims and it would
16 send the wrong message. There are very few -- I agree with
17 Mr. Leibowitz -- there are very few crimes of this magnitude
18 that have inflicted this much pain. This is not the investor
19 in a stock who could have easily diversified and, therefore,
20 hedged his losses and risks. These were people who took what
21 they had saved over a lifetime and entrusted Mr. Nicholson with
22 it, and they lost it all. They'll survive -- I have no doubt
23 about that, they're strong people, I'm impressed by that -- but
24 just the outrage that I think everyone must feel by what
25 happened here just has to be reflected in this sentence.

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1 So it's my intention to sentence Mr. Nicholson to 40
2 years, 20 years on the first count, a consecutive sentence of
3 15 years -- excuse me, and a consecutive sentence of 20 years
4 on the second count with the third count to be -- I guess it's:
5 Count One, 20 years; Count Three, 20 years consecutive; and
6 Count Two, 60 months, to be concurrent.

7 I also impose supervised release of three years with
8 the terms and conditions set forth in the presentence report.
9 I will impose an order of restitution of \$140,922,822.57 as
10 well as forfeiture in the amount of \$131,103,399. I will also
11 impose a special assessment of \$300. I'm not going to impose a
12 fine because the restitution and forfeiture, there's no point
13 really.

14 Is there any legal impediment to my imposing that
15 sentence?

16 MR. LEIBOWITZ: No, your Honor.

17 THE COURT: Mr. Mitchell?

18 MR. MITCHELL: No, Judge.

19 THE COURT: Mr. Nicholson, will you please stand.

20 Mr. Nicholson, having accepted your guilty plea in
21 December of 2009 and having adjudged you guilty then, I now
22 sentence you to 40 years' imprisonment -- 20 years on Count
23 One, to be followed by a consecutive term of 20 years on Count
24 Three, and a 60-month or five-year term on Count Two to run
25 concurrent to the other counts. I will also impose a

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1 three-year term of supervised release concurrent on all counts.
2 That term will include the mandatory standard and special
3 conditions set forth in the presentence report, mandatory
4 conditions that you not commit another federal, state or local
5 crime, you not possess a controlled substance, that you not
6 possess a firearm or destructive device, and that you cooperate
7 in the collection of DNA.

8 There are 13 standard conditions that you should
9 follow, as is would be the case in every case in which there is
10 supervised release. You shall also follow the following
11 special conditions: That you provide probation with access to
12 any requested financial information, that you shall not incur
13 new credit charges or open additional lines of credit; that you
14 will participate in a mental health program approved by the
15 probation office; that you will take any prescribed medications
16 unless otherwise instructed by the healthcare provider; that
17 you will contribute to the costs of those services to the
18 extent you can afford them or that they are covered by a third
19 party; that you will release any psychological or psychiatric
20 evaluation and reports to the healthcare provider and to
21 probation, that you will not purchase or sell securities,
22 commodities of any kind; that you will not receive compensation
23 directly or indirectly through any person or entity in
24 connection with any actual or contemplated transaction
25 involving a purchase or sale of securities or commodities; you

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1 shall not act as or be employed by, associated with or provide
2 consulting services to, derive any compensation from, or become
3 an agent or undisclosed principal of any broker-dealer, market
4 maker, underwriter, transfer agent, accounting firm, securities
5 information processor, clearing agency, investment advisor
6 investment company, or company that provides banking services;
7 you shall not solicit investors, supervise other soliciting
8 investors or receive compensation for employment in connection
9 with any registered or unregistered offering of securities or
10 sale of commodities; you shall report to the nearest probation
11 office within 72 hours of your release of custody; you shall
12 supervised in the district of your residence which is the
13 District of New Jersey.

14 All right, as I said, I will recommend that you be
15 housed at the facility closest to your family in New Jersey.
16 I'll recommend Fort Dix.

17 Are there any other requests you'd like Mr. Mitchell?

18 MR. MITCHELL: The only other one, Judge, is that
19 given the references in the PSR to Mr. Nicholson's use and
20 abuse of alcohol, that he be recommended for the residential
21 drug and alcohol program.

22 THE COURT: I will make that recommendation. It's up
23 to the Bureau of Prisons but I will make that recommendation.

24 Are there open counts, Mr. Leibowitz?

25 MR. LEIBOWITZ: No open counts, no underlying

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1 instruments, your Honor.

2 THE COURT: All right. Mr. Nicholson, you may have a
3 right to appeal this sentence to the extent that you haven't
4 already waived it. If you wish to appeal, you would need to do
5 so within 14 days. It's two weeks probably from Monday, when I
6 issue the judgment.

7 MR. LEIBOWITZ: Your Honor, Mr. Mitchell and
8 Ms. Lester kindly corrected me: There is an open count, Count
9 Four. I apologize.

10 THE COURT: You move to dismiss it?

11 MR. LEIBOWITZ: We do. Thank you, Judge.

12 THE COURT: So I dismiss the open count.

13 But as I was saying, if wish to appeal, Mr. Nicholson,
14 you have to file a notice of appeal within 14 days, 14 days
15 from Monday.

16 Mr. Mitchell, will you assist in the filing of an
17 appeal if Mr. Nicholson would wish to file an appeal?

18 MR. MITCHELL: Certainly, Judge.

19 THE COURT: All right, so talk to Mr. Nicholson.
20 There is a filing fee associated with the filing of an appeal
21 but if you can't afford to pay that fee, then it would be
22 waived; you just have to fill out an application to indicate
23 you don't have the means.

24 All right, is there anything else?

25 MR. MITCHELL: Judge, the original of the letters that

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1 we've redacted may I give to the Court?

2 THE COURT: Yes, thank you, Mr. Mitchell.

3 All right, this is a sad day, this is a day of pure
4 loss, Mr. Nicholson. I hope that you will be able to have a
5 life, even if prison, where you are a father to your sons and
6 where you are able to restore the relationships that may have
7 been frayed by this whole thing. I imposed the sentence that I
8 think is the appropriate one. I think it's sufficient but not
9 more than necessary to meet the goals of sentencing that I've
10 talked about. I have no illusions that's a very hard sentence.
11 I hope that you'll find some measure of happiness and peace. I
12 hope the victims will as well, and Mr. Nicholson's family
13 members as well. I hope everyone leaves here respectful of the
14 points of view of the others who spoke and the others who are
15 affected by this sentence. I know certainly I feel that way.

16 So if there's nothing further, let me just thank
17 Mr. Mitchell again and Mr. Zissu. Let me thank the government
18 and the court reporter and marshals who are here today. OK,
19 we're adjourned.

20 * * *

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