

CCKFMADS Sentence

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v.

10 CR 228 (LTS)

PETER MADOFF,

Defendant.

-----x

New York, N.Y.
December 20, 2012
4:30 p.m.

Before:

HON. LAURA TAYLOR SWAIN,
District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
LISA A. BARONI
MATTHEW L. SCHWARTZ
JULIAN MOORE
Assistant United States Attorney
JOHN R. WING, ESQ.
CHARLES SPADOFF, ESQ.
JEANNIE RUBIN, ESQ.
Attorneys for Defendant

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1 (Case called)

2 (In open court)

3 THE DEPUTY CLERK: United States v. Peter Madoff.

4 Counsel, please state your appearances for the record.

5 MS. BARONI: Good afternoon, your Honor. Lisa Baroni

6 for the government. With me are Julian Moore and Matthew

7 Schwartz from the United States Attorney's Office and Special

8 Agents Paul Takla and Paul Roberts from the FBI.

9 THE COURT: Good afternoon Ms. Baroni, Mr. Moore,

10 Mr. Schwartz, Special Agents Takla and Roberts.

11 MR. WING: Good afternoon, your Honor. John Wing for

12 Mr. Madoff, together with my partner Charlie Spada and

13 Ms. Jeanne Rubin.

14 THE COURT: Good afternoon, Mr. Wing. Good afternoon,

15 Mr. Madoff, Mr. Spada, Ms. Rubin.

16 We're here this afternoon for sentencing. I've

17 received and reviewed the presentence investigation report

18 which is dated December 10, 2012, including the recommendation

19 and addendum; a letter dated December 6, 2012 from defense

20 counsel, which was accompanied by 63 letters from the

21 defendant's family members and friends. Also I have received

22 and reviewed 41 victim impact statements and a book titled,

23 "The Club No One Wanted to Join," which is composed of letters

24 from the Madoff Ponzi scheme victims. In addition, I've

25 received and reviewed the government's sentencing memorandum

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1 dated December 13, 2012, a further letter from defense counsel
2 dated December 17, 2012 relating to clarification of a footnote
3 in the presentence report, and a December 19, 2012 letter from
4 the government regarding the motions that the government filed
5 on December 14 and 17 seeking to forego a determination of
6 restitution in favor of forfeiture and remission in this case
7 and two companion cases. I've read each of the sentencing
8 submissions, each of the letters and each of the victim impact
9 statements carefully. I note that a consent order of
10 forfeiture in the amount of \$143.1 billion was signed and filed
11 on June 29, 2012 in connection with Mr. Madoff's guilty plea.

12 Are there any other written submissions that the
13 parties intend me to have considered in connection with this
14 sentencing?

15 MS. BARONI: No, your Honor.

16 MR. WING: No, your Honor.

17 THE COURT: Thank you. Ms. Baroni, would you please
18 make a statement for the record regarding the government's
19 victim notification activities in connection with this
20 proceeding?

21 MS. BARONI: Yes, your Honor. Approximately two to
22 three weeks ago we posted on the government's website on the
23 specific Madoff page notice of this proceeding. We also sent
24 letters to as many victims as we have contact information for.
25 Our victim witness coordinator sent those out at least two

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1 weeks ago to each and every victim.

2 THE COURT: I understand that Mr. Michael DeVita
3 indicated that he wishes to speak today. Are you aware of any
4 other victim requests to speak?

5 MS. BARONI: Yes, your Honor. We're also aware of
6 Ms. Amy Luria who would like to speak as well.

7 THE COURT: How do you spell Ms. Luria's last name?

8 MS. BARONI: L-u-r-i-a.

9 THE COURT: Thank you. Are there any other persons
10 present in the courtroom who are victims who wish to be heard
11 in connection with this sentencing? All right, then, a bit
12 later in the proceeding I will call on Mr. DeVita and
13 Ms. Luria. I would ask that you limit your remarks to no more
14 than three minutes each when I call on you.

15 Mr. Wing, have you read the presentence report and
16 discussed it with Mr. Madoff?

17 MR. WING: I have, your Honor.

18 THE COURT: Mr. Madoff, have you yourself reviewed the
19 presentence report?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: And have you discussed it with your
22 attorneys?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Thank you. Mr. Madoff, you may be seated
25 again. Mr. Wing, do you have any objections or other issues

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1 with respect to the content of the report that you wish to
2 address?

3 MR. WING: We do not, your Honor.

4 THE COURT: I wanted to ask you whether in light of
5 the somewhat garbled language in that footnote relating to the
6 forfeiture amount and the amount that the defense represents
7 that Mr. Madoff actually received from Bernard Madoff whether
8 it would be appropriate for me to direct that the language in
9 that footnote be changed to say that the defense alleges that
10 Peter Madoff received from Bernard Madoff approximately
11 \$40.3 million, so on and so forth, rather than what it says
12 now, which is that the information alleges that Peter Madoff
13 received that smaller amount, which of course doesn't make
14 sense.

15 MR. WING: I think that's a wise revision, Judge.

16 THE COURT: Then I will direct that that correction be
17 made in footnote 1. Footnote 1 will therefore read: Defense
18 counsel noted that rather than \$143.1 billion, the defense
19 alleges that Peter Madoff received from Bernard Madoff
20 approximately \$40.3 million, much of which was transferred to
21 Peter Madoff's children and two entities in which Bernard
22 Madoff had recommended he make an investment, including Madoff
23 Securities International, LTD.

24 MR. WING: Thank you, Judge.

25 THE COURT: Thank you. Ms. Baroni, I take it the
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1 government doesn't object to that correction to the presentence
2 report?

3 MS. BARONI: No objection, your Honor.

4 THE COURT: Thank you. Does the government have any
5 objection or other issues with respect to the content of the
6 report?

7 MS. BARONI: No, we don't, Judge.

8 THE COURT: Is the government applying to have Mr.
9 Madoff credited with the third point for acceptance of
10 responsibility?

11 MS. BARONI: Yes, your Honor.

12 THE COURT: That application is granted and that third
13 point is incorporated in the sentencing guideline calculations
14 in the presentence report.

15 As I noted earlier, I have received an application
16 from the government for an order directing that restitution
17 will be foregone as to all defendants in this case and also as
18 to Mr. Freiling before Judge Hellerstein and Mr. DiPasquale in
19 front of Judge Sullivan, foregone in favor of forfeiture and
20 remission. My colleagues and I have agreed that I will resolve
21 that motion for all of the cases. I understand that the motion
22 itself has been posted on the government's website, is that
23 correct?

24 MS. BARONI: Yes, your Honor, it has. Yes, as well as
25 the followup letter to all of your Honors with respect to that

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1 motion.

2 THE COURT: Yes. And Judge Sullivan had issued an
3 order within the past couple of days setting a schedule for
4 opposition. That order is being withdrawn so that we can deal
5 with all of these together. My proposal is that we set a
6 filing deadline for any opposition to the motion of January 14,
7 and is the government willing and able to handle the receipt
8 and ECF uploading of any written objections by non-party
9 objectors who can't file directly on ECF? That would be quite
10 helpful to the Court.

11 MS. BARONI: Yes, your Honor. We'll try to do that.

12 THE COURT: Thank you. And so if you would provide my
13 chambers with the relevant contact information I will issue an
14 order under the captions of the three cases so the opposition
15 deadline will be January 14, the reply deadline will be
16 January 22nd and I will set February 4th, 2013 at 2:30 for a
17 hearing if necessary on the matter. In this connection I am
18 invoking Section 3664(d)(5) of Title 18 which permits the
19 deferral of restitution determinations for 90 days after
20 sentencing, so that February 4th date is well within that
21 90-day window which will enable us to address the matter
22 properly in this case as well as in all of the other cases.

23 Is this structure acceptable to counsel?

24 MR. WING: Yes, your Honor.

25 MS. BARONI: Yes, your Honor. Thank you.

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1 THE COURT: Thank you. And I would, of course, ask
2 that the government post the motions in opposition and my order
3 on the public website as well.

4 MS. BARONI: Yes, Judge.

5 THE COURT: Thank you.

6 As I noted earlier, a forfeiture order has been signed
7 and filed. That order was presented in connection with the
8 plea. I would ask at this point for the government's
9 explanation of one particular aspect of that order which was
10 also alluded to in the defense submission. As I understand the
11 order, all of Mr. Madoff's future income and Social Security
12 benefits are included in the schedule of assets forfeited and
13 so is it correct that even the reservation of a limited amount
14 of income that would occur, say, in a wage garnishment
15 situation and exemptions of small amounts of personal assets
16 that would apply in a bankruptcy proceeding will not apply to
17 Mr. Madoff?

18 MS. BARONI: If your Honor doesn't mind, I'll let
19 Mr. Schwartz address the forfeiture issues.

20 THE COURT: Thank you, Mr. Schwartz.

21 MR. SCHWARTZ: I'm not sure I can claim to have the
22 definitive answer to that, but the forfeiture order doesn't act
23 simply as a judgment under state law so I think it is broader
24 than the sort of order that would have a limited exception in a
25 bankruptcy proceeding or an attachment proceeding. At the same

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1 time, I think your sort of implicit suggestion that someone has
2 to be able to live is correct. I just don't know off the top
3 of my head the extent to which a carveout for living expenses
4 is implicit either in the order itself or in the forfeiture
5 laws. I can certainly get back to you on that.

6 THE COURT: There is a carveout for Mrs. Madoff's post
7 plea accompaniment. I see no carveout for Mr. Madoff. It does
8 seem to me that if it hasn't explicitly been considered the
9 question of whether, A, a person needs to live, and also, there
10 being some incentive to generate income, some substantial
11 portion of which would go towards forfeiture or restitution
12 obligations would be in the best interests not only of Mr.
13 Madoff personally in having income, but of the, of society and
14 of the community of victims.

15 MR. SCHWARTZ: Understood.

16 THE COURT: All right. So for purposes of the
17 judgment here, the amount is what is important. The details
18 are embodied in that order and would be subject to amendment
19 should the parties agree that amendment is appropriate.

20 At this point I would invite first Mr. DeVita and then
21 Ms. Luria to speak. Mr. DeVita, would you please come to the
22 podium? Good afternoon, sir. And would you first speak and
23 spell your name for the court reporter?

24 MR. DeVITA: Michael T. DeVita; M-i-c-h-a-e-l,
25 D-e-V-i-t-a, capital V.

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1 THE COURT: Good afternoon.

2 MR. DeVITA: Your Honor, I cannot thank you enough for
3 the opportunity to be in a courtroom again where a person with
4 the surname Madoff is to be sentenced. Making crime victims
5 part of the process affords those like myself a voice in the
6 criminal justice system. I appeal to this Court to assess
7 punishment commensurate with the damage this crime caused the
8 victims.

9 Financial crimes are violent crimes to the victims.
10 Those involved must be punished with significant jail time and
11 not token fines that are a tiny fraction of the amount stolen
12 and often considered nothing more than a cost of doing
13 business. If you want to change behavior, put the thieves in
14 jail for a long time. The prospect that incarceration is
15 certain would truly deter future crimes like this. While the
16 scope of the Madoff investment advisory business was global in
17 nature, the emotional and the financial damage was done to tens
18 of thousands of innocent individuals just like me. I followed
19 the rules. I did the right thing by planning and by saving for
20 my future and that of my family by trusting a firm that was
21 regulated and examined by a federal agency.

22 By continuing this crime for decades Bernard Madoff
23 and his co-conspirators insured that the innocents would suffer
24 maximum long-term damage with insufficient remaining time to
25 save and recover from this massive theft. I am 62. It's too

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1 late for me.

2 While the responsibility for failure to discover this
3 crime can be laid at the feet of those who failed in their
4 obligation to regulate and police SEC-regulated brokerages,
5 it's very clear to me that the responsibility for designing and
6 running the day-to-day operation of the scandal are Bernard
7 Madoff's inner circle of co-conspirators.

8 It is beyond belief that Madoff alone carried out a
9 crime lasting decades involving hundreds of feeder fund money
10 raisers, tens of thousands of investors and printing hundreds
11 of thousands of stock confirmations and monthly statements. I
12 believe it to be physically impossible for a single person to
13 carry out such a gargantuan task all by himself. Bernard
14 Madoff lied, and we the innocent victims have been waiting for
15 years for others to acknowledge their role and accept their
16 responsibility for this massive crime. We are still waiting
17 for that today. Irving Picard submits that the 17th floor of
18 the Lipstick Building was a den of thieves working together on
19 a daily basis to steal the financial security of those who
20 entrusted their team with their hard-earned savings and
21 financial future. Peter Madoff was one of those who worked on
22 the 17th floor. But not only did he work there, he ran the
23 place. He was trained as an attorney and started working at
24 the investment advisory business in 1965. He held the title of
25 senior managing director and chief compliance officer. Not

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1 only was he the owner's brother, but he had been at this firm
2 for decades and he held a title that indicated a significant
3 responsibility and oversight for running the business and also
4 with interacting with the SEC.

5 Yet Peter Madoff tells us he knew nothing about the
6 criminal enterprise that his brother was running, even though
7 the Ponzi scheme operated for decades on the floor where Peter
8 was the senior managing director. Just what was he directing?
9 There was no legitimate business on that floor, only a vast
10 criminal enterprise, printing paper and cashing checks. Peter
11 could have come forward and stopped this crime much earlier,
12 thereby greatly limiting financial damage done to his
13 customers. He chose not to. The entire investment advisory
14 team waited and waited until the scheme collapsed. Then they
15 played the part of three blind mice; hear no evil, see no evil
16 and do no evil.

17 I personally know many Madoff investors. I am too
18 familiar with the impact of this crime on their lives as well
19 as mine. The devastation includes changes not only to how
20 innocent people lived but also to how they died. The press
21 tells us of those that committed suicide because they could not
22 live with the ramifications of this crime. But very few talk
23 about the slow death that many now experience as the joy in
24 their life evaporates and they deal with the daily turmoil of
25 destitution caused directly by the crew running and prospering

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1 by Bernard Madoff's criminal enterprise.

2 We may never know how many lives have been shortened
3 by this crime, but we can be assured of medical complications
4 as well as emotional and financial considerations have led many
5 to change their day-to-day lives in a way to reduce both their
6 quality and length of life. All of this was preventable if
7 only one person was willing to do the right thing and stop this
8 in its tracks years ago. Peter Madoff could have been that
9 person, but he wasn't. In reality he chose not to be the one
10 to end this crime spree.

11 I ask that you show the same degree of compassion to
12 Peter Madoff that he showed to us; none. I and my 84-year-old
13 mother are not the only ones impacted. These funds were
14 multi-generational in nature. They were supposed and expected
15 to pay for the homes and for college educations for those
16 coming behind us. Many victims are elderly, many are retired.
17 I myself plan to retire in January of 2010. I will now never
18 retire.

19 You have the opportunity to give us justice when you
20 sentence Peter Madoff. At the same time, you have an
21 opportunity to send Wall Street a message that the white-collar
22 crime of defrauding investors will result in much more than a
23 fine or slap on the wrist. Just like Bernard received the
24 maximum and somewhat symbolic sentence of 150 years, I ask that
25 you set aside whatever plea arrangement Peter made and impose

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1 the maximum sentence possible. Judge Swain, you must serve as
2 the voice of victims in this crime when you sentence Peter
3 Madoff. We the victims have not heard one person say I knew
4 and I am sorry. We deserve better than that. Thank you.

5 THE COURT: Thank you, Mr. DiVita.

6 Miss Luria? Please come to the podium. Would you
7 please speak and spell your name for the court reporter?

8 MS. LURIA: Yes, ma'am. My name is Amy Luria
9 Nissenbaum; A-m-y, L-u-r-i-a, N-i-s-s-e-n-b-a-u-m. I'm very
10 nervous.

11 THE COURT: Take your time.

12 MS. LURIA: Thank you. I appreciate that. First of
13 all, I want to say thank you for the opportunity to speak. I
14 want to thank the FBI and the district attorneys for seeking me
15 out and for doing the best they can to make this happen today.

16 I am here to do the right thing for myself and my
17 family, to speak the truth about what Peter Madoff has and
18 continues to do to my family. Four years later Peter still has
19 chosen to take no action and turn a blind eye, leaving us the
20 true victim to fend for ourselves in a mirage of lawsuits.

21 My personal goal for today is for closure and peace,
22 to leave this whole Madoff victimization behind and to rebuild
23 my life.

24 Peter Madoff had direct involvement with my family for
25 over 30 years. He became a trusted advisor and with his wife

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1 Mary were close friends of my grandmother, Gladys C. Luria.
2 They had dinners, attended weddings, celebrated 90th and 96th
3 birthdays, sat shivas and eulogized at funerals. Eventually
4 Peter became one of the executors of her estate. As executor
5 he surrounded himself with a team of attorneys and accountants.
6 He received full reign to bring in any outside funds into the
7 Madoff envelope. He received compensation of over 400,000 as
8 an executor. He fed more than 200,000 in fees to his attorneys
9 and accountants. He demonstrated a lack of fiduciary
10 responsibility in handling my grandmother's estate. He advised
11 or was involved with my 96-year-old grandmother on her death
12 bed to change her will four days prior to her death in
13 April 2009. He paid almost \$20 million in estate taxes through
14 my grandmother's estate. By paying these estate taxes he put
15 my family into a net winner position, leaving us completely out
16 of any SiPC or MIMA reimbursement. We never received a proper
17 accounting. When finally demanded legally just within the past
18 year, almost five years later, the accounting we received were
19 falsified documents and have been objected to legally. To this
20 day we're in the process of having him formally removed as
21 executor of my grandmother's estate as well as having my
22 grandmother's estate accounting challenged.

23 It was Peter Madoff's responsibility as executor to
24 step down if he is not capable of handling this and provide
25 accurate documentation for us. By doing so he would have

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1 allowed me to defend myself as Madoff victim and I'm still in
2 courts.

3 Had I known the truth and been given the proper
4 information about my grandmother's estate I could have avoided
5 a lot more loss. My family's will was designed to keep the
6 Madoffs in charge and rightful inheritors out. When I wanted
7 an outside attorney to look at the will and state accountings I
8 was told by Peter Madoff's lawyers that they also represented
9 my family and if I didn't sign it I would forfeit my
10 inheritance. In November 2008 based on my grandmother's will I
11 was to get my full inheritance. I was told by Peter that in
12 order to keep my family at Madoff I need to keep at least a
13 million in my account. Coincidentally, a month before the
14 Madoff scam became public I asked for money. When I got a
15 check it was not written to me but to a partner, Amy J. Luria
16 Partners LLC. When I went to HSBC Bank I was told I was not a
17 signer on the account. The Madoffs as executors opened up a
18 bank account at HSBC Bank under this partnership using my
19 Social Security number without my knowledge. I knew right then
20 I had been taken. I was lied to and I had to experience
21 defending myself in another lawsuit with HSBC Bank.

22 Since December 11, 2008 my family has experienced
23 devastating financial loss and our situation continues to
24 decline. I'm in survival mode every minute caring for myself
25 at 49, my husband at 52, my daughter at 8 and my three-year-old

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1 special needs son. It started as a month-by-month hardship but
2 has grown to a day-by-day struggle. Our home is in active
3 foreclosure, not knowing where or how I'm going to live. There
4 are days when I struggle to obtain money to feed and clothe my
5 children. Though I was able to obtain state assistance for my
6 two children through Children's Health Plus my husband and I
7 did not have any health insurance for four years and could only
8 seek medical assistance via a hospital emergency room. I was
9 in a hospital without medical insurance and I am now facing
10 huge medical debt. My kids are now getting sponsored education
11 from our school district because of my financial situation and
12 their educational needs.

13 As far as colleges for my kids, thank God they are
14 young because time is on my side to catch up for them. Our
15 utilities, electric, oil and phone are in constant past due
16 turn-off status. A LIPA agent comes to my door to turn off my
17 power but has shown more decency and compassion than Peter
18 Madoff has. My brother has an autistic son and doesn't know
19 how to provide for him. He's scared he'll have to be
20 institutionalized in a home because he doesn't have the money
21 to plan for his future. My mother at 72 years old has
22 dementia, is living on Medicaid with less than two months
23 savings to live in her apartment. She doesn't have the means
24 or options or know where to go. My mother asks me frantically
25 every single day what did we do to deserve this, where are we

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1 going to go, what are we going to do. I don't have answers. I
2 don't have the money to help her.

3 The option of Peter Madoff going to jail for only ten
4 years does not seem just. He partook in a financial Holocaust
5 not only for my family but thousands of victims and this deceit
6 as you can see by his actions still continues. More sentencing
7 time needs to be considered. He benefited from this scam for
8 over 30 years and he should be in jail for the same amount of
9 time. Where is the remorse, decency, compassion that's been
10 mentioned in the press lately? Where is the actions of doing
11 the right thing? Helping my family or other victims' families
12 move on with their lives would have been the right thing to do.
13 If he has any decency or compassion for his victims it only
14 seems to be used as a benefit, as a negotiation point.

15 I grew up believing and teaching my children it's
16 never too late to do the right thing, to be a decent human
17 being and take appropriate actions to right a wrong. I guess
18 that philosophy doesn't hold true for Peter Madoff.

19 And I do need to add a note. I find it unacceptable
20 that he has the opportunity to attend a family event and I feel
21 he should go away today. Thank you for your time. I
22 appreciate the opportunity to speak.

23 THE COURT: Thank you, Ms. Luria. I will now hear
24 from counsel on sentencing issues. Mr. Wing, would you like to
25 speak first?

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1 MR. WING: Thank you, your Honor. Peter Madoff is
2 not --

3 THE COURT: I'm just going to ask that you pull the
4 microphone closer to you.

5 MR. WING: Sure.

6 THE COURT: Thank you.

7 MR. WING: Peter Madoff is not Bernard Madoff and he
8 was not a knowing participant in Bernard Madoff's Ponzi scheme
9 which he only learned of the night before the government was
10 informed of this scheme. He did engage in serious misconduct
11 for which he has taken full responsibility and for which he has
12 paid and with the Court's sentence today will continue to pay
13 an enormous price. Notwithstanding this misconduct, those who
14 know him know that he is and has been a good and decent man in
15 many ways and for many years has looked out for and taken care
16 of and extended himself to many other people, and
17 professionally he was a substantial contributor to the very
18 legitimate market making business at the Bernard Madoff firm.

19 We appreciate the Court's consideration of our
20 sentencing memorandum and of the many letters that were
21 submitted on behalf of Peter Madoff. We would ask that he be
22 permitted to voluntarily surrender and that the Court recommend
23 that he serve his prison sentence at the Otisville prison camp.
24 Thank you, your Honor.

25 THE COURT: Thank you, Mr. Wing. Ms. Baroni, does the
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1 government wish to be heard?

2 MS. BARONI: Yes, your Honor.

3 Your Honor, Peter Madoff carried out his part of an
4 epic fraud. As the chief compliance officer and as an attorney
5 he lied repeatedly over the course of years to regulators and
6 investors, investors who entrusted their money to Bernard L.
7 Madoff Investment Securities. Peter Madoff created completely
8 fake compliance reports in which he had pretended that he had
9 reviewed the trading activity in the investment advisory
10 business. In reality he did nothing of the sort. Had he
11 actually performed the reviews that he was supposed to have
12 performed it would have confirmed that no real securities
13 trades ever happened in the investment advisory business. In
14 addition to his lies on the compliance documents Peter Madoff
15 also lied on documents filed with the Securities and Exchange
16 Commission. For example, he claimed that the investment
17 advisory business had 23 clients when in fact it had more than
18 4,000. All to mislead regulators to create the appearance that
19 BLMIS had a very small number of clients in order to avoid
20 scrutiny from the SEC and other regulators.

21 Peter Madoff also benefited immensely from the fraud.
22 In the last years before the collapse of BLMIS he received
23 \$40 million from his brother Bernard L. Madoff and much of that
24 came directly out of investors funds and that \$40 million was
25 disguised to Peter Madoff as loans or sham stock trades, all to

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1 enrich himself and his family and all to avoid the taxes that
2 he was required to pay on it.

3 These weren't crimes borne of financial distress or
4 market pressures. They were calculated, long-term crimes of
5 deception that he carried out year after year and he knew that
6 his clients and the regulators made important decisions based
7 on his lies, but that didn't stop him.

8 In sentencing the defendant, your Honor, we would ask
9 your Honor also to consider the defendant's actions at the end
10 in December 2008 when he knew that the firm was at the brink of
11 collapse. Even at that point, rather than contacting law
12 enforcement he tried to take the last of the investors' money.
13 He helped prepare \$300 million in checks for his family,
14 friends and preferred clients and had the FBI not arrested
15 Bernard L. Madoff when they did that part of the scheme might
16 well have succeeded.

17 Your Honor, the guideline sentence is in this case is
18 ten years imprisonment. The probation department recommends
19 ten years imprisonment, the defendant has agreed to ten years
20 imprisonment and for repeatedly lying to investors and
21 regulators and for completely abdicating his responsibilities
22 as the chief compliance officer we respectfully submit that ten
23 years imprisonment should be imposed in this case.

24 THE COURT: Thank you. Mr. Madoff, would you like to
25 speak to the Court on your own behalf?

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1 THE DEFENDANT: Thank you, your Honor, I do.

2 I am deeply ashamed of my conduct. I have tried to
3 atone by pleading guilty and agreeing to forfeit all my present
4 and future assets and income, including my home, my life
5 savings, my pension and my personal and real property. I am
6 profoundly sorry that my failures let many people down,
7 including my own loved ones and family. I accept full
8 responsibility for my actions that have brought me before your
9 Honor today and I am here to accept my punishment from this
10 Court. Thank you for listening to me.

11 THE COURT: Thank you, Mr. Madoff.

12 I would ask that everyone sit quietly for just a
13 couple of minutes while I reflect on what I've heard and make
14 my final decision.

15 (Pause)

16 THE COURT: Thank you for your patience. I read
17 everything that was submitted to me carefully before coming to
18 court today and I have listened very carefully to everything
19 that has been said here in court today.

20 I adopt the factual recitation that is set out in the
21 presentence report. As the Supreme Court explained in its
22 opinion in the Booker case, this Court has discretion, subject
23 to the applicable statutory provisions and limitations in
24 exercising its power under Section 3553(a) of Title 18 to
25 determine the particular sentence to be imposed in each

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1 sentence is computed by adding the applicable statutory maximum
2 sentences on the two counts of conviction resulting in a
3 guidelines sentence of 120 months, or ten years of
4 imprisonment. I have used the 2012 edition of the sentencing
5 guidelines manual in making this analysis.

6 I have considered the question of whether there is an
7 appropriate basis for departure from the advisory range within
8 the guideline system. An upward departure is precluded by the
9 statutory maximum sentencing provisions. The Court does not
10 find any grounds warranting a downward departure within the
11 guidelines system.

12 The Court has carefully considered all of the Section
13 3553(a) statutory sentencing factors and goals and all of the
14 information that has been put before it in light of the 3553(a)
15 factors in its deliberation as to the sentence to be imposed
16 here.

17 The enormity of the criminal activity that has led to
18 this day cannot be underestimated. Mr. Peter Madoff's choices
19 and deliberate admitted conduct, falsifying records and
20 securities filings for the investment advisory business run by
21 Bernard Madoff at a minimum contributed to the concealment and
22 continuation of Bernard Madoff's vast Ponzi scheme. Literally
23 billions of dollars of innocent investor savings have been lost
24 to personal extravagance, the establishment and maintenance of
25 the appearance of a phenomenally successful investment business

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1 and promotion of the Madoff name through charitable and other
2 public gestures. Trust in financial institutions, thousands of
3 individual lives and numerous charitable organizations have
4 been blown apart.

5 The guidelines sentence here is life imprisonment. It
6 is literally off the sentencing guidelines chart. The
7 government and the defense, however, have negotiated a
8 carefully crafted set of charges and a guilty plea agreement
9 under which the maximum possible sentence of imprisonment is
10 ten years. Thus the question with which this Court has to
11 wrestle is not whether a sentence longer than ten years is
12 called for but rather whether anything less than ten years
13 could appropriately serve the statutory purposes of sentencing.

14 Peter Madoff worked in his brother's business for over
15 four decades. He accepted and held the title of compliance
16 officer for just under four decades. He was a sophisticated
17 and by all accounts meticulous actor in the securities
18 business. Peter Madoff earned a sterling reputation in trade
19 execution and market making. He held high positions in the
20 National Association of Securities Dealers or NASD, as well as
21 other professional and civic organizations. He is a lawyer.
22 Peter Madoff is a sophisticated person who knew and knows right
23 from wrong. Having taken on the title of compliance officer
24 for Bernard Madoff's investment advisory business and the
25 responsibility of overseeing that business Peter Madoff did

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1 nothing in the way of oversight, but still worse than doing
2 nothing to oversee operations he lied to authorities, using his
3 reputation and training and the Madoff name to deflect
4 suspicion.

5 Peter Madoff's role was not at all passive. Indeed,
6 he carefully falsified reports. Perhaps Peter Madoff did not
7 as he maintains know about the larger Ponzi scheme but he could
8 not have been blind to the fact that the business practices in
9 which he himself engaged when it came to BLMIS affairs were
10 terribly wrong. He knew that huge amounts of money that his
11 brother Bernard conveyed to him were not the proceeds of the
12 specific trades to which they were attributed. He knew that
13 trading records were backdated and falsified. He knew that the
14 stated purpose of the falsification was to cheat the United
15 States government and his fellow citizens out of taxes that
16 were owed on that money. He knew that the ADV forms filed with
17 the SEC were false. To take his story as told when he pled
18 guilty at face value, he knew that the business operation was a
19 little bit crooked and he was content to go along with that.
20 We all know that a crooked operation is only rarely if ever
21 just a little bit crooked.

22 Peter Madoff betrayed investors and betrayed a public
23 trust by posing as a faithful compliance officer, therefore
24 shielding the corrupt business practices of the Madoff
25 companies and enabling the perpetuation of a massive fraud from

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1 which not only Bernard Madoff but Peter himself and the entire
2 family benefited handsomely for decades.

3 Peter Madoff cheated on his own taxes as well. He
4 used the firm as a personal source of untaxed, unearned cash;
5 putting his wife on the payroll, lying about the legitimacy of
6 that status in government filings and using the firm's credit
7 card for close to \$200,000 of personal expenses. Turning a
8 blind eye to such practices would have been deplorable.
9 Participating in them was far worse. Even when Bernard Madoff
10 told Peter Madoff outright that he had run a Ponzi scheme and
11 that the money that Peter Madoff and other family members
12 received was not the product of investment returns, even when
13 Peter Madoff knew that there would not be enough to pay the
14 thousands of customers who had entrusted their savings to the
15 Madoff name, Peter Madoff did not say stop. He did not go to
16 the authorities. With this full knowledge he reviewed and
17 approved priority payments to family members and friends of
18 what little money was left and took out \$200,000 of cash,
19 investors money, took it out ostensibly to use it in making
20 charitable contributions.

21 Peter Madoff's contention that he did not know that
22 anything was wrong with the investment advisory business is
23 beneath the dignity of the former vice chairman of NASD,
24 governor of the National Stock Exchange and corporate director,
25 community pillar and family paradigm about whom I have read so

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1 much over the past few days. It is also, frankly, not
2 believable.

3 The Court understands that Peter Madoff's relationship
4 with his brother Bernard was unhealthy. That cannot excuse
5 Peter Madoff's conduct. The Court is also very much aware that
6 Peter Madoff and his family have lost the assets, reputation,
7 financial security and social position that they had enjoyed.
8 The negotiated and indeed Draconian forfeiture agreement seals
9 Peter Madoff's financial ruination. That punishment while
10 indisputably severe is not alone sufficient to effect a
11 punishment that is just, given the nature, magnitude and
12 context of the crimes for which Mr. Madoff is being sentenced
13 today.

14 Many people and institutions have suffered the same
15 fall from wealth, privilege and in many cases even basic levels
16 of financial security as a result of the massive fraud.
17 Ordinary wage-earning people who had planned for ordinary
18 comfortable retirements are among the victims here too,
19 although the reports that Peter Madoff filed told government
20 authorities that the investment advisory clients were few in
21 number and that all were sophisticated investors.

22 Proper punishment also requires a lengthy term of
23 imprisonment, the punitive loss of Mr. Madoff's personal
24 freedom. Such a sentence is also necessary to serve the
25 deterrence function of sentencing. I am persuaded that Peter

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1 Madoff himself will not reoffend. He has been hurt too badly
2 and brought his family down too low to go the route of
3 dishonest business practices again. However, the world in
4 which his conduct took place is full of many temptations and
5 opportunities to breach trust relationships for personal gain.

6 The consequences of such behavior must be harsh to
7 help deter others from taking the path of dishonesty and theft.
8 Sentencing consistency also guides this Court strongly in the
9 same direction. But that is not the end of the story. Much
10 remains to be written and perhaps told.

11 I have received many letters that speak of a man who
12 has suffered much and who has shown great courage and
13 responsibility in unthinkable situations of adversity.
14 Eloquent letters paint in stark terms the tragic blows and
15 daily challenges that you, Mr. Madoff, your wife and your
16 extended family faced before 2008 through December and the
17 impact that the revelations of December 2008 has had on all of
18 you emotionally and practically. You, Peter Madoff, have been
19 an inspiration and a witness for faith and selflessness in the
20 lives of many, that is clear. The duality of your behavior is
21 remarkable, but not unique. You have an opportunity to build
22 on this very positive aspect of your legacy while you serve
23 your prison term and in every day of the remainder of your
24 life.

25 I recognize that you want to understand what has

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1 happened and clearly you want to rehabilitate your name and
2 that of your family. Both require honesty. People are still
3 hurting in the victim community as well as in your family.
4 Investigations and asset searches are still ongoing. If you
5 truly want to live as the selfless, honest person who so many
6 others have seen and to whom so many are grateful, I challenge
7 you to be honest about all that you have done and all that you
8 have seen, in other words, about all that you know. You can
9 live a life in which the light of truth illuminates all corners
10 of your life and of your memory.

11 No one but you knows what more there is to your story.
12 Your path to social redemption and rehabilitation depends on
13 the ability of friends and strangers to know that you are truly
14 courageous and that you can be trusted. Of course, the Fifth
15 Amendment protects absolutely your right to remain silent so
16 you cannot be forced to say anything more ever. You with your
17 lawyers and your family will have to decide what course is
18 consistent with the life that you want to live and the conduct
19 for which you want to be remembered.

20 Since your son's death and the collapse of BLMIS you
21 have been on a personal journey of spiritual examination and
22 fellowship and you have worked hard to hold together and
23 support your family. You have worked hard to model both
24 humility and generosity. I note in particular your combination
25 of community work and study at Central Synagogue and you have

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1 introduced your young granddaughter to volunteer service in
2 that community. There is much that is good in your life and
3 the way in which you are seeking to pursue it. You have much
4 to build on and much in terms of strength and your obvious
5 desire to play a positive role in other people's lives. I
6 suggest that you now orient yourself completely towards that
7 goal.

8 It is important for the victim and for society as a
9 whole that the full scope of corrupt activity at BLMIS be
10 uncovered and understood. Part of your redemptive work is
11 determining what if any role you will play in that process and
12 making a decision consistent with your personal and spiritual
13 goals and values. I know that you want to be a man who others
14 can properly depend on, admire and emulate. I also know that
15 you can succeed in attaining and maintaining such a life even
16 while you are in prison. You have overcome many challenges
17 that might have defeated others.

18 Having considered all of these matters I conclude that
19 the guidelines sentence is sufficient, appropriate and no
20 greater than necessary to address the statutory purposes of
21 sentencing. Mr. Madoff, I would ask that you and your
22 attorneys please stand now while I announce the sentence that I
23 intend to impose.

24 Mr. Madoff, is the judgment of this Court that you are
25 to serve consecutive imprisonment terms of five years each on

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1 each of Counts One and Two, for a total of ten years of
2 imprisonment to be followed by concurrent terms of one year of
3 supervised release on each of your two counts of conviction,
4 for a total of one year of supervised release. The standard
5 conditions of supervision 1 through 15 as detailed in the
6 sentencing guidelines manual will apply.

7 In addition, you will be subject to the following
8 mandatory conditions: You must not commit another federal,
9 state or local crime. You must not illegally possess a
10 controlled substance. You must not possess a firearm or
11 destructive device. You must cooperate in the collection of
12 DNA as directed by the authorities. I am suspending the normal
13 mandatory drug testing condition based on the probation
14 office's determination, which I am glad to be able to adopt,
15 that you pose a low risk of future substance abuse.

16 You must also meet the following special conditions:
17 You must provide the probation officer with access to any
18 requested financial information. You must not incur any credit
19 charges or open additional lines of credit without the approval
20 of the probation officer unless you are in compliance with the
21 installment payment schedule -- I am going to restate that
22 because in this situation there is a forfeiture obligation,
23 there is unlikely to be an installment payment schedule so this
24 will simply be a requirement that you must not incur new credit
25 charges or open new lines of credit without the approval of the

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1 probation officer.

2 You must participate in an alcohol aftercare treatment
3 program under a co-payment plan which may include testing with
4 a breathalyzer at the discretion and instruction of the
5 probation officer. You must report to the nearest probation
6 office within 72 hours of your release from custody and you
7 will be supervised by your district of residence.

8 In light of the magnitude and scope of your forfeiture
9 obligation and the need to provide compensation to the victims
10 I will not impose a fine. I will order that you pay to the
11 United States the mandatory special assessment in the amount of
12 \$200 which is \$100 for each of your two counts of conviction
13 and that is payable immediately.

14 You must inform the probation department of any change
15 in financial circumstances and notify the United States
16 Attorney for this district within 30 days of any change of
17 mailing or residence address that occurs while any part of your
18 forfeiture or special assessment obligations remain unpaid.

19 I will recommend to the Bureau of Prisons that you be
20 designated to the Otisville prison camp in order to facilitate
21 the maintenance of your ties with family members.

22 Does the defense have any other recommendation
23 requests, flagging medical issues or anything?

24 MR. WING: We do not, your Honor, although we would
25 ask if we have the end of the day tomorrow to make the \$200

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1 payment because we do not have it available today.

2 THE COURT: Yes, that may be made by tomorrow, end of
3 the day tomorrow.

4 MR. WING: Thank you.

5 THE COURT: I find that Mr. Madoff is required to
6 forfeit to the United States the sum of \$143.1 billion which
7 represents the proceeds that he obtained directly or indirectly
8 as a result of his criminal activity. This obligation is
9 reflected in the Court's order entered on June 29, 2012.
10 Pursuant to Title 18, Section 3664(d)(5), the determination as
11 to whether a restitution obligation will be imposed is deferred
12 to February 4, 2013.

13 I believe that this sentence is reasonable within the
14 meaning of the law, sufficient, appropriate and no greater than
15 necessary to satisfy the statutory purposes of sentencing which
16 include punishment and deterrence.

17 Does any counsel here know of any legal reason why the
18 sentence should not be imposed as stated?

19 MS. BARONI: No, your Honor.

20 MR. WING: No, your Honor.

21 THE COURT: The sentence as stated is imposed.

22 I must say something important to you about appeal
23 rights, sir. To the extent you have not given up your right to
24 appeal through your guilty plea you have the right to appeal
25 this sentence. If you are unable to pay the cost of an appeal,

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1 you may apply for leave to appeal in forma pauperis. At your
2 request the clerk of court will file a notice of appeal for
3 you. Any notice of appeal must be filed within 14 days of the
4 judgment of conviction so be certain to speak with your lawyers
5 about this issue promptly.

6 Ms. Baroni, are there any remaining counts or
7 underlying indictments that need to be addressed?

8 MS. BARONI: No, your Honor.

9 THE COURT: Thank you.

10 Mr. Madoff, you must surrender voluntarily at the
11 designated facility by 2:00 in the afternoon on February 6,
12 2013. I thank counsel for their work on this case. Mr. Madoff
13 and all the victims here I wish you, your families and each and
14 every victim and their families strength, courage and peace.

15 I will direct that a corrected copy of the presentence
16 report be provided for counsel, the Bureau of Prisons and the
17 Sentencing Commission. All other copies of the report must
18 remain appropriately confidential. If an appeal is taken,
19 counsel on appeal are to be permitted access to the report.
20 The original unredacted versions of the letters in support of
21 Mr. Madoff will be filed under seal in accordance with my
22 sentencing submission procedures.

23 Counsel, is there anything else that we need to
24 address together this afternoon?

25 MR. WING: No, your Honor.

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1 MS. BARONI: Not from the government. Thank you, your
2 Honor.

3 THE COURT: Thank you. Ms. Ng, do you have to give
4 any paper to -- Mr. Madoff and Mr. Wing, you will need to go to
5 our probation department tomorrow by the end of the day and
6 information about the details of the sentence will be
7 transmitted electronically to probation by tomorrow morning and
8 that is in order to commence the paperwork with probation and
9 the Bureau of Prisons to get the designation process going.

10 MR. WING: Very well, your Honor.

11 THE COURT: That is at 233 Broadway, so. Do we need
12 to address anything else today?

13 MR. WING: Nothing else, your Honor.

14 THE COURT: Thank you all and I wish all here safe and
15 healthy holidays.

16 COUNSEL: Thank you, your Honor.

17 (Adjourned)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v.

10 CR 228 (LTS)

PETER MADOFF,

Defendant.

-----x

New York, N.Y.
December 20, 2012
4:30 p.m.

Before:

HON. LAURA TAYLOR SWAIN,
District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
LISA A. BARONI
MATTHEW L. SCHWARTZ
JULIAN MOORE
Assistant United States Attorney
JOHN R. WING, ESQ.
CHARLES SPADOFF, ESQ.
JEANNIE RUBIN, ESQ.
Attorneys for Defendant

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Sentence

1 (Case called)

2 (In open court)

3 THE DEPUTY CLERK: United States v. Peter Madoff.

4 Counsel, please state your appearances for the record.

5 MS. BARONI: Good afternoon, your Honor. Lisa Baroni

6 for the government. With me are Julian Moore and Matthew

7 Schwartz from the United States Attorney's Office and Special

8 Agents Paul Takla and Paul Roberts from the FBI.

9 THE COURT: Good afternoon Ms. Baroni, Mr. Moore,

10 Mr. Schwartz, Special Agents Takla and Roberts.

11 MR. WING: Good afternoon, your Honor. John Wing for

12 Mr. Madoff, together with my partner Charlie Spada and

13 Ms. Jeanne Rubin.

14 THE COURT: Good afternoon, Mr. Wing. Good afternoon,

15 Mr. Madoff, Mr. Spada, Ms. Rubin.

16 We're here this afternoon for sentencing. I've

17 received and reviewed the presentence investigation report

18 which is dated December 10, 2012, including the recommendation

19 and addendum; a letter dated December 6, 2012 from defense

20 counsel, which was accompanied by 63 letters from the

21 defendant's family members and friends. Also I have received

22 and reviewed 41 victim impact statements and a book titled,

23 "The Club No One Wanted to Join," which is composed of letters

24 from the Madoff Ponzi scheme victims. In addition, I've

25 received and reviewed the government's sentencing memorandum

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1 dated December 13, 2012, a further letter from defense counsel
2 dated December 17, 2012 relating to clarification of a footnote
3 in the presentence report, and a December 19, 2012 letter from
4 the government regarding the motions that the government filed
5 on December 14 and 17 seeking to forego a determination of
6 restitution in favor of forfeiture and remission in this case
7 and two companion cases. I've read each of the sentencing
8 submissions, each of the letters and each of the victim impact
9 statements carefully. I note that a consent order of
10 forfeiture in the amount of \$143.1 billion was signed and filed
11 on June 29, 2012 in connection with Mr. Madoff's guilty plea.

12 Are there any other written submissions that the
13 parties intend me to have considered in connection with this
14 sentencing?

15 MS. BARONI: No, your Honor.

16 MR. WING: No, your Honor.

17 THE COURT: Thank you. Ms. Baroni, would you please
18 make a statement for the record regarding the government's
19 victim notification activities in connection with this
20 proceeding?

21 MS. BARONI: Yes, your Honor. Approximately two to
22 three weeks ago we posted on the government's website on the
23 specific Madoff page notice of this proceeding. We also sent
24 letters to as many victims as we have contact information for.
25 Our victim witness coordinator sent those out at least two

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1 weeks ago to each and every victim.

2 THE COURT: I understand that Mr. Michael DeVita
3 indicated that he wishes to speak today. Are you aware of any
4 other victim requests to speak?

5 MS. BARONI: Yes, your Honor. We're also aware of
6 Ms. Amy Luria who would like to speak as well.

7 THE COURT: How do you spell Ms. Luria's last name?

8 MS. BARONI: L-u-r-i-a.

9 THE COURT: Thank you. Are there any other persons
10 present in the courtroom who are victims who wish to be heard
11 in connection with this sentencing? All right, then, a bit
12 later in the proceeding I will call on Mr. DeVita and
13 Ms. Luria. I would ask that you limit your remarks to no more
14 than three minutes each when I call on you.

15 Mr. Wing, have you read the presentence report and
16 discussed it with Mr. Madoff?

17 MR. WING: I have, your Honor.

18 THE COURT: Mr. Madoff, have you yourself reviewed the
19 presentence report?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: And have you discussed it with your
22 attorneys?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Thank you. Mr. Madoff, you may be seated
25 again. Mr. Wing, do you have any objections or other issues

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1 with respect to the content of the report that you wish to
2 address?

3 MR. WING: We do not, your Honor.

4 THE COURT: I wanted to ask you whether in light of
5 the somewhat garbled language in that footnote relating to the
6 forfeiture amount and the amount that the defense represents
7 that Mr. Madoff actually received from Bernard Madoff whether
8 it would be appropriate for me to direct that the language in
9 that footnote be changed to say that the defense alleges that
10 Peter Madoff received from Bernard Madoff approximately
11 \$40.3 million, so on and so forth, rather than what it says
12 now, which is that the information alleges that Peter Madoff
13 received that smaller amount, which of course doesn't make
14 sense.

15 MR. WING: I think that's a wise revision, Judge.

16 THE COURT: Then I will direct that that correction be
17 made in footnote 1. Footnote 1 will therefore read: Defense
18 counsel noted that rather than \$143.1 billion, the defense
19 alleges that Peter Madoff received from Bernard Madoff
20 approximately \$40.3 million, much of which was transferred to
21 Peter Madoff's children and two entities in which Bernard
22 Madoff had recommended he make an investment, including Madoff
23 Securities International, LTD.

24 MR. WING: Thank you, Judge.

25 THE COURT: Thank you. Ms. Baroni, I take it the
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1 government doesn't object to that correction to the presentence
2 report?

3 MS. BARONI: No objection, your Honor.

4 THE COURT: Thank you. Does the government have any
5 objection or other issues with respect to the content of the
6 report?

7 MS. BARONI: No, we don't, Judge.

8 THE COURT: Is the government applying to have Mr.
9 Madoff credited with the third point for acceptance of
10 responsibility?

11 MS. BARONI: Yes, your Honor.

12 THE COURT: That application is granted and that third
13 point is incorporated in the sentencing guideline calculations
14 in the presentence report.

15 As I noted earlier, I have received an application
16 from the government for an order directing that restitution
17 will be foregone as to all defendants in this case and also as
18 to Mr. Freiling before Judge Hellerstein and Mr. DiPasquale in
19 front of Judge Sullivan, foregone in favor of forfeiture and
20 remission. My colleagues and I have agreed that I will resolve
21 that motion for all of the cases. I understand that the motion
22 itself has been posted on the government's website, is that
23 correct?

24 MS. BARONI: Yes, your Honor, it has. Yes, as well as
25 the followup letter to all of your Honors with respect to that

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1 motion.

2 THE COURT: Yes. And Judge Sullivan had issued an
3 order within the past couple of days setting a schedule for
4 opposition. That order is being withdrawn so that we can deal
5 with all of these together. My proposal is that we set a
6 filing deadline for any opposition to the motion of January 14,
7 and is the government willing and able to handle the receipt
8 and ECF uploading of any written objections by non-party
9 objectors who can't file directly on ECF? That would be quite
10 helpful to the Court.

11 MS. BARONI: Yes, your Honor. We'll try to do that.

12 THE COURT: Thank you. And so if you would provide my
13 chambers with the relevant contact information I will issue an
14 order under the captions of the three cases so the opposition
15 deadline will be January 14, the reply deadline will be
16 January 22nd and I will set February 4th, 2013 at 2:30 for a
17 hearing if necessary on the matter. In this connection I am
18 invoking Section 3664(d)(5) of Title 18 which permits the
19 deferral of restitution determinations for 90 days after
20 sentencing, so that February 4th date is well within that
21 90-day window which will enable us to address the matter
22 properly in this case as well as in all of the other cases.

23 Is this structure acceptable to counsel?

24 MR. WING: Yes, your Honor.

25 MS. BARONI: Yes, your Honor. Thank you.

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1 THE COURT: Thank you. And I would, of course, ask
2 that the government post the motions in opposition and my order
3 on the public website as well.

4 MS. BARONI: Yes, Judge.

5 THE COURT: Thank you.

6 As I noted earlier, a forfeiture order has been signed
7 and filed. That order was presented in connection with the
8 plea. I would ask at this point for the government's
9 explanation of one particular aspect of that order which was
10 also alluded to in the defense submission. As I understand the
11 order, all of Mr. Madoff's future income and Social Security
12 benefits are included in the schedule of assets forfeited and
13 so is it correct that even the reservation of a limited amount
14 of income that would occur, say, in a wage garnishment
15 situation and exemptions of small amounts of personal assets
16 that would apply in a bankruptcy proceeding will not apply to
17 Mr. Madoff?

18 MS. BARONI: If your Honor doesn't mind, I'll let
19 Mr. Schwartz address the forfeiture issues.

20 THE COURT: Thank you, Mr. Schwartz.

21 MR. SCHWARTZ: I'm not sure I can claim to have the
22 definitive answer to that, but the forfeiture order doesn't act
23 simply as a judgment under state law so I think it is broader
24 than the sort of order that would have a limited exception in a
25 bankruptcy proceeding or an attachment proceeding. At the same

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1 time, I think your sort of implicit suggestion that someone has
2 to be able to live is correct. I just don't know off the top
3 of my head the extent to which a carveout for living expenses
4 is implicit either in the order itself or in the forfeiture
5 laws. I can certainly get back to you on that.

6 THE COURT: There is a carveout for Mrs. Madoff's post
7 plea accompaniment. I see no carveout for Mr. Madoff. It does
8 seem to me that if it hasn't explicitly been considered the
9 question of whether, A, a person needs to live, and also, there
10 being some incentive to generate income, some substantial
11 portion of which would go towards forfeiture or restitution
12 obligations would be in the best interests not only of Mr.
13 Madoff personally in having income, but of the, of society and
14 of the community of victims.

15 MR. SCHWARTZ: Understood.

16 THE COURT: All right. So for purposes of the
17 judgment here, the amount is what is important. The details
18 are embodied in that order and would be subject to amendment
19 should the parties agree that amendment is appropriate.

20 At this point I would invite first Mr. DeVita and then
21 Ms. Luria to speak. Mr. DeVita, would you please come to the
22 podium? Good afternoon, sir. And would you first speak and
23 spell your name for the court reporter?

24 MR. DeVITA: Michael T. DeVita; M-i-c-h-a-e-l,
25 D-e-V-i-t-a, capital V.

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1 THE COURT: Good afternoon.

2 MR. DeVITA: Your Honor, I cannot thank you enough for
3 the opportunity to be in a courtroom again where a person with
4 the surname Madoff is to be sentenced. Making crime victims
5 part of the process affords those like myself a voice in the
6 criminal justice system. I appeal to this Court to assess
7 punishment commensurate with the damage this crime caused the
8 victims.

9 Financial crimes are violent crimes to the victims.
10 Those involved must be punished with significant jail time and
11 not token fines that are a tiny fraction of the amount stolen
12 and often considered nothing more than a cost of doing
13 business. If you want to change behavior, put the thieves in
14 jail for a long time. The prospect that incarceration is
15 certain would truly deter future crimes like this. While the
16 scope of the Madoff investment advisory business was global in
17 nature, the emotional and the financial damage was done to tens
18 of thousands of innocent individuals just like me. I followed
19 the rules. I did the right thing by planning and by saving for
20 my future and that of my family by trusting a firm that was
21 regulated and examined by a federal agency.

22 By continuing this crime for decades Bernard Madoff
23 and his co-conspirators insured that the innocents would suffer
24 maximum long-term damage with insufficient remaining time to
25 save and recover from this massive theft. I am 62. It's too

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1 late for me.

2 While the responsibility for failure to discover this
3 crime can be laid at the feet of those who failed in their
4 obligation to regulate and police SEC-regulated brokerages,
5 it's very clear to me that the responsibility for designing and
6 running the day-to-day operation of the scandal are Bernard
7 Madoff's inner circle of co-conspirators.

8 It is beyond belief that Madoff alone carried out a
9 crime lasting decades involving hundreds of feeder fund money
10 raisers, tens of thousands of investors and printing hundreds
11 of thousands of stock confirmations and monthly statements. I
12 believe it to be physically impossible for a single person to
13 carry out such a gargantuan task all by himself. Bernard
14 Madoff lied, and we the innocent victims have been waiting for
15 years for others to acknowledge their role and accept their
16 responsibility for this massive crime. We are still waiting
17 for that today. Irving Picard submits that the 17th floor of
18 the Lipstick Building was a den of thieves working together on
19 a daily basis to steal the financial security of those who
20 entrusted their team with their hard-earned savings and
21 financial future. Peter Madoff was one of those who worked on
22 the 17th floor. But not only did he work there, he ran the
23 place. He was trained as an attorney and started working at
24 the investment advisory business in 1965. He held the title of
25 senior managing director and chief compliance officer. Not

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1 only was he the owner's brother, but he had been at this firm
2 for decades and he held a title that indicated a significant
3 responsibility and oversight for running the business and also
4 with interacting with the SEC.

5 Yet Peter Madoff tells us he knew nothing about the
6 criminal enterprise that his brother was running, even though
7 the Ponzi scheme operated for decades on the floor where Peter
8 was the senior managing director. Just what was he directing?
9 There was no legitimate business on that floor, only a vast
10 criminal enterprise, printing paper and cashing checks. Peter
11 could have come forward and stopped this crime much earlier,
12 thereby greatly limiting financial damage done to his
13 customers. He chose not to. The entire investment advisory
14 team waited and waited until the scheme collapsed. Then they
15 played the part of three blind mice; hear no evil, see no evil
16 and do no evil.

17 I personally know many Madoff investors. I am too
18 familiar with the impact of this crime on their lives as well
19 as mine. The devastation includes changes not only to how
20 innocent people lived but also to how they died. The press
21 tells us of those that committed suicide because they could not
22 live with the ramifications of this crime. But very few talk
23 about the slow death that many now experience as the joy in
24 their life evaporates and they deal with the daily turmoil of
25 destitution caused directly by the crew running and prospering

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1 by Bernard Madoff's criminal enterprise.

2 We may never know how many lives have been shortened
3 by this crime, but we can be assured of medical complications
4 as well as emotional and financial considerations have led many
5 to change their day-to-day lives in a way to reduce both their
6 quality and length of life. All of this was preventable if
7 only one person was willing to do the right thing and stop this
8 in its tracks years ago. Peter Madoff could have been that
9 person, but he wasn't. In reality he chose not to be the one
10 to end this crime spree.

11 I ask that you show the same degree of compassion to
12 Peter Madoff that he showed to us; none. I and my 84-year-old
13 mother are not the only ones impacted. These funds were
14 multi-generational in nature. They were supposed and expected
15 to pay for the homes and for college educations for those
16 coming behind us. Many victims are elderly, many are retired.
17 I myself plan to retire in January of 2010. I will now never
18 retire.

19 You have the opportunity to give us justice when you
20 sentence Peter Madoff. At the same time, you have an
21 opportunity to send Wall Street a message that the white-collar
22 crime of defrauding investors will result in much more than a
23 fine or slap on the wrist. Just like Bernard received the
24 maximum and somewhat symbolic sentence of 150 years, I ask that
25 you set aside whatever plea arrangement Peter made and impose

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1 the maximum sentence possible. Judge Swain, you must serve as
2 the voice of victims in this crime when you sentence Peter
3 Madoff. We the victims have not heard one person say I knew
4 and I am sorry. We deserve better than that. Thank you.

5 THE COURT: Thank you, Mr. DiVita.

6 Miss Luria? Please come to the podium. Would you
7 please speak and spell your name for the court reporter?

8 MS. LURIA: Yes, ma'am. My name is Amy Luria
9 Nissenbaum; A-m-y, L-u-r-i-a, N-i-s-s-e-n-b-a-u-m. I'm very
10 nervous.

11 THE COURT: Take your time.

12 MS. LURIA: Thank you. I appreciate that. First of
13 all, I want to say thank you for the opportunity to speak. I
14 want to thank the FBI and the district attorneys for seeking me
15 out and for doing the best they can to make this happen today.

16 I am here to do the right thing for myself and my
17 family, to speak the truth about what Peter Madoff has and
18 continues to do to my family. Four years later Peter still has
19 chosen to take no action and turn a blind eye, leaving us the
20 true victim to fend for ourselves in a mirage of lawsuits.

21 My personal goal for today is for closure and peace,
22 to leave this whole Madoff victimization behind and to rebuild
23 my life.

24 Peter Madoff had direct involvement with my family for
25 over 30 years. He became a trusted advisor and with his wife

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1 Mary were close friends of my grandmother, Gladys C. Luria.
2 They had dinners, attended weddings, celebrated 90th and 96th
3 birthdays, sat shivas and eulogized at funerals. Eventually
4 Peter became one of the executors of her estate. As executor
5 he surrounded himself with a team of attorneys and accountants.
6 He received full reign to bring in any outside funds into the
7 Madoff envelope. He received compensation of over 400,000 as
8 an executor. He fed more than 200,000 in fees to his attorneys
9 and accountants. He demonstrated a lack of fiduciary
10 responsibility in handling my grandmother's estate. He advised
11 or was involved with my 96-year-old grandmother on her death
12 bed to change her will four days prior to her death in
13 April 2009. He paid almost \$20 million in estate taxes through
14 my grandmother's estate. By paying these estate taxes he put
15 my family into a net winner position, leaving us completely out
16 of any SiPC or MIMA reimbursement. We never received a proper
17 accounting. When finally demanded legally just within the past
18 year, almost five years later, the accounting we received were
19 falsified documents and have been objected to legally. To this
20 day we're in the process of having him formally removed as
21 executor of my grandmother's estate as well as having my
22 grandmother's estate accounting challenged.

23 It was Peter Madoff's responsibility as executor to
24 step down if he is not capable of handling this and provide
25 accurate documentation for us. By doing so he would have

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1 allowed me to defend myself as Madoff victim and I'm still in
2 courts.

3 Had I known the truth and been given the proper
4 information about my grandmother's estate I could have avoided
5 a lot more loss. My family's will was designed to keep the
6 Madoffs in charge and rightful inheritors out. When I wanted
7 an outside attorney to look at the will and state accountings I
8 was told by Peter Madoff's lawyers that they also represented
9 my family and if I didn't sign it I would forfeit my
10 inheritance. In November 2008 based on my grandmother's will I
11 was to get my full inheritance. I was told by Peter that in
12 order to keep my family at Madoff I need to keep at least a
13 million in my account. Coincidentally, a month before the
14 Madoff scam became public I asked for money. When I got a
15 check it was not written to me but to a partner, Amy J. Luria
16 Partners LLC. When I went to HSBC Bank I was told I was not a
17 signer on the account. The Madoffs as executors opened up a
18 bank account at HSBC Bank under this partnership using my
19 Social Security number without my knowledge. I knew right then
20 I had been taken. I was lied to and I had to experience
21 defending myself in another lawsuit with HSBC Bank.

22 Since December 11, 2008 my family has experienced
23 devastating financial loss and our situation continues to
24 decline. I'm in survival mode every minute caring for myself
25 at 49, my husband at 52, my daughter at 8 and my three-year-old

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1 special needs son. It started as a month-by-month hardship but
2 has grown to a day-by-day struggle. Our home is in active
3 foreclosure, not knowing where or how I'm going to live. There
4 are days when I struggle to obtain money to feed and clothe my
5 children. Though I was able to obtain state assistance for my
6 two children through Children's Health Plus my husband and I
7 did not have any health insurance for four years and could only
8 seek medical assistance via a hospital emergency room. I was
9 in a hospital without medical insurance and I am now facing
10 huge medical debt. My kids are now getting sponsored education
11 from our school district because of my financial situation and
12 their educational needs.

13 As far as colleges for my kids, thank God they are
14 young because time is on my side to catch up for them. Our
15 utilities, electric, oil and phone are in constant past due
16 turn-off status. A LIPA agent comes to my door to turn off my
17 power but has shown more decency and compassion than Peter
18 Madoff has. My brother has an autistic son and doesn't know
19 how to provide for him. He's scared he'll have to be
20 institutionalized in a home because he doesn't have the money
21 to plan for his future. My mother at 72 years old has
22 dementia, is living on Medicaid with less than two months
23 savings to live in her apartment. She doesn't have the means
24 or options or know where to go. My mother asks me frantically
25 every single day what did we do to deserve this, where are we

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1 going to go, what are we going to do. I don't have answers. I
2 don't have the money to help her.

3 The option of Peter Madoff going to jail for only ten
4 years does not seem just. He partook in a financial Holocaust
5 not only for my family but thousands of victims and this deceit
6 as you can see by his actions still continues. More sentencing
7 time needs to be considered. He benefited from this scam for
8 over 30 years and he should be in jail for the same amount of
9 time. Where is the remorse, decency, compassion that's been
10 mentioned in the press lately? Where is the actions of doing
11 the right thing? Helping my family or other victims' families
12 move on with their lives would have been the right thing to do.
13 If he has any decency or compassion for his victims it only
14 seems to be used as a benefit, as a negotiation point.

15 I grew up believing and teaching my children it's
16 never too late to do the right thing, to be a decent human
17 being and take appropriate actions to right a wrong. I guess
18 that philosophy doesn't hold true for Peter Madoff.

19 And I do need to add a note. I find it unacceptable
20 that he has the opportunity to attend a family event and I feel
21 he should go away today. Thank you for your time. I
22 appreciate the opportunity to speak.

23 THE COURT: Thank you, Ms. Luria. I will now hear
24 from counsel on sentencing issues. Mr. Wing, would you like to
25 speak first?

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1 MR. WING: Thank you, your Honor. Peter Madoff is
2 not --

3 THE COURT: I'm just going to ask that you pull the
4 microphone closer to you.

5 MR. WING: Sure.

6 THE COURT: Thank you.

7 MR. WING: Peter Madoff is not Bernard Madoff and he
8 was not a knowing participant in Bernard Madoff's Ponzi scheme
9 which he only learned of the night before the government was
10 informed of this scheme. He did engage in serious misconduct
11 for which he has taken full responsibility and for which he has
12 paid and with the Court's sentence today will continue to pay
13 an enormous price. Notwithstanding this misconduct, those who
14 know him know that he is and has been a good and decent man in
15 many ways and for many years has looked out for and taken care
16 of and extended himself to many other people, and
17 professionally he was a substantial contributor to the very
18 legitimate market making business at the Bernard Madoff firm.

19 We appreciate the Court's consideration of our
20 sentencing memorandum and of the many letters that were
21 submitted on behalf of Peter Madoff. We would ask that he be
22 permitted to voluntarily surrender and that the Court recommend
23 that he serve his prison sentence at the Otisville prison camp.
24 Thank you, your Honor.

25 THE COURT: Thank you, Mr. Wing. Ms. Baroni, does the
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1 government wish to be heard?

2 MS. BARONI: Yes, your Honor.

3 Your Honor, Peter Madoff carried out his part of an
4 epic fraud. As the chief compliance officer and as an attorney
5 he lied repeatedly over the course of years to regulators and
6 investors, investors who entrusted their money to Bernard L.
7 Madoff Investment Securities. Peter Madoff created completely
8 fake compliance reports in which he had pretended that he had
9 reviewed the trading activity in the investment advisory
10 business. In reality he did nothing of the sort. Had he
11 actually performed the reviews that he was supposed to have
12 performed it would have confirmed that no real securities
13 trades ever happened in the investment advisory business. In
14 addition to his lies on the compliance documents Peter Madoff
15 also lied on documents filed with the Securities and Exchange
16 Commission. For example, he claimed that the investment
17 advisory business had 23 clients when in fact it had more than
18 4,000. All to mislead regulators to create the appearance that
19 BLMIS had a very small number of clients in order to avoid
20 scrutiny from the SEC and other regulators.

21 Peter Madoff also benefited immensely from the fraud.
22 In the last years before the collapse of BLMIS he received
23 \$40 million from his brother Bernard L. Madoff and much of that
24 came directly out of investors funds and that \$40 million was
25 disguised to Peter Madoff as loans or sham stock trades, all to

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1 enrich himself and his family and all to avoid the taxes that
2 he was required to pay on it.

3 These weren't crimes borne of financial distress or
4 market pressures. They were calculated, long-term crimes of
5 deception that he carried out year after year and he knew that
6 his clients and the regulators made important decisions based
7 on his lies, but that didn't stop him.

8 In sentencing the defendant, your Honor, we would ask
9 your Honor also to consider the defendant's actions at the end
10 in December 2008 when he knew that the firm was at the brink of
11 collapse. Even at that point, rather than contacting law
12 enforcement he tried to take the last of the investors' money.
13 He helped prepare \$300 million in checks for his family,
14 friends and preferred clients and had the FBI not arrested
15 Bernard L. Madoff when they did that part of the scheme might
16 well have succeeded.

17 Your Honor, the guideline sentence is in this case is
18 ten years imprisonment. The probation department recommends
19 ten years imprisonment, the defendant has agreed to ten years
20 imprisonment and for repeatedly lying to investors and
21 regulators and for completely abdicating his responsibilities
22 as the chief compliance officer we respectfully submit that ten
23 years imprisonment should be imposed in this case.

24 THE COURT: Thank you. Mr. Madoff, would you like to
25 speak to the Court on your own behalf?

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1 THE DEFENDANT: Thank you, your Honor, I do.

2 I am deeply ashamed of my conduct. I have tried to
3 atone by pleading guilty and agreeing to forfeit all my present
4 and future assets and income, including my home, my life
5 savings, my pension and my personal and real property. I am
6 profoundly sorry that my failures let many people down,
7 including my own loved ones and family. I accept full
8 responsibility for my actions that have brought me before your
9 Honor today and I am here to accept my punishment from this
10 Court. Thank you for listening to me.

11 THE COURT: Thank you, Mr. Madoff.

12 I would ask that everyone sit quietly for just a
13 couple of minutes while I reflect on what I've heard and make
14 my final decision.

15 (Pause)

16 THE COURT: Thank you for your patience. I read
17 everything that was submitted to me carefully before coming to
18 court today and I have listened very carefully to everything
19 that has been said here in court today.

20 I adopt the factual recitation that is set out in the
21 presentence report. As the Supreme Court explained in its
22 opinion in the Booker case, this Court has discretion, subject
23 to the applicable statutory provisions and limitations in
24 exercising its power under Section 3553(a) of Title 18 to
25 determine the particular sentence to be imposed in each

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1 sentence is computed by adding the applicable statutory maximum
2 sentences on the two counts of conviction resulting in a
3 guidelines sentence of 120 months, or ten years of
4 imprisonment. I have used the 2012 edition of the sentencing
5 guidelines manual in making this analysis.

6 I have considered the question of whether there is an
7 appropriate basis for departure from the advisory range within
8 the guideline system. An upward departure is precluded by the
9 statutory maximum sentencing provisions. The Court does not
10 find any grounds warranting a downward departure within the
11 guidelines system.

12 The Court has carefully considered all of the Section
13 3553(a) statutory sentencing factors and goals and all of the
14 information that has been put before it in light of the 3553(a)
15 factors in its deliberation as to the sentence to be imposed
16 here.

17 The enormity of the criminal activity that has led to
18 this day cannot be underestimated. Mr. Peter Madoff's choices
19 and deliberate admitted conduct, falsifying records and
20 securities filings for the investment advisory business run by
21 Bernard Madoff at a minimum contributed to the concealment and
22 continuation of Bernard Madoff's vast Ponzi scheme. Literally
23 billions of dollars of innocent investor savings have been lost
24 to personal extravagance, the establishment and maintenance of
25 the appearance of a phenomenally successful investment business

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1 and promotion of the Madoff name through charitable and other
2 public gestures. Trust in financial institutions, thousands of
3 individual lives and numerous charitable organizations have
4 been blown apart.

5 The guidelines sentence here is life imprisonment. It
6 is literally off the sentencing guidelines chart. The
7 government and the defense, however, have negotiated a
8 carefully crafted set of charges and a guilty plea agreement
9 under which the maximum possible sentence of imprisonment is
10 ten years. Thus the question with which this Court has to
11 wrestle is not whether a sentence longer than ten years is
12 called for but rather whether anything less than ten years
13 could appropriately serve the statutory purposes of sentencing.

14 Peter Madoff worked in his brother's business for over
15 four decades. He accepted and held the title of compliance
16 officer for just under four decades. He was a sophisticated
17 and by all accounts meticulous actor in the securities
18 business. Peter Madoff earned a sterling reputation in trade
19 execution and market making. He held high positions in the
20 National Association of Securities Dealers or NASD, as well as
21 other professional and civic organizations. He is a lawyer.
22 Peter Madoff is a sophisticated person who knew and knows right
23 from wrong. Having taken on the title of compliance officer
24 for Bernard Madoff's investment advisory business and the
25 responsibility of overseeing that business Peter Madoff did

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1 nothing in the way of oversight, but still worse than doing
2 nothing to oversee operations he lied to authorities, using his
3 reputation and training and the Madoff name to deflect
4 suspicion.

5 Peter Madoff's role was not at all passive. Indeed,
6 he carefully falsified reports. Perhaps Peter Madoff did not
7 as he maintains know about the larger Ponzi scheme but he could
8 not have been blind to the fact that the business practices in
9 which he himself engaged when it came to BLMIS affairs were
10 terribly wrong. He knew that huge amounts of money that his
11 brother Bernard conveyed to him were not the proceeds of the
12 specific trades to which they were attributed. He knew that
13 trading records were backdated and falsified. He knew that the
14 stated purpose of the falsification was to cheat the United
15 States government and his fellow citizens out of taxes that
16 were owed on that money. He knew that the ADV forms filed with
17 the SEC were false. To take his story as told when he pled
18 guilty at face value, he knew that the business operation was a
19 little bit crooked and he was content to go along with that.
20 We all know that a crooked operation is only rarely if ever
21 just a little bit crooked.

22 Peter Madoff betrayed investors and betrayed a public
23 trust by posing as a faithful compliance officer, therefore
24 shielding the corrupt business practices of the Madoff
25 companies and enabling the perpetuation of a massive fraud from

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1 which not only Bernard Madoff but Peter himself and the entire
2 family benefited handsomely for decades.

3 Peter Madoff cheated on his own taxes as well. He
4 used the firm as a personal source of untaxed, unearned cash;
5 putting his wife on the payroll, lying about the legitimacy of
6 that status in government filings and using the firm's credit
7 card for close to \$200,000 of personal expenses. Turning a
8 blind eye to such practices would have been deplorable.
9 Participating in them was far worse. Even when Bernard Madoff
10 told Peter Madoff outright that he had run a Ponzi scheme and
11 that the money that Peter Madoff and other family members
12 received was not the product of investment returns, even when
13 Peter Madoff knew that there would not be enough to pay the
14 thousands of customers who had entrusted their savings to the
15 Madoff name, Peter Madoff did not say stop. He did not go to
16 the authorities. With this full knowledge he reviewed and
17 approved priority payments to family members and friends of
18 what little money was left and took out \$200,000 of cash,
19 investors money, took it out ostensibly to use it in making
20 charitable contributions.

21 Peter Madoff's contention that he did not know that
22 anything was wrong with the investment advisory business is
23 beneath the dignity of the former vice chairman of NASD,
24 governor of the National Stock Exchange and corporate director,
25 community pillar and family paradigm about whom I have read so

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1 much over the past few days. It is also, frankly, not
2 believable.

3 The Court understands that Peter Madoff's relationship
4 with his brother Bernard was unhealthy. That cannot excuse
5 Peter Madoff's conduct. The Court is also very much aware that
6 Peter Madoff and his family have lost the assets, reputation,
7 financial security and social position that they had enjoyed.
8 The negotiated and indeed Draconian forfeiture agreement seals
9 Peter Madoff's financial ruination. That punishment while
10 indisputably severe is not alone sufficient to effect a
11 punishment that is just, given the nature, magnitude and
12 context of the crimes for which Mr. Madoff is being sentenced
13 today.

14 Many people and institutions have suffered the same
15 fall from wealth, privilege and in many cases even basic levels
16 of financial security as a result of the massive fraud.
17 Ordinary wage-earning people who had planned for ordinary
18 comfortable retirements are among the victims here too,
19 although the reports that Peter Madoff filed told government
20 authorities that the investment advisory clients were few in
21 number and that all were sophisticated investors.

22 Proper punishment also requires a lengthy term of
23 imprisonment, the punitive loss of Mr. Madoff's personal
24 freedom. Such a sentence is also necessary to serve the
25 deterrence function of sentencing. I am persuaded that Peter

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1 Madoff himself will not reoffend. He has been hurt too badly
2 and brought his family down too low to go the route of
3 dishonest business practices again. However, the world in
4 which his conduct took place is full of many temptations and
5 opportunities to breach trust relationships for personal gain.

6 The consequences of such behavior must be harsh to
7 help deter others from taking the path of dishonesty and theft.
8 Sentencing consistency also guides this Court strongly in the
9 same direction. But that is not the end of the story. Much
10 remains to be written and perhaps told.

11 I have received many letters that speak of a man who
12 has suffered much and who has shown great courage and
13 responsibility in unthinkable situations of adversity.
14 Eloquent letters paint in stark terms the tragic blows and
15 daily challenges that you, Mr. Madoff, your wife and your
16 extended family faced before 2008 through December and the
17 impact that the revelations of December 2008 has had on all of
18 you emotionally and practically. You, Peter Madoff, have been
19 an inspiration and a witness for faith and selflessness in the
20 lives of many, that is clear. The duality of your behavior is
21 remarkable, but not unique. You have an opportunity to build
22 on this very positive aspect of your legacy while you serve
23 your prison term and in every day of the remainder of your
24 life.

25 I recognize that you want to understand what has

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1 happened and clearly you want to rehabilitate your name and
2 that of your family. Both require honesty. People are still
3 hurting in the victim community as well as in your family.
4 Investigations and asset searches are still ongoing. If you
5 truly want to live as the selfless, honest person who so many
6 others have seen and to whom so many are grateful, I challenge
7 you to be honest about all that you have done and all that you
8 have seen, in other words, about all that you know. You can
9 live a life in which the light of truth illuminates all corners
10 of your life and of your memory.

11 No one but you knows what more there is to your story.
12 Your path to social redemption and rehabilitation depends on
13 the ability of friends and strangers to know that you are truly
14 courageous and that you can be trusted. Of course, the Fifth
15 Amendment protects absolutely your right to remain silent so
16 you cannot be forced to say anything more ever. You with your
17 lawyers and your family will have to decide what course is
18 consistent with the life that you want to live and the conduct
19 for which you want to be remembered.

20 Since your son's death and the collapse of BLMIS you
21 have been on a personal journey of spiritual examination and
22 fellowship and you have worked hard to hold together and
23 support your family. You have worked hard to model both
24 humility and generosity. I note in particular your combination
25 of community work and study at Central Synagogue and you have

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1 introduced your young granddaughter to volunteer service in
2 that community. There is much that is good in your life and
3 the way in which you are seeking to pursue it. You have much
4 to build on and much in terms of strength and your obvious
5 desire to play a positive role in other people's lives. I
6 suggest that you now orient yourself completely towards that
7 goal.

8 It is important for the victim and for society as a
9 whole that the full scope of corrupt activity at BLMIS be
10 uncovered and understood. Part of your redemptive work is
11 determining what if any role you will play in that process and
12 making a decision consistent with your personal and spiritual
13 goals and values. I know that you want to be a man who others
14 can properly depend on, admire and emulate. I also know that
15 you can succeed in attaining and maintaining such a life even
16 while you are in prison. You have overcome many challenges
17 that might have defeated others.

18 Having considered all of these matters I conclude that
19 the guidelines sentence is sufficient, appropriate and no
20 greater than necessary to address the statutory purposes of
21 sentencing. Mr. Madoff, I would ask that you and your
22 attorneys please stand now while I announce the sentence that I
23 intend to impose.

24 Mr. Madoff, is the judgment of this Court that you are
25 to serve consecutive imprisonment terms of five years each on

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1 each of Counts One and Two, for a total of ten years of
2 imprisonment to be followed by concurrent terms of one year of
3 supervised release on each of your two counts of conviction,
4 for a total of one year of supervised release. The standard
5 conditions of supervision 1 through 15 as detailed in the
6 sentencing guidelines manual will apply.

7 In addition, you will be subject to the following
8 mandatory conditions: You must not commit another federal,
9 state or local crime. You must not illegally possess a
10 controlled substance. You must not possess a firearm or
11 destructive device. You must cooperate in the collection of
12 DNA as directed by the authorities. I am suspending the normal
13 mandatory drug testing condition based on the probation
14 office's determination, which I am glad to be able to adopt,
15 that you pose a low risk of future substance abuse.

16 You must also meet the following special conditions:
17 You must provide the probation officer with access to any
18 requested financial information. You must not incur any credit
19 charges or open additional lines of credit without the approval
20 of the probation officer unless you are in compliance with the
21 installment payment schedule -- I am going to restate that
22 because in this situation there is a forfeiture obligation,
23 there is unlikely to be an installment payment schedule so this
24 will simply be a requirement that you must not incur new credit
25 charges or open new lines of credit without the approval of the

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1 payment because we do not have it available today.

2 THE COURT: Yes, that may be made by tomorrow, end of
3 the day tomorrow.

4 MR. WING: Thank you.

5 THE COURT: I find that Mr. Madoff is required to
6 forfeit to the United States the sum of \$143.1 billion which
7 represents the proceeds that he obtained directly or indirectly
8 as a result of his criminal activity. This obligation is
9 reflected in the Court's order entered on June 29, 2012.
10 Pursuant to Title 18, Section 3664(d)(5), the determination as
11 to whether a restitution obligation will be imposed is deferred
12 to February 4, 2013.

13 I believe that this sentence is reasonable within the
14 meaning of the law, sufficient, appropriate and no greater than
15 necessary to satisfy the statutory purposes of sentencing which
16 include punishment and deterrence.

17 Does any counsel here know of any legal reason why the
18 sentence should not be imposed as stated?

19 MS. BARONI: No, your Honor.

20 MR. WING: No, your Honor.

21 THE COURT: The sentence as stated is imposed.

22 I must say something important to you about appeal
23 rights, sir. To the extent you have not given up your right to
24 appeal through your guilty plea you have the right to appeal
25 this sentence. If you are unable to pay the cost of an appeal,

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1 you may apply for leave to appeal in forma pauperis. At your
2 request the clerk of court will file a notice of appeal for
3 you. Any notice of appeal must be filed within 14 days of the
4 judgment of conviction so be certain to speak with your lawyers
5 about this issue promptly.

6 Ms. Baroni, are there any remaining counts or
7 underlying indictments that need to be addressed?

8 MS. BARONI: No, your Honor.

9 THE COURT: Thank you.

10 Mr. Madoff, you must surrender voluntarily at the
11 designated facility by 2:00 in the afternoon on February 6,
12 2013. I thank counsel for their work on this case. Mr. Madoff
13 and all the victims here I wish you, your families and each and
14 every victim and their families strength, courage and peace.

15 I will direct that a corrected copy of the presentence
16 report be provided for counsel, the Bureau of Prisons and the
17 Sentencing Commission. All other copies of the report must
18 remain appropriately confidential. If an appeal is taken,
19 counsel on appeal are to be permitted access to the report.
20 The original unredacted versions of the letters in support of
21 Mr. Madoff will be filed under seal in accordance with my
22 sentencing submission procedures.

23 Counsel, is there anything else that we need to
24 address together this afternoon?

25 MR. WING: No, your Honor.

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1 MS. BARONI: Not from the government. Thank you, your
2 Honor.

3 THE COURT: Thank you. Ms. Ng, do you have to give
4 any paper to -- Mr. Madoff and Mr. Wing, you will need to go to
5 our probation department tomorrow by the end of the day and
6 information about the details of the sentence will be
7 transmitted electronically to probation by tomorrow morning and
8 that is in order to commence the paperwork with probation and
9 the Bureau of Prisons to get the designation process going.

10 MR. WING: Very well, your Honor.

11 THE COURT: That is at 233 Broadway, so. Do we need
12 to address anything else today?

13 MR. WING: Nothing else, your Honor.

14 THE COURT: Thank you all and I wish all here safe and
15 healthy holidays.

16 COUNSEL: Thank you, your Honor.

17 (Adjourned)

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