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1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

4 v.

10 CR 520 (SAS)

5 KENNETH STARR,

6 Defendant.

7 -----x

8 New York, N.Y.

8 March 2, 2011

9 4:30 p.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the

16 Southern District of New York

17 MICHAEL BOSWORTH

17 WILLIAM HARRINGTON

18 Assistant United States Attorneys

18 FLORA EDWARDS

19 Attorney for Defendant

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1 (Case called)

2 THE COURT: Good afternoon, Mr. Bosworth.

3 MR. BOSWORTH: Good afternoon, your Honor.

4 THE COURT: Good afternoon, Mr. Harrington.

5 MR. HARRINGTON: Good afternoon, your Honor.

6 THE COURT: And are you an agent?

7 MR. BERANGER: Yes. Special Agent Robert Beranger,

8 IRS.

9 THE COURT: Good afternoon, Ms. Edwards.

10 MS. EDWARDS: Good afternoon, your Honor.

11 THE COURT: Good afternoon, Mr. Starr.

12 THE DEFENDANT: Good afternoon, your Honor.

13 THE COURT: I reviewed the revised presentence report  
14 dated February 25, 2011, together with the sentencing  
15 recommendation and the addendum of the same date and the  
16 detailed loss and restitution chart. I've also reviewed  
17 defense counsel's various submissions, the first dated February  
18 8, 2011, attaching letters from defendant's family and friends,  
19 the second dated February 25, 2011, which I view as objecting  
20 to various portions of the revised presentence report, and the  
21 third dated February 25, 2011, addressing the victim impact  
22 statements that are a part of the presentence report and  
23 attaching a presentence report involving one of the victims.

24 Finally, I have reviewed the government's sentencing  
25 memorandum dated February 23, 2011.

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1 Ms. Edwards, have you reviewed the report,  
2 recommendation, addendum, and the government's sentencing  
3 memorandum?

4 MS. EDWARDS: Yes, I have, your Honor.

5 THE COURT: You do have objections that you stated in  
6 your February 25 letter, one of the two February 25 letters.  
7 What are we going to do about that?

8 MS. EDWARDS: They're in two parts. My objections to  
9 paragraphs 22 through 28 of, I guess, the third iteration of  
10 the presentence report really has to do with the victims, and,  
11 of course, you have that, your Honor. And in the interest of  
12 protecting the privacy of the victims, I filed that under seal  
13 and I don't think I have to raise it here. But I just wanted  
14 your Honor to have a more complete picture.

15 I do have just two objections to the report at page  
16 27.

17 THE COURT: I have your letter in front of me, but I  
18 would like to see if I have the report. Page what?

19 MS. EDWARDS: Page 27 of the report overstates the  
20 loss amount by \$3 million. It's not the loss amount.

21 THE COURT: No.

22 MS. EDWARDS: I would like that corrected.

23 THE COURT: You mean where it says, toward the bottom,  
24 under justifications.

25 MS. EDWARDS: Right.

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1 THE COURT: Starr siphoned over 36.5 million.

2 MS. EDWARDS: That's incorrect.

3 THE COURT: Yes. I hadn't seen that figure before.

4 And the government's stipulated loss amount is \$33,312,782.

5 Does the government have any objection to my amending  
6 the presentence report --

7 MR. BOSWORTH: No objection.

8 THE COURT: -- starr siphoned over 33 million?

9 MR. BOSWORTH: No objection.

10 THE COURT: What else?

11 MS. EDWARDS: Also, on that same page we object to the  
12 statement that Mr. Starr intended to steal \$6 million. In  
13 addition, that appears absolutely nowhere.

14 THE COURT: I don't know where they got that one  
15 either. I don't understand. He intended to steal over \$6  
16 million more.

17 MR. BOSWORTH: I'm not sure either. I think that that  
18 portion we agree should be stricken.

19 THE COURT: Okay. Done.

20 MS. EDWARDS: Those are my objections to the report,  
21 your Honor.

22 THE COURT: So they're resolved, so to speak.

23 MS. EDWARDS: They're resolved.

24 THE COURT: Have you gone over the report, the  
25 recommendation, and the government's sentencing memorandum with

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1 your client?

2 MS. EDWARDS: Yes, I have, your Honor.

3 THE COURT: Does he have any objections other than the  
4 issues you just raised?

5 MS. EDWARDS: No, he does not.

6 THE COURT: All right.

7 MS. EDWARDS: To the government's memorandum, the  
8 objections are reflected in my response to the Court.

9 THE COURT: Yes. All right.

10 Mr. Bosworth.

11 MR. BOSWORTH: Yes, your Honor.

12 THE COURT: Has the government reviewed the report,  
13 recommendation, addendum, and defense counsel's several  
14 submissions?

15 MR. BOSWORTH: Yes, your Honor. No objections.

16 THE COURT: To anything in the report?

17 MR. BOSWORTH: No, your Honor.

18 THE COURT: Are there any fact issues in dispute then  
19 that do require a Fatico hearing? You obviously have some  
20 different views maybe on the inferences to be drawn from the  
21 facts, but I don't know whether there are any real factual  
22 disputes that have to be resolved at a hearing now that we have  
23 resolve the loss figure.

24 Anything that you think requires a Fatico hearing,  
25 Mr. Bosworth?

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1 MR. BOSWORTH: No, your Honor. And I think that  
2 Ms. Edwards would agree that one statement in her submission is  
3 inaccurate, that it does go to the facts.

4 THE COURT: I need to look at that. Which letter?  
5 There are two February 25 letter.

6 MR. BOSWORTH: February 25 submission.

7 THE COURT: I know, but there are two dated February  
8 25.

9 MR. BOSWORTH: The seven-page submission that is  
10 public.

11 THE COURT: Seven pages. Is that the one that starts  
12 with "the within submission is made in response to the second  
13 disclosure"?

14 MR. BOSWORTH: Yes, your Honor.

15 THE COURT: Which statement?

16 MR. BOSWORTH: It's on page two.

17 THE COURT: Page two.

18 MR. BOSWORTH: Ms. Edwards says, in the last sentence  
19 and the carryover paragraph on top, "Of the 33 million included  
20 in the loss amount approximately 50 percent is comprised of  
21 investments related to count 22."

22 I think that's just a misstatement. As I understand  
23 it, the parties, after extensive discussions, agreed upon the  
24 loss amount that's set forth in the government's sentencing  
25 memorandum, and, as made clear from that recitation, there's

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1 only one set of victims, the jeweler and his wife, who are  
2 included, in the government's view, and defendant agrees, as  
3 victims. They are the only victims whose loss stems from bad  
4 investments, and that loss is \$8,950,000.

5 THE COURT: So instead of roughly 16-1/2 and 16-1/2,  
6 it should be 24 and eight? Roughly?

7 MR. BOSWORTH: Roughly, yes, your Honor.

8 THE COURT: Because I didn't hear back from the  
9 government on that, and I presumed it to be true. When I wrote  
10 up my remarks today, I did say 16-1/2 and 16-1/2. You think  
11 it's more like 24 and eight?

12 MR. BOSWORTH: Yes, your Honor.

13 THE COURT: What do you think, Ms. Edwards?

14 MS. EDWARDS: I believe that there were some, I don't  
15 know that we need a Fatico hearing on it. I believe that on at  
16 least some of the victims, in fact, there were investments. It  
17 wasn't just transfers.

18 THE COURT: It wasn't just theft. There were some  
19 investments.

20 MS. EDWARDS: There were investments included there.

21 THE COURT: Right. Either the investments --

22 MS. EDWARDS: That was my calculation.

23 THE COURT: Either the investments are in shell  
24 companies or they're in companies as you say that may or may  
25 not yet make money.

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1 MS. EDWARDS: That's correct, your Honor.

2 THE COURT: So, what she was trying to do was  
3 distinguish outright theft from investments where there wasn't  
4 proper disclosure, so maybe the person wouldn't have made the  
5 investment if they had had disclosure, but we don't know the  
6 outcome of those investments yet.

7 MR. BOSWORTH: In fact, we do, your Honor, and it  
8 puzzles me that Ms. Edwards would make that claim. Everything  
9 except for the \$8,950,000 relating to the jeweler and his wife  
10 did constitute out and out theft.

11 THE COURT: See, I can't resolve this if this is what  
12 you're telling me. I have no way of independently knowing.

13 MS. EDWARDS: Your Honor, if I could just direct both  
14 the Court and the government --

15 THE COURT: No, don't direct both of us. Ask to meet  
16 with the government. Ask if you can confer with Mr. Bosworth.

17 MS. EDWARDS: Okay. Can I?

18 THE COURT: Yes.

19 (Discussion off the record)

20 MS. EDWARDS: Your Honor, I think we have sort of  
21 agreed to disagree, and if it's material to the Court, we don't  
22 believe it is material on one of the investments, I see a  
23 million dollars that I believe was for an investment and not a  
24 transfer. The government, although the government can  
25 certainly speak for itself, says otherwise. If it makes a

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1 material difference to the Court in terms of what your decision  
2 is, that's one thing. We don't necessarily see it as material,  
3 but, we're not disputing the total amount.

4 THE COURT: The 33 million?

5 MS. EDWARDS: Yes, we're not disputing that.

6 THE COURT: Right, but still you're saying either  
7 eight or nine million of it is not theft but investment made  
8 without full disclosure.

9 MS. EDWARDS: Right.

10 THE COURT: Right?

11 MS. EDWARDS: It would be 750, so it would 9,750.

12 Almost nine or ten.

13 THE COURT: So it's either close to nine or close to  
14 ten for investments made without full disclosure as opposed to  
15 outright theft. All right.

16 Is either side requesting a Fatico hearing, in the  
17 end, Ms. Edwards?

18 MS. EDWARDS: I'm sorry?

19 THE COURT: Is anybody requesting a Fatico hearing?

20 MS. EDWARDS: I'm not requesting a Fatico hearing.

21 THE COURT: Mr. Bosworth.

22 MR. BOSWORTH: No, assuming the disagreement about  
23 that additional million isn't material.

24 THE COURT: It would be nice to know, but I can't say  
25 whether it's material, whether it's close to nine or close to

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1 ten.

2 MR. BOSWORTH: Thank you.

3 THE COURT: As I understand it, restitution has also  
4 been agreed to at 29,112,782, is that right?

5 MR. BOSWORTH: Yes, your Honor. That's the agreement  
6 between the parties, and then the Court had set the additional  
7 April 4 date so that if there were any additional restitution  
8 claimants, they can make submissions to the Court, and the  
9 Court will issue the final restitution order sometime after  
10 that.

11 THE COURT: Is there a forfeiture order here, too?

12 MR. BOSWORTH: There is, and we would just propose as  
13 we continue to figure out if there are any additional  
14 restitution claimants that the parties have additional time.

15 THE COURT: I don't set the figure today? I order  
16 forfeiture but not in a fixed amount?

17 MR. BOSWORTH: We think that your Honor can do a  
18 forfeiture order at this point.

19 THE COURT: In a fixed amount of?

20 MR. BOSWORTH: In the fixed amount of the restitution  
21 amount.

22 THE COURT: Okay. Same amount. All right.

23 In that there's no objection to anything in the  
24 presentence report other than what we've discussed, I adopt the  
25 findings of fact as amended in the presentence report.

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1 The defendant has pled guilty pursuant to a plea  
2 agreement to three counts, one count of wire fraud, one count  
3 of money laundering, and one count of investment advisor fraud.  
4 All of these counts can be grouped together for the purpose of  
5 calculating the guideline range because the offense level is  
6 determined by the total amount of the loss.

7 The applicable guideline for this group is found at  
8 Section 2S1.1. The base offense level is seven pursuant to  
9 Section 2B1.1(a) (1) because more than one count of conviction  
10 has a statutory maximum term of imprisonment of 20 years. This  
11 level is then increased by 22 levels to 29, pursuant to Section  
12 2B1.1(b) (1) (M) because the loss was more than \$20 million but  
13 less than \$50 million. An additional two levels are added to  
14 level 31 pursuant to Section 2B1.1B(17) (a) because the offense  
15 involved a violation of the securities laws and at the time of  
16 the offense Mr. Starr was an investment advisor. Because Starr  
17 was convicted of money laundering, an additional four-level  
18 increase to level 35 is required pursuant to Section  
19 2S1.1B(2) (b). The offense level is then decreased by three  
20 levels to level 32, based on defendant's acceptance of  
21 responsibility pursuant to Section 3E1.1A and B.

22 Defendant has no prior conviction. As a result, he  
23 falls in criminal history category I. His guideline range at  
24 offense level 32, criminal history category I, is 121 to 152  
25 months in prison and a fine range of \$25,000 to \$84,194,564.

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1 In addition, restitution in the amount of \$29,112,782 is  
2 required, but final order of restitution will not be entered  
3 until April 4. So at this time, I simply note that restitution  
4 is required, but this may not be the final amount. However,  
5 forfeiture is imposed, and forfeiture is imposed in the amount  
6 of \$29,112,782.

7 With that, Ms. Edwards, do you wish to be heard?

8 MS. EDWARDS: Yes, your Honor.

9 Kenneth Starr really made some terrible mistakes.

10 This is what brings him before you today. But I just want to  
11 remind the Court that he is much more than the sum total of the  
12 offense to which he pled. He had more than four decades in a  
13 successful and vibrant and decent and honest legal and  
14 accounting career. He gave generously of his time, his energy,  
15 and his resources. He made a real contribution to the civic  
16 and the cultural life of this city. He has a family who loves  
17 him. His wife and two daughters are here today. This all goes  
18 into making up the sum total of the man who stands before the  
19 Court.

20 Somewhere along the way, he just lost his way, and in  
21 the process, he really lost himself, and he's paid dearly for  
22 that. He lost his reputation, his freedom, his livelihood,  
23 and, given his age, depending on what the Court does today, he  
24 may lose his entire future.

25 Now, the government argues that this is a serious

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1 offense and that the offense involves staggering amounts of  
2 money, and I do not dispute, Mr. Starr does not dispute it. We  
3 recognize that this is a serious offense. But when you look at  
4 the other prosecutions in this district, the amount's not  
5 staggering. This case is simply not of the same character and  
6 magnitude as the prosecution ranging from hundreds of millions  
7 to billions of dollars, and that's with a B.

8 THE COURT: That's the chart that you gave the Court  
9 in your February 25 submission.

10 MS. EDWARDS: Yes.

11 THE COURT: Pages five and six, that's public, that's  
12 the public chart.

13 MS. EDWARDS: That's the public chart.

14 THE COURT: It talks about many other cases, of  
15 course, starting with the Madoff case, where you say the loss  
16 was 50 billion, the Ebberts case, 11 billion, Rigas, 200  
17 million. Those are in this district, Bennett, 109 million.  
18 Adelson, between 50 and 100 million. Here's another one, Turk,  
19 30 million. Smurlock, I don't know who that is, 12-1/2  
20 million. You list a number of Southern District of New York  
21 cases. You also list Eastern District of New York and other  
22 districts around the country.

23 MS. EDWARDS: That's correct, and given my resources,  
24 it's obviously not exhaustive.

25 THE COURT: It's not every fraud case in the United  
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1 States.

2 MS. EDWARDS: Oh, no.

3 THE COURT: Of course not.

4 MS. EDWARDS: Not at all.

5 But, it's not just different in terms of the amount of  
6 money. I mean, these are staggering amounts of money, really  
7 staggering. But in all of these cases, the defendant was  
8 responsible for wreaking unmarginable losses. They  
9 destabilized corporations. They destabilized banks. They  
10 gutted pension funds. Hundreds, if not thousands, of people  
11 lost their pensions. They were financially ruined.

12 This is not the Starr case. It's not what happened  
13 here. It's not comparable, and I think it's important that  
14 these are the kinds of cases that probation is relying on when  
15 it makes its recommendations. These are the cases. In fact,  
16 that's what gave me the idea to make the compendium, because  
17 these cases are just not comparable. It's not 100 million to  
18 50 billion.

19 Monday of this week, a gentleman named Vance Moore.

20 THE COURT: I'm sorry. What?

21 MS. EDWARDS: Vance Moore, and that's 09 CR 881. He  
22 was just sentenced in this district by Judge Griesa to 97  
23 months' imprisonment for his participation in really what was a  
24 Ponzi scheme for \$50 million that extended over a period of  
25 three years, with hundreds of victims, some of whom actually

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1 lost their life savings.

2           Here, we don't have hundreds of victims. We have nine  
3 victims. All of the victims are incredibly wealthy, all of  
4 whom had access to a phalanx of attorneys and advisors, and  
5 this isn't said to diminish in any way the wrongfulness of the  
6 conduct nor to diminish the emotional impact that it had on the  
7 victims. But it's not right, nor is it necessary to suggest  
8 that these individuals were ruined financially.

9           THE COURT: Your whole point is they were not  
10 financially devastated.

11           MS. EDWARDS: They were not. They were not.

12           THE COURT: All right.

13           MS. EDWARDS: And I really believe that while every  
14 sentence obviously is based on individual circumstances of the  
15 defendant that stands before the Court, there's really nothing  
16 here that renders Mr. Starr worthy of a harsher treatment than  
17 sentences imposed upon similarly situated offenders, for  
18 example, like Mr. Turk, who was convicted of \$29.6 million and  
19 was sentenced to 60 months' imprisonment.

20           Mr. Starr is absolutely committed to making  
21 restitution. I believe that Mr. Lockard, AUSA Lockard will be  
22 giving me the amounts in the bank accounts that are frozen. We  
23 think it's close to about \$4 million there, although I'm not  
24 sure. But, in addition, we've gotten the lists and are working  
25 on hopefully trying to get some records, Mr. Starr has other

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1 assets, and he is personally committed and hopefully will be  
2 able to get a hold of those assets. The receiver has them  
3 boxed up somewhere, the paperwork that goes with them. But  
4 hopefully, that's going to be another several million dollars.

5 Mr. Starr is committed, really committed to trying to  
6 make restitution and make this right.

7 Given his age, his family history, I can't say as a  
8 matter of law that a sentence within the guideline range is  
9 unreasonable because we agreed to that. But it's life  
10 imprisonment for him, and there is no need for him to die in  
11 jail for what he did. A sentence of 60 months is more than  
12 sufficient to punish him for his conduct. It's in line with  
13 similarly situated offenders. It's sufficient, but it's not  
14 greater than necessary to meet the goals of sentencing, and,  
15 most importantly, it offers Mr. Starr the possibility of  
16 redemption and I think he can make good on that, your Honor.

17 So, we would just beg the Court for some mercy here.

18 THE COURT: Thank you, Ms. Edwards.

19 Mr. Starr, do you wish to be heard? Is there anything  
20 you want to say before the sentence is imposed?

21 THE DEFENDANT: Yes, your Honor. I want to thank you  
22 for letting me address the Court. I stand before you --

23 THE COURT: I stand before you, what?

24 THE DEFENDANT: These are just sort of notes.

25 I stand before you a contrite, humiliated, and ashamed

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1 man. I want to apologize to the Court for my lack of respect  
2 for the law, and I want to apologize to those clients whose  
3 lives I affected adversely and for the obvious anguish I caused  
4 them. And I want to apologize to my family. I did not  
5 practice what I preached. And they've endured pain and  
6 hardship. Through it all, they supported me, they loved me.  
7 I've always been a fairly religious person, and my friends in  
8 the Jewish community arranged for my name to be placed in the  
9 wall so I could be forgiven.

10 At some point in time, I strayed from the values I've  
11 been taught. I misappropriated funds, hurt innocent people who  
12 had placed their funds in my care for safeguarding. And the  
13 results were dire as well. I lost my freedom, my livelihood.  
14 My wife and son struggle. My daughters are on public  
15 assistance. And I have no one to blame but myself.

16 No matter what happens here today, actually, I'll  
17 always carry the consequences of my conduct, but I truly  
18 believe this is a country that grants its citizens a second  
19 chance, and I would hope I would have the opportunity to have a  
20 second chance to make amends.

21 I'm incredibly sorry. It's not because I was caught,  
22 because what I did, what I did, I acted in a way alien to the  
23 values that my parents had taught me. I did acts that in  
24 retrospect I can't believe I did it, I would never ever do  
25 again, and I lost my moral compass, and basically the result of

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1 that is I'm in front of you today.

2 I promise to do everything in my power to make sure  
3 that everyone is paid back, and I believe I can do that. I  
4 thank you for listening to me, your Honor.

5 THE COURT: Thank you, Mr. Starr.

6 Mr. Bosworth.

7 MR. BOSWORTH: Thank you, your Honor.

8 Of course not all fraud cases are equal, and of course  
9 not all defendants who are convicted of fraud offenses are  
10 similarly situated. That seems obvious. And part of the  
11 problem with just reflecting on a compendium of cherry-picked  
12 cases across many districts is the Court does not know and,  
13 frankly, the government does not know all the details about  
14 those particular cases and the individual defendants that stood  
15 before the courts that sentenced them.

16 For example, Ms. Edwards referred to Vance Moore, who  
17 was sentenced by Judge Griesa this past Monday. What is not  
18 communicated by simply reflecting on the \$50 million figure is  
19 the knowledge that Mr. Moore had precisely the same guidelines  
20 loss, 20 to \$50 million, as Mr. Starr, and Mr. Moore's  
21 guidelines range was at the low end, 97 months, and Judge  
22 Griesa imposed the low end of the guidelines sentence.

23 THE COURT: Wait a minute.

24 MR. BOSWORTH: He did not have the same enhancements  
25 that Mr. Starr had.

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1 THE COURT: I thought Ms. Edwards gave a different  
2 figure than 97 months.

3 MS. EDWARDS: 97 months.

4 THE COURT: You did say 97 months? Sorry.

5 MR. BOSWORTH: That was the low end of the guidelines  
6 in that case.

7 This case is not as grand in its total as other cases  
8 that are notorious in this district, there is no question, but  
9 one of the things that makes this unique is the nature of the  
10 victims. In this case, the victims were Mr. Starr's clients.  
11 And if there's any question about the effect that his offense  
12 had on them, it's cleared up by the probation officer's  
13 interview of the various victims.

14 THE COURT: Yes, but, those probation officer  
15 interviews that are summarized in the presentence report do  
16 talk about devastating emotional impact. Ms. Edwards talked  
17 about nondevastating financial effect. I assume you don't  
18 disagree with her on the facts. All she's saying is that none  
19 of those people were left penniless here by any means. The  
20 fact that they're extremely wealthy and if a million was stolen  
21 or two million was stolen, they still had 500 million. It  
22 doesn't minimize it, but none of them were destroyed  
23 financially.

24 MR. BOSWORTH: None of them were destroyed  
25 financially.

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1 One of the reasons that so many of them were affected  
2 emotionally is because they were vulnerable. They relied on  
3 Mr. Starr to provide wise counsel in their interests.

4 THE COURT: I understand the argument both ways. I do  
5 understand you're saying that the emotional impact is  
6 devastating that somebody who managed your money and you  
7 trusted for decades would steal from you. I also understand  
8 her point, that none of them were destitute. I'm sure many of  
9 these cases, as Ms. Edwards argued, companies were destroyed,  
10 people's pensions were lost. Working people had no money left.  
11 Madoff victims were left, after a lifetime, some of them,  
12 penniless. All she's saying is that of the nine victims, which  
13 is a small number, nobody was financially destroyed. I took  
14 that to be true.

15 MR. BOSWORTH: That's true.

16 THE COURT: And what to do with that, how it cuts is a  
17 different issue. I understand they all suffered great  
18 emotional impact.

19 MR. BOSWORTH: Right. Ultimately how that tension is  
20 resolved is for the Court to decide.

21 THE COURT: You're quite right in saying that I don't  
22 know the facts of the Turk case, the Moore case, the Adelson  
23 case, the Pendant case, the Rigas case. I don't know all the  
24 different factors in all of these different sentencings. I do  
25 see there's a wide range of sentencings. Here's one I never

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1 even heard of, Kohler in Florida, somebody steals 826 million,  
2 everybody gets five years. I don't know why.

3 MR. BOSWORTH: Right.

4 THE COURT: There's lots of things on this chart that,  
5 you're quite right, I didn't look behind each case to try to  
6 understand.

7 MR. BOSWORTH: Sure. That's why at the end of the day  
8 it's for the Court to decide the sentence for this defendant,  
9 and this defendant is someone who picked elderly clients, or  
10 clients whose husbands were going to jail, or clients who  
11 relied on him completely.

12 THE COURT: Picked?

13 MR. BOSWORTH: Elderly clients.

14 THE COURT: Picked? You mean that's who he chose to  
15 rob from?

16 MR. BOSWORTH: Correct.

17 THE COURT: I thought he had clients who were also  
18 younger.

19 MR. BOSWORTH: Absolutely.

20 THE COURT: He had young clients, old clients. He had  
21 all kinds of clients.

22 MR. BOSWORTH: And in this case the clients that he  
23 robbed wholesale, not just bad investment advice, included very  
24 elderly people.

25 THE COURT: And some young ones, I thought. I can

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1 think of one in particular.

2 MR. BOSWORTH: And to the young ones, in the case of  
3 victim No. 2, I think, the actress who is identified as victim  
4 No. 2, that was someone who ceded complete control of her life  
5 financially to Mr. Starr. In that respect, she was vulnerable  
6 in that she had no oversight.

7 Of course, as to all these victims and to victims in  
8 any fraud case, you can say, Well, you should have done more,  
9 you should have looked harder. The reason that she didn't, the  
10 reason that the other clients didn't is because they had a  
11 financial advisor to look out for them. It was this defendant.  
12 And they placed their trust in him and he exploited it, not  
13 once, but time after time over a period of years.

14 At the end of the day the recommendation that seems,  
15 the government, of course, supports a sentence within the  
16 guidelines, but the probation officer, as the Court is aware,  
17 recommended a sentence of 151 months, the top of the guidelines  
18 range, after having spoken to these victims. And one thing  
19 that is at least worth noting is that the probation office, of  
20 course, it's just a recommendation, but they make  
21 recommendations across fraud cases and see a lot of cases.

22 THE COURT: They make recommendations in every case,  
23 and my experience is they almost never recommend a  
24 nonguidelines sentence, which is very typical now to give.  
25 They virtually never recommend them, and they always recommend,

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1 frankly, a higher number than I pick.

2 MR. BOSWORTH: That may be.

3 THE COURT: That's my experience.

4 MR. BOSWORTH: And anecdotally, at least in my  
5 experience, they almost never recommend a sentence at the top  
6 of the guidelines range, which is itself significant. And, of  
7 course, the Court will weigh all these factors. The Court has  
8 all the information, and the Court will figure out whatever  
9 sentence is just in this case and whatever sentence is  
10 appropriate to send a message to the community to deter other  
11 people like Mr. Starr who have clients who rely on them to  
12 prevent those financial advisors from exploiting their clients'  
13 trust like Mr. Starr did, to make them think twice about  
14 robbing their clients in the way that he did.

15 THE COURT: I wish I believed all that worked, that  
16 all the jail we give deterred people. But we keep getting  
17 cases year after year. We have a chart like this for 20  
18 multimillion billion dollar frauds, and people keep doing it,  
19 sadly. General deterrence, I don't know what to say. But  
20 specific deterrence, I'm sure my sentence will achieve.

21 Yes, Ms. Edwards.

22 MS. EDWARDS: Yes. Just two very, very brief points,  
23 your Honor.

24 I believe that the basic nature of the argument that  
25 Mr. Starr misappropriated funds of people who trusted him with

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1 their funds. Your Honor that's what an embezzlement is. If  
2 you don't have access to the money, you can't embezzle. He's  
3 not being charged with a breaking and entering. It's not a  
4 robbery.

5 THE COURT: In fairness, Ms. Edwards, there's a  
6 difference. Some of us invest money, but we've never met the  
7 advisor at all. It's just a voice on the telephone. You have  
8 an account somewhere, the advisor changes every two years, and  
9 these people leave and go to another firm. It isn't like that  
10 here. This is a close, personal relationship.

11 MS. EDWARDS: Absolutely.

12 THE COURT: These people knew and worked with  
13 Mr. Starr for years. This isn't just, Of course, he had access  
14 because they have an account. This isn't a faceless  
15 relationship.

16 MS. EDWARDS: The other thing is I just wanted to draw  
17 your Honor's attention to two things. One is the enhancements  
18 under the guidelines. The guidelines are what they are, but  
19 the enhancement under the guidelines, I think there's two  
20 points for fraud for being an investment advisor. If you plead  
21 to fraud by an investment advisor, you've automatically gotten  
22 yourself two points. These are some of the fundamental  
23 problems, and I think the fact that even the Justice Department  
24 saw that there's a problem with the way the points get piled on  
25 in its letter to the Sentencing Commission.

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1           Also, while obviously we don't have a complete  
2 understanding of what went behind every single case in my  
3 little list, what it really does show is that, in general, when  
4 it's over \$100 million, it's one kind of sentence, double-digit  
5 sentences. And when it's under \$100 million, courts tended to  
6 impose a lesser sentence, and it shows a pattern. And since  
7 sentencing is tied to loss amounts in fraud prosecutions, the  
8 loss amount tends to be certainly not within the guideline  
9 range when you have that.

10           I just wanted to say one more thing. Times have  
11 certainly changed because had Mr. Starr done this, let's say,  
12 before Sarbanes-Oxley a few years ago, these wouldn't have been  
13 the guidelines range. The guidelines range would have been  
14 different. We are where we are.

15           THE COURT: But I suppose the good news for you along  
16 those lines is the guidelines are now guidelines.

17           MS. EDWARDS: That's right.

18           THE COURT: They're not mandatory.

19           MS. EDWARDS: And we are thankful for that, your  
20 Honor.

21           THE COURT: They're only one factor for the Court to  
22 consider.

23           Mr. Bosworth, was there anything else you wanted to  
24 add? I didn't know if you were done when Ms. Edwards rose.  
25 You may have been; I wasn't sure.

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1 MR. BOSWORTH: We have nothing to add, your Honor.

2 THE COURT: In every case, the Court has an obligation  
3 to determine a reasonable sentence, in particular, a sentence  
4 that is sufficient but not greater than necessary to serve the  
5 required purposes of sentencing. Based on all of the  
6 sentencing factors set forth in 18, United States Code, Section  
7 3553, which I will go through one by one, and I don't think  
8 suspense is a fair thing, I conclude that a nonguidelines  
9 sentence is appropriate here and intend to impose a sentence of  
10 90 months in custody, to be followed by three years of  
11 supervised release, a mandatory assessment of \$300, a  
12 forfeiture of \$29,112,782, which will include the value of the  
13 apartment, and restitution in the amount to be finalized by a  
14 proposed order around April 4, but certainly no less than  
15 \$29,112,782. Restitution must be paid at the rate of 15  
16 percent of earnings, and the obligation to pay restitution will  
17 continue after the expiration of defendant's supervised  
18 release.

19 Now, I will go through each of the factors one by one.  
20 The first is the nature and circumstances of the offense and  
21 the history and characteristics of the defendant.

22 Starting with the nature and circumstances of the  
23 offense, this defendant was a financial planner and investment  
24 advisor for several decades. During his years, he managed  
25 money and invested money for many wealthy clients, including

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1 many celebrities. For many of these clients, he virtually  
2 managed all of their finances, paying their bills, providing  
3 tax advice, making investments. However, at some point, he  
4 began to steal money from his own clients. Between March 2009  
5 and April 2010, for approximately a year, he stole millions of  
6 dollars from his clients, simply by transferring his clients'  
7 funds to his attorney escrow account and then withdrawing money  
8 from those accounts for his own personal use. Based on the  
9 sort of conversations we've had here, it appears that he stole  
10 money in this way in about the amount of \$24 million.

11 In addition to outright theft, between 2005 and 2010,  
12 the defendant also fraudulently induced some of his clients to  
13 make certain investments by making material misstatements  
14 and/or material omissions.

15 According to statements of defense counsel, the vast  
16 majority of these investments are in valid, revenue-producing  
17 companies, and these investments may yet have some value, but  
18 that, of course, is pure speculation. At this time, the  
19 government assumes that these investments have no value and  
20 that, therefore, the victims have lost an additional either  
21 nine or \$10 million.

22 So, of the total of \$33 million, I may have this  
23 wrong, I had thought that approximately \$3 million may have  
24 already been repaid. Is that right? Already repaid, before  
25 the apartment and before the accounts that you mentioned that

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1 are frozen?

2 MR. BOSWORTH: Yes, your Honor. 2.7 million.

3 THE COURT: Already repaid?

4 MR. BOSWORTH: Right.

5 THE COURT: Then there's the apartment and then  
6 there's the frozen account that Ms. Edwards hopes will have  
7 about \$4 million. So there may be another seven or so million  
8 on the way.

9 MS. EDWARDS: There may be another three or four  
10 million on top of that, assuming we can get the investments  
11 from the receiver.

12 THE COURT: One hopes. It may be that in short order  
13 a total of ten million or so may be repaid.

14 As noted in defense counsel's submission, defendant  
15 stole money from approximately nine victims, all of whom had a  
16 great deal of personal wealth but all of whom placed their  
17 trust in this defendant with honesty and integrity, which he  
18 did not do.

19 I turn now to this defendant's history and  
20 characteristics. This now 67-year-old defendant has no prior  
21 convictions. He's a graduate of Queens College and Brooklyn  
22 Law School and has a master's in tax law from the NYU School of  
23 Law. He was admitted to the bar in 1967 and became a CPA in  
24 1970. For the next 20 years, he had a successful accounting  
25 practice together with his brother. In 1990, he formed his own

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1 company, Starr & Co., where he became involved in money  
2 management for wealthy clients.

3         During the next 20 years, he became a wealthy and  
4 successful businessman, serving on the board of trustees of the  
5 NYU Law School, the board of the Queens College Foundation, the  
6 board of directors of Mentor, which involves mentoring programs  
7 for children in public schools, the board of the Network for  
8 Teaching Entrepreneurship, which helps young people in urban  
9 areas to learn entrepreneurial skills, the board of trustees at  
10 the Women's Project, promoting works by women playwrights, a  
11 sponsor of the Council on Foreign Relations, a trustee of the  
12 School of Public Health of Columbia University. He also found  
13 an organization known as Friends In Deed, which is dedicated to  
14 counseling people suffering from AIDS. He also found the Sam  
15 Alexa Charitable Foundation, which has made charitable  
16 contributions for the past 12 years. He's also been a patron  
17 of dozens of charitable organizations in New York, including  
18 the Museum of Modern Art, Museum of Natural History,  
19 Metropolitan Opera and the Frick Museum and Morgan Library and  
20 many other noteworthy charities.

21         I must say I don't believe he became involved in all  
22 of this for the purpose of appearing at this sentence today. I  
23 think he did all of this work over the many years because he  
24 was involved as a good public citizen and did give up his time  
25 and his money, which was not stolen money.

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1           The defendant has had four marriages. He has children  
2 by his first and third wives. He was married to his first  
3 wife, Gail, for 12 years. They have two grown children, now 44  
4 and 41. His daughter's a clinical psychologist and his son is  
5 an attorney who at one time worked with his father at Starr &  
6 Co.

7           His second wife, Sheila, had two children when they  
8 married. One child died of AIDS at age 21. The other is now  
9 39 and works in finance.

10          His third wife, Marissa, suffers from multiple  
11 sclerosis and has two teenage daughters from her marriage to  
12 Starr. These girls are now 16 and 17 and are living with their  
13 mother. Starr has supported them, and now both they and their  
14 mother are in great financial distress.

15          Starr met his fourth wife, Diane, in 2005. They  
16 married in 2007. She is now 34. She is the mother of a  
17 13-year-old son who suffers from asthma. She is now living in  
18 a luxury apartment that Starr purchased in April 2010, just  
19 before his arrest. The apartment is subject to forfeiture and  
20 she is making arrangements to vacate the home. She and her son  
21 have been dependent on Starr for support. While she has  
22 several projects that she's working on, like writing a book and  
23 producing a workout video, she has no real source of income.

24          The presentence report does not include a financial  
25 affidavit because all the defendant's records have been seized.

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1 The report does report that he filed tax returns in 2006, '07,  
2 and '08, but not in '09. In '06, he reported income of \$1.7  
3 million; in 2007, \$358,000; in 2008, \$81,000. He has many  
4 debts and at least one outstanding judgment of a million  
5 dollars.

6 I was going to say I can't really tell what assets he  
7 has given, absent the report, but you said some things about  
8 that here today, Ms. Edwards, that make me think there will be  
9 some immediate significant percentage for restitution.

10 The defendant has produced several dozen letters from  
11 friends and family of the defendant, including several from the  
12 institutions that he assisted over the years that I mentioned  
13 earlier. These letters speak of defendant's many good deeds,  
14 both in charitable contributions but also in providing support  
15 and leadership to individuals and organizations.

16 I now turn to the second factor, which is the need for  
17 the sentence imposed. Sentence must reflect the seriousness of  
18 the offense, and this offense is very serious. I do think that  
19 stealing from your own clients over a period of time over and  
20 over again, just taking the money, is a serious offense.

21 Sentence must promote respect for the law and it must  
22 provide just punishment. I certainly think a sentence of seven  
23 and a half years does all of that. The sentence is to provide  
24 adequate deterrence, and deterrence is as important in white  
25 collar fraud cases as it is with respect to any other category

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1 of criminal conduct. Those who steal money from their clients  
2 or fail to disclose material information regarding investments  
3 or knowingly invest money in shell companies, knowing it's not  
4 a real investment, do create havoc in the marketplace and do  
5 cause the destruction of trust in the financial markets. Such  
6 people must know that if they are caught they're going to go to  
7 prison just as they would if they dealt in drugs or guns.

8 Then there's the need to protect the public from  
9 further crimes of the defendant. The public needs protection  
10 from people who engage in fraudulent conduct. Again, as you  
11 pointed out, Ms. Edwards, he really wasn't dealing with the  
12 public per se. He had a small number of personal clients. He  
13 managed their money. I believe him when he says this is not  
14 going to ever happen again. He would be a fool to be released  
15 in his 70s and take on clients and steal from them. I don't  
16 think he will have any clients then and I don't think he will  
17 steal from them. So I don't think the public per se needs any  
18 protection from him.

19 The next factor is the need to provide educational or  
20 vocational training, medical care, or other correctional  
21 treatment. I didn't find that to be a factor in this sentence.

22 The next factor is the kinds of sentences available.  
23 The guidelines call for a custodial sentence, but there's no  
24 mandatory minimum so I'm aware that I could give him any  
25 sentence, even time served. I do realize that. But this is

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1 the sentence. A significant custodial sentence is what I  
2 consider appropriate.

3 Now, then, there's the guidelines and applicable  
4 policy statements, and the Court must consider that very  
5 seriously, and I did. As noted many times here, the guideline  
6 requires a term of 121 to 151 months in custody, but it's based  
7 primarily on the type of scheme and the amount of loss and, as  
8 you said, other factors, being an investment advisor, abuse of  
9 trust, all of that. But in looking closely at the amount of  
10 loss here, which, as you point out, is something in the range  
11 of 33 million, the number of victims, the type of victims, this  
12 does appear to be somewhat atypical of the big fraud schemes  
13 that we have seen recently in this district.

14 As defendant points out, sentences in fraud cases have  
15 generally not followed the guidelines anyway. Courts have  
16 looked closely at the type of fraudulent conduct, the number  
17 and type of victim, and the amount of loss. Compared to many  
18 recent cases, a loss amount of \$30 million is not an  
19 astronomical loss figure. The victims are not corporate  
20 employees who often lost their pensions, their livelihood when  
21 their companies collapsed. None of these victims were left  
22 financially destitute as happened in several other cases.  
23 While they no doubt suffered great emotional pain being  
24 betrayed by a trusted advisor, they are all extremely wealthy  
25 and have not suffered significant financial reversal as a

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1 result of this scheme.

2           While his conduct toward his clients was despicable,  
3 it affected a very small group of people and did not involve  
4 widespread financial harm to society on the whole. On the  
5 other side of the ledger, and I did give him great credit for  
6 this, was his years of significant charitable work for many  
7 important projects. I don't believe he did this work with an  
8 eye toward this sentence as these thefts seem to have occurred  
9 toward the end of this 40-year career when he seemed to have  
10 lost his moral compass partly as a result of infatuation with  
11 his young fourth wife.

12           I conclude that given his age and his long record of  
13 good works, a 25 percent reduction from the low end of the  
14 guidelines range is appropriate. I also note that he seems to  
15 have genuinely and quickly accepted responsibility for his  
16 thefts, and he has already and I hope he will continue to make  
17 every effort to repay what he's stolen. That's what he's said  
18 today, and I'd like to believe that's so.

19           Then there's the need to avoid unwarranted sentencing  
20 disparities, which is certainly the overwhelming purpose behind  
21 the Sentencing Reform Act of 1984 and it does survive the  
22 Booker analysis. The guidelines system was promulgated to  
23 sentence toward a national norm for certain criminal conduct.  
24 However, as repeatedly noted, the guidelines are not  
25 presumptively reasonable, and they are a benchmark or a

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1 starting point. And as I've already noted, given that some of  
2 the investments and losses may yet be recouped, a guidelines  
3 set primarily by loss amount is not always the best measure of  
4 appropriate sentence, but for all the reasons I've stated in  
5 these last ten minutes of talking, this sentence creates no  
6 unwarranted sentencing disparity.

7       The last factor is the need to provide restitution,  
8 and here, it was a significant amount of money, and the sooner  
9 he is released and earning money legitimate the better. I  
10 therefore conclude that considering the goals of sentence and  
11 the individualized sentencing that a sentence of 90 months in  
12 custody to be followed by three years of supervised release is  
13 sufficient but not greater than necessary to serve the goals of  
14 sentencing.

15       In addition, the required special assessment of \$300  
16 must be paid immediately. The fine is waived, given the  
17 required restitution and the required forfeiture. Defendant is  
18 to be supervised in the district of his residence and the  
19 standard conditions of probation as recommended by the  
20 probation department shall apply.

21       In addition, the following mandatory conditions shall  
22 apply: First, defendant shall not commit another federal,  
23 state, or local crime. That should be an easy one, Mr. Starr.

24       Second, the defendant shall not illegally possess a  
25 controlled substance. I hope that's easy too.

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1 Third, the defendant shall not possess a firearm or  
2 other destructive device, and I assume you have never had that  
3 problem anyway.

4 The mandatory drug-testing condition is suspended  
5 based on this Court's determination that the defendant poses  
6 little or no risk of any future substance abuse.

7 The following special condition shall also apply:

8 First, defendant shall provide the probation  
9 department with access to any requested financial information,  
10 and, second, the defendant shall not incur new credit charges  
11 or open additional lines of credit without the approval of the  
12 probation department and only if he is in compliance with his  
13 obligation to pay restitution.

14 Finally, the defendant is to report to the probation  
15 office within 72 hours of his release from custody.

16 Are there any legal objections before I actually  
17 impose the sentence? Not an invitation to reargue, but if I  
18 have something incorrect, I want to correct it now.

19 MR. BOSWORTH: Not from the government.

20 MS. EDWARDS: No, your Honor.

21 THE COURT: Pursuant to the Sentencing Reform Act of  
22 1984, it is the judgment of this Court that the defendant,  
23 Kenneth Starr, is sentenced to 90 months in custody to be  
24 followed by three years' of supervised release. Defendant  
25 shall be supervised in the district of his residence and will

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1 be required to adhere to the standard and mandatory conditions  
2 of probation and the special conditions set forth earlier.

3 He is further required to pay the mandatory assessment  
4 of \$300 immediately and to make the required restitution, the  
5 terms of which will be set forth in a separate order.

6 I order the sentence imposed as stated.

7 Mr. Starr, you have the right to appeal this sentence  
8 within 14 days but only to the extent permitted by your plea  
9 agreement. If you cannot pay the cost of appeal, you have the  
10 right to appeal in forma pauperis.

11 Are there any special requests?

12 MS. EDWARDS: Yes, your Honor.

13 I would request that the Court make a recommendation  
14 that Mr. Starr first be designated directly from MCC so he  
15 doesn't get transferred to MDC. That's where a hard trip, and  
16 if the Court would do that, I would be very appreciative.  
17 Also, we are requesting a recommendation that he be designated  
18 to Otisville because it is within reasonable proximity to his  
19 family and also has a good program for observant Jewish  
20 offenders.

21 THE COURT: All right. Anything from the government  
22 with respect to those recommendations?

23 MR. BOSWORTH: Obviously the Court can make those  
24 recommendations.

25 THE COURT: Anything to dismiss here, Mr. Bosworth?

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1 MR. BOSWORTH: Yes, the government moves to dismiss  
2 the open counts in the indictment.

3 THE COURT: Do you know what they are?

4 MR. BOSWORTH: All but counts nine, 21, and 22. One  
5 through eight.

6 THE COURT: One through eight, ten through 20, and 23?

7 MR. BOSWORTH: Yes.

8 THE COURT: One through eight, ten through 20, and 23  
9 are dismissed.

10 With respect to the recommendations, I want to stress  
11 that the Bureau of Prisons decides where to designate. That is  
12 not up to the Court. All the Court can do is make a  
13 recommendation. The Bureau of Prisons will or won't follow it.  
14 They have many criteria they have to consider. You obviously  
15 have a very large and supportive family, many of whom have come  
16 today, which is very nice, and I'm sure you're grateful to them  
17 for coming. So the nearer to New York as possible is best.  
18 Therefore, I have no problem recommending the Otisville  
19 facility. But as I said the Bureau of Prisons has their own  
20 criteria.

21 With respect to this business of transfer, I haven't  
22 had that request before, and really again that's completely up  
23 to the prison system. I don't know the needs they might have  
24 to ship between MCC and MDC. I'm a little reluctant to become  
25 involved in that. That's something they have to decide. The

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1 idea is not to have a whole host of transfers on the way as  
2 possible. But I think I better leave it at that. If you wish  
3 to order the transcript and show it to somebody, okay, but I'm  
4 not going to put that on the J & C form.

5 Anything further?

6 MR. BOSWORTH: Nothing from the government. Thank  
7 you.

8 THE COURT: Thank you.

9 (Proceedings adjourned)

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