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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA	:	No. 3:10CR222 (RNC)
	:	
vs.	:	
	:	
ROBERT RIVERNIDER, ET AL,	:	HARTFORD, CONNECTICUT
Defendants.	:	December 18, 2013
----- x	:	

SENTENCING

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

Darlene A. Warner, RDR-CRR
Official Court Reporter

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APPEARANCES:

FOR THE GOVERNMENT:

U.S. ATTORNEY'S OFFICE
157 Church Street
P.O. Box 1824; 23rd Floor
New Haven, Connecticut 06510.
BY: JOHN H. DURHAM, AUSA
CHRISTOPHER W. SCHMEISSER, AUSA

FOR THE DEFENDANT RIVERNIDER:

SHIPMAN & GOODWIN
One Constitution Plaza
Hartford, Connecticut 06103-2819
BY: JAMES W. BERGENN, ESQ.
MICHAEL G. CHASE, ESQ.

9:37 A.M.

1
2
3 THE COURT: This is the continuation of the
4 sentencing hearing in the Rivernider case.

5 MR. BERGENN: Your Honor, for the defense, James
6 Bergenn. With me at counsel table is Michael Chase,
7 Patricia Vargo and Robert Rivernider, the defendant.

8 Thank you, Your Honor.

9 THE COURT: Good morning.

10 MR. DURHAM: Good morning, Your Honor, for the
11 United States, John Durham. And at counsel table are:
12 Christopher Schmeisser, Assistant United States Attorney;
13 Special Agent Steven West of the FBI; next to Special
14 Agent West is Alexandra Hess, who the Court may have seen
15 we filed a motion for Ms. Hess -- who's a Yale law student
16 and is working in our office -- to appear here today; and
17 then Elizabeth McCartney from the FBI, who is the
18 financial analyst; and Special Agent Michael Renehan of
19 the Internal Revenue Service, Criminal Investigation
20 Division.

21 THE COURT: Good morning.

22 There has been a fair amount of activity in this
23 file in the days leading up to today, and I appreciate the
24 efforts that you have made to try to provide me with as
25 complete a record as possible.

1 I think that our first order of business is to
2 address Mr. Rivernider's pro se motion which seeks leave
3 to withdraw his guilty plea and a new trial and also
4 dismissal of the indictment.

5 I've read those papers submitted by
6 Mr. Rivernider. I was just handed the government's
7 response, which I haven't had an opportunity to read. I
8 thought that rather than keep everybody waiting while I
9 read the government's response, it would be better to just
10 get started, anticipating that the government would be
11 able to make the points orally here in open court.

12 So unless there is something else that we need
13 to do beforehand, I would propose to give Mr. Rivernider
14 an opportunity to speak on his own behalf in support of
15 his motion if he wishes to do so. I would caution you,
16 Mr. Rivernider, that what you say may have an impact on me
17 in deciding what the sentence should be in a way that's
18 not to your liking.

19 When a defendant appears for sentencing, he or
20 she has a perfect right to address the Court, but they're
21 under no obligation to do so and they can't be made to do
22 so, and sometimes defendants decide it's in their best
23 interest to rely on counsel to speak for them and not make
24 a statement themselves, and that's fine with me.

25 It sometimes happens that a defendant helps

1 himself, in my estimation. It sometimes happens that a
2 defendant hurts himself, in my estimation. But it's up to
3 you, and if you wish to make an argument in support of
4 your pro se motion, that's fine with me. If you want to
5 rest on your papers, that's also fine with me.

6 MR. DURHAM: Your Honor, just one matter before
7 Mr. Rivernider advises the Court as to how he wants to
8 proceed, the -- it certainly is to be anticipated, if not
9 completely expected, that Mr. Rivernider will be speaking
10 of things that are not part of the current record. So
11 we'd ask that the Court put Mr. Rivernider under oath
12 because I don't think he's going to be doing this from the
13 witness stand so the government won't be able to
14 cross-examine him, in all likelihood. But we would ask
15 that he be put under oath and subject to the penalties of
16 perjury making whatever representations he's going to make
17 to the Court.

18 THE COURT: Any objection?

19 MR. BERGENN: Just I wanted to make one
20 observation, Your Honor. Of course compliant with the
21 Court's order, we are not involved specifically in any way
22 with the motion, but what research we've done on it does
23 suggest that there is a pretty strong likelihood we will
24 be proceeding with the rest of the day's events, and I
25 wanted to ask the Court to at least consider, given the

1 right of allocution, and my expectation that it will be
2 exercised, whether the Court would entertain a hearing or
3 argument, I should say, on this motion during the defense
4 presentation, as it were, for sentencing.

5 And by the way, just to assure the Court, the
6 presentation will consist exclusively of comments by me,
7 and my expectation is there will be comments by
8 Mr. Rivernider. And the reason I suggest that is what I
9 had contemplated at the time of presenting the defense
10 argument at sentencing would be, I was going to be making
11 some remarks which I traditionally do and then stand
12 aside, let clients speak and then try to conclude. And I
13 just think that may be in the client's interest, and I
14 don't know if that would offend in any way the Court's
15 procedural view of the matter.

16 Again, I'm not connected to the matter, but my
17 understanding of how courts approach these, my suggestion
18 would not offend or be out of line, but I only offer it
19 because I -- I'm here.

20 THE COURT: I don't insist on taking up the
21 pro se motion at the outset. I can defer on that and
22 proceed to the other matters that need to be addressed.

23 As far as Mr. Durham's suggestion that
24 Mr. Rivernider be placed under oath is concerned, let me
25 address that when the time comes.

1 MR. DURHAM: Yes, Your Honor, and I guess I'm
2 not entirely clear on what it is that counsel suggests.

3 It would seem to the government that
4 procedurally it makes a lot more sense for the Court to
5 address the question of motion to withdraw guilty pleas
6 and some of the other items contained in the defendant's
7 pro se motion before the Court then proceeds to inquire
8 about whether he, Mr. Rivernider's had the opportunity to
9 review the presentence report or the objections and so
10 forth and so on. In fact, if we were to proceed along the
11 course presented by counsel, I can certainly envision an
12 attorney on appeal saying this was predetermined, that the
13 Court had already made up its mind on this issue.

14 So I believe procedurally it makes a whole lot
15 more sense to address the defendant's pro se claims before
16 we get to questions that really relate specifically to
17 sentencing.

18 THE COURT: Well, I would like to be able to
19 please everybody. I'd like to be able to follow a
20 procedure that would leave everybody feeling as though the
21 hearing was full and fair regardless of the outcome. If
22 you're concerned that by deferring on the pro se motion
23 we're risking the kind of criticism that you raise, then
24 I'm prepared to address the pro se motion first. If you
25 believe that's a significant risk, then I guess maybe

1 that's what we ought to do.

2 MR. DURHAM: As the record currently stands,
3 Mr. Bergenn's comments that he believes the matter's going
4 to proceed to sentencing in any event, and then if we were
5 to take the pro se motion out of order, I can certainly
6 envision somebody making the argument down the road, that
7 was evidence of this fact.

8 Given the nature of some of the claims that are
9 contained in the pro se motion, it certainly is not
10 beyond -- well, I think it is likely that some argument
11 like that might be made.

12 THE COURT: Okay.

13 MR. BERGENN: Could I just respond just
14 specifically to that?

15 We've researched all the cases that we could
16 find under these similar circumstances and not found a one
17 that would be at odds with the procedure I suggested, is
18 point one.

19 Point two is that I think that this record is
20 abundant that any argument that the Court had
21 predetermined without a full hearing would be frivolous.

22 THE COURT: Okay.

23 Mr. Rivernider, we have a lot to do today and on
24 my list of things to do, your pro se motion is first. I
25 think logically it should be addressed first.

1 As I said a minute ago, I wouldn't insist on
2 that if there was some good reason to proceed in a
3 different fashion, but I don't see one and I am sensitive
4 to the concern that if we proceed to other matters people
5 might think that I didn't regard the pro se motion with
6 appropriate seriousness.

7 Please understand, sir, that ordinarily a
8 defendant has a right to be represented by counsel and a
9 defendant exercises that right. Sometimes a defendant
10 will want to proceed pro se, as he might have a right to
11 do, in which case he proceeds pro se. The law doesn't
12 provide for a hybrid whereby a person who is represented
13 by counsel also proceeds pro se.

14 So we find ourselves in an unusual posture
15 today. I'm doing this because I understand that you feel
16 strongly that the proceeding has not been fair to you and
17 I want to give you an opportunity to be heard on matters
18 that your counsel believes they cannot address on your
19 behalf.

20 So out of abundance of concern for procedural
21 fairness and the appearance of fairness, I'm giving you
22 this opportunity.

23 With regard to the question whether you want to
24 make an argument in support of the motion this morning, I
25 can tell you that I have read your papers and I have

1 considered the points that you have raised and I've looked
2 at the applicable law.

3 If there is something new that you want to add
4 to your papers, if there's something different that you
5 want to bring to my attention, then you have an
6 opportunity to do that. If not, if you would merely be
7 repeating what you have presented to me in writing, I
8 don't see a need to do that, but I will give you an
9 opportunity to proceed that way if you'd like.

10 I think in fairness to the government, I should
11 have the clerk place you under oath. You are being given
12 an opportunity to make statements for the purpose of
13 influencing my thinking and you're not subject to
14 cross-examination, and I think that this added assurance
15 of trustworthiness provided by the oath is appropriate.

16 So if you do wish to make an oral argument, I'm
17 going to ask the clerk to place you under oath.

18 MR. BERGENN: Can I -- in light of the fact that
19 the record is also clear that I am responsible for
20 everything but this, may I have a moment with respect to
21 the things other than this motion with my client?

22 THE COURT: Yes.

23 (Pause)

24 THE COURT: Mr. Rivernider, how would you like
25 to proceed, sir?

1 THE DEFENDANT: Your Honor, I hope to just cover
2 some new ground.

3 THE COURT: Okay. Then I'm going to ask the
4 clerk to place you under oath.

5 (Defendant sworn)

6 THE DEFENDANT: Thank you, Your Honor.

7 Your Honor, as you know, I filed a motion to
8 withdraw my plea because after reviewing some information,
9 I just don't believe that what we've submitted to the
10 Court rises to the level of criminal activity because we
11 had no mens rea.

12 Now, maybe I have a different version or
13 different belief in mens rea where you had to have a
14 guilty mind at the time, and I simply did not have a
15 guilty mind at the time, Your Honor. Never once did I
16 intend to steal anybody's money, take anybody's money, I
17 never put any of the money in my pocket.

18 The government keeps saying I have \$20 million
19 or something? Your Honor, I haven't even owned a car in
20 the last five years. I was driving a 2002 Hyundai at the
21 time. Okay? I was not living extravagantly. I was not
22 spending people's money on myself. It's just not true.

23 Obviously I was in the No More Bills program
24 just like everybody else was in the No More Bills program
25 with all of my own money. When everything went down and

1 crashed, it all went down and crashed. I couldn't pay my
2 own mortgage. I couldn't pay my kids' tuition.
3 Everything that happened to them, happened to me.

4 Now, just to cover some new stuff, Your Honor,
5 as I said I would do, the government filed their
6 submission for fraudulent obtained funds. I would just
7 like to cover a footnote that they wrote in here, footnote
8 five. It also appears on September 24, 2007, Cut Above
9 Ventures sent \$324,500 to an attorney's ALTA account in
10 connection with Praise's investment. Presumably the
11 defendant also lost this money.

12 And, once again, I apologize, sometimes -- most
13 people have two ears, I only have one mouth, and I think
14 they can hear twice as fast as I could talk, so I usually
15 go on with that. I'll slow down.

16 Your Honor, in the government's footnote, it
17 says it presumably \$324,500. On September 24, they still
18 at this point, this far into the process, don't know that
19 that was money that went out to purchase or to lease a
20 certificate of deposit. That certificate of deposit was
21 to go into a trading program, which is exactly what the
22 clients said was going to happen with their money.

23 Their money was pooled, did go into this, and
24 the government's claiming that they're not aware of it.
25 Yet SEC-004522, which is an email that I sent to Douglas

1 Gordimer, Douglas Gordimer on September 24, 2008, with the
2 SEC in Dallas, Texas, he was running the investigation for
3 David Praise, and I sent an email -- and if you want me to
4 submit it to the record, I will, or I'll just go ahead and
5 read it, Your Honor, but it says: Subject, Martin Porter
6 One. Attached are documents regarding Martin Porter. I
7 was getting a CD from Mr. Porter through a company called
8 Proof of Funds, LLC, based on David Praise telling me he
9 would be able to put into trade. He did not. The CD
10 apparently could only be used as some sort of asset
11 enhancement. After paying for the instrument, Mr. Porter
12 then sent us instructions to pull the CD down, which
13 nobody could use. Bob Rivernider.

14 Your Honor, this included attachments regarding
15 Martin Porter and the entire CD and the entire investment.
16 Those CDs and the entire investment were all at my house,
17 the originals, with contracts that the government took
18 when they raided my house. They're all in discovery. I
19 don't know whether the Court has them all, but I can
20 submit them all to you.

21 I attempted over and over again to put these CDs
22 into a trade on behalf of the clients in order to earn the
23 money that was -- that they were told that they would
24 be -- that they were going to get paid back in the
25 repayments in the No More Bills program. So I did exactly

1 what the government told the grand jury I did not do and
2 exactly what they tell the victims I did not do.

3 And the government was well aware of this
4 because they knew from the SEC report. They also knew
5 from Donna Moore.

6 USAAO-001189, Donna Moore, before the grand
7 jury, is answering a question, and she says: Yes, in
8 November of 2007, I went with what I thought was to
9 Rivernider for \$35,000.

10 Question: What was the reason for lending him
11 that money?

12 Answer: He needed money because he was buying a
13 CD to invest, and apparently it was something where the CD
14 would then be traded or invested or whatever.

15 So the government was well aware of it there.
16 They were also aware of it in Donna Moore's 302 where
17 Special Agent West wrote that Moore wired approximately
18 \$33,800 to Cut Above Ventures. She actually wired that
19 money, if you look at her bank statement, to Martin W.
20 Porter. Donna Moore was part of that -- as well as Eric
21 Reid -- was part of that deal. That didn't work out with
22 David Praise. So I was looking for other people who could
23 invest that CD in order to pay everyone.

24 Your Honor asked a question at the last hearing,
25 when should I have known. When? The answer to that

1 question is January 20, 2008.

2 On January 20, 2008, we had a conference call
3 with IGT. I was at a stockholder's meeting on August 15,
4 2007. On August 15, I believe I wrote most of this in
5 here, \$500,000 was supposed to start coming in December of
6 2007. We didn't find out that that was not going to
7 happen until January 20, 2008.

8 At that point everything bounced, including all
9 of my payments. I couldn't feed my family at that time.
10 That's when everything crashed. Okay?

11 But I didn't stop trying, though, Your Honor. I
12 continued to try.

13 On February 8, I wrote an email to Ricardo
14 Prieto and the email says -- or actually Ricardo Prieto
15 sent me an email, February 8, 2008, regarding a \$100,000
16 CD -- or \$100 million actually. And Ricardo says, we are
17 going to bring this CD down. I will send you the
18 agreement. You will note pay the loan. I will service
19 the loan. The split is 60 to you, 40 to me, after all
20 fees are paid. I will try to bring down the instrument
21 tomorrow morning if I can. I will let you -- I will let
22 you. That's what he says. Best regards, Ricardo Prieto
23 the International Group Companies.

24 So even in February I continued to try to do for
25 the clients what they expected to happen.

1 And you might remember Ricardo Prieto, he's the
2 recipient right after this in March where I write the
3 email that says "WTF," which as an acronym we now know is
4 for "what the fig?"

5 So I sent that email, which I apologize if
6 that's out of line. I know Mr. Durham strained to not say
7 that, but that's -- that's what that email was about.

8 That whole email in March was about, hey, are
9 you getting the CD down? When is it going to come down so
10 we can put this CD into trade. I just didn't quit. I
11 just don't know how to quit, Your Honor.

12 And Your Honor, I can submit if the government
13 doesn't have these, if the Court doesn't have these, this
14 is a hundred million dollar CD made out to Cut Above
15 Ventures from UBS Bank.

16 If it's fake, if it's wrong, I don't know, Your
17 Honor, but I didn't have a guilty mind at the time because
18 this is one of the things -- you asked, you know, what is
19 the one big thing? Well, this was one of four.

20 IGT was another investment that was supposed to
21 be paying \$500,000 per month with Phase II starting in
22 February of '08.

23 David Praise million dollars was a whole other
24 one.

25 So I continued to try.

1 Another one was Kinetic International. I
2 submitted a sheet with Kinetic where I was to be paid
3 .25 percent of all worldwide income, all worldwide
4 companies into perpetuity. Perpetuity lasts longer than
5 252 months.

6 So I had many things going on at the same time,
7 any one of them could have paid everyone's bills. And
8 that's what I expected to happen and that's what I
9 continued to work hard to do, Your Honor.

10 And just to give you an idea of how -- my
11 interaction with the SEC, the government says in their
12 sentencing memorandum that I shouldn't get a downward
13 departure because I basically only help the SEC as though
14 a victim would. Your Honor, I put my kids' lives in
15 danger going after an international fraudster who was
16 involved in billion dollar deals, okay?

17 In February 2009, I wrote an email to Janie
18 Frank and Doug Gordimer, the two people at the SEC on
19 January 25, 2009, and the email says subject, Praise in
20 Vegas. Ms. Frank, David Praise was staying at the
21 Venetian Resort. I called and asked -- I called and they
22 said he checked out on Friday the 23rd. Sorry I did not
23 have this until Saturday. I believe he moved to the
24 Flamingo and stayed with Theo Moustakakis but they checked
25 out on Saturday. As you know, they would have asked him

1 for picture ID that would have current address, and I'm
2 sure David would be using a debit card that could lead to
3 a bank account that may have stashed my million, maybe.
4 The Venetian Resort -- and I give the address and the
5 phone number for the Venetian. I hope this is helpful in
6 some way, Bob Rivernider. With my phone number.

7 Your Honor, this is January of 2009, I'm still
8 trying to help. This is based on massive investigation of
9 mine. I continued to investigate David Praise on an
10 ongoing basis finding -- and I was notifying the people he
11 was scamming who then turned around and were threatening
12 me because they thought everything that he was doing was
13 on the -- was legitimate.

14 So I was stopping crimes from being committed.
15 And, Your Honor, you wanted new evidence?

16 The government is now going after the lenders,
17 you may be aware. I mentioned some of that in my -- and
18 the lenders are saying that -- or the government is saying
19 that the lenders committed loan origination fraud.

20 I did not fill out any mortgage applications. I
21 submitted information to professional mortgage people who
22 followed the guidelines of their company in order to do
23 the mortgages. That's what happened, okay?

24 Now, since the government is now going after the
25 lenders, my house, which you know has been foreclosed

1 because I can't make the payments, I received a letter in
2 a settlement that the government made with the banks.
3 Nobody's going to prison. However, the letter here says,
4 your payment will be \$300.

5 So the government is going after the lender,
6 they get to write a check to us for \$300. We just got
7 this October 25, 2013. Under the equal justice, we should
8 be able to write a check for \$300 to all victims as well
9 if there's equal justice under the law, because that's
10 what the government negotiates with the lenders.

11 The government also, as you know, is going after
12 Sun Trust Bank, saying the same things. Sun Trust, I
13 learned after trial, had an arrangement with Fannie Mae
14 where they had a stepped up income program where they
15 allowed their brokers to step up the income.

16 If somebody's income at \$20,000 wasn't good
17 enough, they could increase it to 21 or 22 or 23 or 23.5
18 as happened with Mark Taylor and Donna Moore.

19 We never gave Mark Taylor \$23,500 for Donna
20 Moore. Mark Taylor stepped that income up to help her
21 qualify. And then Mark Taylor said in his 302 that he
22 never discussed income with me.

23 We never saw any paperwork, never saw closing
24 documents, never saw any of that stuff. But with Sun
25 Trust, they get to write a check for a billion dollars?

1 And Sun Trust agreed -- according to this news article
2 when it happened -- Sun Trust agreed to provide
3 \$500 million in consumer relief and pay \$468 million to
4 resolve claims by the U.S. Justice Department and the
5 Federal Housing and Urban Department. So the Justice
6 Department and HUD are getting \$468 million and nobody's
7 going to prison.

8 I can go on about -- the government keeps
9 mentioning Tosha Wade, mentioned Tosha Wade extensively.
10 I only met Tosha Wade like five times, Your Honor, maybe
11 six. I don't curse. I never cursed in front of Tosha
12 Wade or her kids. It never happened. So for the Court to
13 believe that all of this stuff happened, that I was
14 working there every day, that my sister was working there
15 every day, and to be sentencing us for that is just not
16 true. I wasn't there.

17 Loretta had a job in Fort Lauderdale an hour
18 away that she continued to work at. Tosha Wade wasn't
19 even a licensed realtor, which she says she was as the
20 Court is now aware.

21 They also talked about Shirley Hibbard and
22 because Shirley Hibbard wanted to use an attorney, Doug
23 Yates, in order to do closings. Doug Yates did some of
24 the closings on these deals. He was the attorney on a lot
25 of the Bear Creek deals before Dave Bryant.

1 So the fact that I didn't want to do business
2 with Shirley Hibbard because she was going to send things
3 to her attorney is just patently false.

4 And Shirley Hibbard, for the record, Your Honor,
5 I know a sentencing is about making sure new crimes aren't
6 committed, and I'd be happy to do a public service
7 announcement and stop new crimes from being committed if
8 the Court will allow, because crimes are still be
9 committed in Tennessee.

10 If the crime that I'm alleged to have committed
11 is having people buy second homes where they're actually
12 used as investment properties, that still happens today.
13 I pulled up a whole bunch of properties where Shirley
14 Hibbard closed loans and Dave Bryant are closing loans as
15 of December 2012 on one of the actual deals that we were
16 involved in and sold, Shirley Hibbard closed the loan, it
17 was done as a second home -- I got the public records --
18 and they're now renting out the property as an investment
19 property. Shirley Hibbard's renting the property out.

20 So if new people are being brought into that
21 crime, then they should be known. And Wells Fargo and Sun
22 Trust are doing the mortgages.

23 So what I'm accused of doing, what I'm guilty of
24 doing in this court, is still happening to this day. And
25 the government has not once, I assume, told Shirley

1 Hibbard, hey, that's a crime.

2 Now, I would like to just be able to stop a
3 crime, Your Honor. If other new people -- a young couple
4 goes to Tennessee, they take their family to a cabin and
5 they get sold buying this cabin as a second home and they
6 can rent it out, Shirley Hibbard sells them it, they get a
7 mortgage, and the mortgage is now a second home and
8 Shirley Hibbard rents the property out. If I'm guilty of
9 that crime, why is the government still letting it happen?
10 I just don't understand that. Because Shirley Hibbard and
11 Dave Bryant -- it's normal procedure for the area.

12 I'm sorry I have to bring this stuff up, but if
13 it's happening today, how can I be knowingly guilty of the
14 crime at the time when Shirley Hibbard -- and they were
15 doing it at the time. I can submit the records to show
16 you, property after property the same thing happens.

17 You're familiar with the loss numbers, the loss
18 calculations, and I demonstrated where the government is
19 off by on Maureen Walters 102 percent. Because she
20 received over \$102,000 after sending in the \$100,000.

21 Michael Mastoris, according to Special Agent
22 West, before the grand jury said Michael Mastoris said he
23 lost between seven and \$900,000 and Michael Mastoris said
24 he sent between seven and \$900,000. And I documented the
25 numbers of \$1.2 million that he actually received. So I

1 can't figure out how Michael lost money or if he made
2 money, because it appears that he actually made money.

3 Now, Your Honor, the government is arguing that
4 in the thing, whatever it was that we received last night,
5 that they can't determine the exact numbers. Your Honor,
6 the reason they can't determine the exact numbers -- and I
7 have been asking about this since day one. Where are the
8 records to show -- that Bank of America can show who
9 received the actual money?

10 Bank of America sat on the witness stand, the
11 representative, and told us they're on a different server.
12 If the government or anyone would have asked Bank of
13 America, can you get us those records that are on a
14 different server, they would have submitted the records.
15 The government can then go through those records and see,
16 here's how much Michael Mastoris got, 250,000 went to
17 Mountain Shore Cabin Rentals for an investment into the
18 cabin rental company.

19 So the government can get the records. I
20 believe they have the records, because they subpoenaed
21 Bank of America for all the records. But they're not
22 turning over those records because they don't want people
23 like Donna Moore to show as having made money as opposed
24 to being a victim. That's why they start Donna Moore's
25 records that she started receiving payments in July of

1 2007 when Donna Moore says that she started receiving
2 payments in November 2006. It's just -- none of it just
3 makes sense to me, Your Honor.

4 And, Your Honor, again that's why not only have
5 I filed a motion to withdraw my plea, because the grand
6 jury should be able to determine whether or not I had the
7 proper mens rea at the time based on the information I
8 provided, based on the information that I've just gone
9 over this morning.

10 For example, I know the government would like
11 everyone to get all their money back. I would like
12 everyone to get all their money back as well. I was kind
13 of upset the other day when Mr. Durham said, we would find
14 it if we just looked harder. Well, why don't you just
15 look harder?

16 I was a victim, as they know, from -- as they
17 now admit, of the David Praise scam. Special Agent Craig
18 Mason stated that I was a victim. However, we -- I was
19 not informed because somebody told Janie Frank -- and I
20 have her email here -- that I was indicted in July of
21 2009. So they never informed me of David Praise. I
22 wasn't indicted in July of 2009, but the only people who
23 knew that I was even under investigation is the
24 prosecution.

25 So how did Ms. Frank believe that I was indicted

1 in July of 2009 when she told Special Agent Mason who was
2 investigating David Praise in California. And that's why
3 my rights under the Crime Victims Rights Act were
4 violated. I never had an opportunity to go into David
5 Praise's sentencing and speak. Because I was never
6 informed about it, which happened a month before I was
7 indicted. I should have been notified so that I could
8 tell Judge David O. Carter, what David Praise did to me
9 and my family.

10 We now live in a single wide trailer, Your
11 honor. I don't have a car. I have to borrow my mother's
12 car to take my kids to school every morning who live with
13 me in that trailer. Okay? But the government prevented
14 us from getting restitution as well. A requirement of the
15 mandatory restitution act.

16 Kamanga Mwangi, he agreed to pay \$380,000 to the
17 Securities and Exchange Commission. I never received a
18 dime of that or was ever notified of about it because the
19 Securities and Exchange Commission believed that I was
20 indicted because -- and Craig Mason, Special Agent Mason,
21 said because we were telling people we were putting it in
22 real estate investments and we put the million dollars
23 into this stuff, meaning David Praise. This stuff was an
24 offshore investment.

25 And, Your Honor, to this day -- you've heard

1 about Methwold. Methwold was an investment that I sent
2 \$513,000 to. There was over \$800,000 in that investment
3 which happened in early 2007. Your Honor, on 12/16/13, I
4 printed out a message that I received on 12/13/2013, last
5 Friday, and it's an update, and it says: Dear client,
6 Progress of Settlement. It has taken significantly longer
7 than anticipated to secure agreement with Pay Master that
8 are able and willing to comply with the rigorous demands
9 placed upon us by the various institutions and regulations
10 involved with the settlement procedures. Consequently we
11 anticipate that the settlement process previously advised
12 will commence approximately six to eight weeks after
13 Christmas, new year, holiday period. Best wishes for the
14 coming festive season. Regards, Methwold International.

15 Your Honor, this was the program that was frozen
16 which was referenced in the recipe email. It was in fact
17 frozen, we did in fact tell people the truth, which is
18 exactly the opposite of what was told to the jury and to
19 the Court. The program was frozen, it remains frozen to
20 this day, Your Honor.

21 How could I be guilty of doing something that
22 still to this day remains frozen? I just don't understand
23 that.

24 And currently sitting in there right now, I
25 never expect to get a dime of it -- Mr. Bergenn, we've

1 gone over it. Do I ever expect to get a dime of it? No.
2 There's \$387,000 that's sitting in that program. This
3 program was actually the Mastoris program, which was
4 frozen which is what I was talking about in that recipe
5 email. This was not about No More Bills, even though I
6 had No More Bills money into this program. Okay?

7 So the government, also they talk about where I
8 was trying to get people to send more money in and do
9 different things in 2007. I'd just like to point out,
10 Your Honor, on the promissory notes that were introduced
11 in this court, Section 9 says lender -- which was the
12 person who lent the money -- agrees to assist in a yearly
13 review to determine if terms could be reduced and terms
14 restructured to get lender debt free faster.

15 Your Honor, our goal was to get people debt free
16 as fast as possible. What I was talking to Mr. Ponte or
17 emailing about was restructuring everything so they could
18 get out of debt faster based on our agreement. This was
19 in the contract. This is what we were trying to do because
20 that was our goal to get people out of debt as fast as
21 possible.

22 That's what we worked on, Your Honor, that's
23 what we continued to do.

24 As Your Honor is aware, I went through extensive
25 diesel therapy to get up here the first time. I would

1 have gladly come up here, I would have gladly met with
2 Special Agent West and the prosecution, and they say,
3 what's this about? And I would have happily told them
4 everything. Just as I did with their doctor. I told him,
5 here's the truth, here's what happened. I had nothing to
6 hide.

7 When Special Agent West came to my house, he
8 said, he said, I filled out the mortgage applications. I
9 didn't fill out mortgage applications. He then goes over
10 to my mother's house and says if I admit what I did, then
11 I would go away to a camp for a couple years. He didn't
12 tell me what I did. I then took a paralegal course to try
13 to figure out what the law was. What did I do wrong? I
14 was trying to figure out.

15 I begged for a bill of particulars, Your Honor.
16 Tell me what I did wrong. I never got a bill of
17 particulars. I can't figure out why. Apparently it was
18 denied at some point in time. But I just found out after
19 trial, or before trial, sometime that it had been denied.
20 If I had known it was denied, I would have continued to
21 ask. I need to know what I did wrong or I can't properly
22 prepare for trial.

23 They're arguing the Mastoris program, and that's
24 what I did wrong, yet the Mastoris program ended in
25 April 2007. No money came in after April 2007 because

1 Methwold was frozen.

2 And as I said, I would have gladly come up here
3 had I not been in Florida State Prison. The day before I
4 was arrested by the FBI, Shellie Sadin is calling me up
5 asking me to come up and get on a plane because she had
6 finally gotten the money approved. But I didn't have my
7 cell phone with me because I was in the Florida State
8 Prison.

9 And the reason for that was because I was
10 investigating a case for an indigent defendant. I was
11 working for the State of Florida for the past year and a
12 half as an intern criminal defense investigator trying to
13 help people who were indigent protect their constitutional
14 rights because I was told they won't -- when I started
15 that job, my most important job was protecting their
16 constitutional rights, specifically the Fourth, Fifth and
17 Sixth Amendments, because if their rights can be taken
18 away, can be violated, your rights can be violated. That
19 was profound, Your Honor.

20 I've documented My fourth, my Fifth and my Sixth
21 Amendments that I believe were violated. I've asked my
22 attorneys to file motions to compel the government to give
23 us all the grand jury transcripts because there is massive
24 fraud in the grand jury transcripts. It never happened.
25 I couldn't believe we were actually here at trial. That

1 should have happened prior to trial. I wish it had,
2 because the indictment should have been dismissed based on
3 massive fraud in the grand jury -- before the grand jury.
4 The grand jury's independence was taken away because they
5 were not told the truth.

6 Your Honor, I didn't prepare anything because
7 Mr. Bergenn told me we were just going to go to
8 sentencing, and so I really just pulled out some papers in
9 order to do this today, but I just wanted you to have some
10 facts. I just wanted you to know some of the truth and
11 why I believe that this motion should be approved, why we
12 should have an evidentiary hearing to find out whether or
13 not the government was in fact reading my emails during
14 trial, because I believe they were. It wasn't a
15 coincidence. I walk in here one day and Mr. Bergenn's
16 standing there reading an email regarding Asset Wise right
17 after I sent him an email explaining what Asset Wise was.
18 It's just coincidence after coincidence continued to
19 happen.

20 Maybe I'm wrong, maybe they weren't doing it.
21 However, in U.S. v. Aguilar, Judge Mathis said the
22 government read the defendant's emails and threw the case
23 out in part because of it.

24 So if that happened, Your Honor, again, I
25 learned as a criminal defense investigator to uncover

1 reasonable doubt, to make sure someone's constitutional
2 rights were not violated, and that's why, Your Honor,
3 after extensive investigation of this case, after reading
4 just about every document that I can come across, which I
5 no longer have access to, that's why some of my
6 presentation may not be as full as I would like it to be,
7 I learned that the defendant's constitutional rights are
8 the most important thing. That my job as a criminal
9 defense investigator was to make sure they weren't
10 violated, and to have mine violated over and over again,
11 Your Honor, I would just ask that you would consider it
12 and consider the constitution over everything else.

13 Thank you.

14 THE COURT: Thank you.

15 Any comments by counsel for the government?

16 MR. DURHAM: Some, Your Honor, but I will try to
17 be brief.

18 The government's position with respect to the
19 defendant's motion to withdraw his previously entered
20 guilty pleas is set out in the response that we filed to
21 the defendant's lengthy pro se motion. But essentially in
22 order for the defendant's motion to succeed, there are
23 certain things that he would have to establish, which the
24 government respectfully submits to the Court, he clearly
25 has failed to do.

1 That is, in order for him to succeed, the
2 defendant would have to, in the first instance, establish
3 fair and just reasons for the withdrawal itself being
4 requested. And in this instance, he would also have to
5 show -- and he bears the burden of showing that there are
6 valid grounds for the withdrawal.

7 The Second Circuit has then set out essentially
8 a three-prong test to guide a district court judge in
9 determining whether or not proper grounds exist for the
10 withdrawal of a previously entered guilty plea, and those
11 three prongs are whether the defendant has asserted his or
12 her legal innocence; secondly, the amount of time that
13 elapsed between the plea and the motion; and third,
14 whether the government would be prejudiced by a withdrawal
15 of the plea.

16 As to the first of the elements, whether the
17 defendant has asserted his or her legal innocence in the
18 motion to withdraw, it's a little bit hard to sort through
19 exactly what it is that Mr. Rivernider was saying. So I'm
20 not sure he's asserting his or claiming his actual
21 innocence as opposed to he didn't understand the
22 government's theory of the case. But in any event, I
23 would respectfully submit to the Court what he just
24 presented into the record and what is included in his
25 brief falls far short of establishing the first prong of

1 the test.

2 With respect to the second prong of the test set
3 out by the Second Circuit, the amount of time that has
4 elapsed, I believe the record is abundantly clear, I don't
5 think the defendant can dispute the fact that he entered
6 his guilty pleas on February 25, 2013, after the
7 government had put on half or better than half of its
8 evidence and indeed essentially on the doorstep of the
9 government presenting several witnesses that were most
10 damaging as to the defendant and his conduct. One in
11 particular that's been referred to by Mr. Rivernider
12 today, that being Tosha Wade. So he entered his guilty
13 pleas in this case more than 10 months ago.

14 The first the Court, it's the government's
15 understanding, the first the Court has heard from the
16 defendant about withdrawing his guilty plea -- and I can
17 say with certainty the first the government had heard
18 about his interest in withdrawing his guilty plea -- only
19 occurred on December 5 of this year, approximately 10
20 months later, and only after the Court had conducted full
21 evidentiary hearings on the amount of the loss in this
22 case back in September and after the Court had conducted
23 two days of hearings on the defendant's purported
24 diminished mental capacity based on executive functioning
25 deficits, and only after the Court, having heard that

1 evidence, advised the parties and the defendant that the
2 Court did not believe that the defendant had carried his
3 burden to establish that he was entitled to a downward
4 departure.

5 So as to the second element, this isn't somebody
6 who has buyer's regret within a day or two of entering a
7 guilty plea. This is 10 months later and after the
8 defendant has been advised the Court's not going to buy
9 his diminished mental capacity claim that he then
10 approaches, as we understand it, chambers and then the
11 clerk's office regarding this motion to withdraw.

12 So he clearly has failed to meet the second
13 prong of the test.

14 Then as to the third prong, whether the
15 government would be prejudiced by the withdrawal of the
16 guilty pleas at this point in time, he doesn't even argue
17 that we wouldn't be prejudiced. But let me give the other
18 side of the coin even though it's the defendant's burden.

19 The government had been attempting to get this
20 case on trial for a lengthy period of time and the Court
21 ending up with the matter rather late in the processing,
22 the Court's fully aware of the fact that the case was
23 indicted on November of 2010 and we weren't even able to
24 get the case to trial until Your Honor fortunately freed
25 up time so we could try the case and it started in

1 February of 2013.

2 The government put on, as I've indicated, over
3 half of its case against Mr. Rivernider and his
4 co-defendants. Ms. Seneca pleaded guilty the same day.
5 Shortly after, the defendant here, Mr. Rivernider, pleaded
6 guilty. And then we continued for another period of time,
7 a week or thereabouts, with Mr. Ponte, before Mr. Ponte
8 decided that he too would plead guilty to all of the
9 charges in the indictment.

10 So from the government's perspective --

11 (Pause)

12 MR. DURHAM: Mr. Ponte -- there may have been
13 some early substantive counts Mr. Ponte pleaded to. But
14 no matter. He ended up pleading guilty further down in
15 the trial.

16 So would the government be prejudiced there?
17 Absolutely the government will be prejudiced.

18 The Court will recall we had to bring witnesses
19 in from all over the country to get them here. I think
20 the Court will recall that that was not an easy task. I
21 believe the Court will recall that at least one of the
22 witnesses, Ms. Flores, who had worked for one of the
23 mortgage lenders, that institution has been dissolved.
24 She's gone on to work at other locations and the like.

25 So it would be an enormous expense, undoubtedly

1 would result in further delays, because the defendant
2 would be seeking transcripts of all the witness's prior
3 testimony which would take months and months and months to
4 prepare and the like. So there clearly would be prejudice
5 to the government.

6 But put a bit differently, the defendant
7 certainly has not established that we would not, that is
8 the government, would not be prejudiced.

9 So under the controlling Second Circuit case law
10 and the question of motion to withdraw the guilty plea,
11 it's the government's position that the defendant has
12 failed to meet his burden and therefore the motion should
13 be denied.

14 More broadly, with respect to what the defendant
15 has provided to the Court by way of purportedly new
16 information, I seriously doubt -- although the Court I
17 know is very attentive to these matters -- but I seriously
18 doubt that one could follow what Mr. Rivernider was saying
19 about some of these other entities and investments and the
20 like, that essentially have nothing to do with the charges
21 which were brought against him and to which he pleaded
22 guilty. But when Mr. Rivernider indicates that he never
23 had any mens rea, the government would respectfully submit
24 to the Court that that's just a flat out lie. That is not
25 true.

1 Mr. Rivernider knew from the very beginning of
2 the No More Bills process that he had no returns on
3 investment. So when he or his surrogates are telling
4 potential investors that they're going to be getting
5 incredible returns in their money and they've invested in
6 all these outside funds and that's where the money is
7 coming from to make these monthly payments, that's a flat
8 lie. There were no returns on investments.

9 The government would accept for the purpose of
10 these proceedings that Mr. Rivernider perhaps hoped that
11 there would be returns someplace down the road, but that's
12 a very different thing than telling investors, we're
13 getting these monthly returns that are paying these
14 incredible rates that are called for under your plans.

15 So did he know that he was not -- he did not
16 have money -- returns on these investments that he was
17 talking about? Yeah, he absolutely knew that he had no
18 money. He had no money that he had in his bank account,
19 in the Bank of America account, or any other bank account
20 associated with the Bank of America account for Cut Above
21 Ventures, with which to pay the people that he had
22 promised these monies to.

23 What the defendant also knew, and he denies or
24 avoids today is, that the moneys that were being paid out
25 to people who had invested in No More Bills were monies

1 that had come from other investors, and that's a complete
2 fraud and the defendant knew it was a fraud. I don't hear
3 him to be saying he didn't know that he was using other
4 people's money in the No More Bills program to pay earlier
5 investors, and that's a fraud from the start.

6 More importantly, however, is that the defendant
7 would have the Court, as we refer to in our brief, run
8 down this rabbit hole of No More Bills and investments and
9 hundred million dollar CDs and, you know, Your Honor,
10 watch my hand over here and ignore the fact that
11 \$23 million plus of the losses in this case come from the
12 real estate fraud that he committed.

13 And as the government sets out in the submission
14 that we filed concerning losses and the like here, the
15 defendant knew from day one what they were doing with
16 respect to these mortgage loan applications, that there
17 were misrepresentations being paid to the lenders.
18 Misrepresentations in some instances included an
19 individual's income, in other instances also perhaps what
20 the property was going to be used for. The borrowers or
21 the investors in the real estate didn't know
22 Mr. Rivernider was taking out huge marketing fees and he's
23 using those marketing fees to pursue his own purposes.
24 That's all fraudulent conduct and he knew that from day
25 one.

1 But most importantly perhaps is that he knew,
2 Mr. Rivernider knew -- he can't put this off on mortgage
3 brokers, he can't put it off on his sister Loretta, he
4 can't put it off on the borrowers, he can't put it off on
5 the banks, it's him, this was his plan -- that he was
6 going to be paying the mortgages on these properties for
7 the first two years. He was going to be paying and did
8 pay the earnest money on these payments. He was going to
9 pay the home association fees. He was going to pay the
10 taxes. And all of that information was withheld from the
11 lenders.

12 He can complain all he wants about Sun Trust,
13 Wells Fargo, or whatever. The record is absolutely
14 positively abundantly clear here that from the getgo,
15 Sterling Village condominiums and with respect to these
16 properties in Tennessee, he concocted this plan and he hid
17 those fundamental facts from the lenders. That's a fraud.
18 That's the mens rea that's at play here.

19 And yet Mr. Rivernider essentially continues to
20 ignore the real estate scam here. And indeed in the
21 sentencing memorandum that was filed in this case,
22 essentially the defense ignores the real estate scam
23 hoping that we can focus all of our attention on the
24 \$2.2 million of losses from No More Bills.

25 Mr. Rivernider boldly, the government would say,

1 refers to he simply submitted information to the mortgage
2 brokers, refers to Mr. Taylor, and they followed their
3 practices and he didn't know what they were doing. Well
4 that's not true and accurate either.

5 The Court will recall one of the witnesses who
6 testified at trial was Donna Moore, and the Court I think
7 will remember in connection with Ms. Moore that there
8 were -- various documents were entered and for purposes of
9 today's proceeding we'd ask that they be marked again
10 today. That being Government's Exhibits 175 and
11 Government's Exhibit 176.

12 And as to these documents -- if I might just
13 have a moment?

14 I think the Court will recall that Donna
15 Moore -- there was an email sent from Donna Moore's
16 address to Mr. Rivernider, and with respect to -- this is
17 Government's Exhibit 175, the email message to Rivernider
18 was: Bob, this is Robert.

19 So it's not -- it's being sent from Donna
20 Moore's email, but it's from Ponte.

21 This is Robert sending from Donna's PC. Let me
22 know if the attached works, Robert.

23 Then what's attached to the Government's
24 Exhibit 175 is a letter, To whom it may concern: My name
25 is Donna Moore and I'm an actress, singer, model, writer

1 and stand-up comedian currently working in an off Broadway
2 show in New York City. I'm also working with Blue Cloud
3 Productions LLC and the Hudson Group developing the
4 Broadway show *Cougar, The Musical*. I currently make
5 approximately \$20,000 through the endeavors of modeling,
6 commercial work and theatrical productions. Thank you,
7 Donna Moore.

8 That's what Mr. Ponte sends down to
9 Mr. Rivernider. And yet when the loan applications are
10 submitted, it doesn't show that Ms. Moore is making
11 \$20,000 a year, the loan applications show her making, I
12 forget whether it's 20 or \$23,000 a month.

13 Mr. Rivernider's not aware of this when the
14 letters, Ms. Moore's letters, are being sent by his
15 co-conspirator, co-convicted defendant, Ponte, on what
16 Ms. Moore's situation is? That is preposterous.

17 But more importantly, when the defendant says
18 that, well, this was just the mortgage brokers, I would
19 remind the Court of -- and I believe we referenced this --
20 I know that we referenced this in our submission to the
21 Court answering the questions that had been posed
22 regarding how much money was taken in -- and specifically
23 Government's Exhibit 106. So now this is the defendant
24 Rivernider with Shirley Hibbard.

25 So when Mr. Rivernider makes these unfounded

1 allegations in his pro se motion and when he stands here
2 and he tells the Court he didn't know what was being done
3 here, I would respectfully address the Court and remind
4 the Court what's contained in Government's Exhibit 106.

5 And for purposes of today's proceedings, well,
6 Ms. Hibbard, the Court might recall, was affiliated with
7 Hemlock Buyers. And Ms. Hibbard went to some lengths to
8 say I'll do these deals selling these cabins, but I want
9 full disclosure so everybody knows what is going on here,
10 referring to the marketing fees and so forth and so on,
11 and I will have my lawyer put all of this in the contract
12 so everybody knows what's going on.

13 And what is Mr. Rivernider's response on 10
14 March 2007?

15 Shirley: Well, it was a pleasure meeting when I
16 was in town and hope we can do business some way in the
17 future. Based on experience as a lender for many years, I
18 am sure your attorney will include something in the
19 contract that will not be acceptable to the lenders that
20 are still in business so the deals will never close. I
21 would not want to see you spend a bunch of money and
22 attorney's fees on these deals. I really like the cabins,
23 I guess I will have to have Lonnie build some for me.
24 Thanks, Bob.

25 He knows exactly what time it is. He knows

1 exactly what he's doing. He knows exactly how he's
2 defrauding the lenders.

3 So when he stands here under oath and tells the
4 Court that, oh, this is the mortgage brokers and they just
5 followed the normal practices, I would respectfully
6 suggest to the Court that that simply is untrue, it's as
7 untrue as pretty much everything else he asserts in his
8 pro se motion to withdraw his guilty pleas.

9 The defendant in his omnibus submission
10 addresses or raises issues, Sixth Amendment issues, motion
11 to dismiss for egregious prosecutorial misconduct,
12 ineffective assistance of counsel, and I assume that's all
13 part of what we're supposed to be addressing here, and at
14 least some of counsel questions, Mr. Rivernider, I guess
15 legally referred to those.

16 But take into consideration what happened on
17 February 25. Not on December 5 after the defendant knew
18 he was not going to be able to convince the Court to
19 downwardly depart based on diminished mental capacity.
20 This is the transcript of the defendant's plea. When the
21 Court, I would respectfully suggest, carefully canvassed
22 all of the questions relating to the defendant's
23 constitutional rights, his Fifth and Sixth Amendment
24 rights, the Court carefully determined whether or not the
25 defendant was entering into his guilty pleas knowingly,

1 voluntarily and with a full understanding of the
2 consequences of his guilty plea. And when the Court
3 inquired of his satisfaction or dissatisfaction with
4 counsel who from the government's perspective was
5 incredibly involved in the details of this case, provided
6 terrific representation to Mr. Rivernider, whether he
7 deserved it or not, but here's what Rivernider said at the
8 time the Court took his guilty pleas.

9 The Court as follows: Mr. Rivernider, has
10 anybody made any promises to you to cause you to want to
11 change your plea?

12 The Defendant: No, sir.

13 Or, I'm sorry, I think I hit a wrong space here.
14 Hold on one second.

15 Sorry. This is on page 32 of the government's
16 submission, Your Honor, to the Court.

17 Are you satisfied with the legal services that
18 are being provided to you by your counsel?

19 Defendant: They have been wonderful.

20 The Court: Do you have any dissatisfaction with
21 the services whatsoever?

22 The defendant: None at all.

23 The Court: Are you satisfied that your counsel
24 have devoted enough time to this case to provide you with
25 effective assistance?

1 The defendant: Yes, I am.

2 The Court: Are you satisfied they've spent
3 enough time with you speaking about your options?

4 The defendant: Yes.

5 That's the state of the record concerning the
6 kind of representation that he received. And the fact
7 that he now is dissatisfied or the fact that he wasn't
8 able to perpetuate another fraud -- which the government
9 would say is this notion of his suffering from an
10 executive functioning deficit, he hasn't been able to
11 carry his burden in that regard -- is not just cause for
12 saying that defense counsel didn't perform effectively in
13 this case.

14 And so no matter where the Court looks in this
15 motion, this pro se motion to withdraw, the motion to
16 dismiss with prejudice for prosecutorial misconduct
17 because of ineffective assistance of counsel, there is no
18 there there, as the current idiom goes.

19 He has not met his burden on any of these
20 claims, and we would respectfully submit the defendant's
21 pro se motion, accordingly, should be denied.

22 THE COURT: Thank you. We'll take a recess at
23 this time. During the recess I'll have an opportunity to
24 read the government's response, and when we return I will
25 do my best to rule and we'll see where we stand at that

1 point.

2 Thank you all for your patience.

3 (Whereupon, a break was held.)

4

5 THE COURT: All right. We're ready to resume.

6 During the recess I read the government's response; and
7 again, I appreciate the efforts that people have made to
8 provide me with their input.

9 With regard to the pro se motions, I'm denying
10 these motions for substantially the reasons stated by the
11 government. Under Rule 11(d)(2)(B) of the federal Rules
12 of Criminal Procedure, the defendant has the burden of
13 demonstrating a fair and just reason for withdrawing the
14 plea. The Court needs to find that there are valid
15 grounds for withdrawal taking into account any prejudice
16 to the government.

17 Under the case law construing and applying the
18 rule, courts consider the amount of time that has elapsed
19 between the entry of the guilty plea and the motion to
20 withdraw; whether the defendant is asserting a claim of
21 legal innocence; and whether the government would be
22 prejudiced by the withdrawal.

23 Here we have a motion filed approximately 10
24 months after the change of plea. Mr. Rivernider does not
25 assert a claim of legal innocence and the government would

1 be significantly prejudiced by the withdrawal.

2 Under the law, the standard for withdrawing a
3 guilty plea is stringent because society has a strong
4 interest in the finality of guilty pleas. In applying
5 this stringent standard, the Court must of course consider
6 the defendant's sworn statements at the time of the plea
7 allocution. Under the law, those statements are
8 conclusive unless the defendant demonstrates that there is
9 some good reason to depart from their apparent truth. A
10 defendant's assertions that simply contradict his sworn
11 statements at the plea allocution do not provide a basis
12 for withdrawal of a guilty plea nor do they provide a
13 basis for an evidentiary hearing concerning the plea.

14 I think the law aims to give a Court authority
15 to permit a defendant to withdraw a guilty plea when it is
16 apparent that this is required by the interests of
17 justice, and I am not persuaded that the guilty pleas in
18 this case are unjust or unfair. I don't see any reason to
19 disturb them. Having considered Mr. Rivernider's written
20 and oral submissions, I don't see anything that casts
21 doubt on the voluntary and intelligent nature of the
22 guilty pleas.

23 I was concerned to see Mr. Rivernider state in
24 his motion papers that he wasn't in a proper mental
25 condition at the time of the change of plea proceeding.

1 He implies that after spending a significant period of
2 time speaking with Mr. Bergenn about the possibility of a
3 diminished capacity departure, he felt pressured to plead
4 guilty. I note that in his motion papers, he indicates
5 that after Mr. Bergenn received an opinion from
6 Dr. Filippopoulos concerning the presence of a mental
7 condition in the nature of a neurocognitive deficit, he,
8 Mr. Bergenn, refused to continue with the trial.

9 After considering these assertions, I find that
10 they're insufficient to warrant a hearing. I'm guided by
11 my own distinct recollection of the change of plea
12 proceeding. I recall Mr. Rivernider appearing before the
13 Court that day. He was composed; he was able to
14 communicate effectively with his counsel and me; he
15 appeared to understand fully all the pertinent
16 circumstances, legal and practical; and at that time he
17 assured me under oath that he was able to understand, that
18 his mind was clear, that he felt capable of making
19 important decisions, and that he was completely satisfied
20 with the services of his counsel. He told me that he had
21 no desire for a postponement, nor any need for a
22 postponement. I credited those assurances and proceeded
23 with the change of plea proceeding.

24 In addition, I was assured that nobody was
25 pressuring him or threatening him to get him to plead

1 guilty and that he was choosing to plead guilty because he
2 believed it to be in his best legal interest in the
3 circumstances.

4 I think that the assertions in the pro se motion
5 concerning his mental condition at that time, which are
6 conclusory in nature, are contradicted by his sworn
7 statements, and I don't think that they provide a basis
8 for an evidentiary hearing or any other type of relief.

9 Mr. Rivernider also states in his pro se motion
10 that his counsel rendered ineffective assistance and he
11 lists a dozen or more claims. I've reviewed those claims
12 and considered whether they pertain to the validity of the
13 guilty pleas, and I find that they do not. None of the
14 alleged deficiencies affect the knowing and voluntary
15 nature of the pleas.

16 Mr. Rivernider states that Shipman & Goodwin has
17 a conflict of interest because it represented Webster
18 Bank. To justify withdrawing his plea on that basis, he
19 needs to allege and show an actual conflict of interest
20 that caused prejudice to him. I don't see any allegation
21 that Mr. Bergenn was burdened by an actual conflict of
22 interest nor any allegation that any such conflict
23 actually was prejudicial to the defense of this case.
24 Again, I see no reason to have an evidentiary hearing on
25 that aspect of this matter.

1 Also Mr. Rivernider says that he should be
2 allowed to withdraw his guilty pleas because he wasn't
3 adequately informed of the basis of the charges against
4 him. I think that this claim is ill founded. It's more
5 in the nature of a legal argument than a claim. I think
6 that the plea colloquy establishes that Mr. Rivernider had
7 an adequate understanding of the nature of the charges and
8 the facts that the government would have to prove, and I
9 think that this is borne out by his petition to plead
10 guilty which covered these matters and in addition
11 included an admission of offense conduct which states in
12 some detail the admissions that Mr. Rivernider was making
13 with regard to his criminal conduct and why the conduct
14 was criminal. As the transcript shows, that admission was
15 the product of intensive discussions between
16 Mr. Rivernider and his counsel. There's no doubt in my
17 mind that Mr. Rivernider understood the nature and basis
18 of the charges against him. So that claim is unavailing.

19 With regard to the other matters that
20 Mr. Rivernider presents, I believe that these were waived
21 by his guilty pleas. As the law clearly provides, and as
22 I indicated at the change of plea proceeding, among the
23 rights that a defendant gives up by pleading guilty is a
24 right to raise defenses, objections and claims that he or
25 she would otherwise be able to press. I explained that to

1 Mr. Rivernider and I believe he understood.

2 So the other claims presented in the pro se
3 motion, specifically that Mr. Rivernider didn't get a bill
4 of particulars, was unaware that Judge Burns had denied
5 his request for a bill of particulars, that the government
6 withheld certain records, that Agent West testified
7 falsely before the grand jury, that his home was searched
8 on the basis of a warrant obtained using a false
9 statement, that Tosha Wade testified falsely at trial,
10 that counsel for the government made improper remarks
11 during the trial, that the government violated
12 attorney/client privilege, these matters were waived by
13 the knowing and voluntary guilty pleas.

14 In addition, the matters that are presented here
15 appear to be either ill founded or immaterial to the
16 question whether there is a fair and just reason for
17 permitting the withdrawal.

18 Mr. Rivernider's claim that he lacked mens rea
19 is unavailing. Mr. Rivernider's admission of offense
20 conduct which was incorporated into his petition to plead
21 guilty establishes that he had the requisite intent to
22 defraud, and his statements today, to the extent they're
23 inconsistent with that sworn admission, are insufficient
24 to provide a basis for relief.

25 I do think that Mr. Rivernider acted initially

1 with good intentions. I am not persuaded that
2 Mr. Rivernider is a predator who undertook to steal
3 people's money for the purpose of financing a lavish
4 lifestyle. I think that he thought that he could succeed,
5 and I believe that he liked the idea of helping others and
6 getting credit for helping others, and I think that this
7 needs to be taken into account in determining the
8 sentence, but I think that his own sworn admission of
9 offense conduct viewed in the context of the evidence
10 presented at trial, in the petitions to plead guilty filed
11 by his co-defendants, demonstrate that crimes were
12 committed with criminal intent.

13 The No More Bills program became a ponzi scheme
14 in fact, and the mortgage fraud was a fraud from the
15 beginning. So there's no doubt in my mind that
16 Mr. Rivernider had criminal intent, as I found at the time
17 I accepted his pleas.

18 With regard to the motion to dismiss the
19 indictment, Rule 12 requires that motion to dismiss a
20 defective indictment be filed before trial begins.
21 Mr. Rivernider hasn't shown good cause for waiving this
22 requirement. His allegations of misconduct before the
23 grand jury are unavailing, his claim was waived by virtue
24 of his guilty pleas.

25 Also having considered his motions, I see no

1 reason to investigate further, as he has urged me to do.
2 I don't see sufficient cause to undertake any such
3 investigation.

4 With regard to the motion for a new trial,
5 having presided at the trial, I believe that it was a fair
6 trial. I think that the jury was very attentive. I think
7 that any issues relating to the credibility of witnesses
8 were fair game for the jury. I don't see anything of a
9 compelling nature that would lead me to find that any of
10 the witnesses for the government committed perjury, that
11 is knowingly and willfully misstated the facts, and I
12 think any comments by counsel for the government in the
13 midst of what was an intense proceeding did not detract
14 from the fairness of the trial.

15 It's my perception that Mr. Rivernider was
16 motivated to change his plea because it was not going well
17 for him. The testimony of the victims was compelling and
18 the government was about to present testimony that could
19 be as or more devastating. I think Mr. Rivernider
20 realized that he was almost certainly going to be
21 convicted and made a strategic decision that was a good
22 one in the circumstances.

23 It's my perception that Mr. Rivernider was
24 influenced by the prospect of getting consideration for a
25 downward departure based on diminished capacity. I think

1 that in the circumstances as they existed at the time, he
2 believed that that provided him with a better prospect
3 than taking his chances with the jury. When I asked him
4 "Do you believe that a guilty plea is in your best legal
5 interest," and he answered "Yes," I think that's what he
6 had in mind. That's my perception of what occurred in
7 front of me at the time.

8 So the pro se motions are denied and we need to
9 proceed.

10 Mr. Rivernider has pleaded guilty to Count One
11 alleging conspiracy to commit wire fraud in connection
12 with the No More Bills program, Counts Two through Eight
13 and Ten to Thirteen alleging wire fraud in connection with
14 that program, Count Nine alleging conspiracy to commit
15 wire fraud in connection with the mortgage fraud scheme,
16 and Counts Fourteen through Eighteen alleging wire fraud
17 in connection with that scheme.

18 In his counsel's submissions, Mr. Rivernider
19 asks me to impose a non-Guideline sentence of anywhere
20 from 24 to 30 months imprisonment. The government asks me
21 to impose a Guidelines sentence, which means they would
22 like me to impose a sentence in excess of 20 years. A
23 presentence report has been prepared.

24 Mr. Bergenn, can you confirm for the record that
25 you have received and read the presentence report as

1 amended?

2 MR. BERGENN: Correct, Your Honor.

3 THE COURT: Can you confirm for the record that
4 you've gone over it in detail with Mr. Rivernider?

5 MR. BERGENN: Yes.

6 THE COURT: All right, thank you.

7 Yes, sir?

8 MR. BERGENN: Just as a procedural matter,
9 during the recess, Mr. Rivernider had marked some exhibits
10 and it's -- I just want to do that for the record. I know
11 we're moving past that now, but I -- and I know I have
12 nothing to do with it, but I just thought for the record
13 it should be clear that some of the items to which he
14 referred were given exhibit numbers.

15 THE COURT: Okay, thank you.

16 Mr. Rivernider, addressing you directly, can you
17 confirm that you've received and read the presentence
18 report as amended?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And discussed it in detail with
21 Mr. Bergenn?

22 THE DEFENDANT: We discussed it.

23 THE COURT: All right.

24 Mr. Bergenn, I received your email to Mr. Lopez
25 outlining the objections that Mr. Rivernider has with

1 regard to the statements of fact. Before we turn to those
2 objections, I need to focus on the offense level
3 computation in the presentence report.

4 MR. DURHAM: Your Honor, could I just ask one
5 thing?

6 Mr. Bergenn had filed a motion, and I'm
7 paraphrasing, but I believe it was a motion that the
8 defendant be able to file pro se motion to withdraw his
9 guilty plea and for Mr. Bergenn to serve as standby
10 counsel. And I know that the Court had granted the motion
11 so as to permit the defendant to file his pro se motions
12 but had Mr. Bergenn remain as counsel for other purposes.
13 And I'm assuming as we're proceeding here that that's fine
14 with Mr. Rivernider, that is, he had the opportunity to be
15 heard on his pro se motion and he would agree that
16 Mr. Bergenn should continue as his counsel here.

17 But so the record is clear and any other issues
18 don't pop up down the road, we would ask the Court to
19 inquire of the defendant whether he's in agreement with
20 that.

21 THE COURT: Mr. Rivernider, are you content to
22 have Mr. Bergenn represent you going forward?

23 THE DEFENDANT: Sure. That would be fine.

24 MR. DURHAM: Thank you, I appreciate it, Your
25 Honor.

1 THE COURT: Okay.

2 Mr. Bergenn, with regard to the offense level
3 computation, the report starts with a base offense level
4 of seven; adds twenty-two levels for the loss in excess of
5 \$20 million; four levels are added for more than 50
6 victims; two levels are added for sophisticated means; two
7 more are added because more than a million dollars was
8 obtained from one or more financial institutions; and
9 another four levels are added for role, specifically for
10 acting as an organizer or leader of this group. A
11 two-level reduction for acceptance is provided resulting
12 in a total offense level of 39.

13 Is there any objection to any of that?

14 MR. BERGENN: No. Other than what was made
15 clear in terms of our addressing legally what the Court
16 should be doing with the loss calculation. But those are
17 exactly what the Guidelines call for, and we believe those
18 are properly set forth as a starting point.

19 THE COURT: All right, thank you.

20 MR. DURHAM: Your Honor, can I ask for a
21 clarification?

22 When Mr. Bergenn makes reference to legally what
23 we said about the loss calculations, it's not clear to the
24 government what that's exactly a reference to.

25 MR. BERGENN: That's just citing to page 22 of

1 our sentencing memorandum, et seq., which identifies that
2 the loss calculation is not based on empirical evidence
3 and that the bracket inflation directed by Congress lacks
4 an empirical basis.

5 It's just those points. It's not an argument
6 that the PSR setting forth what the numbers are
7 appropriate for and that there is in fact evidence of loss
8 over \$20 million. It's just speaking to the impact of
9 that loss and, frankly, I don't want to do more than or
10 less than or different from what we've written because it
11 would not enhance the proceedings.

12 MR. DURHAM: Thank you, I appreciate it.

13 THE COURT: It's my understanding from our
14 previous hearings that the defense concedes that on this
15 record the Court can find that the amount of loss set
16 forth in the presentence report is a reasonable estimate
17 of the loss while reserving the argument that the amount
18 of the loss significantly overstates the culpability of
19 Mr. Rivernider for various reasons.

20 MR. BERGENN: That's a fair -- if someone drew a
21 succinct summary of the voluminous papers, I think what
22 you've just expressed probably does it.

23 THE COURT: Thank you. So I find that the
24 amount of loss set forth in the report is indeed a
25 reasonable estimate.

1 The government maintains that Mr. Rivernider
2 should not receive credit for acceptance of
3 responsibility. Apart from that, does the government have
4 any objection to the offense level computation or --

5 MR. DURHAM: No, Your Honor, we do not.

6 THE COURT: All right, thank you.

7 I'm going to reserve on the question of
8 acceptance of responsibility until a later point in the
9 proceeding, but subject to that, I adopt the offense level
10 computation in the absence of objection.

11 Now turning to the defendant's objections to the
12 statements of fact, Mr. Bergenn's email usefully outlines
13 the four areas in dispute.

14 First, Mr. Rivernider maintains that he did not
15 have an intent to defraud from the start;

16 Second, he maintains that he did not prepare or
17 submit false documents;

18 Three, he maintains that he engaged in
19 significant investment activity;

20 And four, he maintains that Tosha Wade's trial
21 testimony regarding her dealings with him is false.

22 Do you want to elaborate on any of that,
23 Mr. Bergenn?

24 MR. BERGENN: I believe the record is so full
25 that our email submission was really just an aid, and I

1 don't believe there is any reason to take up more time to
2 submit anything more factually, legally, or by way of
3 argument.

4 THE COURT: All right, thank you.

5 Any comments, Mr. Durham?

6 MR. DURHAM: Your Honor, the government has read
7 through these.

8 The first group of defenses, number one, where
9 it says there's no fraud ab initio. I guess my principal
10 comment would be, that's a sterling example of why the
11 defendant should not get a downward adjustment for
12 acceptance of responsibility, because in the government's
13 view at least, it's yet another indication that he fails
14 to accept responsibility for his conduct.

15 But as to what's included in those various
16 paragraphs referenced in Section 1, that's the
17 government's version of the offense, it seems to the
18 government, it may be accepted as the government's
19 characterization of the offense. But I don't think the
20 Court needs to resolve anything contained in Section 1. I
21 mean, it is what the government submitted to probation as
22 what we believe the evidence shows. So I don't think the
23 Court need do anything with that.

24 As to submission of false documents, I think
25 that in a number of instances, there's some misconstruing

1 that is going on. I don't think that there's anything in
2 that section of the email, submission of false documents,
3 which requires the Court to resolve the conflict between
4 the government's view of the evidence and the defense's
5 objections to our view of that evidence.

6 And the same holds true pretty much for the rest
7 of these paragraphs, with the exception of Tosha Wade.
8 The defense suggestion that she is not credible is a
9 little bit strange for a number of reasons.

10 Number one, as the Court I believe alluded to a
11 bit earlier, the defendant Rivernider elected to plead
12 guilty pretty much as soon as or just before Ms. Wade was
13 going to take the stand, and I think the Court's
14 observation was right. Ms. Wade's testimony was very
15 damaging to Mr. Rivernider. And so, well, it might be
16 that Mr. Rivernider for her purposes suggests she's not
17 credible, I respectfully submit to the Court that the jury
18 found her very credible and her testimony would have been
19 accepted had the matter gone to the jury for
20 deliberations.

21 So again with respect to the Wade testimony, I
22 don't believe the Court needs to resolve that. The
23 defendant waived any claims he might have along those
24 lines by pleading guilty. And so, again, I don't think
25 the Court needs to decide these issues.

1 MR. BERGENN: I do need to respond to that, I
2 apologize.

3 But in fact there is no dispute that this is the
4 government's version. And as the Court appreciates, a
5 trial is about a lot of things. Ultimately it's about the
6 ultimate elements of the offense.

7 Characterization of one party or another about
8 some sub fact really is not germane to guilt or innocence.

9 The PSR is something that goes with a defendant
10 as a convicted felon for a lot of different purposes. And
11 I believe that the fact that the government's
12 characterization of facts found its way abundantly in the
13 PSR is never a basis for it to remain in the PSR. I think
14 it is uniquely in the province of the Court to determine
15 what is appropriate and necessary to put in a PSR.

16 And so the fact that Tosha Wade did not get
17 cross-examined and presented with what we believe is, you
18 know, it's 302 material, is not something waived by
19 pleading guilty, it's something that does not necessarily
20 have to find itself in a PSR. And in fact we don't know
21 what the jury felt about that testimony because it had not
22 been cross-examined with this other preexisting evidence,
23 some of which was -- I mean, again, it's not material to
24 vacate an element, but it is also not necessary to just
25 put it in.

1 And we'll never know. In fact, at a trial, had
2 he been convicted of all counts, which may well have been
3 overwhelmingly likely, but that doesn't make each of those
4 facts, subordinate facts, something that belong in a PSR.
5 And, frankly, that's just the whole point of a PSR.
6 Otherwise we would just have the government say whatever
7 it wants and that would be the end of it.

8 So we believe we've been careful, circumspect,
9 detailed, and limited in our submission for corrections
10 and in no way do they negate the acceptance of
11 responsibility. In fact, I think we took great pains,
12 repeatedly and will, before the day is out, try to make
13 that very clear, that there is complete acceptance of
14 responsibility. But that doesn't mean that, you know,
15 some of these characterizations are necessary.

16 Thank you, Your Honor.

17 PROBATION OFFICER: Your Honor, if I could,
18 before the government speaks, just to put the presentence
19 report into its proper context? And this objection was
20 responded to in the second addendum to the PSR. And
21 albeit that it's more challenging for the probation
22 officer to prepare an offense conduct section when there's
23 been a lengthy trial, which would require us to rely a
24 little more heavily perhaps on the government in helping
25 us to draft an area, but I think it's incorrect to frame

1 the offense conduct portion of the PSR as the government's
2 version of the offense. In fact, the government's version
3 of the offense is much more lengthy than what's been set
4 forth in the presentence report.

5 The probation officer happens to agree with the
6 government on its opinions and interpretations of some of
7 the facts and circumstances of this case. So I just
8 wanted to make that clear, that the offense conduct of the
9 presentence report is just -- is in fact that, it's the
10 offense conduct, it's not the government's version of the
11 offense.

12 The probation officer reviewed all the
13 submissions by the government and all the attachments by
14 the government and took a lot of time discussing the
15 government's information, the government's evidence, with
16 the Assistant U.S. Attorneys assigned to this case, and
17 the case agents assigned as well.

18 So I just wanted the record to be clear as far
19 as the presentence report is concerned.

20 THE COURT: All right, thank you.

21 MR. DURHAM: Your Honor, I had one other comment
22 that Mr. Bergenn's remarks to the Court raised in my mind.
23 And that is: In the email that Your Honor referenced,
24 that is an email sent by Mr. Bergenn to Mr. Lopez with one
25 copy to it, dated Tuesday, December 17. In the heading,

1 as the Court noted, is "No Fraud Ab Initio." But I
2 believe the Court had said previously that the Court finds
3 that there was evidence of fraud, certainly from the
4 beginning with respect to the real estate scheme that was
5 being run by Mr. Rivernider. And I think the jury clearly
6 found that.

7 So I guess the point we'd want to make is that
8 under what is set out as the first section of that email,
9 the heading is "No Fraud Ab Initio," but then the
10 paragraphs referred to under that where they take
11 exception to one or another word or perhaps a phrase in
12 the presentence report really don't address no fraud ab
13 initio. Because, of course, the Court would have to find
14 that there was evidence that the defendant intended to
15 defraud people; and, secondly, that as a result of that,
16 losses in fact were suffered.

17 MR. BERGENN: I think it would be helpful, two
18 things, one perhaps, to mark this. But secondly, the
19 label really was just something to lump things together.
20 And the claims are only the claims in the sub parts. And
21 the no fraud ab initio does not mean there was no fraud in
22 the counts that were pled to. It really speaks to what
23 the Court's already addressed. And I think the record is
24 somewhat uncontroverted that when he started what he was
25 doing, he wasn't thinking, I got an idea, let's do a

1 fraud. That's really what that's talking about.

2 So I'm thinking that it might be prudent, Your
3 Honor, to mark the --

4 THE COURT: That's fine. We can mark it as an
5 exhibit to this hearing.

6 MR. BERGENN: Saving Darlene a lot of words.

7 THE COURT: I think that the procedure that
8 applies to the preparation and submission of the
9 presentence report and the sentencing hearing itself is
10 important in giving both sides a chance to object to
11 inaccuracies in the report. It's in everybody's interest
12 that the report be accurate. I think that the primary
13 goal is to be sure that the Court acts on the basis of
14 accurate information in determining what the sentence
15 should be.

16 There is also a need to be sure that the
17 defendant is not going to be unduly prejudiced down the
18 road, because Mr. Bergenn is right, the PSR does follow
19 the defendant.

20 In this case I think that the primary goal has
21 been amply served by the process that we have followed. I
22 don't think that it would be helpful for me to go through
23 the presentence report line by line. I don't think that's
24 necessary. But I do think I need to respond to the
25 defendant's overall objections so that you will know what

1 I'm thinking.

2 With regard to point one, no fraud ab initio: I
3 just talked about this aspect of the case, and as I said,
4 I think that the No More Bills program was not undertaken
5 with an intent to steal people's money. I don't think
6 that Mr. Rivernider undertook to operate a ponzi scheme in
7 the guise of the No More Bills program, but it's apparent
8 that it became a ponzi scheme, in fact, and he knew what
9 was going on in that regard. He knew that the new money
10 was being used to satisfy clients who had invested
11 earlier, and he knew that people were being misled about
12 that, and that's fraudulent intent right there.

13 With regard to the mortgage fraud scheme, again
14 I think that there was a fraudulent intent from the
15 beginning.

16 With regard to preparation and submission of
17 false documents, based on the record before the Court, I
18 think that Mr. Rivernider is responsible for the
19 preparation and submission of false documents even if he
20 didn't do it himself. His surrogates prepared and
21 submitted materially false documents. They did that on
22 his watch. They did that believing it to be what he
23 wanted them to do -- at least that's what the record tells
24 me -- and if he himself didn't have his fingerprints on
25 particular documents, that does not absolve him of

1 criminal responsibility.

2 With regard to point three, I think the record
3 establishes that Mr. Rivernider did engage in significant
4 investment activity. Again, this isn't a case where the
5 defendant stole people's money to finance a lavish
6 lifestyle. It appears to me that Mr. Rivernider was
7 hoping to hit a home run, and he kept trying, as he said
8 earlier.

9 Finally, with regard to Ms. Wade's trial
10 testimony, I thought that she was a credible witness. I
11 grant you she was not cross-examined and so I don't know
12 what would have been brought out on cross-examination, but
13 reviewing the points that have been raised by
14 Mr. Rivernider in his pro se motion, I don't think it's
15 necessary for me to parse her testimony and decide whether
16 a certain statement is persuasive. I think it's
17 sufficient for me to find that her dealings were
18 consistent with what was happening generally. And I have
19 no reason to think that she was off on a frolic and detour
20 of her own acting against the wishes of Mr. Rivernider.
21 She was part of the conspiracy to defraud the lenders and
22 the borrowers, and I think there's nothing more that I
23 need to say about that.

24 I think, Mr. Bergenn, that if there's anything
25 in the presentence report that you think is unduly

1 prejudicial to Mr. Rivernider going forward, you should
2 submit a letter to me pointing out what you think ought to
3 be removed or corrected.

4 Having reviewed the objections that were made in
5 the first instance, which I did yesterday -- and I'm
6 referring here to document 478-2 filed August 1 -- and
7 having looked at your email, I don't see a need to do more
8 at this time.

9 There are a number of grounds urged by
10 Mr. Rivernider in support of a downward departure or
11 variance, specifically diminished capacity, which was the
12 subject of a hearing, a substantial assistance to the SEC
13 and federal authorities and the loss calculation
14 significantly overstating culpability.

15 I'll give you an opportunity to address these if
16 you wish to do so. But before we do that, I know that
17 there are people here who want to testify.

18 How would you like to proceed, Mr. Durham?

19 MR. DURHAM: Your Honor, I would prefer if we
20 could wait until the government makes its remarks to the
21 Court concerning what the sentence ought to be because
22 it's sort of built into that presentation.

23 I think that each of the victims here in terms
24 of timing, they're okay for the time being.

25 THE COURT: All right.

1 Do you want to -- Mr. Bergenn, do you want to
2 offer anything further on the subject of diminished
3 capacity?

4 MR. BERGENN: Well, the record of course is very
5 thorough, and I did intend to address that in my remarks
6 with respect to the sentence because of course the
7 identical analysis pertains to the Court's consideration
8 of 3553 irrespective of what the Court's perception is of
9 the Guidelines standard of proof. And if I could, with
10 equal succinctness to match the Court's so far today,
11 summarize the state of the evidence about the executive
12 function deficit, which the way the conic in this case
13 took place also was made more relevant by the diminished
14 emotional intelligence. But we're not making a diminished
15 capacity argument on emotional intelligence.

16 The summary would be that the abundant testimony
17 that you heard leaves the Court with concession by all
18 four experts, and three under oath subject to cross and
19 the Court's questioning, that there was not one identified
20 flaw in the testing; that the testers have very deep and
21 extensive experience in administering the tests; that the
22 tests are by all the witnesses the gold standard, they are
23 reliable, they are what is used, and none of the opinion
24 testimony that you heard from the government's experts
25 took away anything from those points I've just made and

1 were literally theories as to why it might be, but their
2 theories do not take away from the facts of these standard
3 tests properly administered that prove up something that I
4 believe establishes that a person with the 70 percentile
5 global intelligence, who is established to be below the
6 first percentile in sort of a leading executive function
7 test, and at the one and four percentile of two others,
8 for that to have happened based on something random as
9 opposed to what the record shows us was a standard test
10 properly administered, the odds of that happening for
11 someone in the 70th percentile is less than four out of a
12 million. Because the odds of that not being the result of
13 a substantial executive function would be less than
14 1 percent times 1 percent times 4 percent. And I think we
15 are left with an overwhelmingly clear picture based on
16 evidence that he has this executive function disorder.

17 Now, it does not negate guilt. It is, as the
18 Court openly expressed, not necessarily in your words,
19 incomprehensible. Before we get testimony on this, before
20 we delve into this world that they've been developing over
21 the last 30 or 40 years, this is accepted by all of the
22 doctors, we would have said that can't be true. As you
23 said, it argues against common sense. Well, it does,
24 because it's not common. It's not common.

25 I've been doing this a long time and I have

1 taken on the most difficult of cases as sort of something
2 that I've done, and I've never had one so difficult, that
3 I, as I heard to the amusement of the courtroom, expressed
4 myself openly to who I knew to be the leading neuropsych
5 person in the area, this Dr. Stoll. I just -- I expressed
6 essentially the same thing you did. I don't get it. I'm
7 having problems. I'm explaining things and I got to
8 explain them again. And it's exasperating. I'm trying to
9 just be an effective lawyer and it didn't make any sense
10 to me. I just didn't know what to do.

11 And so I'm urging the Court to recognize, as you
12 thought aloud, thank you, I was thinking aloud with the
13 doctor, and the answer was just, it happens to be that
14 this very abnormal, very unusual, unique, certainly in my
15 experience -- I'm expecting not to have another -- it's
16 not unique to the professionals. It's rare. But for them
17 it's recurrent.

18 Dr. Stoll expressed that I've had half a dozen
19 or more experiences where nobody knew. I took the test
20 boom, there it was. That's what he does for a living.

21 And so on that score, it impacted everything.
22 If he did not have this EF, I certainly would never be in
23 this case. The EF, short for executive function deficit,
24 I think there wouldn't have even been a case if he didn't
25 have it.

1 You heard him today speak about his
2 conversations with West, which I think were appropriate,
3 and I'm not standing on the precision of what happened in
4 that conversation. But it is the case for somebody who's
5 in their mid forties, never committed a crime in his life,
6 gets confronted by a law enforcement officer, and even if
7 the law enforcement officer says, you filled out these
8 affidavits or these mortgage applications and, boom, no, I
9 didn't. He doesn't have the executive function to go,
10 well, but what's really going on here? Oh, yeah, I did
11 that. Oh, I'm sorry. And most cases, when confronted
12 with the kind of evidence that happened in this case end
13 right there. You don't have to do a lot. And it wasn't
14 because he was trying to be difficult.

15 As I expressed to you, he can't stop. He didn't
16 say, I won't stop. He can't. That's how his brain
17 functions. And I'm not trying to give him a badge for it.
18 It's nothing to be happy about or proud about. It's just
19 what it is.

20 And when a Court is doing its 3553 obligation --
21 I know how careful this Court is -- it is something so
22 different from the other people who have done these
23 things, it's no better for the victims. The victims are
24 in equal pain. But those victims are in that kind of pain
25 from civil fraud too. A multiple of the 20 plus million

1 here has happened across America, and it's horrible.

2 But when we're looking at a criminal case, the
3 Court knows, the government knows, we all know, this is
4 the -- we're supposed to be looking at who is this guy.
5 And yes, we need to deter everyone. That's a big part of
6 it. But it's also important -- it's statutorily
7 required -- that we actually look at what was going on in
8 this guy's mind, which the evidence just continues. Today
9 is nothing different.

10 You know, I was a little taken aback when the
11 pro se motion presented itself when it did at its time,
12 but I'm somewhat inoculated to this based on what you
13 heard me express to Dr. Stoll back in October of last
14 year. What's going on here? I get it now. And it's
15 disconcerting, but I'm past that.

16 This is a unique person, and I can't expect
17 anybody to understand it, but I do believe the Court does,
18 and I think that what might have been more telling on this
19 issue of EF, was when you inquired openly of the experts
20 to help you process: What do you do here? Is this guy
21 going to repeat? Is he deceitful? Is he, you know -- you
22 were more eloquent than "a bad guy," but you were asking
23 those kinds of questions. And the government's rigorous
24 advocate tells you, with me he was not a deceitful person,
25 he doesn't have an antisocial bone in his body. That's

1 not what he is.

2 Now, he did things that in fact were very
3 antisocial. It hurt a lot of people. But it doesn't come
4 from what comes to virtually all, if not all, of the rest
5 of my white collar clients over the last 30 plus years.
6 There was not a greed factor. It was naive, and his
7 perseveration -- I still can't say it right -- the fact he
8 just couldn't stop and he thought it was going to work, I
9 mean, telling us about the Methwold thing. Yeah, he's
10 still going to make money on Methwold. This isn't a show.
11 This is who he is.

12 I just urge the Court, and if I could, I would
13 communicate directly with the victims so they'd
14 appreciate, as wrong as he was, he really did believe that
15 it was working and it was going to work.

16 And I know we're not going to want to take the
17 time up of the Court to have the victims see the video
18 that we submitted to the Court where the other people all
19 believed in Praise and -- Mr. Praise. Twelve plus million
20 dollars. And he became sort of the leader to try to get
21 the money back. These were all educated people, and they
22 really believed.

23 So he's still believing right up to the end,
24 he's going to make fifteen to one, he's going to make
25 \$15 million.

1 I wish those victims could know, as wrong headed
2 as it was, that's -- he really did believe it. And that
3 to me all comes back to the core issue of his deficit. I
4 think the evidence of his deficit is overwhelming. And I
5 don't think this record contains evidence that essentially
6 rebuts or deflates or derogates from the tests analysis.
7 And when you overlay it on his historical life, it fits.
8 There's nothing inconsistent.

9 So I appreciate the opportunity to address that
10 issue in specific. It's a substantial part of what the
11 sentencing argument is for the Court's consideration.

12 But that we believe -- I believe there's so many
13 other problems with the Guidelines that I don't need to,
14 you know, talk about that. I think I can rest on my
15 papers with respect to that I think the papers really do
16 explicate the loss calculation overstating, I think the
17 substantial assistance. That of course is typically
18 something that only the government has the right to
19 provide, but I don't -- I've read through all the papers.
20 I don't see the government arguing with the fact that he
21 did in fact help get Praise. I believe the record shows
22 his initials were used as the victim, and whether it was a
23 violation of the Victims' Rights Act is not really
24 material. But I do think the Court can see he did in
25 fact -- along with those other people you saw in the

1 video, I hope, I trust -- believe him and he got ripped
2 off.

3 Incidentally, when we come to loss overstating,
4 the guy that ripped off all those honest, intelligent,
5 mostly well-heeled people, was greedy. That was black and
6 white, right down the middle fraud, criminal, where he was
7 going to get a finder's fee of two and a half million
8 dollars -- probably still got it, nobody ever got that
9 money back -- he got 31 months -- 41, sorry, 41. That was
10 evil. That was multiple direct false statements to people
11 flying around the world.

12 It was a -- quite a slight of hand when they
13 were going to Bermuda, sending this Scott Hulet. And the
14 Court in that instance believed, with the millions of
15 dollars that were ripped off, to somebody who had a
16 history of criminality, he deserved 41 months.

17 Mr. Rivernider believed it hook, line and sinker
18 and fears to this day that Praise is a danger to himself
19 and his kids.

20 So that's the sort of thing you do look at for
21 substantial assistance. When somebody does something and
22 puts himself at risk. I'm not saying he's really at risk.
23 I'll be honest with you, I've spent personal time saying
24 he's at no risk where. I've never seen a case in 30 years
25 where someone like Praise puts his kids at risk. That's

1 just not going to happen. Even the mob cases, that
2 doesn't happen. That's my responsibility to my client to
3 put him at ease of that. But he's certainly -- I can't
4 convince him of many things. I'm doing my best.

5 But I do believe the loss calculation
6 overstating, substantial assistance, and the EF are like
7 really unusually cogent, well-documented grounds to
8 depart. But I also believe that under all the
9 circumstances the Court has already expressed itself on
10 the Court's approach to sentencing and taking its
11 statutory obligations very seriously.

12 So nothing more would I want to say.

13 THE COURT: Thank you.

14 Any comments, Mr. Durham?

15 MR. DURHAM: Yes, Your Honor.

16 As I understand Mr. Bergenn's comments, he's
17 addressing -- he was addressing all three of the issues
18 raised -- questions raised by the Court, that is
19 diminished mental capacity and substantial assistance to
20 the SEC and loss calculations overstating.

21 Let me address the first one first.

22 We're a little bit removed from the evidentiary
23 hearings that Your Honor presided over back on December 4
24 and 5, but I'm sure that most, probably all but very
25 little is pretty fresh in the Court's mind. But the Court

1 did conclude, after having heard that testimony, that the
2 defendant had not met his burden to show that in fact he
3 suffered from some type of diminished mental capacity.

4 And it's the government's recollection that when the only
5 psychiatrist who was called to testify, Dr. Lewis, was on
6 the stand, the Court specifically inquired of Dr. Lewis
7 about diminished mental capacity and about this purported
8 executive functioning deficit, and Dr. Lewis advised the
9 Court that she did not believe that he, Mr. Rivernider,
10 suffers from an executive functioning deficit.

11 She is a medical doctor, a board certified
12 psychiatrist, and that is her view, looking at the entire
13 record, not just a little tiny -- comparatively tiny scope
14 of the information presented by the defense. That is, how
15 did Mr. Rivernider do in certain testing that occurred
16 over a period of I believe it was a day or a day and a
17 half. I think started late one day, went into the next
18 day. You don't look just at, well, how did he do on this
19 test? And then conclude from that, oh, yeah, he suffers
20 from an executive functioning deficit.

21 Similarly, Dr. Kaplan testified, and unlike Dr.
22 Stoll and Dr. Filippopoulos -- and Dr. Kaplan also board
23 certified in this instance in forensic psychology -- and
24 Dr. Kaplan reached the same conclusion; that is, no,
25 Mr. Rivernider does not suffer from an executive

1 functioning deficit and that's not the explanation for why
2 he engaged in the criminal conduct that he did.

3 Now, to the extent that obviously the government
4 is -- well, withdrawn. Maybe it's not so obvious. I
5 would say it seems obvious, but Mr. Rivernider apparently
6 believes that we're listening to his telephone calls,
7 viewing his emails or what have you. I can assure you
8 that's not the case, but no matter.

9 The Court listened to him, Mr. Rivernider,
10 articulate his position today. And it goes -- his views
11 as expressed today and in some of the materials that we
12 had provided to probation regarding acceptance of
13 responsibility, Mr. Rivernider is just an incredibly
14 arrogant person. He thinks he's smarter than everybody
15 else despite the lack of education and sophistication in
16 these financial matters, that he's going to go out and
17 he's going to make all of this money.

18 Now, I'm not sure -- and I would suggest, that's
19 not an executive functioning deficit. That's narcissism and
20 arrogance.

21 But in any event, I would urge the Court to just
22 recall the proceedings that occurred on December 4 and 5
23 where the Court specifically found that they had not
24 made -- they had not met their burden of showing that
25 there was a diminished mental capacity. And in fact, my

1 recollection is the Court had said the Court doesn't want
2 to inflict harm on Mr. Rivernider's children and whatnot,
3 but you just can't make the finding of diminished mental
4 capacity so that provides a means by which the Court can
5 impose some different sentence. That's the state of the
6 record.

7 We would urge the Court to continuing in that
8 position, particularly when, if you look at the actual
9 conduct engaged in by Mr. Rivernider over a long period of
10 time, it provides a lot more valid data to the Court than
11 does some testing on a particular day where he did
12 particularly poorly in I think two out of 18 tests, and
13 that gets interpreted as, oh, he suffers from some
14 executive functioning deficit.

15 With respect to counsel's comments about risk,
16 what kind of risk Mr. Rivernider poses, the defendant
17 can't have it both ways. That is, it can't be the case
18 that he can't control himself and that's why he engaged in
19 this activity and he's going to continue to do everything
20 he can. And then on the other hand argue, he poses no
21 financial risk to anybody because those are, the
22 government respectfully submits, those are inconsistent
23 positions to take. He can't control his behavior but, oh,
24 he's not a risk down the road. The government would
25 suggest to the Court that Mr. Rivernider -- in

1 Mr. Rivernider's sentencing, specific deterrence is a key
2 factor if not the key factor in fashioning an appropriate
3 sentence.

4 There's reference made in the defendant's
5 sentencing brief and the Court alluded to a downward
6 departure based on substantial assistance to the SEC. And
7 Mr. Bergenn alludes to, well, Mr. Praise received 41
8 months and that involved \$12.5 million, and it was pure
9 greed.

10 The government takes no issue with the fact that
11 Mr. Praise is also a fraudster engaged in fraud. But
12 there are facts that the defendant doesn't refer to.
13 Defense doesn't refer to that which the government would
14 suggest are important with regard to Praise.

15 First of all, Praise was sentenced to 41 months,
16 but Mr. Praise was also deported from the United States
17 and sent back to Nigeria, and so that's not an
18 insignificant factor. The American taxpayers aren't going
19 to be paying to have Mr. Praise sitting in a prison for
20 some period of time.

21 Secondly, if you look at Praise's conduct and
22 what he was convicted of, how many people were affected by
23 what Praise did? Well, the repeated reference here is to
24 there were 12 investors, one of whom was Mr. Rivernider in
25 his Cut Above Ventures entity. There were 12 people that

1 were affected by that conduct.

2 In this instance, the Court has found by
3 accepting the Guidelines calculation, and we believe the
4 evidence -- we know the evidence supports it -- that there
5 were more than 50 people. More than 50 victims here.
6 There were 104 mortgages that were involved in the real
7 estate fraud alone.

8 And so the defense again I think invites the
9 Court to go down to what we've referred to in our
10 pleadings and earlier today is that rabbit hole of No More
11 Bills and what was happening with the investments and did
12 I really believe it or did I not believe it. In excess of
13 \$23 million of the loss here comes from what the Court has
14 found today is this is fraud from the beginning, the real
15 estate scheme. And we would suggest the Court ought to
16 focus on that.

17 And the third thing that the government suggests
18 to the Court distinguishes the Praise situation in an
19 important way from the circumstances here is that Praise's
20 conduct didn't have the kind of negative effect on the
21 banking system in the United States as did the conduct of
22 Mr. Rivernider and those other people who have been
23 prosecuted for similar conduct throughout the country and
24 whose conduct contributed in a substantial way to the
25 economic woes that the entire country has been suffering

1 over the past few years.

2 That is, it is true that Praise engaged in
3 fraud, but it's also true that that fraud that he
4 committed didn't have the kind of impact on as many lives
5 as the defendant's conduct has and, further, didn't have
6 any kind of impact on the financial system the way the
7 fraud that Mr. Rivernider and people like him had on the
8 financial system of the United States.

9 I think that addresses what counsel had to say,
10 but if I missed something, I'd ask the Court to obviously
11 inquire, as I know it will.

12 THE COURT: The other point has to do with the
13 loss calculation.

14 MR. DURHAM: Yes, Your Honor, and whether the
15 loss calculation overstates the relative culpability.

16 The government's view would be that -- I mean,
17 the loss figures are what the loss figures are. That is,
18 the defendant -- the real estate scheme in which the
19 defendant took part, in fact designed, organized,
20 operated, ended up obtaining something in excess of
21 \$37 million in mortgage loans. And ultimately, when that
22 house of cards collapsed, there were losses from that real
23 estate scheme in excess of \$23 million.

24 And the Guidelines -- obviously the defense
25 briefed this question as did the government as to whether

1 or not the Guidelines are based on empirical information
2 and whatnot.

3 The government's view of that is, these were
4 very carefully considered. This Court has any number of
5 minority kids who come in here on drug charges and the
6 like who are sentenced to long periods of time as a result
7 of the Guidelines, sometimes mandatory minimums, but the
8 Guidelines themselves.

9 In this instance, this defendant, he engaged in
10 criminal conduct which had enormous negative impacts on
11 the lives of dozens and dozens of people and resulted in
12 the loss of more than \$25 million to banks and individuals
13 who have lost their homes, who haven't been able to
14 provide monies for their children to go to school. In one
15 instance, for a person who we will allude to later, who
16 literally become homeless. For somebody else to be living
17 in an attic with a friend because they can't afford rent.
18 These are significant things.

19 And we would take the position, do take the
20 position, that no, the loss calculations don't overstate
21 the seriousness of the criminal conduct here. And so that
22 the Court ought to then appropriately apply the Guidelines
23 as they are contained in the presentence report.

24 THE COURT: All right, thank you.

25 Mr. Bergenn, I'll give you a chance to add a few

1 words, but then I think we're going to need to take a
2 break for lunch.

3 MR. BERGENN: Very briefly. Just with respect
4 to the second category, Praise. I don't think we heard
5 anything to argue the fact that he did provide substantial
6 assistance.

7 When we are addressing Praise, however, it is
8 also black and white clear that when the government says
9 Praise only had 12 victims, in fact the million dollars
10 came from all these victims. And so pro tanto, those
11 victims, as of September when that money went out the
12 second time, first time in July, that in fact was money
13 from all these people.

14 So it may be that the Court there sentencing
15 Praise did not know, for reasons that I think have come
16 out -- Mr. Rivernider was not a participant in that
17 proceeding -- but it is plain as a matter of fact and
18 undisputed that the million dollars did come from CAV, Cut
19 Above Ventures, that that money went to Praise, he kept it
20 and he got sentenced. So there was the same number of
21 victims, just diluted.

22 And the loss calculation overstating point, the
23 gist of it is, because I've been doing this since back in
24 '87 when the Guidelines first came out, and before, but
25 back then, this crime, as we put in page 25 et seq. in our

1 original sentencing memo, would have gotten him 37 to 46
2 months. This very crime. And the elevation of the
3 Guidelines to double after the savings and loan crisis and
4 double again when we put the -- when there were other
5 humongous frauds, and we just wanted to capture bigger
6 losses for bigger institutional misbehavior typically. It
7 essentially is six times what it would have been. And
8 there is not, there is not empirical evidence to support
9 it.

10 And the Guidelines were established expressly by
11 Congress -- and the judges have talked about this
12 themselves -- that to be patterned after actual empirical
13 evidence. And so that just didn't happen. There is no
14 empirical evidence. And while we're now used to these big
15 numbers, I think it is very important to look at that fact
16 when assessing culpability and appropriateness under 3553.

17 Thank you, Your Honor.

18 MR. DURHAM: Your Honor, I know the Court wants
19 to take a recess, but if I might just briefly?

20 Mr. Bergenn suggested that, well, he in fact --
21 he, Mr. Rivernider -- provided substantial assistance. I
22 know that they were included in the binder of all the
23 government's exhibits provided to all the parties and the
24 Court at trial and I know that they're part of what, you
25 know, the Court had available at the time it took the

1 guilty plea, but I would simply remind the Court --

2 (Pause)

3 MR. DURHAM: Let me withdraw that and we'll go
4 to lunch.

5 THE COURT: Okay. Before we break, let me ask
6 you to enlighten me as to what you have in mind for me
7 this afternoon. My intention is to turn the floor over to
8 you at this point, and so can you tell me what to expect,
9 please?

10 MR. DURHAM: Yes, Your Honor.

11 From the government's presentation, there are
12 three victims that we think are representative of
13 different sorts of harm that flowed from the defendant's
14 criminal conduct, and we would expect to ask them -- ask
15 permission from the Court to have them speak in connection
16 with the hardships that they've suffered as a result of
17 this.

18 One of those individuals I think has to leave
19 the courthouse by 2:40 to get a plane back to his home
20 state, but I would think that the government's
21 presentation would take in the order of 20 minutes, maybe
22 a little bit more. Say half an hour.

23 THE COURT: Okay. Why don't we say that we'll
24 take 45 minutes, and then we'll come back and we'll hear
25 from anybody who would like to testify.

1 MR. DURHAM: Yes, Your Honor.

2 THE COURT: And then after that, counsel will
3 have an opportunity to make whatever further presentations
4 they wish, and Mr. Rivernider will have a chance to speak
5 again if he wants to.

6 No obligation, but you'll have that opportunity,
7 Mr. Rivernider, all right?

8 MR. BERGENN: Thank you, Your Honor.

9 THE COURT: And if there is a scheduling
10 conflict with a witness, I'd like to do whatever we can to
11 lighten that burden.

12 MR. DURHAM: Yes, Your Honor.

13 (Whereupon, a recess followed)

14 MR. BERGENN: Your Honor, could I do a 30 second
15 housekeeping matter?

16 Exhibits that have been referenced and offered
17 in proceedings on this sentencing include on December 4
18 and 5, Exhibits 1 to 6 and 8 to 12, and on 12/18, i.e.
19 today, Exhibit 7, 13 to 23 and 25 to 30. And I would just
20 ask that they be made full exhibits.

21 THE COURT: Thank you. I appreciate that.

22 All set to proceed?

23 MR. DURHAM: The government's prepared, Your
24 Honor.

25 I think in the normal course, the defense

1 usually goes first to make whatever claims they want to
2 make and the government will respond. But we're prepared
3 to respond.

4 THE COURT: I just want to be sure that the
5 witnesses have a chance to testify and get to where ever
6 they need to be.

7 MR. DURHAM: We've been able to adjust the
8 schedule a little bit. So I think there's a flight that
9 they need to take, but so long as they're out of here by
10 3:30, we're good.

11 THE COURT: All right. Then I guess, consistent
12 with the usual order of things, I would call on
13 Mr. Bergenn at this time to make whatever additional
14 presentation he would like.

15 Mr. Rivernider, as I mentioned, you have an
16 opportunity to speak again on your own behalf if you want
17 to. You don't have to say anything, but you do have a
18 right to speak on your own behalf. All right?

19 MR. BERGENN: Thank you, Your Honor. I had
20 actually anticipated that the victims would go first, but
21 I understand. I'm happy to -- I just don't want them to
22 have to stick around any more than necessary.

23 But I do want to, on Mr. Rivernider's behalf,
24 acknowledge the victims' sincere actual substantial pain.
25 I also want to acknowledge the very substantial drain on

1 resources that has been required in this case for the
2 court, the government, the defense.

3 Of course the court issue is how we got here,
4 and I'm going to endeavor not to repeat anything because I
5 don't think you need more. I think we've included quite a
6 lot of material, but I think this much of a tight
7 chronology is relevant to orient us to the appropriate
8 sentence.

9 When the real estate market went up, nobody gets
10 credit for that, it just happened. Mr. Rivernider had,
11 over time, had \$180,000 equity to the good. So when he
12 sold his house back in the late fall of '04, he had
13 \$180,000 to his name from that sale and from -- he'd
14 always worked hard and the like, but like many people, he
15 happened to have some value, and when he sold he had this
16 money.

17 He had done this debt acceleration work for a
18 living, and with this money, he believed he should be
19 doing more. He, for whatever reason, believed that this
20 was due to some work on his part. Well, of course, the
21 fact that he bought a house young, I guess, does give him
22 that opportunity to have at a relatively young age, I
23 guess, \$180,000 of net value.

24 But the weak -- and even if it's not a
25 diminished capacity weakness -- emotional intelligence

1 sold him very readily on this PQI, Pinnacle Quest
2 Investments, because he had seen 2,000 other people go
3 into this and he had no education past high school into
4 investments, no experience with them, and these people are
5 slick and they're effective and he believed it, and once
6 he believes something, he doesn't get that belief shaken.
7 So that's what happened.

8 And so really, in that regard, he's not
9 different from the victims here. They believed this
10 10 percent a month, which for someone who's just
11 dispassionate and reflective or educated, or all the
12 above, that just doesn't make sense. Nothing pays
13 10 percent a month indefinitely, just like things can't
14 pay 1 percent a day, and all this other stuff that
15 Mr. Rivernider still believes. But those victims and he
16 all lost, and he was the instrument of their loss, he owns
17 that.

18 I've spent a lot of time with him, and the fact
19 that he's still fixated on the belief does not deny for a
20 moment his complete acceptance of responsibility that he
21 is the cause of their suffering, and it's the very reason
22 why we ended up pleading guilty to all counts.

23 But before getting to that, because that is
24 important, when he was investing and being sold and, my
25 goodness, look at this, they're showing me I'm making

1 money and they're letting me -- there's some kind of
2 vehicle whereby he could withdraw money. And he did. And
3 so he -- but they keep showing him, it's doubling, it's
4 going up, whatever, and he's taking the money out, and
5 he's like, whoa, I don't want to take too much money out
6 because this is really doing well. So he committed to
7 himself, I'm going to leave as much as I can in. That's
8 what he did.

9 Now, it is unfortunate that the MY ICIS records
10 back at that time are just not available to everyone here,
11 but I can tell you in our dealings with him, he has been
12 uniformly accurate and honest with us in dealing with
13 historical events and that comport with the records as
14 we've seen them. And he can draw upon the records. And
15 he and the government and we, you, can't draw upon the MY
16 ICIS stuff.

17 But what we do know from the extremely expensive
18 and thorough vetting that his behavior got, that that
19 \$180,000 which was put in -- you know, we have established
20 proof that he did get it -- is no longer. And that's
21 where the money went. It went into the investments that
22 were through the MY ICIS account.

23 But when he now sees this is really working and
24 he's helping these people through the debt acceleration
25 and he runs into people who he realizes they're never

1 going to get out of debt, I -- these people should be able
2 to do the same thing I'm doing. And so naturally he's
3 thinking, well, this is easy, so this marriage of using
4 debt acceleration with his high end investments and later
5 with his real estate, which I'll get to, that was
6 something he did just to help.

7 But more important to the executive function
8 problem, it's not complicated. It appears complicated to
9 all of us because it's so big, but doing the same thing
10 over and over and over making it bigger and bigger and
11 bigger does not change its inherent complexity. This was
12 simple and it was not ingenious.

13 I remember one of the experts -- I can't
14 remember whether it was the government's or ours --
15 speaking to how this seemed to be pretty clever. It
16 wasn't clever. It was just wrong.

17 First of all, the idea you can make money just
18 by putting money in and it would keep coming back to you
19 ad infinitum or as we just heard in perpetuity, it's
20 ridiculous. So marrying that concept to debt
21 acceleration, it's not like intellectual property somebody
22 is going to patent. It's just wrong. That's why nobody
23 thought of it. Because why would you apply such a
24 fundamentally wrong thing to debt acceleration?

25 What makes this case so enormously tragic, well,

1 it's the fact that this guy who for 40 years obeyed the
2 law, he's actually more obedient than most, he has kind of
3 a social responsibility compliant personality, up until
4 all these events -- and I'm not trying to belittle these
5 events -- and for what I fully anticipate the rest of his
6 years. As we saw for the three years he was out, he
7 complied with everything. And this is a person who
8 viscerally is upset with anything that went wrong in
9 connection with the investigation, yet he complied
10 100 percent with every requirement. So that's his
11 personality.

12 So what made this thing incredibly tragic and
13 enormously tragic is that he's such a hard worker and has
14 always been, and he really believed he wanted to help
15 others. And I honestly, Your Honor, did not think it was
16 because he wanted the big pat on the back, I think it's
17 inherent in him, it's who he is, it's the guy who wants to
18 make sure everybody gets their paper, it's the guy who
19 wants to make sure he never misses a day of school. He
20 gets these commitments, this seal that's just oversized,
21 and once he gets committed, he can't stop.

22 It's interesting because when I had prepared my
23 remarks for today, I wanted to express that it doesn't
24 matter that he was fooled or that he was just wrong, it's
25 that he can't stop. It's not that he won't stop, it's

1 that he can't stop. And I thought it was telling when
2 once again spontaneously, believe me, this was his
3 spontaneous remarks, him expressing to you that minimal
4 self knowledge, I can't stop. And it's not just an
5 expression, it's literally his functionality.

6 Well, while he is terrific at his work, once he
7 got this very simple idea, all the other information that
8 was coming in just didn't get evaluated, didn't get second
9 thoughts. And we do know that he cannot be involved with
10 other people's money. He's complied so far with that.
11 There's no reason to expect that he won't.

12 And you've heard some of those remarks from the
13 experts. He's compliant. He knows what he's not allowed
14 to do, he doesn't do it. He's not going to be able to
15 handle his own money or anybody else's money. He's not
16 going to reoffend. And so I would expect that his 40 year
17 positive record when we're done, whatever happens here,
18 he's long lived, he'll have another 40 years of being a
19 good guy.

20 But back to the chronology.

21 So we learn after working with him for hundreds
22 of hours in a more intimate setting, of course, than what
23 happens in a court report, that it just didn't make sense.
24 And then when it was confirmed by these again unimpeached
25 reliable tests that are accepted in the field, I now have

1 a very good grasp of it, as do at least the two experts
2 that spent a lot of hours with him and a lot of hours on
3 the test. This was not just, as the government backhands,
4 oh, well, it's just a couple of days of tests. Well,
5 those couple of days of tests are the gold standard of
6 tests. That's what these people do for a living. Now,
7 Dr. Lewis doesn't do it for a living. She said so. But
8 these tests are valid. The government witnesses did not
9 invalidate either the general tests or the application of
10 the tests here.

11 And we heard the experts explain -- Stoll, I
12 think, said they present as arrogant. And I do believe
13 that the government speaks honestly when the government
14 perceives him as arrogant. People with this situation are
15 most frequently perceived that way. And I've just been so
16 inoculated, it doesn't affect me that way because I know
17 my job is different from just reacting. It's thinking,
18 what does this mean? I'm supposed to be using an
19 executive function, and I do, and I appreciate very much
20 that the Court is doing the same, but the doctors are the
21 ones who are the best at this, and this isn't just a test
22 and a couple of tests, these were tests that established
23 it, as I have remarked earlier today.

24 And when the government counsel articulates that
25 that was a fraud on the Court, I know that has to be

1 hyperbole because you can't express that. These two
2 doctors are called upon by courts all the time.

3 Most of the time when they're hired to do these
4 evaluations, it's by courts, and it's to come in and to
5 testify, and it's government and defense, it's civil
6 cases, it's plaintiff's and defense counsel. That's what
7 they do, they run these tests and they report it. And
8 neither of them have ever had their credibility or their
9 reliability questioned.

10 Now again, people can always quibble, as
11 Dr. Lewis did, experts get hired to, you know, give
12 different slants. But the fundamentals of the test? No.
13 The opinions that you draw from those tests? No. The
14 methodology of -- you are required -- you are required to
15 seek. What do the people around him say? You can't just
16 go with the tests. And those people who know him well
17 took tests which are designed to prevent the witness's
18 from tainting each other.

19 Oh, they're all family. Well, they weren't.
20 Some were family, some were not. But they each answered
21 very detailed questions that were designed to tease out
22 specific information, and there was a very substantial
23 difference before and after. So the absence of a
24 physiological, contemporaneous piece of evidence is
25 actually commonplace, as Dr. Stoll explained for each of

1 the six that he had done the testing and found it. Just
2 hadn't been any physical evidence to confirm a brain
3 injury. But I don't want to get tied up too much in that.
4 I just think it's relevant to the Court's consideration of
5 what to do in this case.

6 And so when we ran into this problem, I then had
7 to take a broad view and try to explain, which I think is
8 true, that everything that the government did thereafter
9 in terms of having to get all these witnesses and, you
10 know, identify the co-conspirators, that all had to
11 happen. And I believe that had he not had this issue,
12 this case would have been over real fast, pick the counts,
13 pitched to the Court, the Court does what it thinks it
14 ought to do.

15 He's never denied what he did. I did what I
16 did. The record's really complete with what actually
17 happened, but this isn't a normal case because it's not a
18 normal person.

19 So the trouble he has, which I think was
20 manifest in this motion that he decided to file, is even
21 though I can explain to him the transitive property of
22 legal intent, I intend "B" to happen. "C" necessarily
23 happens. I intend "C." Jury instructions, we all know,
24 you intend the natural and probable consequences. The
25 natural and probable consequences of all of his conduct

1 were exactly what happened here. He intended it as a
2 matter of law.

3 He is smart enough to follow that logic and
4 understand it, and the rigor in which we had to go through
5 that, yeah, it was pressure, but it was just a fact
6 pressure, it wasn't like anything other than, this is what
7 the facts are, this is what the law is. That is onerous,
8 but it isn't inappropriate pressure. It's just a pressure
9 of life and the realities that he was facing. He
10 understood it.

11 And you could remember at that sentencing he
12 reacted viscerally when you asked him about the effect on
13 others. I thought that was an amazing moment. He was
14 emotionally upset because his need -- his inability to
15 follow my explanation as to how his intended conduct
16 produced the elements of the offense, that cannot go away,
17 and his entire life's history, supplemented by the tests
18 which show he is a socially responsible person, meant that
19 at that point in time you see now what I couldn't explain,
20 the pain of these witnesses. That's what started the
21 guilty plea. It was his reaction simpatico with the
22 witnesses.

23 He has a low empathy personality. Doesn't mean
24 he doesn't have empathy. The doctors explained that. I
25 think you can understand it. We all know some very bright

1 lawyers and some engineers who, really, they work at the
2 cognitive level. They're not rich in the feeling level.
3 He's not. He might be impoverished on that level. But
4 that doesn't mean he lacks it. And when he saw this
5 witness after witness, notwithstanding all the important
6 points to bring out on cross, he saw the pain and he saw
7 himself and he saw how irresponsible he was and he didn't
8 like it, and he didn't want anybody to have to go through
9 that.

10 And when it was obvious now -- because I
11 couldn't explain to him the test results in October.
12 Forget that. That was impossible. But we're now a week
13 and a half into the trial. I think it was just the end of
14 the second week. And we went outside and we were talking
15 and he was really disturbed because of his feelings and
16 he -- his identification. And he really was ready to deal
17 with it.

18 And so we disciplined ourselves to get those
19 core facts that we knew cognitively he would understand
20 which produced the stipulation of the offense conduct. It
21 was -- he'd understand it, he'd agree, and it was like a
22 rubber band. If you'd let go of it, it would snap back,
23 and you had to keep explaining it. And it did take two
24 and a half days to finish that. And -- but his reaction
25 in front of you at that time, which I was so happy it

1 happened, because I wasn't sure, how was I going to be
2 able to convey it? I try to be articulate, I try to be
3 credible, but I can't do it. But what you saw was
4 genuine. His reaction, his feeling for the other people.

5 Now, he still has that feeling and ironically
6 it's his excess sense of social responsibility that drives
7 him crazy when he sees things going wrong according to the
8 perfect playbook of an investigation on a prosecution.
9 They bother him. He feels he's got a duty to do something
10 about it. But that is really apart from the core crime
11 here. The core crime he gets all the way in terms of what
12 happened, and that it was his doing.

13 His problem is, no matter how much he
14 understands that transitive property, that what is legal
15 intent, he knows to a certainty his whole life is positive
16 intentions, wanting to help. So the wanting to help, it's
17 almost like an eraser just erases his previous thinking
18 and he goes back to, but wait a minute, all I was trying
19 to do was help, I wasn't try to harm. So that's part of
20 why he reverts to this thinking of it not being a crime,
21 even though cognitively he gets through the process and
22 emotionally he gets the damage that he caused and he feels
23 the responsibility. As he described it, he lives it, he
24 sees it in his children.

25 The second point is that he was fully sold, as

1 he was with Dr. Stoll at the time of the testing, as he is
2 today. You just saw it. I mean, he is still sold. He
3 still has this conviction that somehow Methwold is going
4 to produce money.

5 And then we've got the real estate, which of
6 course the Court is concerned with, and of course as a
7 matter of law, any liability of lenders or representatives
8 or anybody else in the system doesn't change his
9 liability. It doesn't. But the lenders' conduct, which
10 everybody knows about now, and their words, were in fact
11 clear. The words and conduct were: I got these
12 appraisals, things have been going up for a decade. Those
13 are both facts, and no matter how much the government
14 investigated this, there was never one wrong appraisal,
15 you know, one corrupt appraisal. These were
16 professionals. Maybe they were leaning, maybe they were
17 tipping the scales, but they were in fact people putting
18 their license on the line and they were not selected by
19 him. So those lenders were competing to get the most of
20 those because they were furiously packing them up and
21 selling them and making a bunch of money.

22 So when he sees that, this doesn't change the
23 crime when somebody writes down something that's not true,
24 but it is a difference in degree that's so substantial
25 that the think the Court wants to take cognizance of that.

1 Yes, you've seen so many mortgage fraud cases in
2 this courtroom. I've seen so many. And there are certain
3 common elements, and everybody's been through the
4 materiality and the loss. But it is true that
5 notwithstanding all of that, when you got somebody like
6 him who's already sold on how you can make all this money
7 and help everybody get out of debt, and then you see this
8 is how they work, he is more -- with his lower IQ and with
9 his fixation -- more vulnerable than the average bear to
10 believe that that's okay. Now it's not. I'm not saying
11 it's okay. But that's where -- that's what he
12 experienced.

13 And so when you wonder, how do we get to 100
14 different mortgages in this case? And it's not because of
15 his overbearing will, it's because everybody in that
16 system was like, let's go. And he is responsible for his
17 part of facilitating that.

18 But because everybody was doing these no income
19 verification, and it doesn't change the fact of the crime,
20 but it does change the nature of the criminality. It's a
21 crime, but it's like when you describe pain, you got pain,
22 okay, is it on a level of one to ten? Doctors always ask
23 you. If you got pain and it's a one, it's still a pain.
24 You got pain that's a ten, very, very different pain.
25 It's still pain.

1 This is mortgage fraud, but I'm going to suggest
2 that when you're evaluating Mr. Rivernider, who he is, not
3 the pain that was caused -- 20 something million dollars
4 of pain is an enormous amount of pain -- but we've got
5 billions of dollars, literally billions and billions of
6 dollars of pain, none of which has seen the criminal
7 courts. Civil pain, the pain is more.

8 We're here on a criminal case, and I think it's
9 important to look at his behavior, because I was paying
10 very close attention to the evidence.

11 After I learned about this cognitive switching
12 problem -- and it was terrific that the Court went through
13 that metamorphosis of not knowing a thing until even going
14 through the details of the Wisconsin Card Sorting and
15 understanding what this issue is -- there is nothing in
16 this case that is -- that impeaches or erodes anything
17 about the fact that he has almost no ability to do a
18 cognitive switch.

19 He was steeped in the world of mortgages such
20 that for him when one lender doesn't do it, you go use
21 another lender. That's not cognitive switching. People
22 with executive function disorders or deficits drive. When
23 you drive down the road and there's an accident on the
24 highway and you've got to get off the highway, that is
25 actually technically a cognitive switch. It's an

1 executive function of a sort. But we have so much driving
2 experience and you can't go. You don't say, well, I'm
3 going to just keep going, I'll sit here until this -- you
4 know, so I would describe any of his decisions in
5 implementing NMB and the mortgage situations as the
6 functional equivalent of driving along and there's an
7 accident or there's a detour.

8 Yeah, he switched, but it was not clever, it was
9 not a result of digesting complicated or new information
10 that required substantial evaluation. It was, I would use
11 the metaphor of like Duplo Blocks. We all remember
12 Duplos. You know Legos, they're Duplos until you're like
13 four or five. And all of his work in all of these cases
14 was the functional equivalent of working with Duplos.
15 There was no fine motor skills, there was no complexity.
16 He was just driving along and, if you will, getting it
17 done.

18 So when he observed the trial and the witnesses,
19 it was not, honestly, because -- I mean, it is
20 coincidental and as a lawyer it is true that further
21 witnesses were going to make it worse -- but once it was
22 clear enough that the government's sort of reduced
23 theory -- the government did some adjusting in the course
24 of trial, but what -- the core part of the government's
25 case was simply true. And once that was evident and felt

1 and I could discuss it and he could get it -- something I
2 would have done in the first, second or third meeting with
3 any client -- it was time for him to stop. It was -- he
4 wanted, evidenced by his conduct to the Court, no, I do
5 have a sense of social responsibility. I'm not trying to
6 incur all these expenses, everybody flying in. I don't
7 want to do this anymore.

8 So while it is true that we did not further
9 cross-examine, and it is also true that it appeared to us
10 at the time as soon as I had that conversation Friday
11 night after court and we processed with him the basic
12 facts of stipulation -- we did communicate with the other
13 counsel, including government counsel, because we realized
14 this is pretty big, and we wanted everybody to have a
15 chance to think and react the way they were going to -- it
16 did appear to us, frankly, that the others were going to
17 plead, and that just didn't happen as quickly as we
18 thought it would, but it did happen.

19 But the experience he had was emotion. It was
20 contrite, and he was overwhelmed. But he did take his
21 responsibility.

22 And so, you know, before I conclude, I do want
23 him to speak, and I would ask the Court to keep in mind
24 what has just been, frankly, a pleasure to watch that
25 you're that open with your thinking where you've expressed

1 how it doesn't make common sense but, you know, that is
2 where I was. It doesn't make common sense, but I have had
3 a number of TBI clients actually from a personal injury
4 side of my practice and I've gotten to appreciate others
5 who have this problem, not this precise problem, but
6 because each person with a TBI does have something unique
7 to them. That's just the brain is so complicated that a
8 TBI is just a category. It's like having an infectious
9 disease. A TBI begs the question, what is going on in
10 that person's brain? That's why they have these tests.

11 And it is exasperating, and this Court's
12 well-known patience has been extremely valuable to the
13 justice process of the this courtroom. And so I would
14 just ask you to keep in mind as he speaks that this is not
15 just a person who's committed these offenses, but this is
16 a person that everybody who has studied it agrees he
17 doesn't have an antisocial personality, that does have
18 strong social responsibility. And the government's own
19 expert is saying he's not deceitful.

20 Now, of course, she wanted to be clear to you
21 when you developed that that, you know, she doesn't want
22 to be in that situation of replacing a court do describe
23 whether someone's truth telling or not. But in all of the
24 three hours she spent with him and her review of all the
25 records, she was convinced that he's just not a deceitful

1 person.

2 While you've been exasperated appropriately
3 many, many times, as everybody in this case has been from
4 time to time, I would ask you to keep that in mind, that
5 whatever we make of this evidence about his executive
6 function, it's real. You know, whether it rises to one
7 standard or another I don't think is as important as the
8 fact that the tests are not impeached, the testers are not
9 impeached, it is totally consistent with everything else.

10 So it helps when you're listening to whatever
11 the remarks may be, which are his remarks, that he still
12 is that person who is otherwise, not just crime free, but
13 a very positive person as an employee and as a father.

14 Thank you, Your Honor.

15 THE COURT: Thank you.

16 Mr. Rivernider?

17 THE DEFENDANT: May I approach or right here?

18 THE COURT: Whatever you prefer is fine with me.

19 THE DEFENDANT: I'll stay right here. I want to
20 clear up a couple different things and talk about what
21 Mr. Bergenn said, and then if I can talk about some
22 personal issues as well.

23 Mr. Bergenn talked about social responsibility.
24 Your Honor, I -- in the 90's, I used to hold Flag Day
25 celebrations every June of every year. I used to have 50

1 or 60 people from my community out to celebrate Flag Day.
2 We had big parties. Jim Purdue was actually part of that.
3 His wife wrote a message in there.

4 I ran an office for a presidential campaign. If
5 you remember hanging chads? I volunteered to stare at
6 hanging chads for days on end. I once hosted a member of
7 the Justice Department at that headquarters. You might
8 have heard of him. Rudy Giuliani. I hosted him at that
9 headquarters.

10 So Mr. Bergenn's right, I do have social
11 responsibility. I was not intending in any way, shape or
12 form to harm anybody.

13 That's why when every time Mr. Bergenn would
14 explain things to me and he would go over you intended
15 because of this even though you never thought about it.
16 So what I would do, Your Honor, is I'd go back after he
17 would say that and I'd go back to notes that I wrote. As
18 I was on diesel therapy, I would -- I traveled around the
19 country, and every opportunity I had I stopped -- I went
20 to the law library. They always had -- an hour or two you
21 could go to the law library every day. So I was there
22 every possible waking moment I could be there, I was at
23 the law library trying to figure out what the actual crime
24 is I committed. I couldn't figure it out. The indictment
25 served no help, because the indictment was just wrong.

1 The information in the indictment, I just -- did not match
2 up with anything that actually happened, and that's part
3 of my problem.

4 And then after Mr. Bergenn would say, you
5 intended harm even though you never thought about it, I
6 would read U.S. v. Charles Starr, 816 F.2d 94, Second
7 Circuit 1987. Appeals Court reversed the conviction, and
8 they said to establish mail or wire fraud, the government
9 must prove the defendant acted with an intent to defraud.
10 To establish an intent to defraud, the government must
11 prove that the defendant contemplated some actual harm or
12 injury to the victims. Only a showing of intended harm
13 will satisfy the element of fraudulent intent.

14 Your Honor, if I intended to harm myself by
15 putting my own money in, my mother, by her putting her
16 money in, and my sister Loretta, if I intended to harm us
17 and every other victim, any one of them, Mr. Durham has
18 experience with water boarding, I would submit to water
19 boarding every day the rest of my life in this courtroom
20 if you would like.

21 I did not intend to harm anybody, anybody. I
22 had to look up the word contemplate. It means thoughtful.
23 I had to look it up to make sure it meant what I thought
24 it meant. And it means thoughtful.

25 Now, if there's other meanings of it, fine, but

1 if Mr. Bergenn is saying you had to think about it and
2 contemplate means thoughtful, I know I never thought about
3 actually harming anybody. That was the -- never even
4 crossed my mind or, I'm sure, Mr. Ponte's and certainly
5 not my sister's who just lost her job and came to work for
6 me for a couple of months because she didn't have a job.
7 That was the only reason.

8 So, as you could see, I didn't -- if I didn't
9 intend to harm anybody, that's why I couldn't understand
10 how 12 jurors or how a grand jury could even indict.

11 The morning I was -- the morning Ms. Sadin's
12 calling me and telling me that they're going to indict,
13 even though they hadn't indicted yet, I was in the office
14 where I was working at the fourth regional -- the Regional
15 Council office for the Fourth District, State of Florida,
16 where I was a criminal defense investigator, and I had
17 investigated a case before that. And I ran into the
18 attorney and she said -- I asked her, hey, whatever
19 happened with that case? And she said, oh, thanks, you
20 guys did great. It was really helpful, but we had the guy
21 plead out because he was already in prison for a year and
22 he would only have to do another year.

23 I proved that the guy, who supposedly shot into
24 a crowd of 50 people at a house where nobody in the 50
25 people got shot and the house wasn't shot -- so I proved

1 beyond a reasonable doubt that he did not do what the
2 government said he did. And I vowed to myself that, I'm
3 not pleading guilty to something that I didn't do. So
4 what did I do? And nobody was able to ever explain to me
5 what I actually did.

6 When you get to the mortgage situation, the
7 government keeps saying, we don't want to talk about the
8 mortgage situation. I will talk about the mortgage
9 situation all day long without a problem.

10 With the Sterling properties, I contracted with
11 the developer of the Sterling properties to get a
12 marketing fee of 18 percent. I wasn't -- we did not
13 inflate the prices. The value -- and I did a complete
14 analysis of every property at the Sterling, what it was
15 sold before -- what Tosha Wade sold the properties for.
16 And they were all sold for about the same. In some cases
17 I was selling them for less.

18 So the whole concept that I inflated the values
19 that caused this harm from the beginning just doesn't bear
20 out to the facts when I did the entire analysis based on
21 public records of what actually sold. Three hundred some
22 odd properties, that's available. I turned it over to my
23 attorneys.

24 And they gave you a couple of examples to show
25 that before I was involved that these happened, and we did

1 not inflate the properties.

2 When Dave Bryant testified in the deposition,
3 the government was trying to prove that he inflated --
4 that we inflated all those fees, yet we sold them for the
5 exact price he listed it for.

6 So the whole real estate concept, I'll talk
7 about it, answer any questions anybody has on it, if
8 anybody has any questions. I did not inflate the
9 properties.

10 Now, we heard about this compassion issue. I
11 don't have compassion because I didn't show compassion to
12 Dr. Lewis with my stepson.

13 You have to know the history, Your Honor. His
14 father died when he was four years old. His father died
15 in a boating accident because him and his friends were all
16 on drugs, okay? And that's what caused the boating
17 accident.

18 I started taking care of him when he was about
19 five, and then I eventually married his mother and he
20 became my stepson.

21 I put him through private schools, the whole
22 thing. I took him to daycare every day. Little league.
23 I played baseball with him, everything. Okay?

24 He decided to follow in his father's footsteps
25 and he decided to use drugs.

1 When I found out about it, I literally took him
2 when he was 15 years old, shoved him in the car, drove to
3 the school, because he told me he got them at the school,
4 and made him sit in front of a sheriff and tell the
5 sheriff who gave them to him and where he got them under
6 threat of going to jail.

7 He decided to continue with the drugs. He wound
8 up at the Fort Union Military Academy. Between
9 consultation with his grandfather and with his mother, we
10 put him in military school to try to straighten him out.

11 What's going to happen now, he hopefully
12 straightened himself out. Now I'm going away? He's going
13 to have to take my kids every morning to school because
14 his mother goes to work at 4:00 in the morning. So now
15 he's going to have to go pick up my kids, get them ready
16 for school and take them to school.

17 What happens now, Your Honor, is they live with
18 me full-time, seven days a week. I take care of them
19 full-time. They're going to have to go live with their
20 mother where she's not going to be there.

21 In the morning now they wake up to me tickling
22 them and singing to them. They wake up to me making them
23 breakfast, to me making their lunches and playing hide and
24 go seek in a single wide trailer now. And I have to
25 borrow my mother's car to take them to the school.

1 Their lives are going to be substantially
2 changed.

3 I don't know when we're supposed to submit these
4 now or --

5 MR. BERGENN: Whatever you want to do.

6 THE DEFENDANT: Your Honor, we have some
7 exhibits, some pictures of the kids, if you'd like, we can
8 submit them.

9 THE COURT: I have them.

10 MR. BERGENN: Okay, good.

11 I don't know this first one, this was last
12 Halloween.

13 This was my son's school. That's me and a
14 little friend of his from school. His name is R2D2. We
15 just watched the whole series.

16 Next one, I took both of them, we went to a park
17 and we went on the race cars.

18 It's just things that I can do.

19 The next one is the kids with a guy named San T.
20 Claus. That's -- I actually dress up in that every year.
21 That's me in there.

22 And then me Emma. And by the way, Your Honor,
23 Emma here, if the Court -- we had talked about a 400 year
24 sentence, Emma was a vampire and she had some vampire
25 teeth, and I had her bite me in the neck. So should the

1 Court impose a 400 year sentence, I will commit to every
2 day if I have to, because I got bit by a vampire. I had
3 perfect attendance in high school, Your Honor, so I'll see
4 what I can do about the 400 years.

5 And there's Robert and Emma and the kids just
6 together there. Your Honor, it's not perfect, they're
7 going to live the rest of their lives now in poverty.

8 So, Your Honor, I appreciate the impassioned
9 plea that you made to Mr. Bergenn about give him something
10 to not harm these kids. One of the reasons why I had to
11 file that motion was, Your Honor, I didn't do what the
12 government's saying. Don't take away the -- their sole
13 support. They're going to be living in poverty for the
14 rest of their lives or forever long I'm gone. Their
15 mother works at McDonalds.

16 I don't know, Your Honor, I don't know what else
17 to say. But I know everyone got hurt. I know the victims
18 got hurt. I have to see it in their eyes every day. I
19 see what the victims go through on a daily basis because I
20 see it in their eyes. They're living it.

21 Emma asked me, dad, you already missed two of my
22 birthdays. Once because I had -- because I was being
23 detained because the government said I had my passport,
24 which I didn't have and, you know -- I wrote about that.
25 And then the other one we started trial. So I missed

1 another birthday of Emma's at trial, which was in
2 February. How many more I'm going to miss? I don't know.
3 But the impact it's going to have on these kids long term
4 because I failed at a business? It will be profound.

5 Now, as far as recidivism and doing it again,
6 you know, I was a boy scout, Your Honor, you know, you
7 learn to help little old ladies across the street. I
8 thought I was helping these people get their bills paid.
9 Am I ever going to help anybody pay their bills again?
10 No. Am I ever going to do real estate deals again? No.
11 Not going to do it. If somebody needs help with
12 something, will I help them? Yeah, I mean, I can't not
13 help them.

14 Will I break another law? If the Court can tell
15 me how many federal laws there are? Because I've been
16 trying to find out. I'll look them all up and I'll read
17 them and I'll try to not break another law. Do you have
18 any idea how many federal laws there are? From what I
19 understand, nobody knows. I'm trying to figure out what
20 all the federal laws are just to make sure I don't break
21 them. But I don't intend to break any. I don't intend to
22 cause anybody harm. I never intended to cause anybody
23 harm.

24 Mr. Bergenn mentioned about switching lenders.
25 What's missed here a little bit is when Loretta was

1 working at the Miceli's office, they couldn't do the loans
2 in Tennessee because they couldn't do loans where there
3 was a rental office. So it wasn't that hard for me to ask
4 the question to people in Tennessee like Robert Hall --
5 who was my real partner, not Robert Ponte -- Brian Owens,
6 who worked up there in the real estate business: Who can
7 do mortgages in Tennessee? They referred me to Mark
8 Taylor. Mark Taylor worked for his own company, Trinity
9 Mortgage, and he sent loans over to Sun Trust Mortgage and
10 whoever else. He was a broker. So it wasn't that hard.
11 It didn't take the functioning, whatever Mr. Bergenn
12 refers to, it wasn't that hard to ask the question, who
13 can do loans in Tennessee? So I didn't go out of my way
14 to find somebody who could do fraudulent loans.

15 You know, I read in Tosha Wade's 302 that I told
16 somebody on no doc loans to bring a pay stub to a
17 closing -- a fake pay stub. Taking aside the fake part,
18 Your Honor, if I told somebody to bring a pay stub to a
19 closing on a no doc loan -- which mysteriously is not in
20 discovery, so apparently it didn't happen -- but if I told
21 them to bring a pay stub to a closing on a no doc loan,
22 then I don't think I was capable of running any type of
23 fraud because that's like a major faux pas. You don't --
24 no doc means no doc. So why I would tell somebody to do
25 something like that -- I'm sure it sounded good for the

1 jury. But I'd have to be nuts to tell somebody to bring a
2 pay stub, let alone a fake one, to a closing on a no doc
3 loan. So when I read some of this stuff, Your Honor, it
4 makes me want to pull my hair out.

5 And I did not plead guilty because of Tosha Wade
6 going to testify. Yes, Mr. Bergenn said next week is
7 going to be an "S" storm. And I'm prepared -- I read the
8 302. I was fully prepared. I would have been more than
9 happy to have her cross-examined, because I would have
10 been able to demonstrate that none of what she's saying is
11 factual.

12 If you have to lie about your real estate
13 license, which goes to credibility Napue v. Illinois has a
14 problem with that. The Supreme Court had a problem with
15 the credibility when it goes to just lying about your
16 credibility. But I would have been more than happy to
17 cross-examine or go through.

18 But, as the Court is aware and the Court brought
19 up nightly, the jury was tired. Everybody was tired. I
20 did not plead because certain people were going to pled.
21 I pled basically because we were going to have a problem
22 coming back in, number one, and because I didn't see I was
23 getting a fair trial, to be honest with you. And that's
24 the reason why I -- why I pled guilty, Your Honor.

25 Whether I'm right or wrong, in my view, I'm just

1 a layperson, the first time going through this, maybe this
2 is normal procedure. As I read U.S. v. Aguilar and a
3 number of cases that I cited, maybe it is just normal
4 procedure that what happens happens.

5 When you grow up and you're born blocks away
6 from where the constitution was born, blocks away from
7 Independence Hall, as I grew up in Philadelphia, you don't
8 realize that what actually happens in the real world is
9 not what the founders of this country intended.

10 I'm reading a book now with my kids, Rush Revere
11 and the Brave Pilgrims, and I think they would be appalled
12 and be turning over in their grave if they knew what I
13 know. And I'm sorry I didn't give it all to Your Honor, I
14 was hoping to do that before I pled with a motion to
15 compel to get all the information. I really wish this
16 never got to where it got.

17 And I'm just -- again, let me just apologize to
18 the victims. I never intended to harm anybody, period.
19 To harm them meant harming me.

20 Can you imagine -- you know what it's like when
21 your son's in first grade, you have him in a private
22 school, and you get a letter from the school saying, you
23 need to come talk to the business office because the
24 tuition's not paid and we're holding his report card?
25 That's not fun, Your Honor.

1 Now they're in government -- public schools and
2 they're going to have to go through that -- they're
3 going -- not that that's a bad thing. They're in good
4 schools, but where they're going to have to move to
5 because I'm not going to be there aren't good schools.

6 My son, he's in advanced classes and, you know,
7 he's 12 now, and you see the issues starting to come up.
8 He doesn't want to go to school and he knows what's going
9 on here. This is going to be drastic. And the fact that
10 I did what I did, not only leaving Mr. Ponte, who
11 basically was an unarmed man, to fight against an
12 opposition that was overbearing -- because he had no idea
13 what was going on at any point in time. So for him to be
14 able to defend himself was really bad, and I apologize to
15 Mr. Ponte because of that. I should have never done that.

16 But what's going to happen to these kids? The
17 fact that I pled guilty and now they may never see their
18 dad again for the rest of their childhood if the
19 government gets their way because I failed in a business?
20 It's just -- I don't see how causing more harm to two
21 little kids is justice or helps anybody in any way.

22 If I have to pay the price, put me in -- water
23 board me, tar and feather me outside. I'll be more than
24 happy to. I just don't -- I just hope the Court could
25 find a way to not harm these two little kids, that's all,

1 Your Honor. That's all I have to say.

2 Thank you, Your Honor. I appreciate your time.

3 THE COURT: Thank you.

4 Are you ready to proceed?

5 MR. BERGENN: I was just going to conclude.

6 THE COURT: All right.

7 MR. BERGENN: The remarks that are in writing,
8 Your Honor, again shorten what I need to say. I will make
9 a couple of points just for the record in terms of
10 restitution.

11 I think we've expressed that we believe the law
12 requires a finding in each case. And, you know, out of
13 the 100 in this particular instance, I think the record is
14 clear that by their conduct and words, the appraisals and
15 the increased values were what was driving the decisions
16 of the lenders. And that's not to deny that the residence
17 issue -- you know, whether it's an investment or it's
18 part-time for a home or going to live there -- is not
19 material. It is material. And the people who wrote down
20 something not true makes those criminal.

21 But when -- out of the harm here, probably
22 23,000,000 of it is lenders. And we know that from the
23 other cases that are -- the Court can take judicial notice
24 of -- that they really made judgments that don't negate
25 the crime here, but the judgments they made were business

1 judgments, that they were making money even if they did
2 contain fraud, if they did contain things that were not
3 compliant with their own internal standards. That does
4 not make anybody who did it okay. But since the
5 restitution order essentially goes to them who made a
6 calculation -- and in fact made a lot of money because
7 they typically off loaded them -- now, in the bigger
8 picture, of course, somebody got damaged. And so they
9 ended up becoming conduits for the ultimate holder of the
10 paper. But that's what the restitution order deals with.

11 Second point to make on deterrence. The
12 regulatory response to the economic disaster is, you know,
13 with billions of dollars in settlements and the like, is
14 designed also to be a deterrent, and I don't think that
15 the measurable difference between what the Guidelines
16 called for before the, you know, radical changes without
17 empirical evidence -- but what the Guidelines called for
18 was based on empirical evidence, the past application of
19 sentences, and those sentences that were in the two and
20 three year ranges for first offenders satisfied the courts
21 almost uniformly to serve general deterrence.

22 Here I would just ask you to look through the
23 bones, to through the bones of Mr. Rivernider, as opposed
24 to the surface that is exasperating and irritating, but he
25 still is that person who is a first offender with an

1 unblemished record. And the large dollars and cents that
2 really are the result of his unbridled energy and his
3 enthusiasm and hard work, that's what increased the
4 number. It was not because of some quantum of evil inside
5 of him.

6 So that huge number that we're dealing with is a
7 number that has not found its root in distinguishing
8 culpability as compared to other mortgage fraud cases.
9 The damage is absolutely a multiple of a typical mortgage
10 fraud case, but the culpability, who he is, is not
11 fundamentally different.

12 I appreciate the Court's taking the time, which
13 I trust it did, to review the other people who are more
14 intelligent and experienced than him that fell for Praise.

15 And I do also want to put on the record that we
16 would ask that the surrender date and place be in Florida.
17 I think we articulated in one of our motions -- I
18 understand that that would be nearer his children, some
19 kind of relationship can be maintained. But Miami,
20 Orlando and Tallahassee, I think in that order, have
21 facilities appropriate for persons of his crime. And I
22 think we put that in one of our travel motions. But those
23 are the facilities and I think Mr. Lopez is probably
24 familiar with those.

25 But I know the Court is mindful of not wanting

1 to cause any unnecessary gratuitous harm caused by the
2 sentence, and so I would just thank the Court for the fact
3 that you've been so clear with your conduct throughout
4 these proceedings, that you embrace not just your
5 statutory role but how it applies to the unique facts in
6 this case. And I just want to thank you personally.

7 THE COURT: Thank you.

8 Are you ready to proceed?

9 MR. DURHAM: Yes, Your Honor.

10 Your Honor, the government would initially just
11 like to comment on a few of the remarks of counsel. Just
12 so the record is clear on a couple matters and I hadn't
13 intended to mention one of these, but it seems to the
14 government that to some extent there's a little bit of the
15 gilding of the lily here when the argument or part of the
16 argument to the Court is that Mr. Rivernider's a
17 completely law abiding citizen who has never violated the
18 law until he got here and into this situation.

19 My recollection is that during testimony that
20 the Court took on December 4th and 5th -- or it was
21 probably on the 4th from Dr. Lewis, could have been on the
22 5th -- but in any event it included, I believe also in
23 Dr. Lewis' report, there's the whole situation where
24 Mr. Rivernider, for example, had gotten so many motor
25 vehicle tickets or citations, violations, he could no

1 longer drive. And so his solution to that was to go to
2 Pennsylvania and go get a driver's license in Pennsylvania
3 so he could continue to drive.

4 Now, is that a huge deal in the whole scale of
5 things? No. But to suggest that he's a completely
6 upstanding person his entire life and this is the first
7 time he stubbed his toe I think is also untrue
8 particularly in light of the fact that in this instance,
9 not only did Mr. Rivernider violate the law, but as the
10 Court knows from related court proceedings, he was
11 responsible for getting Tosha Wade involved in committing
12 criminal offenses, he was responsible for getting Shirley
13 Kemp involved in criminal offenses, both of whom have
14 forthrightly come in, admitted their guilt, unvarnished,
15 said what they did, how they did it, and so forth. And I
16 think it's significant -- the government believes it's
17 significant to at least point that out.

18 With respect to counsel's question -- did I say
19 Shirley Kemp? I meant Shellie Kemp. If I misspoke, I
20 misspoke.

21 Mr. Bergenn makes reference to the defendant was
22 not deceitful with Dr. Lewis. I think the testimony was
23 clear through Dr. Lewis that she said in her dealings with
24 him she did not find him to be deceptive or deceitful in
25 him talking to her. But I think she clearly distinguished

1 between her interviews of the defendant and the
2 defendant's criminal conduct as established by the
3 evidence in the case. And clearly the defendant's conduct
4 in that regard was deceptive and deceitful.

5 Let me turn to the focus of what the government
6 would like to bring to the Court's attention today, and
7 that is to focus, at least initially, on the claim by the
8 defendant -- and this appears on page 52 of his sentencing
9 memorandum, and then it's repeated multiple times today.
10 The defendant was, according to the sentencing memo,
11 quote, his motive was, from the outset and through the
12 end, to help others. Well, I would respectfully submit
13 that it would be helpful, I think, to take a look at what
14 kind of help that Mr. Rivernider in fact provided to other
15 people.

16 The Court will recall there was an individual
17 who testified in these proceedings whose name was Al
18 Vigil. And I think it's important to look at how it is
19 that, for example, Mr. Rivernider with his deceptions and
20 the fraud that was perpetrated in this case, how Mr. Vigil
21 was helped in this case. And as the Court I think will
22 recall with respect to Mr. Vigil, when he testified in
23 these proceedings, he was asked to give his address. He
24 was asked about a business address. He had no business
25 address. And then he was asked to give the city and state

1 and so forth where he resided, and he was homeless.

2 So bottom line with respect to Mr. Vigil was
3 that as a result of the defendant's conduct, Mr. Vigil
4 became a homeless person. His family was destroyed, his
5 financial standing was destroyed. He became homeless.

6 The Court might recall you asked Mr. Vigil after
7 he'd finished testifying, Where you going now? And I
8 think Mr. Vigil indicated he was going to go live with his
9 sister. Mr. Vigil has subsequently passed away.

10 So there are a significant impact on any number
11 of people as a result of the fraud that Mr. Rivernider
12 perpetrated on any number of people.

13 Or take another example: There was an
14 individual who had testified before Your Honor, one of the
15 victims in this case named Scott Meyer. And with respect
16 to Mr. Meyer -- well, let me withdraw that, because I want
17 to be crystal clear when talking about Mr. -- because
18 there's comments made about Mr. Rivernider didn't enrich
19 himself.

20 Does the Court recall what Mr. Rivernider's home
21 looked like? The home he bought for \$700,000 and was
22 living in after he had lost the money through -- after he
23 had lost the money through MY ICIS and then he was
24 gambling with other people's money? This is the house --
25 what's on the screen now is the house that Mr. Rivernider

1 was living in. It's the house where it was being paid
2 for, all of Mr. Rivernider's needs were being paid for,
3 and the like.

4 Mr. Vigil ends up on the street homeless. This
5 is the home that Mr. Rivernider was living in.

6 Or with respect to Scott Meyer. The Court might
7 recall Mr. Meyer testified. And with respect to Scott
8 Meyer, he -- again he was asked to give his business
9 address and the like. And what about Mr. Meyer?

10 With respect to Mr. Meyer, his testimony, where
11 he testified in response to a question about him having --
12 he and his wife having separated. Yes.

13 And so during this time period, let's say the
14 spring and summer of 2007, where were you living?

15 Answer: I was living with Mike --
16 Gielarowski -- up in his attic.

17 Question: And what was your financial status at
18 that time?

19 Answer: Very poor.

20 You also have a camper?

21 Yes.

22 Did you at times live during the summer in that
23 camper?

24 Yes, I did.

25 Mr. Rivernider and Mr. Ponte were fully aware of

1 the fact that a number of the people that they took money
2 from as investors in either No More Bills or the real
3 estate were people who were already desperately in debt.
4 The whole purpose for them to go to the No More Bills
5 program and these other things were to reduce their debt,
6 not to take on an additional debt.

7 And where was Mr. Ponte living? Mr. Ponte was
8 living in the \$1.275 million house in North Stonington
9 that was acquired through bogus mortgage loan applications
10 that they did through, not Mr. Ponte, but Mr. Ponte's
11 elderly parents.

12 And with respect to the defendant wanting to
13 purportedly only help people through this entire episode,
14 only trying to help people, I'd remind the Court of this
15 email that had come up during the course of the
16 proceedings on December 4 and 5, and maybe previously.

17 But this is Government's Exhibit 151. And as
18 you see, this is from Mr. Rivernider, not somebody else.
19 This is Mr. Rivernider to Mr. Ponte, and it's in the
20 context of people demanding their money. You'll see, Your
21 Honor, that it was sent on 31 March 2008. And what's the
22 subject matter? This is from Mr. Rivernider, who stands
23 here and his counsel represents to this Court, he only
24 wanted to help people. The subject line "Send this to our
25 whining clients." And it's a newspaper article, "Death

1 For Hire. Suicide machine lets you push final button."
2 And then the report reads, "One press of a button and you
3 can end your life with a swift injection of potassium
4 chloride. That is the boast of Roger Kusch, once one of
5 Germany's most promising conservative politicians and now
6 the improbable promoter of a mercy killing machine."

7 That does not suggest to the average person,
8 certainly doesn't suggest to the victims in this case, and
9 I don't believe it would have suggested to the jury in
10 this case if the matter continued to a conclusion and
11 rendered a verdict, that what Mr. Rivernider was all about
12 was helping other people.

13 I would suggest to the Court that when we're
14 outside this courtroom in the real world, when there isn't
15 a federal judge who's about to impose sentence, and you
16 look and see what a person is actually saying and doing
17 and how he or she comports themselves, something like this
18 email is a lot more indicative of who we are and how we
19 conduct our lives than what is said in this formal setting
20 of the judicial proceedings.

21 The Court had commented, as was referred to by
22 Mr. Bergenn and by Mr. Rivernider, commented at the
23 hearings on December 4 and 5 that the Court doesn't want
24 to hurt or harm the defendant's children, and that the
25 Court believes the defendant really cares about his

1 children.

2 I have no doubt that he cares about his
3 children. I have no doubt whatsoever that his children
4 care about him. But I would say to the Court, it is not
5 just this defendant that the Court needs to take into
6 consideration or the impact, as negative as it might be,
7 on his children.

8 In point of fact, there are -- he has -- there
9 are two children. Mr. Rivernider, I guess at this point,
10 I assume that it's accurate, that they're staying with
11 him.

12 You know why they're staying with him? Because
13 his wife is working. She's at a McDonalds to try to put
14 enough money together to be able to continue. So somebody
15 has to watch the children.

16 So I don't doubt at all the defendant cares for
17 his children and his children care for him. But I would
18 say to the Court that in virtually any case that has
19 appeared before Your Honor for sentencing where somebody
20 has a child, the exact same thing confronts the Court.
21 And that's one of the most difficult -- I would assume, I
22 don't know, I'm not sitting in your chair, Your Honor --
23 but I assume that's one of the most difficult things about
24 sentencing. Because the sentence that the Court imposes
25 doesn't just impact the defendant. It impacts other

1 people as well.

2 But I would urge the Court not to focus
3 singularly on what the effect of this would be on the
4 defendant's children who unlike many, again, cases that
5 appear before you, they at least do have somebody to care
6 for them. They have the grandmother, they have the mother
7 and whatnot. There are lots of people who appear in this
8 court -- maybe not lots, but at least some -- who don't
9 even have that in their lives for their children.

10 I would ask you, for example, Your Honor, in
11 this regard, and we're talking about children, to take
12 into consideration the testimony from Tosha Wade, where
13 again, what did people say and do when they don't think
14 people are looking or watching or they're going to be
15 scrutinized?

16 Her testimony, Ms. Wade's testimony under oath
17 was: We were coming from the pool area. He immediately
18 started to yell at me in front of my daughter, and he
19 called me an F'ing moron in front of my daughter and it
20 startled my daughter. She cried and she was like, why is
21 someone yelling at you and cursing at you? And I had to
22 explain to her that he's just not a nice person.

23 Right?

24 So the defendant files something with this
25 Court, a pro se motion, talking about how absurd that is

1 because he, Mr. Rivernider, doesn't curse.

2 He repeated the same thing here today. Saying
3 to the Court WTF doesn't mean what everybody in the world
4 knows it means, what the acronym is. No, it means, no,
5 what the fig I guess is his testimony today.

6 Well, I'm going to turn to this at the end of my
7 remarks, and we'll see whether or not when he represents
8 that to the Court in his pleadings and when he stands here
9 in the courtroom, if he's telling the Court the truth or,
10 like everything else that is evident from the totality of
11 the evidence in this case, it's all something of an angle,
12 a duck and a dive and jive, whatever.

13 I'd ask the Court to keep that in mind when he
14 tells you that Tosha Wade essentially is a liar and that
15 he doesn't curse. Ask you to consider whether he's
16 telling you the truth or in fact he's standing here
17 defrauding the Court, telling a lie.

18 Another example that we have with respect to
19 taking into consideration children and the impact -- who's
20 impacted by this.

21 You'll recall there was a Robert Bennett who
22 testified who was another one of the defendant's victims
23 here. And he submitted a victim impact statement that the
24 Court, I hope, has had a chance to read. But I would
25 point to one of the more salient points in Mr. Bennett's

1 letter.

2 "I have suffered the loss of my credit from a
3 perfect rating to zero. As a result, I have been unable
4 to assist my sons in their college education payments due
5 to my lack of credit. This has caused me irreparable
6 personal harm in both a financial and an emotional sense.
7 I feel like a complete failure to my sons by not being
8 able to assist them in this most critical time of need in
9 their lives. Looking them in the eye has been next to
10 impossible for me. I was once a proud father and
11 provider, now I feel like a complete failure to them."

12 So I'd ask the Court to take into consideration
13 those children and take into consideration Mr. Bennett and
14 what has happened in Mr. Bennett's life as the result of
15 the defendant's criminal conduct in this case.

16 The Court may recall that there was a letter
17 submitted by somebody who was a victim in this case, but
18 whose -- who was not -- there was no substantive count as
19 relates to the damage suffered by Diane Perdue, but she
20 writes to the Court "With our savings account depleted, I
21 had to resort to borrowing thousands of dollars from
22 family, something I've never done, and still not able to
23 repay. Mr. Rivernider, I had yard sales every weekend
24 where I sold my jewelry, pictures, clothes, furniture, any
25 item to try and cover a late mortgage or a past due bill.

1 I was so scared living with the reality we could be on the
2 street within days. With the foreclosure of my cabin
3 located in Tennessee, my credit was ruined, no bank would
4 loan me money. My credit cards, all in good standing,
5 were taken away from me except the ones that had a balance
6 and those credit limits were lowered to what was owed.
7 After selling everything except for our basic needs, in
8 addition, we lost our home. I loved that house. We spent
9 almost 20 years there. My son, Jonathan, grew up there
10 and I enjoyed working in the yard every weekend. When I
11 get the nerve, I sometimes drive by it and still cry after
12 all these years. My family had to relocate to an
13 apartment where we still reside today. We don't like it,
14 but it's all I can afford. It's not a home."

15 And then Ms. Perdue goes on to say -- to show
16 that the impact is not simply that financial impact where
17 she writes to the Court, "My husband feels responsible for
18 trusting and believing in you" -- in context,
19 Mr. Rivernider -- "and not listening to me. He can't
20 forgive himself for failing his family and not being able
21 to provide for us. He can't seem to hold down a good job
22 and constantly drinks either to forget or just to be able
23 to sleep. Jim still lives with us. We don't speak and he
24 has his own room that he retreats to each night. I don't
25 have the heart to throw him out. He has no place to go.

1 You see, in addition I've lost my marriage."

2 This is the impact of the criminal conduct in
3 which the defendant engaged.

4 The Court has received letters from
5 Ms. Doughman. And in her submissions to the Court she
6 points out, "Mr. Rivernider promised that they would have
7 all their debts" -- the Doughman debts -- "paid off in two
8 years. After four months of payments, Mr. Rivernider
9 stopped paying, and at that point I thought I would have a
10 nervous breakdown as our lives were in turmoil. We were
11 unable to even purchase a set of tires for our car. As
12 our credit was ruined, we had to borrow money from family
13 to purchase these tires. Mr. Rivernider was very smooth
14 in deceiving us into believing these lies, which we fell
15 hook, line and sinker."

16 And Ms. Doughman goes on to say, "My husband,
17 Phil, was so ashamed, as he is a very proud man, and that
18 was the beginning of him starting to feel very worthless
19 as a provider and husband. Even now he does not sleep
20 very much worrying, even though the condos have
21 foreclosed, about debt collectors coming and taking our
22 home. I keep telling him that the lord will take care of
23 us and it will not happen."

24 Now, these are letters that the Court has had,
25 but I'm not sure that letters, notwithstanding how well

1 written they are, necessarily have the impact of other
2 live people, flesh and blood people, who have been harmed
3 by the defendant's conduct. And so Ms. Doughman has
4 traveled up here. I would indicate to the Court, we
5 provided the airline ticket for her to come up so that she
6 could speak. And we would ask the Court to permit
7 Ms. Doughman to comment to the Court on what the
8 defendant's criminal conduct has meant to her and her
9 family.

10 THE COURT: Yes.

11 THE WITNESS: Hello, Your Honor.

12 THE COURT: Good afternoon.

13 THE WITNESS: My name is Teresa Doughman. I'm
14 from Wilmington, North Carolina, and I'm a victim.

15 Mr. Rivernider, when this all came about, my
16 first cousin, Linda Carpenter, knew -- went to school with
17 this gentleman named Rick Higgins who knew Mr. Rivernider.
18 And through this process, we did the bill payer plan. And
19 Mr. Rivernider said that he would need some equity in
20 order to invest in long -- off longshore investments to
21 get it started.

22 So he -- we sent him paystubs and things, and he
23 did the bill payer plan and took \$48,500 out of our
24 equity. We already had a \$30,000 equity, which he had to
25 pay off before he could continue on to receive the rest of

1 the funds.

2 We did not know that he had taken this amount of
3 money until we received the first statement from Citi
4 Mortgage. The check went to Mr. Rivernider. It did not
5 come to us.

6 I contacted Citi Mortgage and they did not --
7 they couldn't trace the check unless I had the check
8 number, which I did not have, of Mr. Rivernider's.

9 And how this has impacted us, as he was reading,
10 my husband Phil and I, it has strained our marriage. He
11 feels worthless. He still doesn't sleep in the nighttime.
12 And you talk about Mr. Rivernider having children? We
13 have children. We have five grandchildren that we can't
14 provide for. We go to yard sales to buy Christmas gifts
15 and toys for those children because Mr. Rivernider,
16 through his lies that he has, deceived us and we bought
17 it, as I say, hook line and sinker, and we did this plan.

18 And then it moved on to doing the condos. And
19 he approached my husband and said, if you will buy a
20 condo, then you can get your bills paid off in two years
21 instead of eight years. Well, Mr. Rivernider talked my
22 husband into doing three condos, which was \$900,000
23 almost. Our income was \$5,200 a month, and we had a
24 mortgage, we had a second mortgage, we had a student loan,
25 let alone electric, trash. That's just the bare you know

1 essentials, not getting any groceries or buying gas to go
2 to work.

3 I -- between my husband and I, we made \$5,200.
4 They -- on the loan application when we found out, in
5 2008, he had put down that we made \$14,000 a month and
6 there was no way that we did that.

7 Anyway, I contacted Mr. Rivernider -- well, he
8 contacted my husband on the condos and said, due to the
9 Patriot Act he was having trouble getting his funds and if
10 we could make the payment this month, then he would be
11 back on track.

12 So we made -- borrowed money on a credit card
13 and made a \$9,000 payment that month on three condos. And
14 then I tried to contact him frequently and he did not want
15 to talk to me. He was very arrogant, short, ugly on the
16 phone, very ugly to me. And he told me, he says he would
17 let them, you know, fall apart and then he would buy them
18 on the courthouse steps for nearly nothing and laughed and
19 hung up the phone.

20 To tell you, talk about my children? I have a
21 daughter that does well and I have a daughter who doesn't
22 do well who's a single mom, with a grandchild, a grandson,
23 and this year I have to write a postdated check to give
24 her in January to buy meat. Because through someone I
25 know up there that is a butcher, he's going to give her

1 some meat and wrap it for them to have to eat because she
2 can't afford to buy groceries and I can't afford money to
3 give to her.

4 He thinks he has devastation yourself,
5 Mr. Rivernider? I think you have believed your lies so
6 long that you think they're the truth, and they're not.
7 You're a very ugly man.

8 I don't know what else to say.

9 That God has been with us, he's helped us, but
10 we are still in fear of losing our home. We were told by
11 an attorney if we were late one time with our payment that
12 the banks could come and take our homes. Even though all
13 three of these homes has foreclosed, condos has
14 foreclosed, the last one in May, we were still receiving
15 threatening letters that they're going to sue us and take
16 us to court this day.

17 I have contacted Michele here with the
18 attorney's office, and she tried to contact this last --
19 Chase sold the loan to an Aquin and then to two other debt
20 collectors, and they were trying to collect money from us,
21 threatening us. That one was for 199,000. That one condo
22 that we gave \$207,000 for, sold for \$53,000 this past May.
23 And when we did our taxes, we had to pay capital gain on
24 that. We had to pay almost 4,000 and something dollars,
25 which my husband, he has had to deplete a lot of his

1 retirement money just to be able to cover bills. And he
2 said he may never be able to retire.

3 He has totally devastated our lives. We cannot
4 provide for the one daughter. We cannot provide for the
5 grandchildren and do things. Like we'd like to take them
6 on trips or we'd like to do things with them, and we
7 can't. We can't do it.

8 So when you make your decision, take into
9 consideration, we are real flesh and blood people. We
10 hurt, we bleed. That's all.

11 THE COURT: Thank you.

12 MR. DURHAM: Thank you.

13 As I indicate, Your Honor, before, I do think
14 that it's terribly important to look at some of these
15 matters and see what's going on when we're not in the
16 formality of a federal courtroom, and Ms. Doughman can
17 testify and has advised the Court that outside the
18 courtroom when she's talking to Mr. Rivernider -- not
19 Mr. Ponte, not Ms. Wade, not somebody else, she's talking
20 directly with Mr. Rivernider -- he's laughing at her and
21 telling her he'll just buy the condominiums on the
22 courthouse steps after they're sold.

23 Impact of the criminal conduct on the
24 defendant's part also extends beyond just the impact that
25 it has on children or on other people's marriages. The

1 effect of the crimes and the financial ruin that the
2 defendant has brought on to others continues to this day.

3 Ms. Doughman has spoken to part of it. But
4 there's another witness that -- or victim in this case
5 that we've asked to come so the Court can have yet a
6 different perspective on what the consequences of the
7 defendant's fraudulent conduct is.

8 Ann Marie LaPorte is an individual, she and her
9 husband have served this country honorably in the
10 military. And as the result of Mr. Rivernider's conduct,
11 it has a dramatic impact on their lives. And I'd ask the
12 Court's permission to have Ms. LaPorte address the Court.

13 THE COURT: All right.

14 THE WITNESS: Good afternoon.

15 THE COURT: Good afternoon.

16 THE WITNESS: Thank you for letting me speak and
17 come here today.

18 As he said, both my husband and I are in the
19 military. I have 31 years. My husband has 27 years.

20 THE COURT: Would you please tell us your name
21 for the record?

22 THE WITNESS: Ann Marie Laporte. My husband's
23 Randall Newton.

24 Since getting involved with the No More Bills
25 program in May of 2007 with Mr. Rivernider, my husband and

1 I have suffered numerous financial, professional and
2 emotional repercussions that have had serious negative
3 impact on both us and our entire family. We were prime
4 victims because we had excellent credit and credit
5 history. We had very little bills, so actually we got
6 involved for an investment property. We didn't have any
7 bills to pay off.

8 That's no longer the case. Our financial
9 security has been severely tarnished, our credit rating
10 destroyed, suspension of our home equity line of credit,
11 several good standing credit cards have been drastically
12 reduced or closed, and several declined credit requests.
13 I went to purchase a vehicle in 2011, never had anything
14 negative on my credit report before, and couldn't get a
15 basic loan. I had to put money down and go through a
16 couple of different credit requests.

17 As I just mentioned, we had spent several
18 thousands of dollars trying to respond and fix what
19 Mr. Rivernider has done to us, out of pocket, a rough
20 number that I've come up with is \$89,000.

21 We spent \$26,000, my husband and I, on
22 attorneys.

23 Total of my family and I, \$100,000.

24 \$10,000 lost on two properties in Tennessee.

25 Actually had to go to Tennessee. Went there, between

1 Tennessee and Florida, at least 10 times. Actually won a
2 judgment against his supposed business partner, Mr. Bob
3 Hall, who was stealing from us, stealing rent money after
4 everything went south and not paying us, not paying
5 anything.

6 We had to have locks changed, meetings with
7 attorneys and court appearances. That was over \$6,000.

8 The Florida condos we spent over \$4,000 in
9 repairs on two condos not receiving anything.

10 We just recently had to -- we have one property
11 left. We had two cabins and two properties in Florida.
12 We just recently in October had to go to Florida to fight
13 a lien that was imposed on us for renting the property
14 that we did not rent. The people in HOA association -- a
15 couple years ago when we tried to sell it because it was
16 owed HOA fees -- would not allow us to rent it. We had
17 work done to get it up to speed to rent, and then they
18 would not allow us to rent it. At that time I deployed to
19 Iraq and we couldn't work on the situation while they
20 illegally rented it and then tried to charge us for
21 eviction fees and eviction notices and a couple other
22 things. Not to mention we were reported to the city as
23 having rented it. And there in the city, you have to have
24 a rental license. All those Sterling condominiums that
25 were being rented as far as this scheme had no rental

1 licenses. It's illegal. That statute I found out has
2 been in existence in West Palm Beach since I believe 1989.
3 So we were victims of this even though we were not renting
4 it.

5 A \$22,000 lien was placed against us. We had to
6 fight that. Got it reduced down to \$1,500. We had to pay
7 it because, with our situation being in the military, none
8 of our properties foreclosed on us because we were
9 protected by the Soldiers Civil Relief Act. That was a
10 good thing, but it's a bad thing, because it's drawn it
11 out. Up until this day, we're still having to resolve one
12 property.

13 If any of the properties foreclosed, we both
14 would have lost our security clearances. We're both
15 required to have security clearances in the military. And
16 I distinctly remember one of the first things with
17 discussing getting involved with Mr. Rivernider in his
18 business, I said, you sure this is legal? We cannot have
19 this -- anything happen. We cannot lose anything, because
20 if this affects us and affects our credit, we will lose
21 our clearances in the military. Said no, no, no, there's
22 no problem. This is legal. Trust me, nothing's going to
23 happen. I remember specifically asking this.

24 Well, as it turns out, I have a secret
25 clearance, my husband has a top secret. Just imagine you

1 sitting up there and somebody coming in, security,
2 escorting you off your podium, off your position,
3 escorting you out of the building, taking your Blackberry,
4 revoking your computer privileges, and saying you can no
5 longer come in this courtroom. That's what happened to my
6 husband last year in January 2012. I'm sorry, this year,
7 2013. He was escorted out of FORSCOM headquarters at Fort
8 Bragg, a four star headquarters, because of his security
9 clearance being revoked because of this issue.

10 Not only was he humiliated, then he had to
11 explain to his superiors, which is a one and two star
12 general, of this whole situation and us being involved in
13 it. It's very humiliating, embarrassing. And we are
14 still dealing with it, because you could see, I've also
15 brought this, this is a conditional statement that he
16 received for his security clearance. If you'd like?

17 THE COURT: All right.

18 THE WITNESS: His is still conditional. Until
19 we get this property resolved, he has to give quarterly
20 updates to his superiors. And with the downsize in the
21 military, at any point in time, they can decide enough's
22 enough and revoke his security clearance. That's it. His
23 27 years in the military are done and you get discharged
24 out of the military.

25 I have no doubt in my mind that if they do that

1 to him, they will do that to me. The military considers,
2 if you can't handle your financial responsibilities, you
3 would have questionable integrity and that you're also
4 subject to somebody blackmail or defrauding you.

5 So this is still ongoing. We are trying to
6 short sale this property in Florida. We had to come up
7 with a deal with HOA. We had to pay \$15,000 in backpay to
8 the HOA. Those fees are now building up again because
9 that was the deal made in June. As time goes on, it
10 continues to build even though we know they rented our
11 property. Trashed it. Hopefully we'll get that sold, but
12 this is going to continue on our credit for years. We
13 have the four properties and this -- it's still not -- we
14 can't even start recovering until this property is sold.
15 So from whenever that date is, and hopefully in the near
16 future, it will take another seven years, not to mention
17 how it has affected us.

18 And once your superiors know that you've had an
19 incident like this, whether it was our fault or not,
20 you're looked at differently. No ifs ands or buts. So
21 more important are the effects the negative credit has had
22 on our military careers, and I explained that to you.

23 The emotional stress and toll it has taken on
24 our lives cannot be measured. It has caused a chasm in
25 our family for the last six years.

1 And I wanted to bring up Tosha Wade. I know
2 Tosha Wade. I spoke to her on several occasions. The
3 reason I found out that, because she was living in one of
4 my condos in Florida. When this whole thing went south,
5 they were still collecting rent and not paying on the
6 mortgages. She was one of the individuals living in one
7 of the condos.

8 When I finally got ahold of her and spoke to
9 her, found out that she -- she told me personally that she
10 had to deal with Rivernider to live in those condos
11 because she was doing the work for him and that she was
12 eventually looking to buy the property but she
13 couldn't get -- he was supposed to get her credit fixed --
14 couldn't do that and she couldn't get approved. She lived
15 in that condo for probably a year and a half without
16 paying a dime.

17 We also had her come out to Tennessee for our
18 attorneys to make a statement and she was very fearful of
19 her role. She knew what she was doing, I believe, and she
20 took direction from Mr. Rivernider, and she was very
21 fearful of her implications and what she did. So I have
22 no doubt she told the truth when she testified.

23 As far as Mr. Rivernider, I'd just like to say,
24 him not having any prior criminal activity, just because
25 you don't get convicted of a crime, in my opinion, does

1 not -- I do not believe that doesn't mean you did not
2 commit a crime. Because I know of an incident over
3 20-something years ago where he -- his sister owned a car
4 that was -- its value was less than what the payments were
5 due, and she bragged about getting rid of that car and it
6 was gotten rid of. It was supposedly stolen. I can't
7 prove this. I can't say anything. But from what was told
8 to me, he helped her get rid of that car, and it was
9 supposedly stolen, a Mazda RX2. So yes, he was never
10 convicted, but I do believe he had a play in getting rid
11 of that car.

12 One of the biggest things that I want to say is
13 the moral responsibility. When my family and I contacted
14 a lawyer in Tennessee and we were going through this, we
15 had a couple emails. We had a woman contact us from
16 Sterling, and her name was Mona, and she was in tears on
17 the phone because she was diagnosed with cancer and she
18 got into this. Her Sterling property was her primary
19 residence and she didn't know how she was going to pay her
20 mortgage. Her mortgage wasn't being paid. She had
21 cancer. She had no family, she had nobody to help her
22 out, and she was looking for anybody that could help her.
23 And we gave her our attorney's name, but I don't know what
24 happened to her. I'm assuming she either lost the home or
25 she's passed. But to hear her was just unbelievable that

1 he would even get somebody who had cancer involved in this
2 as her primary residence.

3 Not to mention he got my mother involved, a 70
4 year old woman with no income other than craft shows.
5 What about the moral responsibility of getting a 70 year
6 old woman -- what if it was your mother -- involved in a
7 risky business like this? She didn't have any bills to
8 pay off.

9 One thing I would like to say is, yes, he has
10 two children, I understand that. I have two children too,
11 I have two girls. I was a single parent for 10 years. I
12 worked three jobs and raised those children without a
13 father. He was in this country, yes. Did he participate?
14 No. They're doing fine. They're doing okay, and I did
15 what I had to do. I worked three jobs.

16 Mr. Rivernider and the way he got us involved in
17 this thing would take away everything that I worked for,
18 everything that I worked for in the military and what this
19 has done.

20 The worst part is what this has done to my
21 family. His sister is my brother's wife. When everything
22 fell apart and they lost everything, they came home to
23 New Jersey and moved in with my mother. From that point
24 on, it just ripped apart my other brothers and sisters and
25 our family and what our dynamic was.

1 There was no more getting together with family
2 Christmases or having Christmas at my mothers, which was
3 the regular thing. There were times that she wouldn't
4 come up to my house because she felt nobody was talking to
5 them, nobody was obligated to them.

6 The last -- since -- this has been since 2008.
7 So 2008, 2009, that's six years of stress that it's
8 causing my family. Not to mention she is a 70 to 76 year
9 old woman who helped support my brother and his family due
10 to the losses that they suffered in this whole thing. And
11 what happened was, she didn't take care of herself because
12 she was working to help feed them, to help take care of
13 the bills there, and she was diagnosed with cancer this
14 summer.

15 I went to Kuwait this past year, volunteered,
16 went to Kuwait so I could help pay my bills off, and I
17 come home and my mother's diagnosed with cancer. And
18 she's had surgery and she was doing well for five days,
19 and then everything went south, and she's gone, she didn't
20 make it. I can't get back that time. I can't get back
21 the 12 months that I was away to help pay off my bills to
22 help get us back in check and get through this, because I
23 know we couldn't get rid of this property in Florida
24 unless we paid this HOA and we can't let it foreclose
25 because we'll lose our military positions, we'll lose our

1 military jobs. And she's gone. And he may have his
2 children, he has his mother. She's alive. He has his
3 father, he's alive. He has his sisters, they're alive. I
4 can't get back the last six years with my mother and the
5 stress that this has caused her and my whole family. And
6 I can't get back this last year. She's gone from my life
7 forever.

8 I have not returned to work because I had no
9 clue what this would do to me. I have to go back next
10 month, but since August, since she's passed away, this has
11 been the most difficult thing I've ever, ever in my life
12 had to deal with. Because I can't get it back. And the
13 past six years have been nothing but stress and negativity
14 from all of us having to deal with this.

15 The only other thing I would say to you is
16 you're not -- sentencing him is not hurting those
17 children. You're doing what's right. That mother will
18 take care of those children, just like I had to take care
19 of my children. If you don't sentence him to at least the
20 Guidelines, you will only be contributing to the results
21 of his schemes and the continuing pain and ripple effects
22 of all the negative impacts we have held. And that
23 includes two attorneys who have done nothing for me and my
24 husband. One who is now in jail, a second one who took
25 \$25,000 from us, misguided us, and has done nothing for me

1 and my husband. And now we are going to have to have a
2 court case or fight against him because he didn't do what
3 he did. This has been a constant ripple effect.

4 So if you don't do what the statutes tell you
5 you can do, you will just be continuing that ripple effect
6 for me, my family and everyone else who was victimized.

7 That's all I have to say.

8 THE COURT: Thank you.

9 We're going to need a break. How would you
10 suggest we proceed?

11 MR. DURHAM: If the court reporter could just
12 hear from Mr. McNeal, because he does have to get a plane,
13 Your Honor.

14 THE COURT: All right.

15 MR. DURHAM: Here's the context. I want to talk
16 about the defendant's remorse or lack thereof. And
17 Mr. McNeal testified before Your Honor previously, but he
18 is also victimized in a completely separate way by
19 Mr. Rivernider. And I'd ask the Court's permission to ask
20 Mr. McNeal to come up and just address the Court.

21 THE COURT: Yes.

22 MR. DURHAM: Thank you, Your Honor.

23 THE WITNESS: Good afternoon, Your Honor.

24 THE COURT: Good afternoon, sir.

25 THE WITNESS: Thank you for allowing me to speak

1 today.

2 My name is Michael R. McNeal, and I'm here
3 today, a little bit of different venue, but I dealt with
4 Robert Ponte, but I call it the Rivernider gang.

5 I'm here today to describe the six, going on
6 seven, years of heck that the Rivernider gang has caused
7 me. And the end in sight is never ending. I don't see an
8 end in sight, sir.

9 My entire family are victims: My wife; my
10 stepson, Jeff, who I met when he was five; my son Dillon,
11 who turned 16 yesterday and I was on a plane here to come
12 and speak; my daughter, Maddy; and my son Brady, who is
13 nine. Brady was three when I got involved in this. He
14 doesn't know what a private school could even think about
15 being, because I didn't have any money to even start to
16 send him there. So I'm here to explain kind of what I
17 have gone through.

18 I'm a crime victim on a daily basis. I'm a
19 victim to the banks ringing my phone, looking for their
20 money daily, weekly, monthly. I don't know how to get out
21 of it. It just reoccurs every month. Prior to this No
22 More Bills, I had a 790 credit score. I don't even know
23 what it is today. It's unworthy. I've had a foreclosure
24 in Tennessee.

25 Rivernider's gang, when they got in trouble and

1 they were looking for more money to scam out of people,
2 they orchestrated \$150,000 check scam and took the money
3 away from me, and I had to pay interest on it every month.
4 For four or five years I was paying interest to keep a
5 roof over my head in Arizona.

6 Got to the point I couldn't pay anymore and I
7 quit paying it, and now they're trying to foreclose on my
8 house because I don't have the money to pay it. So I'm
9 dealing with court stuff like that.

10 So thanks for helping everybody out, buddy. Big
11 help.

12 So I'm dealing with that. So I got the
13 foreclosure.

14 MR. DURHAM: Your Honor, just in context, the
15 check scam, I would ask that Mr. McNeal explain to the
16 Court what the check scam is. It essentially was this.

17 THE WITNESS: The check scam this, sir:

18 I got involved in this in May of 2007. I wasn't
19 looking to get out of debt, I didn't have any bills. I
20 was approached. Ponte approached me. I got into No More
21 Bills. I spent 55,000, and it was kind of paying. Three
22 or four months went by and he brought up this property
23 deal. I was like, I don't need a property. I'll wait
24 until my No More Bills payments comes through.

25 The pitch to me was, I gave him all this stuff,

1 my income and everything. I was legit and honest and
2 everything like I do with all my other businesses.

3 THE COURT: Was that Mr. Ponte?

4 THE WITNESS: Yes, sir. Mr. Ponte -- that's who
5 I was brought into this thing with.

6 THE COURT: And forgive the interruption, but
7 would you please remind me of what you were doing for a
8 living at the time?

9 THE WITNESS: I do, and still do work for AT&T.

10 THE COURT: Okay, that's what I thought.

11 THE WITNESS: So in communications for almost 33
12 years.

13 THE COURT: Wasn't it somebody from work who got
14 you involved?

15 THE WITNESS: Yes, yes.

16 What had happened, to go way, way back, a guy
17 named Paul Diaz worked in Tucson, and he reported to me
18 and he was telling me about this, and I said a fool would
19 do that, an idiot would do that.

20 About a year later, I go down there and I say,
21 hey, how's your thing going? Oh, it's going great.

22 And another co-worker down there named Bob
23 Cartwright got involved. So I started hearing them talk
24 everyday about how great there was. So I started talking
25 to Ponte. So I got into the No More Bills based on those

1 two guys. Didn't want anything to do with this property.

2 So Ponte approached me about this property and
3 it was probably -- I lose track of time -- but it was
4 probably more in August of '07. So that from June to
5 August, he was trying to get me into this property. He
6 wouldn't take no for an answer. I was like, dude, I don't
7 have any bills, I don't need a property in Tennessee, I
8 don't need a cabin. And he kept approaching me and kept
9 approaching me and kept approaching me. And then finally
10 he hooked me up with some gal named Shellie Kemp. And
11 your 790 credit score, you're good to go. We make the
12 payment for two years. We do this, we do this. We do
13 that. And so after all that trying to get us to do it, we
14 ended up doing it.

15 So we get the property. They make the payments,
16 and in November of that year, they have trouble making a
17 payment. They make it late. In February of '08, they
18 were a little slow on their payments, but they were making
19 them, and I think his sister, Loretta, was making the
20 payments. In February '08, they made the payment, and it
21 might have been a little late and then it was called
22 retracted or repartitioned. I'm like, what's that mean?

23 So I'm calling the bank, what's going on, here?
24 Everyday I'm calling the bank, make sure these payments
25 are getting done. Calling Ponte.

1 Your funds were repartitioned. I was like,
2 what's that mean? Well, they were no good.

3 So we made the payments in February of '08.
4 They were repartitioned, which means they were stripped
5 back. And then Ponte starts calling me in March of that
6 year, hey, if we give you some money, you know, you can
7 keep 10 percent of it and you can make some payments on
8 the condos and we'll get back on the cabin and we'll get
9 back on track. I was like, yeah, I'd be interested in
10 that if it came through.

11 So I get this \$150,000 check into my account. I
12 had no idea how much money was coming. I thought some
13 money, might have been 5,000, 10,000. I didn't think it
14 was going to be 150,000. It comes in late March of '08.

15 To get the cabins up to snuff or concerned about
16 my credit is the only reason why I kind of agreed to it.

17 It shows up in my checking account. So these
18 awesome, wonderful people trying to help everybody out,
19 these God saviors, these good soldiers, I get this
20 \$150,000 into my account. I'm watching it, I was like,
21 wow, that's a lot of money, and it stays pending. And in
22 the beginning of April, it comes off of a pending state,
23 like April 4 or 5. So it had been there four or five
24 days.

25 I go to the bank, end up talking to them,

1 everything looks good. I make a wire. I send \$134,304 to
2 Cut Above Ventures in New Mexico. So from the 150,000, I
3 was going to keep the difference and make some condo
4 payments, cabin payments, and get my credit back up to
5 snuff.

6 The 134 goes out to New Mexico. Fourteen days
7 later I get a letter from Wells Fargo saying it was -- a
8 counterfeit cashiers check, which I originally thought was
9 a wire, ended up being a counterfeit cashiers check -- is
10 false. So my line of credit on my mortgage in Arizona's
11 now \$280,000.

12 Thank you again for helping me out. That was
13 awesome.

14 So now I'm \$280,000 in debt on a house when I
15 didn't even want this property in Tennessee, and I'm
16 trying to keep my credit going and keep everything going.

17 Now I've got to start making interest payments
18 on this money on my house. He starts sending Ponte
19 emails. Did McNeal get some money back? The bank's
20 telling me he got some money back out of the 134,304.
21 Robert Ponte didn't do anything to try to get me my money
22 back. He said, oh, well, I don't know what to do for you.
23 I got on the phone and talked to a gal named Tammy Hurst,
24 explained to her everything that's going on. And my
25 wife's like, don't tell her too much, don't tell her too

1 much. She goes, if you want me to help you, you got to
2 tell me everything. So I told her everything.

3 She goes like accounts that benefited from your
4 wire, if there's any money in them, I'll see if I can
5 return them. So they had to do a hold harmless agreement
6 check. Hold harmless Bank of America to Wells Fargo. And
7 I got two installments, roughly around 60,000. One was
8 for like 57,000 and the other was for like 3,000. So now
9 out of the 134,000 I'm about 80,000 in the hole. This is
10 on my mortgage in Arizona. They stole money off my line
11 of credit in Arizona.

12 I don't know how you get a counterfeit,
13 fraudulent check through the system. Maybe you can stand
14 up and explain to everybody how you did that. How you
15 squeaked it through.

16 So it goes through the system and everything
17 happens and I got to pay for it. I'm still paying for it.
18 I paid for it almost four years, almost five years, sir,
19 and I couldn't pay for it anymore. So I got to the point
20 where I quit paying for it. And I got some other stuff in
21 here, but Wells Fargo, last year they started to try to
22 foreclose on my house in Arizona because of this check
23 because I couldn't keep up with the monthly payments and
24 so on and so forth.

25 So that's kind of --

1 MR. DURHAM: Just so it's clear, the \$134,300
2 you sent to Cut Above Ventures, and did you ever get a
3 dime of that back?

4 THE WITNESS: I got about 60,000 retracted from
5 the Bank of America, but I've never gotten a nickel. He's
6 never gave me a five-dollar bill to say help your kid get
7 a pacifier, diaper, nothing. Ponte, neither.

8 Sorry for being emotional.

9 This financial crisis, I'm a crime victim on a
10 daily basis. With the worries of stress of how I'm going
11 to put food on the table, clothes on my kids back, a roof
12 over my family's head. Okay? It's just brutal.

13 My family, we've had numerous and stressful
14 moments since becoming financial crime victims from this
15 welldoer and his gang. There's numerous of them, too many
16 to tell, but I'm going to rattle off a few of them.

17 While shopping at Costco, my wife had her Am Ex
18 card -- her Am Ex card was canceled. She's shopping at
19 Costco, buying groceries for the family, she goes through
20 the line and the card's canceled. She calls me hysteric.
21 I can't get groceries, I can't get food, I can't do this.
22 What do I do? The Am Ex has been canceled. And later I
23 called Am Ex, and they says it's because of this Tennessee
24 fraudulent loan.

25 I write a letter, I called the FBI, February

1 of '09, March of '09, the FBI sends me a letter, but they
2 wouldn't send it directly -- they sent me a copy. They
3 sent the real letter to Wells Fargo saying that I was a
4 potential victim of a mortgage fraud and was instructed to
5 restore my credit. To no avail. I still don't have an Am
6 Ex card today. I couldn't get that back. And she was
7 just hysterical, I mean, just on the phone. Just
8 unbelievable.

9 We tried to refinance our house in Arizona
10 because of the interest rates coming down. Countrywide --
11 and I got a letter from them -- they told me as long as
12 the Tennessee thing is on your credit, we can't help you
13 out. When you get that cleared -- and I was working with
14 the FBI to try to help get some of that cleared -- we can
15 help you out, call us back. I still haven't been able to
16 get that cleared.

17 Wells Fargo sued me in Arizona. Because of this
18 loan in Tennessee. The original mortgage was 429,000, and
19 then there was some kind of a second on it for 79,000. I
20 don't know who got the money, where the money went. I
21 didn't see a nickel of it. After the loan foreclosed in
22 Tennessee Wells Fargo started to sue me for this \$80,000.
23 And I started getting the lawsuits coming in on that.

24 My oldest son Jeff, when I was here earlier in
25 February, he got married in 2010. I met him when he was

1 five. I raised him. I was a freeloader at his wedding,
2 and I worked for 33 years. Didn't have a dime to help him
3 out. Nothing. Sitting in your son's wedding, the most
4 joyous time of his life and freeloader thanks to helper
5 over here, helper and his crew. So I couldn't give Jeff
6 any money. That still hurts me today, and that was in
7 2010. It was brutal.

8 I got a little guy named Brady. He's nine now.
9 Christmas comes around, there's not the presents under the
10 tree that I'd like to put there. You know, he stripped
11 everything that we can do as a family. It's just Brady
12 doesn't know any different. You can tell him, sorry,
13 dude, can't get that. All of our money went to the banks
14 and to helper over here.

15 Debbie and I have to go without to ensure our
16 kids are provided the basics. I drive a 1990 Honda
17 Accord. When I got into No More Bills I thought maybe I
18 can get a new car, maybe I can get something new or
19 whatever. I still drive the same car today. It's got
20 290,000 miles on it. Gets me around. It's dependable
21 but, you know, I don't think anybody in here would really
22 like to drive a 1990 car with 290,000 miles on it and call
23 it their primary car because they can't afford anything
24 else.

25 In September of 2012, Wells Fargo attempted to

1 foreclose on my Arizona residence because of helper,
2 because of all the financial check scam crap that they ran
3 through me, I still have to deal with that.

4 So I had to hire a lawyer to stop that. I still
5 don't know the outcome of my house in Arizona. I don't
6 know if they'll end up taking it or if I can end up
7 thwarting it off.

8 If you would, sir, I'd like to approach the
9 bench to you and give you a little handout before I go any
10 further.

11 THE COURT: All right.

12 THE WITNESS: That's yours to keep.

13 For the record, I just gave Your Honor a picture
14 of my best friend, Al Vigil. He's dead. Your scheme
15 caused it. He drank himself after all the stress and
16 everything. He has four kids, they're never going to see
17 his dad. Never going to get to come home and take them to
18 McDonalds, do anything. Never, ever. He's gone, thanks
19 to your crime.

20 THE DEFENDANT: It wasn't me.

21 THE WITNESS: Thanks to your crime.

22 THE DEFENDANT: No, it wasn't.

23 THE WITNESS: Al Vigil, is gone, sir. His
24 children will never see their dad walk through the door
25 again ever, and I'll never get to talk to my best friend

1 again.

2 This crime, this put him into drinking and all
3 kinds of stuff. He lost his wife. High school
4 sweetheart. You can read that. High school sweetheart.
5 Lost his marriage, lost -- I mean, his kids will never see
6 him again. It's tough, it's tough. It is what it is,
7 it's tough.

8 I loved Al with all my heart, and he's gone, and
9 this crime is the reason why he's gotten to the point
10 where he left. I truly believe that, sir.

11 This ordeal's been a never-ending nightmare, of
12 ruthless and barbaric tactics. The Rivernider gang, they
13 lied on every occasion, stated bogus investments, phony
14 promissory notes. No More Bills was supposed to have the
15 promissory note with it. They show it to you.
16 Everything's guaranteed. You get involved, no big deal,
17 you exercise this gold shield promissory note, whatever it
18 is, you get your money back. They showed it to us. We
19 never got it. Obviously it was a scam.

20 No money down, mortgage programs, everything's a
21 bogus.

22 And this is what I ask you, sir: I ask you to
23 please consider all the anguish and pain this group, with
24 the kingpin over here, has caused me and my family, and I
25 plead with you, please make it to where he can never hurt

1 anybody else again. I think he's a schemer, a conniver, a
2 scammer. I think he'll lie his way out of anything to
3 tell you what he wants to hear, so you'll go on and do all
4 this other stuff. That's my opinion. He's a diverter.
5 He tries to point fingers instead of looking himself in
6 the mirror, and I don't think he can take accountability
7 for anything until he can stand up to the plate and say,
8 you know what? I was wrong. I screwed everybody I ever
9 came in contact with. I'm a crook, I'm a thief, I'm a
10 liar. I'm all that stuff. That's what I think he needs
11 to be able to do is be a man and stand up and take it like
12 everybody else has had to take it. So please maybe it to
13 where he can never hurt anybody else.

14 I have sleepless nights every night. I don't
15 live my life to the fullest. There's always a little bell
16 in the back of my head saying, you know, this crime, this
17 fraud, what's going on with your house? I'll be at a
18 kid's event I might think of it. I can't get away from
19 it. Sleepless nights, worries, fear of losing the
20 residency.

21 I pray to God daily, and I ask you help that
22 prayer come true, sir: Dear Lord, please give the United
23 States of America the strength to convict Rivernider and
24 his thieves, to have them serve the maximum time allowable
25 by law and to hopefully never see another free day as long

1 as they live.

2 Your Honor, I've lost six to seven years of my
3 live stressing over this precious time with my kids, being
4 a freeloader at my son's wedding, I couldn't ever get any
5 of that back, sir. But, you know it's in your hands.

6 And then I got PS on here.

7 Mr. Rivernider's a fraudster and an also
8 indirect murderer by his actions. He killed my friend Al
9 Vigil, his scam, his schemes. His kids, they will never
10 have their dad to come home to. Their dad's not coming
11 through the door, their dad's in a box six feet under the
12 ground, dude.

13 He did not care about my kids. His kids went to
14 private school. My kids didn't. All my money went to
15 him. I don't know how many hundred thousand dollars went
16 to him. I didn't get a nickel. I didn't get a
17 five-dollar check. I didn't get a Christmas card with 25
18 bucks. Nothing. He don't care about anybody's kids. He
19 don't even care about his own kids. He's trying to have
20 sympathy on you saying he cares about his kids. He's a
21 con, a liar, a thief.

22 I rest my case, sir.

23 THE COURT: Thank you.

24 We need to take a break. Court will be in
25 recess for 20 minutes.

1 (Whereupon, a recess followed).

2 THE COURT: Mr. Durham?

3 MR. DURHAM: Thank you, Your Honor.

4 During the recess, Ms. LaPorte, who did not have
5 to get a flight, indicated there was one piece of
6 information she thought would be important for the Court
7 to hear, and it goes directly to the question of or the
8 issue relating to whether Mr. Rivernider knew anything he
9 was doing was wrong. And I'd beg the Court's indulgence?
10 And that would be the last witness, live witness, to
11 testify, Your Honor.

12 THE COURT: Okay.

13 THE WITNESS: Sorry, Your Honor, Ms. LaPorte.

14 THE COURT: That's all right.

15 THE WITNESS: One thing I wanted to tell you
16 that I felt was important:

17 I had two condos in Florida and two cabins in
18 Tennessee. The intent was, the first cabin that we got in
19 Tennessee was that was the investment property that we
20 wanted to eventually have as a vacation home for my
21 husband and I. The second cabin, which was the fourth
22 property that we got, just -- I had no knowledge of, no
23 intention of, no intention of buying or anything or having
24 anything to do with. Just one day a Fed Ex document
25 showed up at my house of closing papers. I never filled

1 out one document. I never applied for any application.
2 To this day I don't even know what was in the application,
3 I don't know who filed it. But I do know the only two
4 people that I gave information to was Mr. Rivernider and
5 Loretta.

6 And when I called Loretta in a panic of, what is
7 this cabin? What are these documents, she told me that
8 this was a second cabin that her brother told her to put
9 in -- to put me in for to help pay for the first cabin.
10 And I had 24 hours to sign the papers and send them back.
11 And then I called Mr. Rivernider and it was the same
12 thing. He said, well, you want this vacation property,
13 which I had already committed to three properties and we
14 wanted that cabin in Tennessee, and he said, well, you got
15 to pay this off, this is what -- you've got to get this
16 cabin to help pay this off, which I thought the other two
17 condos were.

18 So I don't know who filled out that paperwork.
19 I know I never did. I know my husband never did. Closing
20 papers just arrived on our door.

21 So I just felt it important, because there's
22 only two individuals that knew of my information.

23 THE COURT: All right.

24 MR. DURHAM: And, Your Honor, could I just ask
25 Ms. LaPorte one other thing? Because an issue was raised,

1 and we'll return to it, regarding Tosha Wade and
2 Mr. Rivernider essentially calling her a liar or a
3 perjurer because he never cursed. And I'd ask Ms. Laporte
4 to advise the Court as to whether, based on her personal
5 knowledge, whether it in fact is true that Mr. Rivernider
6 does not curse.

7 THE WITNESS: That is not true.

8 Actually, that story that you read about Tosha
9 Wade, I remember her telling me on the phone about that
10 incident. She told me that. She was actually afraid for
11 herself.

12 We couldn't get her out of the condo because of
13 Florida rules, and she was concerned with where she was
14 going to go live, so that's kind of how I got information
15 from her and got her to our attorney.

16 But with Mr. Rivernider, he was nice, very quick
17 speaking, very -- whenever we asked specific questions, he
18 gave us kind of vague answers, but was very nice. Wined
19 and dined us. Took our whole family out to Ruth Chris in
20 Florida, showed us all these exorbitant properties in
21 Florida when we first went down there.

22 After we got involved, signed the documents,
23 gotten the properties, there was a distance, less
24 communication. It took actually a couple months where I
25 had to contact him and say, hey, are you going to pay on

1 these and do what you said you're going to do? And
2 Loretta got the information and started paying what they
3 said they were going to do.

4 And then when things went south and I contacted
5 him a couple times through email, got one line answers.
6 Then called him one time on the phone, we had a
7 conversation. I said, well, how we going to pay these
8 mortgages? We can't pay them. I remember him using
9 profanity, cussing me out, and then threatening me that he
10 would not pay our bills if we continued to contact him.
11 So he put us under threat that nothing was going to get
12 paid.

13 Same thing with Loretta. I got very negative,
14 hostile remarks from her on the phone.

15 And after that they didn't answer phone calls or
16 emails.

17 So I was, yes, very subject to that profanity.
18 So he does, in fact, use profanity.

19 THE COURT: All right, thank you.

20 MR. DURHAM: Thank you.

21 The government, I guess, can't help itself but
22 to point out the irony of Mr. Rivernider using the Patriot
23 Act as an excuse for not paying people, telling -- not
24 telling them the truth as to what was going on with
25 properties and No More Bills, but using the Patriot Act as

1 the reason that monies weren't coming through. Yet one of
2 the couples that -- whose lives -- financial lives, at
3 least, have been ruined and emotional lives have been
4 ruined, are people who have been honorably serving this
5 country in the United States military. As I said, the
6 irony is astounding.

7 In any event, the Court -- we then turn to
8 another matter, which obviously is an important factor
9 here and we believe that the Court most likely considers
10 to be, if not the most important factor, in evaluating
11 what the sentence should be, is that of deterrence. Both
12 specific deterrence to impress upon Mr. Rivernider the
13 severe consequences that should flow and do flow from
14 conduct such as the conduct he engaged in. And then more
15 broadly, general deterrence to try to discourage or
16 impress upon others how ill-advised it would be to do what
17 it is that Mr. Rivernider and Mr. Ponte and Ms. Seneca had
18 done.

19 We had indicated or represented in the
20 government's sentencing memo, and we believed to be true,
21 that this is the largest mortgage fraud case that's been
22 brought in this district, at least in terms of the loss.
23 The loss again exceeding \$25 million. In that regard, we
24 would ask that the record include, and we would offer
25 Government's Exhibit 378, which are deficiency judgments

1 that have been entered in the State of Florida on the
2 properties that are involved in this case.

3 The FBI's efforts to retrieve deficiency
4 judgments in Tennessee have not been successful. But as
5 the Court will see, this is probably, what? An inch and a
6 half or more of deficiency judgments that have been
7 entered into -- entered in the state courts in Florida as
8 a result of just the fraudulent conduct engaged in by
9 Mr. Rivernider in that state. Copies of all those
10 documents were provided to the defense way back in
11 September.

12 We would suggest to the Court that the facts of
13 this case do demand a substantial term of incarceration.

14 I want to, in that regard, address -- and I know
15 the Court said it was reserving the question on acceptance
16 of responsibility -- and in the government's mind at least
17 it is important -- the acceptance of responsibility is an
18 important issue and of course this Court, Your Honor, has
19 to decide that question. But I would suggest to the Court
20 that a question or an issue related to accepting
21 responsibility has to do with remorse. Is this a
22 defendant in any way remorseful? Remorseful for the
23 conduct in which he engaged?

24 And the government would say to the Court, he is
25 not remorseful for what he's done. In fact, he's pretty

1 darn bold about himself and his conduct, and this is not
2 the government simply saying this. There's objective
3 evidence of this fact.

4 I'd ask Your Honor to take a look at what I'm
5 currently putting on the screen, and there's several
6 things about this posting of Mr. Rivernider's that in the
7 government's view are significant.

8 First, you see that the post was from May 12,
9 2013. And the person, the Bob Rivernider whose picture
10 appears on it is the person who is sitting in this
11 courtroom.

12 What's significant about March 12, 2013? Well,
13 nothing in particular, except for the fact that this is
14 what Mr. Rivernider, when he doesn't think people are
15 looking -- this is a public posting by the way, nobody had
16 to invade his privacy to get his public posting -- if I
17 said March 12, it's May 12. What's a person doing when he
18 doesn't think people are looking? This is May 12, 2013.
19 Why is that significant? Because this defendant pleaded
20 guilty before Your Honor on February 25, 2013. So this is
21 after he has admitted his criminal conduct by way of a
22 guilty plea. And what is it that Mr. Rivernider is
23 telling people?

24 "Wells Fargo commits massive fraud. Two hundred
25 ten violations by Wells Fargo and no one is going to

1 prison. WTF?"

2 If you were to believe the defendant, again that
3 being what the fig.

4 "If you or I committed just one violation or
5 should have known someone was committing a violation, we
6 would have our homes raided by armed, bulletproof FBI
7 agents, all our stuff taken, prosecuted and our families
8 destroyed. But if we can hire attorneys who run the DOJ,
9 we get small fines. Justice?"

10 I would again suggest to the Court that this
11 posting by Mr. Rivernider says more about his state of
12 mind and whether he has even an inkling of remorse than
13 anything he has said in this courtroom or that has been
14 said on his behalf.

15 I'm going to ask the Court to take a look at the
16 next item that --

17 MR. BERGENN: Your Honor, I don't want to
18 interrupt Government's counsel.

19 Could we have copies of these documents to which
20 he's referring?

21 MR. DURHAM: Sure. We'll ask that the series of
22 the slides to the Court that's been shown today be marked
23 as Government's Exhibit 379 when we're done, with the
24 Court's permission.

25 Posting from May 17, 2013 from Bob Rivernider.

1 I watched it -- this has to do with "Now I see U.S.
2 government tyranny." It's the headline. And
3 Mr. Rivernider: "I watched it live in action as a target
4 of tyrannical low level government employees."

5 So what's the defendant telling the world about
6 this? That he has any remorse at all for what he's done
7 to families like the Court has heard from today? Either
8 by way of victim impact statements or people who have
9 traveled here to speak to the Court and spill their hearts
10 out? That this is all about tyrannical low level
11 government employees.

12 The defendant does not accept any responsibility
13 for his conduct, at least as reflected by the objective
14 record, and not based on what the defendant is telling the
15 Court at the time of sentencing. And walks in, knowing
16 from December 5 that the Court is sensitive to the impact
17 of these things on children, and then hands the Court a
18 packet of pictures of him and his children in costume.
19 That's supposed to carry the day here? The government
20 would suggest to the Court that that's a completely
21 self-serving, shameless act on the part of this defendant.

22 Is there other objective evidence in this record
23 to suggest that the defendant is completely remorseless?

24 When he was taking people's money, gambling with
25 other people's money, was he at all concerned about what

1 he had done to these individuals? The answer, objective
2 answer based on the evidence, is no, not at all.

3 The Court heard from -- and I should hasten to
4 say, we appreciate your taking Mr. McNeal out of turn and
5 spending a little bit of time here so he could make his
6 flight. But Mr. McNeal told the Court that at a
7 particular point in time in March, late March of 2008, he
8 was a victim of a check scam, and he described in general
9 to the Court how it happened: That he was told, well,
10 this money was going to come into his account and he could
11 take a certain percentage out to cover the cost -- cover
12 the monies he wrote on the condominium and then he was
13 supposed to send the money back. And he told Your Honor
14 that with respect to that matter, he sent back \$134,300 to
15 the Cut Above Ventures account, and that's what's in the
16 record.

17 When we submitted to the Court, the Court's
18 request, a filing concerning how much money was taken in
19 by Mr. Rivernider, what happened to that money and so
20 forth, we made specific reference in that filing to the
21 fact that one of the items that we could see being
22 deposited into the account was \$555,524. It appears on
23 page 4 of the government's submission from yesterday
24 entitled Government's Submission Rate, Funds Fraudulently
25 Obtained, Funds Disbursed, and Timeline of Relevant

1 Events, which I hope was responsive to the questions or
2 the issues the Court had raised.

3 Well, what is that 555,000 plus dollars? Let me
4 show you what the analysis of the -- of this is.

5 If we can ask this be marked as Government's
6 Exhibit 377, and we'll provide a copy to --

7 MR. BERGENN: Could we have a copy now, please?

8 MR. DURHAM: Is your monitor not working?
9 Because I don't have one here. I think your monitor's
10 working.

11 This, Your Honor, shows what it is that
12 Mr. McNeal was talking about.

13 In this regard, you'll see that there are three
14 entries. Actually this was tried on five different
15 people, is my recollection, but three of them actually
16 worked.

17 There was deposited into Michael Mastoris's
18 account a similar check, and Mr. Mastoris took out money
19 that was owed to him and then he sent, as reflected in
20 this table, \$245,000 back to the Cut Above Ventures, LLC
21 account that we have heard so much about.

22 Similarly Norman Hall, who is the father of
23 Robert Hall, who you've heard about today, had a check
24 deposited into his account, and then he caused to be
25 forwarded to Cut Above Ventures \$176,220.

1 And then there's the one that Your Honor heard
2 about from Michael McNeal that there was transferred
3 \$134,304 to the Cut Above Ventures, LLC.

4 In each one of these instances, after the money
5 had been sent from the respective parties into that
6 account, that's where the \$555,524 comes from, it
7 subsequently turned out that the checks were no good and
8 the individuals were then on the hook for those monies, as
9 Mr. McNeal explained what happened to him.

10 This is something separate and apart from, above
11 the ponzi scheme Mr. Rivernider constructed relating to
12 called No More Bills, and in addition to the \$37 million
13 in fraudulent mortgage loans he'd obtained as part of the
14 real estate scheme.

15 And so you might think, well, that's not a good
16 thing. And the Court of course would be right, that's not
17 a good thing. Well, let's examine what it is that the
18 defendant's response -- or what the defendant views or
19 considers, how he considers this.

20 I said to the Court -- I asked the Court -- told
21 the Court a bit earlier that we would get back to the
22 question as to whether or not Rivernider was in any way
23 truthful to this Court in his pro se pleading when he
24 said -- he told this Court in his pleading and then today
25 that he doesn't curse. He makes up this nonsense that WTF

1 stands for what the fig. All right? But what's he doing
2 saying -- what actions is he undertaking when a federal
3 judge is not looking at him? When he's dealing with
4 people like Ms. LaPorte or with Mr. McNeal, or with some
5 person who was living in somebody else's attic, Mr. Meyer,
6 or when he's dealing with somebody like Al Vigil? What is
7 he doing then?

8 MR. BERGENN: Excuse me, Your Honor, I don't
9 want to interrupt and I think the government knows, or
10 they've just forgotten, that he had no personal dealings
11 with McNeal or Vigil. So because this is pretty powerful
12 things to be saying and these are people who never met
13 him, there was never any interaction with him.

14 So the idea of how did he interact with them
15 when Your Honor wasn't there, I think the government may
16 want to rephrase that particular aspect of its argument.

17 MR. DURHAM: We'll see the next slide and see
18 whether or not it's powerful or not. Because when he,
19 Mr. Rivernider's telling you this, Your Honor, and when
20 he's filing these pleadings with the Court, and when he's
21 telling the Court in here today about how all he wanted to
22 do was help other people, what is he doing in real life?

23 This is Government's Exhibit 354, and it's a
24 little bit small, so I'm going to ask Ms. Konarski to help
25 me make this larger so that you can see it.

1 So I'd ask you to look at this email, Your
2 Honor. This is again 354. It's from the defendant Robert
3 Rivernider, and the date is 10 April 2008. And he,
4 Mr. Rivernider, is sending this email to these
5 individuals. And he says: Hey, guys do you want me to,
6 quote, immediately, closed quote, send you this money
7 also? Multiple question marks. More bad fucking checks?
8 Thanks piece of shit Nigeria fucking scammers. Oh, wait,
9 I'm still ahead almost \$200,000. Ha, ha, ha, ha, ha, ha,
10 ha, ha -- across the entire email.

11 That's who Bob Rivernider is, not somebody who's
12 concerned with helping other people out, who only wants to
13 be there for other people, who never curses, who believes
14 that Tosha Wade is a perjurer, she's lied to the Court
15 because he never swears. Right?

16 This is who Bob Rivernider is. And he's asking
17 the Court, he's asking Your Honor to buy into today's
18 angle, today's maneuvering, today's shifting in trying to
19 decide what an appropriate sentence in this case is.

20 Bob Rivernider is best exemplified by the
21 documents that we have provided to the Court today. These
22 emails that are occurring in realtime, infecting real
23 people's lives. And we respectfully submit, Your Honor,
24 that that's why a Guidelines sentence in this case is
25 appropriate to reflect the seriousness of the offense that

1 was committed here; to recognize the fact that he doesn't
2 have a remorseful bone in his body about this, other than
3 perhaps being caught; that he will use anything that is
4 available to him to sell a story to somebody and hope that
5 in the end somebody will buy his line hook, line and
6 sinker, as one of the victims said today.

7 The government respectfully submits to the Court
8 that ought not to happen and that a significant sentence
9 is called for and the Guidelines should be imposed in this
10 matter.

11 Thank you, Your Honor.

12 THE COURT: Mr. Durham, before you depart,
13 looking at this last slide, can you put that in context
14 for me, please? That was referenced in some of the
15 written submissions, and it wasn't clear for me.

16 MR. DURHAM: Could I have just one moment, Your
17 Honor?

18 THE COURT: Sure.

19 (Pause)

20 MR. BERGENN: For the Court's information, I'm
21 going to be addressing that very identical point you just
22 raised.

23 THE COURT: Okay, thank you.

24 MR. DURHAM: Mr. Schmeisser points out, and we
25 don't have all of the emails here, but there are emails

1 that relate to what was happening with these fraudulent
2 monies or checks that are being sent to the accounts where
3 it's pretty clear that Ponte and Rivernider are suspicious
4 about what's going on here. So they at any time could
5 have said, we're not interested, or they could have had
6 that money go to their own account, but instead they have
7 the checks sent to Mastoris, Hall and McNeal.

8 And so in the end when -- after they have sent
9 the money to Cut Above Ventures account, it's those people
10 who end up holding the financial bag on this.

11 THE COURT: All right, thank you.

12 MR. BERGENN: Continuity may be easiest just to
13 hit right to that first, Your Honor. And that is that --
14 could I have -- I don't think I have that document, the
15 one that we just had up, the document.

16 Here's the context: If you look at pages 4 and
17 5 of the government's pleading, government's submission
18 that was from yesterday, from last night, I should say,
19 regarding funds fraudulently obtained, responding to the
20 Court's question.

21 THE COURT: Yes.

22 MR. BERGENN: Top of page 4, they cited to the
23 \$555,000 that was received as wires in this was both by
24 Bergenn the last two.

25 THE COURT: Right.

1 MR. BERGENN: Those monies were wires in, which
2 Mr. Rivernider understood to be wires. I mean, he was
3 scammed as well.

4 The next page, however, on page 5, those monies
5 did not come in for any of his own benefit, except what he
6 did do is he instantly, as you can see from March 21, '08,
7 was -- and April 2 of '08 -- investing those monies.

8 So, in other words, he put out -- my math is
9 about \$570,000 and he got in \$555,000. And this is long
10 after the collapse that you've heard him articulate in
11 January where you're not going to get any of this money
12 this 500 a month that he thinks he's going to get, and the
13 Praise, not going to get that. So now he gets scammed
14 into thinking this is all legitimate wired money.

15 The money that -- it did go through other
16 people's accounts and there were other monies at that
17 point that he was suggesting to go directly out to people.
18 But these monies, when they were available to him, were
19 not spent on himself. They were, once again, perpetuating
20 his illusory belief on these other particular investments.

21 And that email, that one that contains on
22 April '08 all these curses, are at the point where has
23 described himself as desperate in January. Now he thinks
24 he's got something happening, and he finds out he's been
25 scammed yet again.

1 THE COURT: Who's he writing to?

2 MR. BERGENN: The scammer. The Pure Aqua Health
3 on page 5 of the government's -- he's just been scammed.
4 And where he says, oh, wait, I'm still ahead almost
5 \$200,000. That's not true. That was just another scam.
6 Days later that money was evaporated. So he got scammed.
7 Same as McNeal.

8 When Mr. McNeal described his \$130,000 scam,
9 which was very powerful, horrible stuff, that was not a
10 Rivernider scam. He was absolutely the conduit, the
11 vehicle, for that. But he thought this was legitimate
12 money and he's now angry at the people who did the scam.

13 This fellow, the GGWALL@Kanokia.net, you see
14 that one? That person, I understand it, is Gronwall of
15 Pure Aqua Health. And if you look at page 5 of the
16 government's, that's where this 555 thousand in and 571
17 thousand went out; 96,800 went to Pure Aqua Health on
18 April 2. This is April 10 when they are trying to get him
19 to send more money or get more wires. And at this point
20 he's now figured it out, that this is another scam. He
21 just lost money. Other people's money, but money. And
22 the money he's lost is he's getting these wires and he's
23 investing in these other things, and now he's finding out
24 these people somehow did this wire fraud scam.

25 THE COURT: What does he mean when he says, oh,

1 wait, I am still ahead \$200,000, ha ha ha?

2 MR. BERGENN: Because that wire to the
3 International Fund Capital, you'll see it on page 5 of the
4 government, had not yet completed the scam. They had not
5 yet taken that money out. And then that was just within
6 days later that that money was taken out.

7 THE COURT: And then the last line, just an FYI,
8 can you make sense of that?

9 MR. BERGENN: Well, I mean, basically he's --
10 and I'm going to articulate and I'm going to ask for just
11 a minute, but my understanding is that these were the
12 results of the wired in money, that the checks went out
13 based on the belief that these were wired in monies. I
14 believe it's like McNeal, McNeal using his own check. And
15 I believe the Moore and the Cartwright are analogous to
16 McNeal.

17 But if I could have one moment, Your Honor,
18 please?

19 THE COURT: Okay.

20 (Pause)

21 MR. BERGENN: I understand, Your Honor, that all
22 of the addressees on this email were people who were doing
23 the check scams. And Moore, Cartwright and McNeal were
24 the people who were victimized by it. And he is clearly
25 the conduit and the cause. And, frankly, at that point

1 where he has been for months been still trying -- and I
2 think the Court will recall in '08, he's still chasing
3 down Praise. He's still working, as he thinks, for the
4 government. He's still believing he's going to be getting
5 this money. He now finally gets some and he gets scammed
6 again, and he is past desperation because he's just blown
7 it for every single person. All these people that you've
8 just heard. He's blown it.

9 It is very powerful the evidence that we just
10 heard from these individuals, and I'm not going to negate
11 a molecule of it. And of course I did, in following the
12 Court's suggested order today, acknowledge it as I could.
13 But what I said is a gossamer compared to the power of
14 these people. But the Court understands that that
15 powerful impact is sort of everywhere and it doesn't take
16 away from the focus. A big part of the Court's
17 obligation, I'm not negating that, but the ultimate fact
18 of the quantity of damage was something we've known along,
19 and it doesn't take away any of the structural
20 requirements of what we're supposed to do with him.

21 The only other points that I will make, and I'm
22 going to tick them off, the government pointed out this
23 nice home in October of '04. That was October of '04.
24 That was a half a year before he did his first, you know,
25 wacky investments in '05. So that was -- remember I told

1 you he got 180 out of his sale? He bought that house and
2 then was able to borrow against that house to make his
3 investment.

4 So that house that the government -- I don't
5 know if it was explicit, but it was clearly implicit, he's
6 living in this luxury because of what he did to these
7 other people. That's just simply a lie.

8 I mean, you know, the money that LaPorte and
9 McNeal provided him was money, if you look at the timing,
10 that went to Praise. I'd made the point that Vigil and
11 McNeal, his conduct, which is clearly connected to
12 everybody who contributed funds or lent money or invested
13 however you want to categorize it, was not based on his
14 being predatory with knowledge of their circumstances. He
15 never met these people, he doesn't know these people, he's
16 not -- and I'm not taking away from his causal connection
17 to them, but it's a different level when you've got
18 somebody who's picking out somebody who has already found
19 himself in a camper having nothing to do with dealing with
20 NMB.

21 The whining clients memo was a time of his own
22 pretty significant depression and it was gallows humor.
23 He had lost everything for everybody and, you know, it was
24 not something that he articulated to any of those people.

25 And the last two points I would make, Your

1 Honor:

2 The blogs that I've just seen do not relate to
3 remorse. The fact that he exercised his First Amendment,
4 I think actually we've got a little bit of a legal issue,
5 because he's clearly not addressing any exoneration for
6 his own behavior, and for him to be using those blogs and
7 then have them used against him to influence a Court's
8 sentencing, I really don't think is appropriate. Well,
9 the Court can consider anything. The Court, I don't
10 think, would want to be on the record as having considered
11 someone's First Amendment expression about the fact
12 that -- this is not saying he doesn't belong here, but
13 he's saying, how do they do 210 counts and get nothing?
14 That's not really even inconsistent.

15 And then finally, Your Honor, I had not provided
16 you the details before, and I have it now, that I would
17 ask that the Court in terms of his surrender make a
18 recommendation for -- there's an FCI Miami, there's an FCI
19 Coleman and an FPC Pensacola. Remember I gave you
20 those -- I alluded to the Florida locations? And those
21 are the formal names of those places.

22 THE COURT: FCI Miami?

23 MR. BERGENN: FCI Miami, and then FCI Coleman
24 which is in Orlando, and then FPC Pensacola. And I know
25 that this is ultimately a matter of bureaucracy's

1 decision-making, but they do often give some weight to the
2 Court's comments.

3 THE COURT: Do you want me to recommend them in
4 that order of preference?

5 MR. BERGENN: Yes, Your Honor, thank you.

6 May I have one more moment, please?

7 THE COURT: Yes.

8 (Pause)

9 MR. BERGENN: Your Honor, I mean, my experience
10 actually is typically in the sentencing, the last thing
11 that happens is the defense goes but I respect the order
12 that we took today. It worked. But Mr. Rivernider would
13 like to be able to allocute with respect to what he has
14 heard from the other witnesses if the Court would permit.

15 THE COURT: All right.

16 MR. DURHAM: Your Honor, before we hear from
17 Mr. Rivernider again, there's two things.

18 These -- I swear these will be brief.

19 One with the house counsel refers to.

20 Mr. Rivernider bought that house, it was a \$700,000 house
21 at 9246 Delamar Court, purchased in April of 2006. And
22 for the most part, all of the mortgage payments that were
23 being paid on that house were being paid out of the Cut
24 Above Ventures account, other people's money. That's one.

25 And the second point I want to make is that with

1 respect to counsel's explanation for Mr. Rivernider having
2 finally gotten some money. The defendant was suspicious
3 that this was a scam. He could have had those checks sent
4 to his account, waited for them to clear to see what
5 happens. But he didn't do that. He passed all this risk
6 on to other people who he had already victimized. And
7 then he took the money that he got quickly and he sent it
8 out someplace else, never to be recovered by the victims.

9 He knew exactly what he was doing.

10 Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. BERGENN: Your Honor, the dates I was not
13 mistaken. He moved into that house in the fall of '04 on
14 a lease purchase. The house was refinanced at the date
15 just provided by the government.

16 THE COURT: Okay.

17 Mr. Rivernider, you have had an opportunity to
18 speak at length today and you have spoken at length. I
19 will give you a final opportunity if there's something
20 that you would like to say.

21 THE DEFENDANT: Your Honor, I just want to say
22 that to the people here today, I'm sorry. I never
23 intended --

24 SPEAKER: You're not sorry.

25 THE DEFENDANT: Yes, I am. I never intended

1 anybody to be harmed in any way, shape or form. Never.

2 Why in the world would I want to hurt my own
3 kids? Your kids? Or my sisters? Why? There's
4 absolutely --

5 SPEAKER: You --

6 THE DEFENDANT: You're right, there's no reason.
7 I never wanted to hurt anybody.

8 (Interruption)

9 THE DEFENDANT: Your Honor, I'm terribly sorry
10 about what happened to everybody, everybody. I wish I
11 never got involved in the real estate deal or attempted to
12 help anybody with the paying of their bills. I'll never
13 do that again. I never wanted to hurt anybody, Your
14 Honor. I'm sorry.

15 THE COURT: All right. Anything further?

16 MR. DURHAM: The government has nothing, Your
17 Honor. Thank you.

18 THE COURT: The time for imposing sentence has
19 come.

20 Mr. Rivernider, it's my obligation to determine
21 what the sentence should be, and the law requires me to
22 announce the sentence here in open court and to explain
23 the reasons for the sentencing determination. This is
24 going to take some time, so I would ask you to please be
25 seated.

1 Let me begin, Mr. Rivernider, by explaining that
2 the issue before me is not what I personally would like to
3 do. It's not a question of my opinion about what happened
4 here, and I underscore that because it's important for you
5 to realize that the sentencing determination is guided by
6 law. The law tells me what I'm supposed to do.

7 It says that the sentence must be sufficient to
8 serve certain stated purposes without being harsher than
9 necessary, and it tells me that in deciding what sentence
10 is sufficient to serve those purposes without being too
11 harsh, I need to consider what you did and the
12 circumstances in which you did it.

13 I need to consider your personal history and
14 your personal characteristics as disclosed by the
15 information available to me, primarily through the
16 presentence report.

17 Also in deciding what sentence is sufficient to
18 serve those purposes, I need to take into account the
19 advisory Guideline range. The range doesn't dictate what
20 the sentence should be, but under the law, as you know,
21 I'm required to calculate it and I'm required to be aware
22 of it.

23 The Guideline sentence is not presumptively
24 reasonable, and I can't assume that it is presumptively
25 reasonable, but I do need to be aware of it.

1 I also need to take into account any policy
2 statements issued by the Sentencing Commission, and I need
3 to take into account the requirement that people be
4 treated in an evenhanded manner. The sentence that you
5 receive should depend on the facts of the case, not the
6 personality of the judge.

7 In deciding what sentence is sufficient, I need
8 to look at those purposes very carefully and they are:
9 First, to impose just punishment for the harm done;
10 second, to reflect the seriousness of the offense; and
11 third, to promote respect for law.

12 So looking at what you did and the circumstances
13 surrounding your offense conduct, considering your history
14 and characteristics, bearing in mind the guideline and the
15 need to avoid unwarranted disparity in sentencing, I need
16 to determine what sentence is sufficient to impose just
17 punishment, reflect the seriousness of the offense and
18 promote respect for law.

19 I also need to decide what sentence is
20 sufficient to provide adequate deterrence to criminal
21 conduct.

22 Further, I need to decide what sentence is
23 sufficient to protect the public from further crimes on
24 the part of the defendant.

25 I also need to take into account your obligation

1 to make restitution and your need for correctional
2 treatment, and I need to determine what sentence is
3 sufficient to serve those purposes without being harsher
4 than necessary.

5 In that framework, it's my responsibility to
6 look at these things and make a decision.

7 Starting with the advisory Guideline range, I
8 need to decide whether you should receive credit for
9 acceptance of responsibility. This is an issue that I
10 reserved because I didn't want to make any final decision
11 until everybody had had a chance to speak, including you.

12 The applicable Guideline Section states that a
13 reduction in the offense level under the Guidelines is
14 available for a person who "clearly demonstrates
15 acceptance of responsibility for his offense." That's
16 Section 3E1.1.

17 The factors that the Court is required to
18 consider include whether the defendant has truthfully
19 admitted the conduct comprising the offense, whether the
20 defendant has refrained from falsely denying or
21 frivolously contesting relevant conduct, whether the
22 defendant voluntarily withdrew from criminal conduct, post
23 offense rehabilitation efforts, and the timeliness of the
24 defendant's conduct manifesting the acceptance of
25 responsibility.

1 Under the Application Note to this section,
2 specifically Note 2, a defendant who exercises his right
3 to a jury trial is not precluded from consideration for a
4 reduction for acceptance of responsibility. A person can
5 go to trial and still receive consideration for such a
6 reduction. In fact, the issue whether the defendant
7 should receive a reduction for acceptance of
8 responsibility is to be determined in light of the
9 defendant's statements and conduct as of the time of the
10 sentencing.

11 At the change of plea proceeding, you
12 acknowledged in writing and in the plea colloquy that you
13 misled clients about the risk associated with your
14 activities and that the misrepresentations made to lenders
15 and borrowers with regard to the real estate activities
16 were in fact material.

17 In doing so, you acknowledged your guilt, and on
18 that occasion you told me that you were moved by the
19 testimony of the victims and you said that you had decided
20 to plead guilty because you believed it was in your
21 interest as well as in everybody else's interest.

22 After that proceeding, I made it a point to keep
23 an open mind on the question whether you should receive a
24 reduction for acceptance of responsibility. I knew that
25 from the standpoint of the government it would be very

1 difficult for me to provide a justification for giving you
2 a reduction considering what they had been put through,
3 but I had an open mind on it.

4 As I sit here at this moment listening to your
5 statement ringing in my ears, I can't find that you have
6 accepted responsibility. Your pro se motions undercut any
7 claim that you might have for a reduction.

8 Please understand, I don't take into account the
9 slides about your blog, although I think I'm perfectly
10 entitled to do so, indeed I might have an obligation to do
11 so, but I made a decision about acceptance of
12 responsibility before I saw those slides.

13 In your pro se submission you asked me to
14 dismiss the indictment, permit you to withdraw your guilty
15 pleas and give you a new trial based on egregious
16 prosecutorial misconduct, ineffective assistance of
17 counsel and the failure of the system to provide you with
18 a fair chance at trial. Nowhere in that extensive
19 submission is there any recognition of or acceptance of
20 responsibility for your criminal conduct.

21 So on this record there is no way I can find
22 that you have clearly demonstrated acceptance of
23 responsibility within the meaning of Guideline
24 Section 3E1.1, and I make that decision having listened
25 very carefully to your statements today here in open

1 court.

2 The upshot of that is with regard to the
3 Guideline calculation, the following:

4 We wind up with a total offense level of 41 in
5 Criminal History Category I, which carries an advisory
6 Guideline range calling for a sentence of imprisonment of
7 anywhere from 324 months to 405 months. I believe that
8 correctly calculated that's where we come out with regard
9 to the total offense level and thus the advisory Guideline
10 range.

11 I'm going to turn now to your submissions with
12 regard to requested departures and variances. These bear
13 on both the offense conduct and the circumstances in which
14 it occurred as well as your history and characteristics.

15 With regard to diminished capacity, under the
16 applicable Guideline Section 5K2.13, a defendant seeking a
17 downward departure based on diminished capacity has the
18 burden of proving that at the time of the offense conduct
19 he had a significantly reduced mental capacity which
20 contributed substantially to the commission of the
21 offense. The application note explains that a
22 significantly reduced mental capacity means a
23 significantly impaired ability to understand the
24 wrongfulness of the offense conduct or to exercise the
25 power of reason or control behavior he knew was wrongful.

1 The claim made here is that you suffered from a
2 substantial cognitive defect resulting in impaired
3 executive functioning, inability to properly perceive
4 reality and low emotional intelligence. This claim is
5 premised on expert opinion derived from testing mainly
6 that you have a neurocognitive defect as a result of a
7 traumatic brain injury sustained in a fall from a ladder.
8 This claim was the subject of an extensive evidentiary
9 hearing. It has also received the attention of four
10 experts in detailed reports submitted to the Court.

11 I think that it's human nature to want to find
12 an explanation for disasters like this so that we can
13 think that we've made sense of it and we can go on from
14 there. As I said at the hearing, I'm not looking for ways
15 to give you a heavier sentence knowing the impact that
16 it's going to have on your children, and so there's a
17 natural inclination, I think, to credit this explanation.

18 But as I indicated at the hearing, I'm not
19 persuaded that you had a significantly reduced mental
20 capacity at the time of the offense conduct which
21 contributed substantially to the commission of the
22 offense. I find the reports and the testimony of the
23 government's experts, Dr. Lewis and Dr. Kaplan, more
24 persuasive than the reports of your experts, Dr. Stoll and
25 Dr. Filippopoulos, and the testimony of Dr. Stoll.

1 Your experts focused on your performance on the
2 tests. I'm not persuaded that the tests are infallible.
3 I'm not persuaded that your performance on the tests
4 establishes the existence of a neurocognitive defect that
5 significantly impaired your executive functioning.

6 The experts plausibly suggest, in my opinion,
7 other explanations for the test results. Moreover, it
8 appears to me that one can easily manipulate the score on
9 the tests.

10 I know that everybody said that you appeared to
11 be doing your best and there's no indication of what was
12 referred to as malingering, but in listening to the
13 witness describe the way the test works, I couldn't help
14 but think that if I were motivated to do poorly on the
15 test, I could easily do poorly without leading people to
16 conclude that I was malingering.

17 I'm not making a finding that you did that,
18 Mr. Rivernider, I'm simply pointing out that I don't think
19 that the test results are infallible. I don't think that
20 I can stake this decision on those test results.

21 Your experts also rely on retrospective
22 statements of your supporters regarding your behavior
23 after your fall from the ladder. I think Mr. Bergenn did
24 a very fine job of advocating for the proposition that the
25 reliability of these statements was carefully vetted

1 through the questionnaires, but I'm not persuaded. I
2 think that, like you, they're intensely motivated to do
3 whatever they can to assist you here. It's my belief that
4 they understood what was going on, and while they might
5 not have consciously tried to mislead anybody, I think
6 that they undoubtedly did the best they could to be of
7 assistance to you and your experts, and we don't have any
8 so-called realtime evidence to corroborate the claim,
9 which I think is important.

10 In assessing whether you had a substantially
11 reduced mental capacity at the time of the offense
12 conduct, I agree with Dr. Lewis, that it's most helpful to
13 look at the conduct. Your experts didn't do that. Dr.
14 Stoll saw some of your emails for the first time when he
15 was here in court waiting to testify in support of his
16 opinions previously reached.

17 Based on the record of your offense conduct, I
18 find that it does not reflect a significant impairment of
19 executive functioning; and, moreover, I think your conduct
20 is inconsistent with a significant impairment.

21 Common sense is not infallible either, but it's
22 a pretty good guide most of the time, and as I look at the
23 record of your offense conduct, it seems to me your
24 executive functioning was intact.

25 This is not to suggest that I think you are as

1 culpable as one would be who does not have a mental or
2 emotional condition that might entail some impairment of
3 executive functioning. I think that there is something
4 wrong with you, Mr. Rivernider, and I say that
5 respectfully, not to insult or degrade you, but to tell
6 you what's in my mind. I believe that you do have a
7 mental or emotional condition and I do think that it
8 contributed to your offense conduct. I just don't know
9 what it is.

10 Dr. Lewis said that you have narcissistic traits
11 but not narcissistic personality disorder. She's a
12 psychiatrist with a lot of experience and I'm not going to
13 second guess her opinion, but it seems to me that your
14 behavior was very abnormal and I think that it must be due
15 at least in part to a mental or emotional condition that
16 needs to be addressed. I hope it will be addressed,
17 because I'm concerned that without treatment you are at
18 risk to reoffend.

19 In any case, I adhere to my previous conclusion
20 that a diminished capacity departure is not available to
21 you.

22 I think that you thought big, as Dr. Lewis said,
23 and that you persevered hoping against hope that could you
24 pull it off. I think your confidence that you could pull
25 it off in the face of what happened, your willingness to

1 continue to bet big, so to speak, is abnormal but I don't
2 think that it establishes a significantly reduced mental
3 capacity justifying a downward departure.

4 With respect to substantial assistance, I think
5 that it's important to realize that you were a victim of
6 fraud, which distinguishes you from the predators I have
7 known in cases involving economic crimes. It's remarkable
8 that you continued to give this money to people after you
9 were burned repeatedly, and I think that your reaction to
10 being defrauded by Mr. Praise shows that you were a victim
11 of his seemingly predatory behavior. I take that into
12 account in deciding what to do today, but I don't think
13 that it warrants a departure for substantial assistance.

14 I want to tell you, Mr. Rivernider, that like
15 Mr. Bergenn, it's been my experience that criminals like
16 Mr. Praise don't do harm to other people's children. That
17 hasn't been my experience. And I want to tell you that I
18 think that your concern for your children when it comes to
19 Mr. Praise and people like him may not be well-founded. I
20 hope I'm right about that. But I do credit you for your
21 belief that you're in some danger, and yet I can't give
22 you a downward departure based on substantial assistance.

23 You provided the SEC and others with information
24 to assist them in bringing Mr. Praise to justice, as any
25 victim would do, and it doesn't qualify for a downward

1 departure based on substantial assistance.

2 With regard to the next point, which also bears
3 on the seriousness of the offense and your history and
4 characteristics, we come to your request for a departure
5 or various on the theory that the loss calculation
6 significantly overstates your culpability.

7 I think that this point has substantial merit.
8 The Court understands and appreciates the victims'
9 strongly held view that you should be locked up for the
10 rest of your life, but under the law, the loss calculation
11 which drives this Guideline range does, in my opinion,
12 significantly overstate your culpability for a number of
13 reasons.

14 First of all, as I said earlier today, I don't
15 think you are a predator. I think that your problem lies
16 elsewhere. I think you're less culpable than a true
17 predator who would be deserving of a life sentence
18 perhaps. I'm not aware of a case where the fraudster
19 himself was repeatedly defrauded. I'm not aware of a case
20 where the fraudster himself continued to invest money time
21 after time right up to the end.

22 This is a case where you shifted the risk to
23 other people, you obscured the risk, you misled them about
24 the risk, you abused their trust by arrogating to yourself
25 what you were going to do with their money, by taking it

1 upon yourself to decide what they would be told and what
2 they would not be told. As a result, you've been justly
3 convicted. As serious as that is, it's not as serious as
4 outright theft to finance a lavish lifestyle.

5 In a related vein, looking at this record, I
6 don't see that you got very much out of it. One of the
7 factors that a Court needs to consider in assessing the
8 seriousness of an economic crime is the gain to the
9 defendant. You need to assess the gain in light of the
10 loss, and when there's a huge disparity, as there is in
11 this case between the gain and the loss, that's a factor
12 that suggests the defendant is less culpable. I don't see
13 any gain.

14 I understand that you were living in a nice
15 house and your children were in private school and your
16 bills were being taken care of for a period of time, but
17 when the house of cards collapsed, you had nothing. You
18 had sent the money to people like Praise. It was gone,
19 and look at you now. You don't have anything.

20 The losses caused by your criminal conduct and
21 that of your co-conspirators are devastating, making this
22 a very serious case. But those losses were greatly
23 increased due to the financial crisis and the collapse of
24 the real estate market as you have argued through counsel.
25 Those aspects of the case also indicate that the offense

1 is less serious on the culpability continuum than others.

2 Also, as Mr. Bergenn pointed out, the number of
3 mortgages reflects more on your commitment to this and
4 your energy than it does your level of venality or greed.

5 For all those reasons, I believe that the loss
6 calculation does significantly overstate your culpability.

7 I hasten to add that there are other factors
8 that underscore your culpability.

9 Again, dealing with offense conduct and the
10 circumstances in which it occurred, these schemes were at
11 least somewhat sophisticated. Your conduct was deceitful,
12 as Dr. Lewis correctly pointed out. You engaged in
13 intentional fraud. You deliberately misled others
14 regarding the risk of doing business with you. You were
15 at a minimum exceedingly reckless with other people's
16 money. It wasn't just a lack of caution or a lack of
17 prudence, you were a wheeler, a dealer. It must have been
18 a heavy time taking in literally \$27 million. For a kid
19 from Philly who never went to college, that must have been
20 intoxicating, and there you were.

21 You took advantage of other people not just for
22 a month or two or three. This went on for quite awhile,
23 2006 to 2008. You were not acting under duress or
24 coercion. In the white collar fraud cases that I've had,
25 including recent cases involving mortgage fraud, the

1 defendant is a person who built an honest business and ran
2 an honest business and got into financial trouble and
3 faced the destruction of his business which was going to
4 put his employees on the street, and acting under that
5 kind of pressure the defendant lied on a loan application
6 to the bank. That's not what happened here. There was no
7 duress or coercion here.

8 You persisted when you should have stopped. I
9 don't think that it's reasonable to find that you were
10 incapable of stopping. I think that you had sufficient
11 capacity to understand the wrongfulness of your conduct,
12 to use the power of reason and to control your behavior to
13 stop, but you didn't; and while that was, I think,
14 influenced by whatever it is that's wrong with you,
15 whatever that might be, does not significantly detract
16 from your culpability. You arrogantly persisted when you
17 should have stopped.

18 And with regard to systemic fraud, I know that
19 you're concerned that no high level banking executives
20 have been prosecuted, and that concern is shared by
21 others, including a judge of the Southern District of New
22 York who has recently written an article on that very
23 subject. It is a good question, but for today, I don't
24 see that it significantly detracts from your culpability.

25 If this was a cesspool of fraud, you eagerly

1 jumped in and you swam around in it with no reluctance,
2 taking advantage of other people in a way that shows a
3 lack of ethics and, frankly, a lack of conscience. If the
4 same could be said of senior executives -- and I don't
5 know that it can be -- but if it can be, then shame on
6 them too.

7 I think, Mr. Rivernider, that it's important for
8 me to acknowledge that there are positive aspects to your
9 history. You do have a strong work ethic, you're unlike
10 the most culpable fraudster who cheats other people so he
11 can take it easy. You do have a loving relationship with
12 your family members. I think that you are a loyal person.
13 I think that you aspire to be a good role model for your
14 children. I think you aspire to be a person who
15 contributes in a positive way to your family as well as to
16 your community.

17 I think that as the record shows, this is your
18 first trip through the criminal justice system. I don't
19 know what happened with the car that was mentioned earlier
20 today. I don't know about the traffic tickets that
21 Dr. Lewis mentioned. I don't know what you might have
22 done, but I do know that this is the first time you've
23 been arrested. This is the first time you've been
24 prosecuted. In that sense, you're a true first offender
25 at age 47?

1 THE DEFENDANT: Forty-eight.

2 THE COURT: Forty-eight. That distinguishes you
3 from other fraudsters that we've encountered.

4 There are some people who are repeat offenders.
5 They cheat others, they get caught, they get sent to jail,
6 they get out and they do it again and again and again.
7 That's not you. This is your first time through. You've
8 never served a sentence of imprisonment. As far as I
9 know, you were never in jail until you were arrested in
10 this case, and that's important.

11 Under our system, a sentence of imprisonment
12 needs to take account of whether the person has been
13 incarcerated before. Our system contemplates that
14 sentences of incarceration will be proportionate responses
15 to criminal conduct taking into account whether the person
16 has served time before.

17 The Guideline that we're looking at here has
18 been widely criticized for producing excessive sentences
19 for first offenders for suggesting that somebody who's
20 never been incarcerated before should have to be sentenced
21 to 30 years or life.

22 Mr. Bergenn pointed out that before Congress
23 began to weigh in on this Guideline, the conduct for which
24 you're being sentenced today would have carried a sentence
25 of about two or three years; and I think looking at that

1 people can say that a sentence like that is sufficient for
2 a first offender. In any event, it calls into serious
3 question the validity of a guideline that suggests a
4 sentence that's 10 times that long or more.

5 In looking for better guidance, I took a look at
6 the ABA Task Force report on this guideline, which was
7 released this fall, and I did my best to apply the model
8 that they propose. In doing that, I found that the total
9 offense level that emerged from the analysis was quite a
10 bit lower than the one that emerges from this guideline,
11 about 10 levels lower, and I think that there is much in
12 the Task Force report that is helpful and I think that the
13 guidance provided by their approach is preferable to what
14 emerges from the existing guideline.

15 The Guideline's overemphasis on loss, the
16 Guideline's use of overlapping enhancements, results in a
17 range that is clearly excessive, and I prefer the guidance
18 provided by the Task Force. It suggests that the sentence
19 should be in the neighborhood of 10 or 12 years rather
20 than 20 years or more.

21 At the end of the analysis, I ask myself: What
22 sentence is sufficient without being harsher than
23 necessary to impose just punishment, reflect the
24 seriousness of the offense conduct and promote respect for
25 law?

1 I conclude that after careful consideration of
2 the offense conduct and the circumstances in which it
3 occurred, your history and characteristics and the need to
4 avoid unwarranted disparity in sentencing, that a
5 significant sentence of imprisonment is necessary.

6 Imprisonment will be particularly punitive for
7 you, I believe, because of your age, because of your
8 history, because of your family situation. You don't
9 think you're a criminal. You cling to a self-image that
10 is quite different. You stated today that all you want to
11 do is help stamp out crime.

12 For you I think the idea of being incarcerated
13 must be abhorrent and it will separate you from your young
14 children during their teenage years. So I think that any
15 sentence of imprisonment for you will be particularly
16 punitive.

17 Even so, I think a significant sentence of
18 imprisonment is required to impose just punishment for the
19 extensive harm, both economic and non-economic, that was
20 foreseeably caused by your persistent criminal conduct.
21 You may not have intended to hurt anybody, but your
22 conduct caused grievous harm to people who didn't deserve
23 it.

24 As my law clerk said the other day, if you're
25 driving down the road at 150 miles an hour, the fact that

1 you don't want to crash, the fact that you don't want to
2 hurt anybody, you know, is really no answer, and that's
3 similar to what you were doing. You were driving down the
4 road at 150 miles an hour with other people's money, and
5 as we learned today, it's not just other people's money,
6 it's also other people's marriages, other people's jobs,
7 other people's homes, other people's children.

8 In light of the devastating impact on the
9 victims of the No More Bills scheme and the borrowers on
10 the real estate scheme, not to mention the banks, a
11 significant sentence is necessary to impose just
12 punishment and to adequately reflect the seriousness of
13 what you did.

14 The sentence that you ask for, two or three
15 years, would unduly depreciate the seriousness of your
16 offense conduct and undermine respect for law. It's true
17 that 20 years ago that might have been the sentence, but
18 Congress, in its wisdom, looked around and saw that the
19 sentences weren't sufficient and Congress wanted the
20 sentences ratcheted up, and Congress had good reason. I
21 don't agree with the extent of the ratcheting up, but I
22 agree that those sentences clearly were not sufficient to
23 serve their intended purpose.

24 This is not a case where you simply failed to
25 take steps to ensure that people were adequately informed,

1 as you have suggested. You intentionally deceived other
2 people to get their money. You used their money as you
3 saw fit. You didn't tell them what you were doing. You
4 ran a ponzi scheme. Even though it didn't start out that
5 way, it soon became a ponzi scheme and you were the
6 operator of that scheme. The real estate scheme was a
7 fraud from the beginning. This pattern of deceitful
8 conduct continued for many months. You didn't voluntarily
9 cease. Circumstances prevented you from continuing.

10 I think a significant sentence of imprisonment
11 is also necessary to provide adequate deterrence to fraud
12 and to protect the public against further crimes on your
13 part.

14 For whatever reason, Mr. Rivernider, you remain
15 defiant. In your motion for relief from your guilty
16 pleas, you point the finger at everybody else. You accuse
17 these people seated across from you of egregious
18 prosecutorial misconduct and you accuse Agent West of
19 committing perjury in the grand jury. You assert that
20 Tosha Wade committed perjury. You present yourself as a
21 victim of misconduct of the most serious kind. You
22 suggest that the government was tapping your phone,
23 viewing your emails. You don't offer any indication that
24 you have looked within, that you have gauged the
25 consequences of your reckless criminal behavior.

1 So even though you're a first offender, I'm
2 concerned that there is a continuing risk of reoffense.

3 I will tell you, Mr. Rivernider, that I've had
4 fraud cases where the offense conduct was pretty egregious
5 but by the time of sentencing, the defendant was sincerely
6 remorseful. I've had cases where the defendant presented
7 himself at sentencing with humility, with a desire to
8 forthrightly acknowledge his wrongdoing and with a sincere
9 desire to make amends. You come here with defiance
10 accusing other people of wrongdoing, and it's a concern.

11 I want to impose a sentence that reflects the
12 record with regard to your offense conduct and its
13 consequences without over punishing you, a 47 year old
14 first offender who appears to me to suffer from a mental
15 or emotional disorder, one that I think did contribute to
16 your offense conduct.

17 I conclude that a sentence of 144 months is
18 necessary. I reach that decision after doing my best to
19 analyze each of the statutory factors in light of the
20 record before me. It's a long sentence, especially for
21 somebody who's never been incarcerated before, and my
22 heart does go out to you, Mr. Rivernider. My heart goes
23 out to your children. I look at the pictures that you
24 have given me and I see a loving father who is doing a
25 good job raising two very appealing youngsters, and it's

1 extremely unfortunate that we are in this position today,
2 but I would be shirking my responsibility if I imposed a
3 lesser sentence in my opinion.

4 I know it's not the end of it, Mr. Rivernider.
5 I know that you won't quit. I fully expect that as the
6 years go by I'll be continuing to attend to matters that
7 are entrusted to me in this case. If other cases are any
8 guide, this will go on and on, but hopefully we'll all
9 learn from it, and I do hope that you will get needed
10 treatment that will help you look within and do the hard
11 work of coming to understand your behavior.

12 So on all of these counts of conviction, I'm
13 sentencing you to the custody of the Bureau of Prisons for
14 a period of 144 months. On Counts One through Eight and
15 Ten through Thirteen you'll be on supervised release for a
16 period of three years, and you'll have to pay a special
17 assessment of \$100 on each of those counts.

18 With regard to Counts Nine and Fourteen through
19 Eighteen, you'll be on supervised release for a period of
20 five years, and you'll have to pay a special assessment of
21 \$100 on each of those counts.

22 Total sentence then is imprisonment for 144
23 months, supervised release for a period of five years, and
24 special assessments totalling \$1,800. All of these run
25 concurrent.

1 While on supervised release, which will be a
2 period of five years, you'll need to comply with all of
3 the mandatory and standard conditions of supervised
4 release which will be given to you in writing, and they
5 are very similar to the ones that have applied to you
6 through today. But you'll want to review them to be sure
7 that you understand what you need to do to be in
8 compliance.

9 In addition to those mandatory and standard
10 conditions, I'm imposing the following special conditions:

11 You will pay restitution at a rate of \$500 a
12 month. This amount can be adjusted based on your ability
13 to pay in an amount to be suggested by the probation
14 office and approved by the Court.

15 I am not going to enter a restitution order now,
16 but instead I'm going to leave that open and ask counsel
17 to work on a restitution order that satisfies legal
18 requirements.

19 I hope, Mr. Rivernider, that you're able to make
20 a dent in restitution, but given the amount of the
21 restitution and your age, I think we all realize that
22 you're unlikely to be able to make more than a dent in
23 that restitution obligation.

24 But in any case, I'm going to leave that open
25 for entry of a detailed order within the window of time

1 available to us, which I think is 90 days, but I could be
2 wrong about that.

3 In addition, Mr. Rivernider, you will incur no
4 new credit charges above \$250 without the prior permission
5 of the probation office, you'll provide the probation
6 office with access to requested financial information and
7 you will authorize the probation office to notify third
8 parties of risks associated with your history and
9 characteristics.

10 In addition, you will participate in a program
11 of mental health evaluation, counseling and treatment
12 under the direction of the probation office, and you'll
13 pay all or part of the costs of that based on your ability
14 to pay in an amount to be determined by the probation
15 office.

16 Furthermore, you will participate in 120 hours
17 of community service under the direction of the probation
18 office.

19 Finally, you will not possess a firearm or other
20 dangerous weapon.

21 No fine is imposed because of your obligation to
22 pay restitution.

23 I will recommend to the Bureau of Prisons that
24 you be designated to serve your term of incarceration at
25 the three facilities you have requested: FCI Miami, FCI

1 Coleman and FPC Pensacola, in that order of preference.

2 Is there anything that we have overlooked?

3 MR. DURHAM: I don't know if the Court wanted to
4 set something, at least a tentative schedule, for the
5 submission of the restitution order?

6 I know the parties can get together, but when
7 would the Court like that?

8 PROBATION OFFICER: May I approach, Your Honor?

9 THE COURT: Yes.

10 (Pause)

11 THE COURT: As a further special condition,
12 Mr. Rivernider, you will not have contact with any of the
13 victims in this case without the prior permission of the
14 probation office. I don't mean to suggest that you
15 shouldn't have contact with the victims. It may be that
16 in time that could be a benefit to all concerned, but
17 you're not to have contact with any victims without the
18 prior permission of the probation office.

19 As far as a schedule is concerned, do you have a
20 suggestion?

21 MR. DURHAM: Thirty days, Your Honor?

22 THE COURT: That's fine with me. So I'll look
23 for a proposed restitution order to be submitted in 30
24 days.

25 MR. BERGENN: Just for the FCI Miami, Your

1 Honor, if you could identify there is -- given the age and
2 the length of the sentence, there is an FCI Miami Prison
3 Camp at that facility that I would ask that be
4 recommended.

5 THE COURT: All right. Anything else?

6 MR. DURHAM: The question of bond, Your Honor.

7 THE COURT: Right.

8 MR. BERGENN: Oh, there is the appellate rights.

9 THE COURT: I'm sorry?

10 MR. BERGENN: The appellate rights.

11 THE COURT: Right.

12 With regard to a self surrender, I take it that
13 the defense requests an opportunity to self surrender,
14 Mr. Bergenn?

15 MR. BERGENN: Yes, Your Honor, as indicated
16 earlier.

17 THE COURT: Okay. Mr. Durham?

18 MR. DURHAM: Yes, Your Honor.

19 The government would rely on Section 3143(b).
20 Because obviously the circumstances now have changed.

21 Should the defendant elect to -- well, if he
22 doesn't appeal, then he goes to prison.

23 In any event, if he does elect to appeal, then
24 the standards that are applicable for a release of an
25 individual who's been found guilty and sentenced to a term

1 of prison is:

2 First that the Court must find by clear and
3 convincing evidence that the person's not likely to flee
4 or pose a danger to the safety of any other person or the
5 community if released;

6 Second, the appeal is not for purposes of delay
7 and raises a substantial question of law or fact likely to
8 result in reversal, an order for new trial or a sentence
9 that does not include a term of imprisonment or a reduced
10 sentence and term of imprisonment less than the total time
11 that it would take essentially to pursue the appeal.

12 I don't believe the defendant can satisfy those
13 circumstances.

14 As to not posing a danger, with respect to
15 flight, the community or safety of any person, I would
16 respectfully refer to the testimony that Your Honor heard
17 in this courtroom on December 4 and 5, particularly with
18 regard to Dr. Lewis's observations relating to depression
19 and associated matters.

20 My recollection is that Dr. Lewis testified the
21 defendant had in fact spoken about at times having
22 suicidal thoughts, and I believe that when we eventually
23 probed the question with Dr. Stoll, his notes in fact
24 reflected references to suicidal ideation, depression,
25 insomnia and other indications of depression.

1 So as to the first factor, I don't believe that
2 the current record would reflect a clear and -- or shows
3 clear and convincing evidence he wouldn't pose a danger.
4 But more importantly, I don't believe there's anything in
5 this record which would suggest that if the defendant were
6 to appeal, that there's something in the appeal that
7 likely to result in reversal or of a new trial or a
8 sentence that does not include a term of incarceration;
9 and accordingly, the government would request that bond
10 not be granted at this time.

11 THE COURT: Okay, thank you.

12 Mr. Bergenn?

13 MR. BERGENN: Your Honor, I think a few things.

14 First with respect to the mental health issue,
15 both of those mental health professionals who testified
16 identified his extraordinary loyalty to his children, and
17 how these ideations were immediately dismissed for that,
18 and so I don't believe that that is germane.

19 He has for three years complied with about as
20 onerous and copious a number of restrictions as can be
21 imposed without a single problem. So the risk of flight
22 and the danger to the community I think are nil. Nothing
23 has changed. He knew he was facing an extraordinary
24 amount of time and has honorably, loyally complied with
25 every requirement.

1 When it comes to the appeal issues, I believe in
2 light of the motion that was filed pro se, it will be
3 inappropriate for us as his counsel to really play a role
4 in that other than to discuss with him and file any such
5 notice, but I think it would be inappropriate -- given the
6 claims of ineffective assistance, it would be actually
7 unethical and a conflict for us to be the eyes that
8 address that and evaluate it.

9 So I am not speaking to the prospects of an
10 appeal. I don't think it's appropriate for me to address
11 that. Although ineffective assistance is not something
12 germane on direct appeal, it's nevertheless a conflict
13 given its explicit implications on collateral appeals.

14 But I think that it is standard for white collar
15 offenders, especially first offenders, middle age first
16 offenders with very detailed -- detailed isn't the right
17 word -- very specific and daily and regular
18 responsibilities with family, to be allowed to self
19 surrender.

20 I would not move for any enlargement beyond self
21 surrender at this time, and I don't think it would be
22 pertinent for me to do so.

23 THE COURT: Okay. Do I have legal authority in
24 these circumstances to permit self surrender?

25 MR. DURHAM: Your Honor, the statutory

1 language -- and this is again Section 3143(b), which is
2 entitled or captioned Release or Detention Pending Appeal
3 by the Defendant.

4 THE COURT: Right.

5 MR. DURHAM: Except as provided by paragraph
6 (2), the judicial officer shall order that a person who
7 has been found guilty of an offense and sentenced to a
8 term of imprisonment and who has filed an appeal or
9 petition for writ of certiorari be detained unless the
10 Court makes these findings.

11 So unless the Court is in the position where
12 it's going to find that there's some issue that's likely
13 to result in reversal on appeal and ordering a new trial
14 or a sentence that is not going to involve incarceration,
15 the language of the statute is fashioned as to make it a
16 requirement. I don't think it's discretionary with the
17 Court.

18 THE COURT: What I'm wondering is whether
19 there's a safety valve in effect that allows a Court to
20 allow somebody to self surrender when there are special
21 circumstances as would be the case if you had a defendant
22 who was the principal source of caretaking and support of
23 children and who needs to make arrangements for those
24 children in advance of his self surrender.

25 MR. DURHAM: I can't answer -- I don't know. We

1 can certainly research the issue. But obviously in these
2 circumstances, Mr. Rivernider is here and those children
3 are being cared for so --

4 MR. BERGENN: Yes. That's just because he came
5 here last night, Your Honor, and the expectation is he's
6 flying back tonight.

7 And, I confess, having had multiple experiences
8 with self surrender and had understood the Court's earlier
9 expressions and not understood and prepared myself for the
10 prospect that it would be other than that, and I apologize
11 about that. I was focused on so many other things to
12 focus on that I did not anticipate something that would be
13 beyond the Court's and my experience and contemplation.

14 PROBATION OFFICER: Your Honor, I know -- I'm
15 not an expert on the statutes on bond. I know there's a
16 statute that deals with exceptional circumstances of
17 certain offenses, like controlled substance offenses or
18 crimes of violence.

19 My experience is similar to all of us here. I
20 think that first offender, white collar defendants
21 typically get a self surrender date.

22 Perhaps the statute that Attorney Durham is
23 reading from which deals with release while pending
24 appeal, I think that's contemplating something in addition
25 to just the ordinary self surrender that's available to

1 the Court.

2 But again, I can't cite the specific statutory
3 reference. I'm just going from experience in court.

4 MR. BERGENN: The remarks of the probation
5 officer are in keeping with what I had understood that --
6 and I have in other circumstances had self surrender and
7 taken appeal to the Second Circuit, and upon the appeal
8 having to meet a burden. I recall specifically a case
9 where Judge Daly had denied the bond and then we went to
10 the Second Circuit and got bond, and I believe it was
11 pursuant to the statute that was just read.

12 In fact, I'm virtually certain it was pursuant
13 to that very standard, whether it was the identical
14 statute, that the Second Circuit mandated a release and
15 the appeal ultimately prevailed.

16 But I'm not, is what I was trying to say
17 earlier, maybe not so well, I don't think I'm the one to
18 articulate the appeal issues. My job I thought was to get
19 us through today and the self surrender was part of the
20 sentence and not part of the appeal.

21 And I think if the Court's self surrender date
22 is consistent with what the standard is for Bureau of
23 Prisons, which typically has to go through some limited
24 process just to pick the right spot, and then he promptly
25 go in, I think the appeal issue and any appeal bond would

1 be entirely separate, and I don't contemplate a role in
2 that.

3 THE COURT: Okay. I think Officer Lopez's
4 interpretation of the statute makes sense. We customarily
5 give defendants in cases like this an opportunity to self
6 surrender. The Court's authority to permit that is
7 unquestioned, and that is distinct from allowing somebody
8 to remain at liberty pending the outcome of an appeal.

9 Looking at the statute while by its terms it
10 literally seems to read as you have suggested, Mr. Durham,
11 in context it does seem to be concerned with release
12 pending appeal.

13 I would point out that it goes so far as to call
14 on the Court to estimate the expiration of a likely
15 reduced sentence following appeal.

16 It just seems to be concerned with a scenario in
17 which the person is asking to be allowed to continue on
18 bond pending the disposition of an appeal, which is not
19 what we're looking at here.

20 I think given Mr. Rivernider's track record
21 during this lengthy multi-year period, he is not likely to
22 flee.

23 I don't think that he poses a danger to other
24 people in the community. Whether he poses a danger to
25 himself, that's something that we do need to look at

1 considering what we have heard from the experts.

2 What about that, Mr. Rivernider?

3 THE DEFENDANT: No, sir, not a problem. It's
4 not an issue, sir.

5 THE COURT: I understand from Dr. Lewis that
6 whatever thoughts you might have had along that line had
7 been quelled by your sense of obligation to your children.

8 THE DEFENDANT: Your Honor, I have thoughts of
9 flying an airplane too, thoughts of everything. And, yes,
10 as Dr. Lewis said, I don't know if she said it here or
11 told me, but the chance of my kids goes up dramatically if
12 I do something like that. So it's not an issue, Your
13 Honor.

14 THE COURT: In these circumstances, consistent
15 with custom and practice, I am going to grant the
16 defendant's request for self surrender. In doing that,
17 Mr. Rivernider, I take into account the fact that a person
18 who is permitted to self surrender is more likely to be
19 designated to a minimum security facility, which I think
20 is appropriate in this case. I think if I were to order
21 you remanded right now, it would tend to complicate that,
22 and I think that would not be good.

23 I don't know what the Bureau of Prisons is going
24 to do. I have authority to recommend, but it's up to them
25 to decide. I hope that they'll grant the recommendation

1 and that your children will be able to visit you in an
2 appropriate place not far from home, and by permitting you
3 to self surrender, I think I facilitate that. So I weigh
4 that as well.

5 MR. DURHAM: Your Honor, does the Court intend
6 to impose some terms and conditions on his release at this
7 time pending his self surrender?

8 THE COURT: I would propose to set a date for
9 the self surrender and I would propose to continue
10 Mr. Rivernider on the same conditions that have applied to
11 date.

12 MR. BERGENN: He has a bracelet still, Your
13 Honor. He's electronically monitored still, Your Honor.

14 THE COURT: So it seems to have been sufficient
15 until now, and I would rely on Mr. Rivernider to continue
16 to comply.

17 Please understand, Mr. Rivernider, that if you
18 were to foolishly fail to comply, if you were to violate
19 the conditions of your bond at this point, your ability to
20 self surrender would be revoked and at that point you
21 would put at risk your ability to be designated to a
22 minimum security facility close to your kids, and I can't
23 imagine you'd want to do that. So that's what I would
24 propose to do.

25 How much time would you like?

1 MR. BERGENN: Really, Your Honor, I'm trying to
2 respect -- my experience is that it's really driven by the
3 amount of time that it takes Bureau of Prisons to process
4 this. And I honestly don't recall the standard amount of
5 time.

6 PROBATION OFFICER: I think it's still on and
7 about -- is it three to five weeks? I -- I know they're
8 doing it rather quickly these days but --

9 MR. BERGENN: My memory was 60 days from past
10 experiences, but it can also be faster.

11 So I just don't want to be in a position where
12 Bureau of Prisons does not get the opportunity to do
13 whatever has to be done. It's no picnic, the conditions
14 he's been on, it's not like it's going to be an advantage
15 to postpone it other than to make whatever arrangements he
16 has to make for his family.

17 MR. DURHAM: Your Honor, I don't think it takes
18 60 days to get designation. Maybe a couple weeks, but not
19 60 days.

20 THE COURT: No. It's my belief, based on what I
21 have learned, that the best course is to give the
22 defendant six weeks, which is sufficient time for the
23 Bureau of Prisons to make the designation. Here we're
24 dealing with the holiday period, and so I think six weeks
25 is best, and that brings us to January 29.

1 THE DEFENDANT: My daughter's birthday is
2 February 9th, Your Honor, just for the record. It will be
3 the last one, obviously.

4 MR. DURHAM: And this case has been pending,
5 Your Honor, since November of 2010, and the government's
6 been trying to get this case to go forward. And the
7 multiple victims in this case has been -- I would have no
8 objection to 30 days so we don't run too close to February
9 9 for a surrender date.

10 THE COURT: I'm going to stick with the 29th. I
11 think that's fair and reasonable. To be clear, we will
12 enter the written judgment probably tomorrow or the next
13 day and that will get this in the works. With Christmas
14 and New Year's coming along, I don't know what the Bureau
15 of Prisons is going to do, but I expect that they will get
16 this next week and I expect that they will have a
17 designation for you in January.

18 In the unlikely event that they don't have a
19 designation for you, then you need to self surrender to a
20 Bureau of Prisons facility as directed by the U.S.
21 Marshal. This raises the question, which U.S. Marshal?
22 The U.S. Marshal for Connecticut?

23 MR. BERGENN: I would ask, Your Honor -- I mean,
24 I got to believe that it's almost impossible to imagine,
25 but if it were to happen, I would ask it be in Florida.

1 THE COURT: Which district? Southern District
2 of Florida?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Then we'll leave it like this,
5 Mr. Rivernider: You are ordered to self surrender to the
6 facility designated by the Bureau of Prisons not later
7 than 11:00 in the morning on January 29, 2014. In the
8 absence of a designation by the Bureau of Prisons, you
9 will self surrender to a Bureau of Prisons facility as
10 directed by the U.S. Marshal for the Southern District of
11 Florida. Okay?

12 As a practical matter, I expect you're going to
13 get a designation. If you don't, then you need to be in
14 touch with the U.S. Marshal in the Southern District of
15 Florida and that will result, I believe, in the marshal
16 telling you to stand by and when the designation comes
17 through, he will tell you where you are to go and you need
18 to follow the marshal's directive.

19 The terms and conditions of your bond that have
20 applied to date will continue to apply until the date that
21 you self surrender to the Bureau of Prisons facility.

22 Again, it's very important that you continue to
23 comply, because you don't want to put at risk your ability
24 to self surrender. All right?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: If you have any questions about any
2 of this, please rely on Mr. Bergenn and Mr. Chase, and
3 I'll rely on them to remain involved to avoid any problems
4 with regard to this phase of it.

5 MR. BERGENN: Your Honor, something both of my
6 help here pointed out, that the order not to contact
7 victims, he actually has immediate family that are
8 victims. For example, he's living with his mother and he
9 has contact with his sister.

10 So I was wondering whether the order could be
11 modified with respect to immediate family?

12 THE COURT: Yes.

13 MR. BERGENN: I'm now speaking also of the
14 special release terms.

15 THE COURT: Yes. It's so modified. Okay?

16 With regard to your right to appeal,
17 Mr. Rivernider, you have a right to appeal your conviction
18 even though you pleaded guilty, and you have a right to
19 appeal the sentence if you think there's something wrong
20 with it.

21 Any appeal has to begin with the filing of a
22 notice of appeal. The notice has to be filed within two
23 weeks of the entry of the written judgment.

24 As I mentioned, I hope to enter the written
25 judgment in the next couple of days, so you would have two

1 weeks from then to file the notice of appeal.

2 The notice can be filed for free. It's a simple
3 statement. It just basically says "I hereby appeal." The
4 clerk's office will file it for you on request, but it
5 needs to be filed within that two-week period or you may
6 lose your right to appeal.

7 If you were to appeal, a lawyer could be
8 appointed to represent you on appeal. I think that
9 Mr. Bergenn has an obligation to continue to represent
10 you, and I'll rely on him to do that until he is relieved.

11 So if you have any questions about your right to
12 appeal, the need to file a notice of appeal or anything
13 along that line, please speak with Mr. Bergenn. All
14 right?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Does that cover everything that we
17 need to do?

18 MR. DURHAM: Yes, Your Honor.

19 We're still getting some materials in on this
20 restitution question, so I think we had said 30 days.
21 Would the Court -- is 50 days all right to get that in?

22 It probably doesn't affect the Court, but we
23 want to make sure we get as many of the documents as we
24 can to make it as accurate as possible.

25 THE MARSHAL: I think the statute provides for

1 up to 90 days before issuing a final order.

2 THE COURT: Why don't we say that the proposed
3 order will be submitted within 60 days, which will give us
4 a cushion of 30 days.

5 MR. DURHAM: Yes, Your Honor.

6 THE COURT: Okay?

7 Thank you for your cooperation.

8 MR. BERGENN: Thank you, Your Honor.

9 (Proceedings adjourned at 6:16 p.m.)

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C E R T I F I C A T E

In Re: U.S. vs. RIVERNIDER

I, Darlene A. Warner, RDR-CRR, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/s/ _____

DARLENE A. WARNER, RDR-CRR
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