

19-4337

In The
United States Court Of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,
Appellee,

v.

JEAN S. ERICKSON,
Defendant,
and

THOMAS J. CONNERTON,
Defendant – Appellant.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT (NEW HAVEN)
The Honorable Stefan R. Underhill, Case No. 0205-3: 3:17-cr-47-1**

**APPENDIX – VOLUME III OF III
(Pages 525-604)**

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

SENTENCING

10 | B E F O R E:

THE HONORABLE STEFAN R. UNDERHILL, U. S. D. J.

A P P E A R A N C E S :

FOR THE GOVERNMENT:

18 FOR THE DEFENDANT:

19 LAW OFFICE OF JONATHAN J. EINHORN
20 129 Whitney Avenue
21 New Haven, Connecticut 06510
22 BY: JONATHAN J. EINHORN, ESQ.

1 (Proceedings commenced at 10:14 a.m.)

2 THE COURT: Good morning. We're here for
3 sentencing in the matter of United States v. Thomas
4 Connerton. Could I have appearances, please.

5 MR. McGARRY: Good morning, Your Honor. Mike
6 McGarry from the U.S. Attorney's Office for the United
7 States of America. With me today at counsel table is
8 Assistant United States Attorney Lauren Clark and Special
9 Agent Steve West from the FBI.

10 Also in the courtroom today is Special Agent
11 Sean Darling from the IRS CID; a member of our office,
12 Victim Witness Coordinator Ines Cenatiempo; and a number
13 of victims who are here this morning.

14 THE COURT: Very well. Thank you.

15 MR. EINHORN: Good morning, Your Honor. Jon
16 Einhorn for the defendant, Thomas Connerton, who of course
17 is next to me at counsel table.

18 THE COURT: Very well. Michelle Murphy from the
19 U.S. Probation Office is also with us in court today.

20 On September 17, 2018, following a jury trial,
21 Mr. Connerton was found guilty of Counts 1 through 13, 16
22 through 31, 33 through 36, and 39 of a superseding
23 indictment charging him with wire fraud, mail fraud,
24 securities fraud, money laundering and tax evasion.

25 A presentence report was thereafter prepared for

1 the Court by the U.S. Probation Office. The report, as
2 well as the first addendum, are dated November 26, 2019.
3 I have reviewed that report, as well as the addendum, and
4 I have conferred with Ms. Murphy, who is not the principal
5 author of the PSR but is familiar with the case.

6 In addition, in preparation for sentencing
7 today, I've reviewed the government's memorandum in aid of
8 sentencing and the attachments thereto, a series of victim
9 impact statements that were provided following the filing
10 of the government's brief, the sentencing memorandum on
11 behalf of Mr. Connerton, and a recently received report of
12 psychological evaluation of Mr. Connerton.

13 Mr. Einhorn, have you and Mr. Connerton had a
14 chance to review the presentence report and the addendum
15 to that report?

16 MR. EINHORN: We have reviewed it, yes, Your
17 Honor.

18 THE COURT: All right. Do you have any --

19 MR. EINHORN: And I have given him copies also.

20 THE COURT: All right. And do you have any
21 objections to any of the factual statements set forth
22 there?

23 MR. EINHORN: We object to all of the factual
24 statements, and Mr. Connerton would -- well, I'm sorry, as
25 to the offense, as to the facts relating to the offense, I

1 think it's paragraphs 5 through 40, as Mr. Connerton
2 wishes to preserve his right to appeal and dispute the
3 jury verdict.

4 THE COURT: Well, okay. So you're making an
5 objection in order to preserve an appeal right.

6 MR. EINHORN: That's all, yes.

7 THE COURT: Okay. All right.

8 MR. EINHORN: Yes. And, of course, with regard
9 to -- Your Honor hasn't asked, but we will address,
10 obviously, the enhancements that probation discussed also.

11 THE COURT: Oh, yes, we'll talk about the
12 Guidelines in a minute.

13 Mr. McGarry, has the government had a chance to
14 review the presentence report?

15 MR. McGARRY: Yes, Your Honor.

16 THE COURT: Any objections? You had filed some
17 objections.

18 MR. McGARRY: We did. I believe those were
19 incorporated into the final version. I think the
20 probation officer correctly addressed our objections. I
21 believe that they agreed with us in one, and I think I
22 understand their reasoning for not agreeing with us on the
23 other.

24 The only maybe correction or adjustment that we
25 would suggest relates to the paragraph on restitution,

1 which I think the probation officer did an excellent job
2 in going through the indictment and pulling out the
3 restitution figures. However, we, with the help of our
4 financial analyst, put together a more complete
5 restitution attachment in our sentencing memo, both
6 Attachment A and buttressed by Attachment B, so we would
7 ask that related to paragraph 96 that the Court consider
8 incorporating Attachment A of our sentencing memo in place
9 of the initials listed there.

10 THE COURT: Well, I think restitution is
11 governed by statute, 18 U.S.C. Section 3663A.

12 MR. McGARRY: Correct.

13 THE COURT: And it permits restitution for those
14 other than victims of the offense of conviction when the
15 parties agree to that. The parties have not agreed here.

16 MR. McGARRY: Well, under 3663 and 3663A,
17 because Mr. Connerton was convicted of a scheme under wire
18 fraud, mail fraud, and I believe also securities fraud,
19 the law regarding restitution is that all victims of the
20 scheme are entitled to restitution, which would include
21 all of the victims identified in Attachment A.

22 THE COURT: Well, is there a conspiracy charge
23 in the superseding indictment?

24 MR. McGARRY: There was a money laundering
25 conspiracy. However, we did not press that and it was

1 withdrawn, I believe dismissed on the government's motion.
2 But more importantly, Your Honor, it doesn't have to be a
3 conspiracy if one is convicted of wire fraud, mail fraud,
4 and I believe securities fraud where there is a scheme.
5 And I'll see if we addressed it in our sentencing memo.
6 But I know definitively that all the victims within the
7 scheme are covered within an order or should be covered
8 within an order of restitution.

9 THE COURT: Okay. Well, I think what I should
10 do is leave the presentence report as it is. I'll order
11 restitution today in an amount to be determined, and I'll
12 give you a chance to brief the issue. It seems to me that
13 the proposed forfeiture order, which is broader than the
14 restitution order, is appropriate; but it's not clear to
15 me that the statute authorizes simply because there's a
16 claimed scheme. But we'll hear about that in the
17 briefing.

18 MR. McGARRY: Could I just have a minute, Your
19 Honor?

20 THE COURT: Sure.

21 MR. McGARRY: Just for the record, Your Honor,
22 directing your attention to page 33 of our brief --

23 THE COURT: Yes, I intend to order restitution
24 today, but I want the parties to brief the question of the
25 scope of that order.

1 MR. McGARRY: Sure. We can do that.

2 THE COURT: Great.

3 All right. I'm going to adopt the factual
4 statements of the presentence report as the findings of
5 fact of the Court in this case.

6 And I want to review now the potential penalties
7 that Mr. Connerton faces.

8 First, in terms of imprisonment on Counts 1
9 through 13 and 16 through 31, he faces a maximum term of
10 twenty years of imprisonment.

11 On Counts 33 through 36, a maximum of ten years.

12 And on Count 39, a maximum of five years.

13 Obviously, those terms can be run either
14 concurrently or consecutively.

15 With respect to supervised release, on Counts 1
16 through 13 and 16 through 31, 33 to 36, and 39, he faces
17 up to three years on supervised release. All of those
18 terms should be run concurrently.

19 He faces a fine on Counts 1 through 13 of
20 \$250,000 maximum; counts 16 through 31, \$5 million
21 maximum; Counts 33 through 36, \$250,000 maximum; and
22 Count 39, \$10,000 maximum.

23 As noted, there will be a restitution order
24 entered in this case. It will be in an amount to be
25 determined later. And there is a \$100 special assessment

1 on each count of conviction, for a total of \$3,400.

2 Any correction to that statement of the maximum
3 penalties in the case?

4 MR. McGARRY: No, Your Honor.

5 MR. EINHORN: No, Your Honor.

6 THE COURT: I do want to talk through the
7 Sentencing Guidelines with counsel. I will tell you I
8 think that the Guidelines as calculated in the presentence
9 report are correct, except in one respect. I do not
10 believe that Mr. Connerton should be subject to an
11 obstruction of justice enhancement. Although his
12 testimony at trial was demonstratively wrong, and although
13 the jury found him guilty, I believe that he believes the
14 truth of what he said; and, therefore, I don't think he
15 willfully obstructed justice.

16 If that change is made, then the calculation in
17 the presentence report would be reduced by two levels,
18 which would affect his Sentencing Guideline range.

19 MR. McGARRY: Your Honor, do you want to hear
20 any comment on that?

21 THE COURT: I do. Anybody who wants to argue
22 anything about the Sentencing Guidelines should do so now.

23 MR. McGARRY: In our sentencing memorandum, Your
24 Honor, we, I think, identified a number of specifics and
25 cited to the transcript where, again, Mr. Connerton made

1 statements that were not merely optimistic and not merely
2 forward-looking, but I believe were demonstrably false.

3 Again, flipping through our sentencing
4 memorandum, and the reason why I go back to it is because
5 I think it's easier for the Court to actually see
6 specifically what we're talking about. And, specifically,
7 Mr. Connerton testified, I believe at page 1993:

8 "...each investor or prospective investor was
9 given this book or this package, right?"

10 Connerton: "Every investor."

11 He went on to say: "The only investor that
12 didn't get it by my hand was an investor from Kansas, and
13 she was to receive her document from her sister, and a
14 friend..."

15 We were talking about the legal documents that
16 were prepared, the operating -- the subscription agreement
17 and the operating agreement.

18 THE COURT: Right.

19 MR. McGARRY: Mr. Henry, who happens to be here
20 today, he testified that he only received an operating
21 agreement. Ms. Maclay testified she didn't recall
22 receiving the private placement memorandum.

23 THE COURT: Right, did not recall.

24 MR. McGARRY: I understand.

25 THE COURT: Yes. And Ms. Hofer did not

1 recall -- she got it late. Ms. Ward did not recall.

2 Go ahead, you can make your record.

3 MR. McGARRY: Sure. I believe that Ms. Maclay
4 also testified she didn't receive the documents until a
5 year after she invested.

6 THE COURT: Okay, she received them, but she got
7 it a year later, right.

8 MR. McGARRY: Also, turning to the SEC
9 testimony, which I think we put in a footnote --

10 THE COURT: Right.

11 MR. McGARRY: -- Mr. Connerton testified on,
12 which is page 7 of I believe it's Government's
13 Exhibit 1100A:

14 "We have developed a technology which makes
15 disposable surgical and potentially examination gloves
16 highly resistant to cut, puncture and tear for the
17 prevention of infection."

18 That's just not true.

19 THE COURT: Well, he believed it to be true, so
20 it's not a willful lie. That's the problem.

21 MR. McGARRY: I understand your nuance, but I
22 don't believe that it can be said when he went in front of
23 the SEC that he could say they had developed a technology
24 that makes surgical and potentially examination gloves,
25 they hadn't developed it. They were still --

1 THE COURT: The statement was incorrect. It was
2 not willfully made in order to obstruct justice. He had
3 material; he believed it to be puncture and cut resistant.
4 He had testing that he believed sustained that viewpoint.
5 He did not, in my view -- whether he had a complete,
6 correct understanding of reality is another question, but
7 I do not believe he was intentionally lying.

8 MR. McGARRY: I understand the Court's ruling,
9 while we disagree.

10 Also in the transcript on page 2230, I believe
11 he testified that it was his intention to pay his taxes.
12 I find that to be directly incongruent with the jury
13 finding that he intentionally evaded taxes. So, again --

14 THE COURT: When somebody takes the stand and a
15 jury rejects their testimony --

16 MR. McGARRY: Sure.

17 THE COURT: -- that does not necessarily
18 constitute obstruction of justice. If you look at the
19 application notes under 3C1.1, they specifically say this
20 is not intended to restrict someone's constitutional right
21 to take the stand, and the fact that they have been found
22 guilty isn't enough to give rise to the obstruction
23 enhancement. And they give examples of what is and what
24 is not obstruction. I do not believe that Mr. Connerton
25 obstructed justice intentionally here.

1 MR. McGARRY: Thank you, Your Honor.

2 THE COURT: Yes.

3 MR. EINHORN: Nothing further. We agree with
4 Your Honor's ruling on that. Nothing further.

5 THE COURT: Okay. So I'm going to make the
6 following calculation of the Sentencing Guidelines:

7 The base offense level here is 7. When adjusted
8 for the amount of loss and number of victims, we come up
9 with basically -- and a sophisticated means -- we come up
10 with a base offense level of 27. One level is added
11 because he was convicted under 18 U.S.C. Section 1957.
12 Two levels are added because he supervised the criminal
13 activity of his co-defendant, which gives us a total
14 offense level -- or adjusted offense level of 30. There
15 are no acceptance points subtracted, so our total offense
16 level is 30. And Mr. Connerton is in Criminal History
17 Category I.

18 The resulting Sentencing Guideline range is 97
19 to 121 months of imprisonment; a fine range of 30,000 to
20 \$5 million; one to three years of supervised release;
21 restitution; and the \$3,400 in special assessments.

22 Any correction to that statement of the
23 Sentencing Guideline range based upon the calculation by
24 the Court? I understand the government disagrees with
25 that calculation.

1 MR. McGARRY: No, I think the calculation is
2 correct based on the Court's finding.

3 MR. EINHORN: Well, we obviously disagree with
4 the inclusion of enhancement for sophisticated means, if
5 Your Honor please.

6 THE COURT: Okay. I thought we were past that.
7 Go ahead and argue it now.

8 MR. EINHORN: I'm sorry.

9 THE COURT: When I turned to you and asked if
10 you had anything --

11 MR. EINHORN: And I thought we were going to do
12 it later on. I apologize.

13 THE COURT: This is the time, so make your
14 objections now.

15 MR. EINHORN: Sure. With regard to
16 sophisticated means, I think actually it was painfully
17 simple. It was very simply a procedure where
18 Mr. Connerton, without dispute, engaged securities
19 lawyers, he engaged a patent lawyer, and all toward
20 putting together a product that he hoped would sell and
21 make everyone a fortune, actually. And I feel that's very
22 simple.

23 THE COURT: So the enhancement for sophisticated
24 means is based principally on the money laundering and tax
25 counts. There was a great deal of activity where he was

1 shifting money around, he was pulling out cashier's
2 checks, he was avoiding any attempt to collect his taxes,
3 and he was money laundering, all of which was charged and
4 proven beyond a reasonable doubt to the jury.

5 I agree with you that the fraud was not
6 especially sophisticated. That's not the only convictions
7 that we have here. And the enhancement, I think, applies,
8 certainly applies to the money laundering and tax counts.

9 MR. EINHORN: I think on the tax counts, Your
10 Honor, the evidence at trial had to do specifically with
11 various bank accounts and how he lived, which was pretty
12 frugal, and so forth. I don't know that there was
13 evidence, in fact, that it was particularly sophisticated.
14 It seemed, again, fairly simple that -- how he lived.

15 THE COURT: Okay. But the counts here are
16 willful failure to pay taxes. And what the government
17 proved at trial was that Mr. Connerton went to extreme,
18 indeed sophisticated means, to avoid any levy by the IRS
19 to collect the taxes that he owed.

20 So the willfulness -- the willful evasion or
21 failure to pay taxes was committed through a series of
22 complex, kind of -- if he was just living frugally --

23 MR. EINHORN: Yes.

24 THE COURT: -- and letting the IRS do what they
25 wanted to, he would have had a lot of tax to pay, and they

1 would have collected. But he sought, through various
2 means, to avoid their tax levies. He used his company, he
3 used cashier's checks, he used Ms. Erickson's accounts.
4 There was a lot of effort here to avoid the IRS collecting
5 on his taxes.

6 MR. EINHORN: I think the IRS, keeping that in
7 context, at least with the portion of Mr. Connerton's
8 testimony that addressed that, he honestly believed that,
9 after a meeting with an IRS agent, that everything was put
10 on hold. He really -- he really thought that there
11 weren't going to be any efforts to collect his taxes.

12 THE COURT: And that's why at that point he kept
13 all the money in his personal account. Right? I'm being
14 sarcastic here.

15 MR. EINHORN: No, I know. I think, as I
16 understood it, there were certain expenses that were paid
17 for by the business, such as health insurance -- or health
18 products, sorry, and certainly he did use the company to
19 do that. But in terms of intentionally setting up methods
20 to hide his money, I think the evidence was fairly sparse
21 on that, as I recall. It's not like he put it, as we've
22 seen in other cases, out of state lines or -- it wasn't --
23 I don't think it was particularly --

24 THE COURT: What was the average balance in his
25 personal checking account? The average balance. Close to

1 zero.

2 MR. EINHORN: Yeah, it was pretty much zero,
3 yeah.

4 THE COURT: Zero, at all times, even though he
5 got, over the course of time, over \$2 million in for the
6 company, and he was paying himself, presumably, in some
7 way. I mean, he was, as he claimed, he was entitled to a
8 hundred thousand dollars a year. None of that flows
9 through his personal account, or none of it stayed in his
10 personal account for any period of time.

11 MR. EINHORN: Right.

12 THE COURT: As soon as it went in, he
13 immediately took it out.

14 MR. EINHORN: But he took it out, as I recall
15 the evidence from the extensive IRS analysis, he took it
16 out to actually make payments. So, in fact, putting that
17 in perspective with the government's argument about sort
18 of a Ponzi scheme, it went out again.

19 THE COURT: The simple way to pay it out is to
20 write a check. The sophisticated way to take it out is
21 not to write a check, but to take a cashier's check out,
22 made payable to yourself.

23 He went to great lengths to keep any material
24 sum of money in his personal checking account.

25 MR. EINHORN: I guess I --

1 THE COURT: We're just going to disagree about
2 this.

3 MR. EINHORN: Yes.

4 THE COURT: If there's anything else you want to
5 make a record of, go ahead.

6 MR. EINHORN: No, Your Honor. I think that was
7 basically the -- that was basically what I wanted to note
8 for the record, if Your Honor would --

9 THE COURT: All right.

10 MR. EINHORN: Thank you.

11 THE COURT: I'm going to adhere to the
12 Guidelines calculation and the Sentencing Guideline range
13 that I put on the record a moment ago.

14 That brings us to the question of, are there
15 victims here who wish to be heard? I would note that I
16 have read each of the victim statements that were provided
17 to me in advance, but I also want to permit anyone who is
18 here and wishes to speak to be heard.

19 Good morning. If you could stand right in
20 front. If you could start by giving us your name, please.

21 MS. CARLSON: My name is Margaret Carlson.

22 So my name is Margaret Carlson, and I'm the
23 victim of Thomas Connerton's Safety Technology fraud. The
24 loss of my 87,500 hard-earned money has affected not just
25 myself but my family. This money was earmarked for my

1 retirement, and the loss has caused me to delay my
2 retirement for five years or more. Additional money that
3 I was giving this -- giving to this fraud was to help pay
4 for my brother's four children's college education.

5 Thomas Connerton knew that. Thomas Connerton stole that
6 money that was to help pay for my nieces' and nephews'
7 college education.

8 The emotional toll is equally as great, as I no
9 longer trust anyone new I meet. I have lost confidence in
10 my decision-making, and I am fearful.

11 I'm afraid that when Thomas Connerton is
12 released, he will seek revenge. While he has been in
13 jail, he's attempted to contact me over a dozen times by
14 phone. He wrote me a 40-page letter that I turned over to
15 the FBI. In that letter he sought more money to help
16 finish the research and to help get him released.

17 I ask as part of this sentencing that he not be
18 allowed to contact me in any manner forever. Thank you.

19 THE COURT: Thank you.

20 MR. HENRY: Good morning. Jason Henry.

21 I'm a victim of Thomas Connerton. I invested in
22 Mr. Connerton's company, Safety Technologies. Technology
23 was very interesting to me, having worked in the
24 healthcare field and being stuck with a dirty needle
25 during my work as a phlebotomist. That experience was

1 very traumatic for me. Mr. Connerton's puncture-proof
2 glove struck home with me, and I knew every healthcare
3 worker should have the opportunity to use this technology
4 so they would not have to experience what I went through.

5 I provided Mr. Connerton with our family savings
6 to continue his negotiations and testing of the gloves.
7 Losing this money has had a major impact on my family.
8 There was a time that my marriage was strained due to
9 losing the money, and it has set us back in savings for
10 college for my four children, one who enters college next
11 year.

12 I work two jobs to try to recoup financial
13 stability for my family. I'm very reserved in my business
14 decisions due to this experience, which has adversely
15 affected my company's growth.

16 I trust the Court's decision in sentencing
17 Mr. Connerton. Thank you.

18 THE COURT: Thank you.

19 Just to be clear, any other victims to testify
20 today?

21 MR. McGARRY: I think that's all that are here
22 this morning, Your Honor.

23 THE COURT: Very well. Thank you.

24 Mr. Einhorn, let me hear from you with any
25 comment you'd like to make about an appropriate sentence.

1 Mr. Connerton, I will hear from you if you wish to make a
2 statement. You're not required to do so. And when the
3 two of you are done, I'll hear from Mr. McGarry.

4 MR. EINHORN: Thank you, Your Honor.

5 One of the interesting things I found about
6 appearing in federal court for sentencing, as opposed to
7 state court, is that the federal judges -- I know Your
8 Honor included -- have an interest in finding out why the
9 defendant did what he did. He's been found guilty,
10 obviously -- he didn't plead -- but he's been found
11 guilty, and how did this happen? And I'm fascinated by it
12 too. I mean, it's easier in a drug case when you're
13 looking at someone whose mother had him scavenging food
14 from a dumpster or did other horrible things. Tougher in
15 a case like this.

16 What was very illuminating to me -- although I
17 only got it a short time ago, obviously -- was the first
18 part, at least, of the psych eval. That was the testing
19 part that I submitted just this morning. I apologize for
20 the delay. As Your Honor knows, we were under sort of a
21 tight timetable because Mr. Connerton is incarcerated at
22 Wyatt, and so both Professor Baranoski and Dr. Cassidy had
23 to go to Wyatt or rely on the marshals to bring him here.
24 We never finished the second half of the report because
25 the storm prohibited the marshals from bringing Mr. Wyatt

1 here on --

2 THE COURT: Mr. Connerton.

3 MR. EINHORN: -- Mr. Connerton here on Tuesday.

4 But, nonetheless, Professor Baranoski submitted her
5 psychological report, which I think is interesting.

6 One of the things that just jumps out from the
7 report, based on the testing, is, first of all, he's not a
8 faker, which I think we all agree. The reports and the
9 interviews were legitimate. And she finds that he, in her
10 opinion, he really believed what he said, and actually I
11 thought that throughout the trial, too. Whether or not he
12 was right or wrong, whether or not he exaggerated, whether
13 or not some of the statements that the investors brought
14 home in testimony, he honestly believed what he said. He
15 thought that it was the truth.

16 And in terms of --

17 THE COURT: Well, she didn't go that far.

18 MR. EINHORN: Well, she didn't quite go that
19 far, but what she said is that rather than lying, he's
20 expressing what he believes is true.

21 THE COURT: To her.

22 MR. EINHORN: Right, to her, and that's what --
23 right.

24 THE COURT: And not to the victims.

25 MR. EINHORN: Not to the victims, yes.

1 THE COURT: She did not comment in any way on
2 whether they were defrauded or not.

3 MR. EINHORN: Right. I apologize. It was just
4 her impression of him, having interviewed him, and she
5 never interviewed any victims, of course.

6 THE COURT: Right. By the way, I'm going to,
7 unless you object, I'm going to have the report added to
8 the PSR as an addendum.

9 MR. EINHORN: Please. The only thing I would
10 suggest is that it be done under seal.

11 THE COURT: Well, the PSR is not available. It
12 will be available to the Bureau of Prisons.

13 MR. EINHORN: It will be available to the Bureau
14 of Prisons, yes.

15 THE COURT: But that's appropriate, I think.

16 MR. EINHORN: I think it would be because the
17 bottom line, I think, on her report and where I'm coming
18 from this morning is that I think Mr. Connerton needs
19 help. He needs help, and he probably doesn't want to hear
20 this, but he needs -- the probation report indicates that
21 mental health treatment is required or is suggested, and I
22 think she says the same thing.

23 In reading Professor Baranoski's report, she
24 talks about his coping mechanisms -- relying on fantasy,
25 avoidance and denial. She talks about his invention as a

1 redemption for past failures and a medium for establishing
2 his legacy and value. I guess by all standards we use
3 nowadays, he's just not that old. He's 67 years old. I
4 like to think of that, as a friend of mine says, in the
5 fourth quarter of the game. But, even so, no matter what
6 Your Honor does, he will be back at some point, I would
7 hope. And I think we're all, society in general, in a
8 better position if he can get some mental health treatment
9 and counseling. You know, if he didn't have some sort of
10 mental health issues, and I think she identifies some of
11 them -- she doesn't say he's not competent. I just want
12 to, by the way, make that clear. She doesn't even hint at
13 that. And I spoke with her after receiving the report
14 this morning. That's not her claim. But if he didn't
15 have that, I think it would be a different ballgame. But
16 to compare somebody who has mental health issues with
17 somebody who doesn't have mental health issues, I do think
18 there should be a sentence disparity there. I'm not
19 looking for a credit; I'm just saying would we want to
20 treat somebody like that the same as someone who is
21 normal.

22 THE COURT: Well, just in response to that
23 statement, the most serious of the conditions that she
24 identifies is depression. It's not uncommon for a
25 defendant facing sentencing to be depressed. And none of

1 the conditions that she identifies in her report undercut
2 the seriousness of what he did. In other words, he didn't
3 engage in this illegal activity because of alcohol use
4 disorder, or personality disorder, or a mild cognitive
5 disorder.

6 MR. EINHORN: No.

7 THE COURT: Or depression.

8 MR. EINHORN: No.

9 THE COURT: So --

10 MR. EINHORN: No, I just raise this as a
11 mitigating factor, that's all, not as a defense in the
12 case. Had we gone that way, which we couldn't have,
13 obviously it would have been a different -- a different
14 ballgame.

15 THE COURT: All right. But what is the argument
16 that he should be treated differently from someone who
17 doesn't have those conditions?

18 MR. EINHORN: Because his mental health issues
19 contributed to what he did. I never said they caused it.
20 I couldn't say that.

21 THE COURT: I'm not sure that they contributed.
22 I mean, the narcissistic behavior can probably be said to
23 have contributed, but I'm not sure that it's greatly
24 mitigating, frankly.

25 MR. EINHORN: I think going back to where I

1 started, actually when you're trying to ascertain why
2 somebody does what they did, you have to look at their
3 judgment. And I think in his case what was impairing his
4 judgment were these conditions.

5 I think it's pretty clear, having worked with
6 Mr. Connerton over several years, and Your Honor having
7 seen him on the witness stand, that his judgment probably
8 isn't what we'd expect of somebody in society today. And
9 is it because he's a criminal, or is it because he's got,
10 in addition to the jury finding, obviously, of guilt and
11 intent, is it also because he was suffering under these
12 mental issues? She talks about coping mechanisms,
13 defective coping mechanisms -- fantasy, avoidance, denial.
14 His personality structure may be partially related to
15 alcohol abuse, partially because of his past failures, she
16 says. But all those things, I think, contribute to
17 answering the question why he did this, what was it that
18 impaired his judgment. We'll probably never have an
19 accurate answer to that, although I think if we had the
20 second half of the report it might help. But I do think
21 that to some degree what brings us here is Mr. Connerton's
22 mental condition, not just the narcissism but also the
23 depression, also the past alcohol use, maybe what brought
24 him to some of the conversations with the investors, maybe
25 what brought him to select or be with certain investors.

1 What strikes me is that, too, is related to his mental
2 condition. So I raise this, and I think it is significant
3 that she does talk about his need for mental health
4 evaluation.

5 She also talks about his need for alcohol
6 treatment, which I have to say Mr. Connerton, having
7 raised that with him, he adamantly denies that he's an
8 alcoholic or has any history of alcoholism. And he'll
9 address Your Honor. I'm sure he'll mention that. But she
10 finds that that's an issue.

11 THE COURT: Well, it's something he has to deal
12 with, but it doesn't relate to the commission of these
13 crimes in any way. There's no suggestion anywhere that he
14 was drunk and therefore exaggerated the success of his
15 product over a period of years. He wasn't constantly
16 drunk. He wasn't drunk in dealing with any particular
17 investor.

18 MR. EINHORN: No, I agree with that. I don't
19 think there's any evidence, and if there were, we'd have
20 raised it differently.

21 THE COURT: Right. You're trying to get at why
22 he did what he did.

23 MR. EINHORN: Yes.

24 THE COURT: I think the simple answer is he was
25 greedy. He thought this was a way to hit a home run; to

1 buy a house in Watch Hill, Rhode Island; to have an
2 expensive engagement ring on the hand of a beautiful
3 woman; and to be a success in every way.

4 MR. EINHORN: With all due respect, I think
5 that's a simplistic way of looking at it because one of
6 the things that I identified at trial was that
7 Mr. Connerton and his investors, in at least one degree,
8 shared a common goal. They both wanted to be successful.
9 He did too. If he was just out to scam the investors --
10 and I don't mean to repeat my closing argument -- he
11 wouldn't have hired lawyers or testing companies or wasted
12 money on that. He would have taken a couple hundred
13 thousand dollars and ran. And instead, I think, rather
14 than just simply out for greed, I think he was out to be
15 successful for everyone. He didn't go about it right.
16 That is what the jury found. You know, I can't concede
17 that, but I think it was more that -- I think it was more
18 that because of the way he was built mentally, he didn't
19 see that the path he took probably wasn't going to lead
20 him to the house in Rhode Island and investors being
21 fantastically wealthy, and so forth.

22 I do think he honestly believed that this was
23 going to work, and that honest belief that he had I think
24 was partly rooted in the narcissism, maybe some of the
25 cognitive issues she talks about, and maybe just in who he

1 was. We're all different. But in his case, at least,
2 there's this psych analysis talking about it.

3 THE COURT: So I disagree with your conclusion
4 that he honestly believed what he told the investors. He
5 would leave a meeting with a testing company, or with a
6 glove company, and almost immediately materially
7 misrepresent what occurred at that meeting and the success
8 of the meeting, and this was an effort to keep the fraud
9 going. He had to convince people that the fraud -- the
10 product was going to do something, or he wouldn't get any
11 more money. And he convinced them with dramatic lies that
12 nobody could have believed were true.

13 MR. EINHORN: I think the difference, though,
14 between my evaluation and Your Honor's, even though Your
15 Honor's obviously is the important one, is that I look at
16 the end result a little differently. I think when Your
17 Honor talks about deceiving the investors out of greed, I
18 look at it as keeping the ball rolling, not so much that
19 he can run out and buy a house in Rhode Island or
20 something, but so much that he does ultimately convince
21 these big companies to buy it, and the technology is
22 ultimately totally completed. He would take issue with
23 that, he believes it was completed. But he was trying to
24 keep things rolling in an effort to make it a success.
25 And, in fact, I think he said when he testified that the

1 only reason things stopped was because the government put
2 the halt, put a halt on everything and arrested him -- or
3 indicted him, sorry.

4 So he truly in his heart believed that not only
5 would he profit from this but all the investors would
6 profit. That's no solace to them, I know, in the end,
7 but --

8 THE COURT: Well, I simply disagree.

9 MR. EINHORN: I know. Sorry.

10 THE COURT: I think the length of the scheme,
11 the dramatic nature of the lies that he told, the
12 frequency with which he told them, the frequency with
13 which he was inconsistent in the lies that he told, he
14 couldn't even come up with a consistent story to tell
15 every investor. He was all over the place. Sometimes it
16 was \$10 million, sometimes it was \$400 million. You know,
17 this was just somebody who was going to say whatever he
18 had to say to keep the fraud rolling.

19 MR. EINHORN: Switching gears, at least on my
20 part, for a second. In terms of the actual sentence in
21 this case, as Your Honor knows, he's served 33 months
22 already in custody, and I know even with the reduced
23 Guideline range that Your Honor just identified, he's
24 still looking at substantially more time as a Guideline
25 sentence. We've asked Your Honor to impose a

1 non-Guideline sentence. What I've asked for, obviously by
2 way of the sentencing memorandum, is that he be given a
3 sentence of time served and some substantial probation.

4 And I'm not trying to minimize anybody's pain --
5 certainly the investors, besides the ones who have
6 testified, have submitted letters -- but it's somewhat of
7 a small scheme in the scale of things that I've seen, at
8 least, and we've all seen in this District. And it seems
9 to me that the three years that he has already served is
10 an appropriate jail sentence for what he did or what the
11 jury found that he did.

12 If he serves a protracted sentence in jail,
13 first of all, I don't think he'll get the treatment that
14 he needs, the mental health treatment, which I do believe
15 he needs when he leaves the facility. I would ask for
16 that, for Your Honor to find that the 33 months is an
17 adequate period.

18 He has -- it's funny, the final thing I just
19 wanted to add is that I've never quite seen somebody --
20 and it's identified both by the PSR and in the psych
21 report -- who's so alone. He has no family support. You
22 know, regardless of whether or not they were alienated or
23 who alienated who, he's very alone, and I think that also
24 is part of his mental health portrait. You don't make
25 friends in jail. You don't make a family structure in

1 jail. I think he needs and society needs him to make new
2 friends and to formulate some sort of a structure, whether
3 or not it's with family or friends, and it's probably that
4 solitary nature of his existence that may have led him to
5 where he was. But I don't think I've ever quite seen a
6 report with anyone who has virtually no family support and
7 virtually no friends, although Beau -- there's Beau -- he
8 has one person who has stood by him. But I think jail is
9 not going to enhance his qualities in that regard. I hope
10 for the best for him and for all of us because, as I say,
11 ultimately he's back out in that regard.

12 So that's my request, Your Honor, in this
13 regard. If there's any other questions, I will address
14 them. Otherwise, I know Mr. Connerton would like the
15 opportunity to speak.

16 THE COURT: Very well.

17 MR. EINHORN: Thank you, Your Honor.

18 THE COURT: Mr. Connerton?

19 MR. EINHORN: Do you care if he does it from
20 there?

21 THE COURT: He can stay there.

22 THE DEFENDANT: Thank you, Your Honor. I have a
23 letter that I had intended on sending you that I'd like to
24 read in, if I may.

25 THE COURT: Sure.

1 THE DEFENDANT: Dear Judge Underhill: During
2 the hearing for the oral argument regarding the Motion 29
3 for acquittal, when you stated that it wasn't cut
4 resistant, they couldn't make gloves out of it, it tore my
5 heart up. Previous to that you stated that he hadn't done
6 the science because it kept failing tests. His glove
7 material kept failing tests. It wasn't any better in
8 tactile strength, the material kept -- than a regular
9 glove.

10 These statements were cause for me to go back
11 through the trial testimony to determine the facts that
12 could support such content. Although I reviewed the
13 extensive testimony for the preparation of the Motion 29,
14 mostly regarding the counts, I had not analyzed all the
15 testimony in detail. In response, I specifically reviewed
16 the testimony of Rob Simmonds of Intertek and Dave Schuck
17 of Killian Latex. My discovery led me to find that
18 Mr. Simmonds either made untruthful representations of the
19 material data or that substantial removal -- removal of
20 exculpatory evidence has occurred that is extremely
21 relevant to your ruling regarding the Motion 29.

22 In your ruling you stated that the government
23 alleged generally that I improperly misrepresented the
24 worth and success of Safety Tech and the glove technology
25 that I was developing. It stated that taking the evidence

1 in the light most favorable to the government, the jury
2 could have found that there was a scheme and intent to
3 defraud. I just want to put in one thing. I was not
4 aware of the SEC stipulation by Mr. Einhorn. I thought I
5 had made it very clear previous to going to trial that I
6 was not in favor of that; and, in fact, I believe that by
7 that stipulation being put in place, unbeknownst to me, I
8 was wondering why Mr. McGarry was objecting at certain
9 things I was trying to discuss, and now I know. I just
10 found this out recently. He feels he did it in my best
11 interest. I feel that it made a private offering a scheme
12 to defraud. It will be part of my appeal.

13 In light of these statements in your ruling, I
14 believe that the existing -- existence and success of the
15 science and material technology and the true facts
16 regarding those reasons for the funding capital raising
17 that I lawfully conducted by means of a 504, 506(d)
18 private offering rise to the most -- utmost importance in
19 this case. What I read these statements to mean is that
20 you believe that I misrepresented the success of ten years
21 of research and development that I, my deceased co-
22 inventor and consultants performed, the various scenarios
23 based upon the success or failure of that scientific
24 development process that is represented by testimony and
25 data presented at trial. These statements place paramount

1 importance that all data and testimony produced and
2 presented at trial be done truthfully and with full
3 disclosure and be spoken about by witnesses qualified and
4 knowledgeable to do so.

5 After obtaining recently a copy of the
6 September 18, 2019 hearing, I gained a full understanding
7 of your statements and perspective that was represented at
8 trial by witnesses. I am sure that given your exhaustive
9 schedule and your constant review of numerous cases that
10 you rely on your staff to provide you with the information
11 necessary to reach a decision. Now that I understand that
12 you feel that this case and your decision is based upon my
13 making misrepresentations to the scientific success and
14 the resulting valuations, I, as the technical person that
15 believes that accuracy of the data presented is of the --
16 is of the utmost importance, I present you with a letter
17 directed at the topic to the testing lab. I have a copy
18 of this letter and a copy of the letter to the testing
19 lab.

20 Given that the existence of a scheme hinges on
21 the representations of scientific success and the
22 resulting valuations, any inaccurate representations by
23 the government or its witnesses can be considered pivotal
24 to a ruling decision. I was assured by my attorney that
25 all the data gathered in my computer and in my office was

1 in evidence. We had certainly prepared the proposed
2 technical expert witness with data that was on my
3 computer. I was also denied by the government his ability
4 to testify regarding presenting the data to the jury and
5 the Court. His direction was to explain the data from an
6 overall standpoint but specifically the surgical glove
7 standards for tensile strength, elongation and modulus in
8 light of the added physical resistance values of cut,
9 puncture and tear. His role was to point out our
10 technology -- was to point out that our technology
11 provides for the total compliance with the glove
12 standards, while allowing for substantially enhanced cut
13 resistance -- resistance to cut, puncture and tear; in
14 short, to explain my -- in addition to my testimony, how I
15 dare say "we have it," backed up by repetitive,
16 reproducible data and sample generation.

17 We did not get the opportunity to illustrate our
18 technology in whole, but I believe that there is
19 sufficient testimony to prove the existence of enhanced
20 physical characteristics in cut and tear data.
21 Parentheses, Puncture cannot be illustrated because no
22 ASTM test exists that tests the puncture of a fixed
23 particle barrier against the surface of human skin. We
24 know it is significantly higher; we just don't know
25 exactly how much.

1 In addition to the letter to the testing lab, I
2 have included other items that are all in evidence with
3 the exception of a testimonial from one of the doctors on
4 my doctor product advisory team to the SEC. I am proud of
5 what he states. It is who I am.

6 In addition to Dr. Russi, Dave Schuck also
7 speaks to understand the R&D and failure and how it
8 defines success in a development project. There is also
9 testimony that verifies the gloves were made. The
10 investor update of 1/14 that is in evidence shows the
11 context in which an auction and a potential deposit was
12 expressed to the existing investors and only the existing
13 investors. It will also show that the next month after we
14 got the patent rejection, the investors were told. Most
15 importantly, it shows the valuations were done not to
16 solicit investors, but to prepare for the sale. The
17 valuations were, upon request, shared with some
18 prospective investors, which was dealt with by having
19 investors sign the document referred to in Count 6. The
20 document was signed by investors so that they recognized
21 that their investment return was based upon the sales
22 price and that we, in fact, were not sure what that sales
23 price would be. That's why the four scenarios.

24 I know that you and Mr. McGarry had a
25 conversation regarding that it was a signed document, and

1 when Mr. -- the gentleman here that spoke, before his
2 testimony, and that was the reason for that signature
3 document. That was actually something that was executed
4 when the investment documents were executed, and we did so
5 in order to try to compensate for the interest of
6 prospective investors about what the technology may be
7 worth. I made it clear to everyone that all the
8 valuations were based upon different inputs, which in some
9 cases were shown. A valuation, by definition, is an
10 estimate of worth and only an estimate. The validation of
11 any valuation can only occur at the realization of a sale.

12 We certainly felt based upon market size, input
13 variables and product margin information that some
14 valuations were more accurate than others. As shown in
15 both the 1/4 and 5/9/16 updates, accuracy is something
16 that we constantly attempted to define.

17 I had times where people would say to me, How do
18 you explain the valuation process, the inputs, things?
19 And I'd say -- this is where I want to clarify something,
20 if I may. You know, when somebody -- if you change those
21 variables, you can make it a billion dollars, you can make
22 it 600,000, you can make it 400,000. It's a question of
23 reality, what can be realistic based on the market size,
24 the knowledge of the products, and also the various uses.
25 I mean, the uses for our technology, I feel, are varied

1 and far.

2 With the facts that I have not been allowed to
3 show my data at trial as planned, I want to -- it to be
4 known that the science that occurred over ten years and
5 proof of concept that has occurred between 9/13 and 12/15
6 is the result of a defined, concerted effort. My
7 testimony and Dave Schuck's testimony state that clearly.
8 So as to what goals were and what was accomplished, that
9 is only my call and not his. He did not even know what
10 the particles were until he was told at trial. I keep
11 things secret. I protect, in the interest of myself and
12 my investors, the science. That's my responsibility. I
13 take that very seriously. Unfortunately, I found out that
14 I'm better at keeping a secret than I thought. But it is
15 a secret.

16 I had no intentions of the patent application,
17 even in its present form, being made public as it has
18 been. But thank God -- and I thank God -- that my final
19 filing didn't occur, and that my final trade secrets are
20 not in that application because they would be public
21 knowledge now. And that being not made public was a
22 business decision that was based on protecting my
23 investors and the technology. If this becomes public --
24 we're the only country in the world that doesn't publish
25 patent applications until they're awarded. There's a

1 reason for that. In the rest of the world they protect --
2 they're published immediately. That's why we don't file
3 all the foreign patent applications immediately because we
4 have 18 months to do that, after we file the United States
5 application. There's that breathing period.

6 And I also felt that I would encumber the
7 purchasers, the licensees, how far it works out, assignees
8 of the patent to pay for those foreign applications, and
9 that 18 months would give me the time to define them doing
10 so. So there's a lot of things that you do with patents
11 and application processes that are tactical and strategic.

12 My -- he did not even know what the particles
13 were until trial. He is my chemist and a good one. Any
14 project batches that have done -- have been done
15 subsequently by Dave, as directed by me in all component
16 variables, has resulted in exact desired anticipated
17 results, conformance to all ASTM standards, with high
18 particle loadings for resistance.

19 I have enclosed an email to me that is also in
20 evidence. As I attempted to explain in my testimony, this
21 email from Molynka that was spent -- sent to me after the
22 Molynka presentation to 50 investors and consultants in
23 March of 2013, during the limited disclosure period that
24 followed, illustrates the key to our success. It clearly
25 illustrates -- it clearly illustrates that for decades

1 Molynka, the leading manufacturer in surgical gloves in
2 the world, has failed in attempting to introduce particles
3 into a polymer for high physical resistance values. They
4 could never achieve acceptable modulus values. For two
5 and a half years, as I stated in my testimony, we achieved
6 acceptable modulus to the ASTM standards consistently.
7 This is not fantasy or horse and buggy whips. This is a
8 scientific reality that I was selling to the leading
9 surgical glove companies in the world before I was shut
10 down by the SEC in June of 2016 for a filing error. I
11 did -- I did what I said I would do in the PPM offering
12 document that is in evidence:

13 Page 3, Business of the Company. The company is
14 undertaking this offering to raise funds to assist in its
15 development and patenting of a material, (the material),
16 consisting of a polymer with enhanced properties obtained
17 by proprietary methods to be used in developing a highly
18 puncture-resistant material or medical examination glove
19 (the glove), and together with the material, (the
20 products). Funds from this offering may also be used for
21 the company's general business purposes, including
22 investigating and developing other new technologies for
23 commercialization, if successful.

24 We started off with nothing. It was the first
25 investors, mostly the investors that aren't included in

1 the timeframe of this action by the government that bought
2 the lottery ticket. They bought that ticket. We had
3 nothing. We started from scratch. We had some particles.
4 Scott, my co-inventor, was responsible for 13 patents,
5 putting hard particles into spun-bound polyester fibers
6 for cut resistance that are in the tires under your car
7 right now. He wanted to take that same hard particle
8 technology and apply it to surgical gloves. He was -- he
9 was a chemical engineer. I'm a structural engineer. This
10 was the convergence of two levels of engineering, two
11 expertises. He didn't even know what particles we were
12 going to use. He and I decided on the selection of the
13 particle for many reasons. And those people, those saints
14 that stepped up early on -- and, granted, they got
15 their -- they got an enhancement, they got an extra
16 quarter of a percent, but they were the -- they were the
17 true saints of this whole -- this whole effort. And I
18 think it's very clearly outlined in this offering
19 document, which Day Pitney provided to us and made for us.

20 THE COURT: Mr. Connerton --

21 THE DEFENDANT: What it was, it was based on
22 success.

23 THE COURT: Mr. Connerton --

24 THE DEFENDANT: Yes, sir.

25 THE COURT: The opportunity to speak at

1 sentencing is intended to allow you to address questions
2 of mitigation of the sentence. And I'm concerned that
3 what you're doing is addressing the merits of the
4 government's case, which at this point I can't do anything
5 about.

6 THE DEFENDANT: I'm not trying to change
7 anybody's mind. I think that if I'm allowed to finish
8 this, and I have a few other statements I'd like to make,
9 I just want to make it sure and clear that, you know, I --
10 I have, I believe, lived a truthful life, and I put all my
11 eggs in this basket to make this thing happen. This is my
12 retirement. This isn't just other people's retirement.
13 My interests run parallel with the investors. And -- and,
14 basically, that's what I've always understood.

15 You know, there's a -- there's a lot of people
16 that are still investors in this thing that no longer have
17 a -- have a husband. I was friends with those husbands.
18 I've lost three of my best male friends in the last seven
19 years to cancer. Two of them were significant investors
20 in this project. One was my technical backup. He died in
21 October of '16. If he was here, I would have probably
22 enjoyed bond, and there would be no question in anybody's
23 mind about the existence of this science. This science
24 exists. I have -- I have things that will bury the
25 testimony of Mr. Simmonds that come from this company,

1 that he came in and misrepresented to this Court. Your
2 decision, as I understand it -- and I've read it many
3 times -- is pivotal on the fact that I was out there
4 selling something that didn't exist. That is flatly not
5 true. He just stated it. That's not true. How can you
6 misprove science without misproving it scientifically?

7 When I came before you and spoke, Your Honor, in
8 November, I think it was the 30th, of 2017, I asked the
9 government before trial to get a materials scientist
10 involved and have them either validate or invalidate my
11 science, instead of flying people in from Hong Kong to
12 testify. To me that was better -- money better spent.
13 And any thought that I didn't have what I represented to
14 my investors, that I was in the middle of selling this
15 thing and stopped by the SEC, which amounted to nothing
16 more than a filing error, and I was ready to go back to
17 sale.

18 I'd like to ask you if I could finish. I'm not
19 trying to change anybody's mind. I feel that there's --
20 there's valid points here, and I'm concerned about the
21 perception that I've made misrepresentations that just
22 aren't true.

23 I've tried, I have it right here -- or I had it.
24 It fell off the table. I think I've tried -- may I?

25 I've tried, I believe, I've put it together,

1 I've tried seven times, attempts to explain the science,
2 seven times during this process and before the FBI got
3 involved. I even have letters that I sent to the
4 Department of Justice. I'm sure they have them. They
5 were provided to the Department of Justice in Hartford,
6 the gentleman was the civil representative of the -- of
7 the DOJ, explaining the science, explaining that we enjoy
8 high resistance to cut, puncture and tear, and it's no
9 harder for the surgeon to move his hand.

10 THE COURT: But what you're addressing has been
11 decided, and so there's nothing I can do about that. What
12 you need to focus on today, it's in your interest to focus
13 on what you want to say to me about what sentence you
14 ought to receive, because I was there for the trial. The
15 jury decided, I decided the post-trial motions, and now
16 the question is how should you be punished, how should you
17 be sentenced? And going back over your belief and your
18 arguments why you're not guilty doesn't move the ball
19 forward, and I would like to hear from you what you have
20 to say about the sentencing question, because the rest of
21 it, I'm happy to sit here and let you read it into the
22 record, but it has no bearing on what we're doing today.

23 THE DEFENDANT: Well, I can -- I mean, I'm just
24 kind of -- my thought is progressed based on the document,
25 what I was trying to say.

1 I can -- you know, some of the points, I mean
2 the points about, you know, I -- the points about, you
3 know, taking money based on falsities, I just -- I just
4 struggle with it. I have never in my business, personal
5 or professional life ever been accused of lying in my
6 entire life. That I can say. I have conducted myself
7 with the utmost of integrity in all those areas of my
8 life.

9 I cared for my children. I cared for my parents
10 when they were sick. And, I mean, even what they -- what
11 they have attempted to do in their -- in their brief, they
12 start questioning my -- the validity of my personal
13 relationships. When my parents died eight days apart in
14 2010, my mother of a broken heart, they were married 62
15 years, I wanted some part of that, some part of what they
16 had for the rest of my life. I wanted ten, twenty years
17 of a successful relationship with someone that cared about
18 me as much as that. They've attempted, in their document,
19 to put clouds on that. That's pure intent.

20 This was a private offering that was proceeding,
21 and I decided after 2010 that I could go online like
22 everyone does and try to engage in a relationship. I
23 didn't have time to go hang out at bars, nor did I care
24 to. And I went online, and that's been made a scheme.
25 This is -- this is the most ludicrous thing I've ever

1 heard of. I can tell you right now, I believe that those
2 women online contacted me, because I didn't go searching.
3 I just checked who was there in the morning for the most
4 part. I might have winked at them or something. That was
5 the biggest thing. But that wasn't the intent here. That
6 was me living my life trying to get someone in my life so
7 I wasn't alone.

8 I raised my sons alone. I cared for my parents
9 alone. My two siblings, my three siblings didn't --
10 little help at the end there by my one sister, but I had
11 no help. I was supporting my parents. My father and
12 mother both had dementia. My father hid his money. I
13 didn't even know what the will was until two weeks before
14 he passed away. I was told, because I had bought them a
15 house back in the 1980s, that I was going to be the only
16 child that benefited because I cared for them for 25 years
17 without my siblings. And was I surprised? Yeah. Was I
18 disappointed? Yes. Was I angry? No. I used it more as
19 an impetus for me to succeed at what I was doing, which
20 was this. And the fact is, we did succeed.

21 I mean, I read this thing over and over again.
22 Molynka Health, the biggest surgical glove company in the
23 world: We have done extensive research internally into
24 this field. We have in the past abandoned many of these
25 routes due to the increasing modulus observed with

1 particulate loading, leading to poor comfort levels and
2 the maximum modulus requirements imposed by ASTM D35 dash
3 and ISO 10-282 surgical glove standards.

4 They couldn't do, for decades, what we did in
5 one decade. First it was suspension separation. Then it
6 was achieving modulus. Then it was doing batch stability
7 and curative issues, because our glove failed on the form.

8 THE COURT: So, again --

9 THE DEFENDANT: We succeeded.

10 THE COURT: -- what would be helpful to me would
11 be to hear your comments with respect to an appropriate
12 sentence in the case.

13 THE DEFENDANT: Your Honor, if I could, I would
14 just like to address the money issue. I took less than
15 \$750,000 out of this company, considerably less than that.
16 I don't have my 2007 and 2008 financial bank statements,
17 but I can assure you that there is in excess of a hundred
18 thousand dollars that I put back into the company.

19 As far as the taking of that money, that was
20 over ten years. My -- my calculation has me at least at
21 \$643,000. And they know that. Ms. McCartney knows that
22 because she has all the bank statements. I can account
23 for, during the time of those bank statements she provided
24 me with, \$115,000 and change that I put back into the
25 company. I can tell you with the exception of a few,

1 every one of those certified bank checks -- that I never
2 paid for, by the way. That was part of my agreement with
3 People's Bank that I've had a longstanding relationship
4 with, until I was told to take my money out because the
5 SEC told me I had to, because the bank told me I had to
6 because they got subpoenaed by the SEC. And I can tell
7 you with the exception of one or two of those checks, they
8 all went back into the company. And the reason I took
9 those checks out -- and, by the way, they ended up being
10 taxable to me. I was going to go back and amend my
11 returns because it mostly happened in 2012, 2013, because
12 on the advice of my -- as it's stated in my 302, the
13 advice of my accountant said when you get it, take it out
14 and put it back in as you're moving along so if they hit
15 you, when we were arguing for the abatement on the late
16 filing fee for the company return, and that's what I was
17 doing. It wasn't anything other than what I was directed
18 by my accountant to do.

19 And if you look at my personal activities, even
20 during the time after Ms. Rinaldo came to my house, my
21 apartment, in 2011 and awarded me uncollectible based on
22 my health, I was just getting ready to go into surgery,
23 and the fact that I was going through this thing where my
24 parents both had just passed, that was a health issue.
25 She made me go to New Haven and present her with records,

1 records of how I was paying for the support of my family,
2 my parents. I gave her records, I believe, for the nurses
3 I paid for, for the food I bought. That was the money I
4 got back from my parents' estate, 60-some-odd thousand
5 dollars. I split it with my sister because she helped me
6 during my father's illness there at the end. And I did
7 that willingly. She helped me. I finally had some help.
8 I had some support.

9 And so, you know, there was no scheme of
10 sneaking around. I ran a very open company, open life. I
11 had two people in ten years ask me for financials, as they
12 could. They both left with financials. Mr. Portanova was
13 called subsequently to his receiving those financials and
14 asked if he wanted anything else. He just came at a time
15 when we were finishing up R&D, and we were getting ready
16 to go to point of sale, and it was during tax time. He
17 could have had the bank statements to the whole company if
18 he wanted. That wasn't an issue. He got a call. He
19 never returned my calls.

20 So we never cloaked around any thought of this
21 sophistication. That, to me, means I ran a legal and
22 well-run company. The bills of this company are paid,
23 with the exception of a discrepancy I have with a
24 consultant, which I was going to resolve when I sold it.
25 And he continued to work with me, even though we had that

1 discrepancy.

2 So the money issue, it has to be clear that --
3 that I put money back in, I mean. And I wasn't running
4 from the IRS. I called the IRS in the summer of 2016 to
5 get the balance of my taxes due, and when I got the
6 balance of my taxes due, I asked her if I still had a
7 status, and she said yes. I was still uncollectible in
8 the summer of 2016.

9 THE COURT: That defense was presented at trial.

10 THE DEFENDANT: Pardon me?

11 THE COURT: That defense was presented at trial.

12 THE DEFENDANT: But we didn't have any
13 documentation for it because they said they didn't have
14 it.

15 THE COURT: All right.

16 THE DEFENDANT: But my behavior, I lost millions
17 of dollars in the 1980s when the crash happened. CBT, my
18 bank, closed. It was -- it was a devastating time, as I'm
19 sure you remember. But I became a cash man after that. I
20 went to my bank one morning, and there was chains on the
21 door. And I called my wife and I said, "They're out of
22 business." And my behavior, even during the -- even
23 during the uncollectible time, didn't change how I managed
24 my -- I only used my checking account to pay my credit
25 cards and to put a little money in there in case I used my

1 debit card to have dinner or something. But, you know,
2 even this use of funds for personal reasons, I lived in
3 that office. I recalculated the square footage of my
4 office and residence in Westport where I had a love seat
5 and a bed. Five hundred square feet. I lived there for
6 three and a half years, focused on my work, focused on it.
7 That's one of the things that Dr. Heller talks about, was
8 my devotion, how he tested the gloves. So the money thing
9 really bothers me, any misrepresentation to that effect.

10 The ring, the first ring I paid for was out of
11 company money, out of my draw, which I was entitled to
12 under the -- under the operating agreement. So that
13 amount I gave you was my draw over ten years. It could
14 have been 1.2 million. This is in the bank statements.
15 This is easily documented. So I paid for that out of
16 that. But then what did I do? I took that cash and, in
17 effect, feathered it back into the company.

18 THE COURT: So --

19 THE DEFENDANT: The second ring was the
20 repayment of my -- my loan of the \$26,000 from my parents
21 that I put into the company.

22 THE COURT: Right. I think that defense was
23 also heard at trial. So what I'm looking for now is any
24 comments you want to make about an appropriate sentence in
25 this case.

1 THE DEFENDANT: All I want to say, I guess, is
2 that even things like, you know, substantial offers,
3 Ansell and Kimberly-Clark were here for two or three days.
4 They met with my attorney, myself and Dr. Russi in the
5 office in New Haven of Day Pitney.

6 MR. EINHORN: May I have just a moment, Your
7 Honor?

8 THE DEFENDANT: Okay. I guess I don't know what
9 to say about sentencing because I've never been sentenced.
10 My focus was on selling this thing. I was -- I was shut
11 down by the government. During the end of the SEC thing,
12 I had investors offering me money for the patent and get
13 the K-1s out. All the companies I spoke with were eager
14 to resume activities. I have letters from them stating
15 that, that if you settle the SEC matter -- which we did.
16 We settled it with \$160,000 civil penalty and \$1.7 million
17 in restitution because I was told by my counsel,
18 Mr. Klein, that I had to take responsibility for the
19 clerical error by Wiggin & Dana on the filing. And it was
20 a substantial error, not only in -- it should have been a
21 505, they filed a 506. It should have been for an
22 additional 4 million in capital raised. The paralegal
23 made it \$350,000.

24 MR. EINHORN: Could I have just another moment,
25 Your Honor?

1 THE DEFENDANT: Your Honor, I want to make
2 restitution. I want to resume what I was doing. You
3 know, one other thing about their memorandum in aiding
4 sentencing is they say that there's activities that I'm
5 involved with, even from Wyatt, that are suspect, and they
6 go back to the exhibits. One is a letter to my
7 university, talking about having them send a
8 representative to Wyatt so that I can talk about gifting
9 them money out of my estate and so that they will provide
10 me with a person from the materials engineering department
11 so that once and for all I can get an incredible
12 validation scientifically by an independent source of my
13 technology, which I would use in the future in this case.

14 The second one is a letter to a girl that
15 contacted me from Cleveland, which I recontacted with
16 after I was dating someone else, asking her -- because she
17 told me her business was getting approvals from the FDA
18 for -- for devices. I'm asking her to give me her
19 information, and she was -- she was flattered at that. So
20 I don't -- there's nothing suspect here. I just want to
21 get out and resume my activities. I want to get my
22 technology sold. I've never been incarcerated in my life.
23 I think it's a terrible waste of a man's life. I don't
24 believe there's been any financial misallocation of funds
25 here, according to the operating agreement.

1 I would like to, based on the fact that I was
2 engaged in what I consider ultimate good faith effort to
3 sell it, to bring the investors their money, to get my
4 retirement -- this is it, this is my retirement -- and
5 another device that they spoke wrongly about. I'm asking
6 for probation, Your Honor. I'm asking that I get allowed
7 to get out and to function, and under supervision. I have
8 never been in trouble with the law. I don't do that. I
9 got a speeding ticket within the last ten years, and I
10 took Ambien, and I woke up in the police station being
11 processed and asked them where I was.

12 And I have tried to conduct myself in the most
13 honorable way. I have no intention of harming myself or
14 anyone else. To harm my investors would be to harm
15 myself. That's something I would never intend on doing.
16 I've never hurt anyone.

17 During the time when I -- when I lost my license
18 for the incident with the car, I let a homeless man live
19 in my car for two years. For my church in Guilford, I
20 mentored -- I was in the mentoring program at the Cheshire
21 facility for prisoners. I'm a devoted-to-the-community
22 man. I've become alone. My children don't know what to
23 make of this. My oldest son and I have had differences
24 based on his substance abuse issues. My middle son and I
25 communicated during this, but it became so difficult we

1 couldn't communicate anymore. Plus he had his -- his
2 other parent affecting him on the other side. My youngest
3 son, he's a tough -- he's a tough one. I paid for his
4 cellphone up until before this happened. He wouldn't
5 clear his messages. He doesn't pick up. I stopped
6 paying. Unfortunately, that behavior has continued.

7 But I want to get out and I want to be part of
8 the community again. I have a place to go. And I would
9 like to become productive again. I would like to make
10 restitution. The only way I can do that and get this
11 patent done is to get out.

12 And I just -- I've learned a lot about myself
13 during my incarceration. I've learned a lot about
14 tolerance. I've learned a lot about humility. And I've
15 learned what a hard bed is. And I would like to ask you,
16 based on the fact that I've never been in trouble with the
17 law, and I can substantiate my science, and financially
18 I've conducted myself responsibly, that was one of the
19 things I made with Kelly Rinaldo about the IRS, how much
20 support I gave my parents for four years. That can be
21 substantiated. I'd buy them groceries. I'm providing
22 drivers. They were two elderly people with dementia that
23 loved each other, that wouldn't leave their house. They
24 have rights. I never knew that. They wouldn't leave.
25 Many nights, days, I'd be going back and forth from

1 Madison to Cheshire to care for them, to tuck them in.
2 And I can only say that I don't think that -- that me
3 being incarcerated and not bringing this thing to market,
4 not only to make the investors whole but to bring it to
5 the people, to the medical profession, to healthcare
6 workers. I brought this. It was a thing that was in the
7 *USA Today*. It's about the Labs for Functional Textiles
8 and Protective Clothing at Iowa State University, talking
9 about how they work for gear for basic firefighters,
10 heavy-duty gloves intended to protect against searing heat
11 and sharp objects and, as a result, too cumbersome for
12 maneuverability -- as a result are too cumbersome for
13 maneuverability. The current gloves are not really
14 designed to meet the basic elements of protection, comfort
15 and functionality. Professor Song told the *Cedar Rapids*
16 *Gazette* --

17 THE COURT: Mr. Connerton, the potential market
18 for the material is not --

19 THE DEFENDANT: The science, the science. That
20 was my goal, though, to bring it --

21 THE COURT: I understand. But really we're
22 here -- I take it you've completed your statement about
23 what you want to say about sentencing today? Is that
24 right?

25 THE DEFENDANT: I -- I believe I've made my

1 statement.

2 THE COURT: All right. Thank you.

3 Mr. Einhorn, anything further?

4 MR. EINHORN: No, Your Honor. Thank you.

5 THE COURT: All right. Mr. McGarry?

6 MR. McGARRY: Yes, Your Honor.

7 THE COURT: I've read your brief, and I
8 understand your arguments.

9 MR. McGARRY: Thank you, Your Honor.

10 I think I want to start with something that
11 Mr. Connerton said towards the end of his statement where
12 he said he never hurt anyone, and I think, Your Honor, the
13 record in this case is clear that that is simply not true.
14 Mr. Connerton sought out investors and potential investors
15 through personal contacts, through people and women he met
16 on Match.com. He then used those personal contacts that
17 he met, both women he dated, women he lived with, in a
18 couple of instances women that he was engaged to, and then
19 their friends and their family, and he took money from
20 them, and he did hurt them. And he took people's -- as we
21 heard today -- he took people's children's college fund.
22 He took people's retirement, people who were at a stage in
23 life where they're never going to be able to put that
24 amount of money back. We heard from Mr. Henry just today
25 that he's working two jobs. We had people come and

1 testify. I think Lisa Manganiello testified that he told
2 her that they were going to make money within 30 or 60
3 days, and she'd be able to put the money back into her
4 IRA. She took the money out of the IRA. She suffered
5 penalties. So he clearly hurt people. He hurt them
6 financially.

7 He also caused people to suffer nonpecuniary
8 harm, and we heard some of that today, about people who
9 trusted him, people who felt violated. I think
10 Ms. Carlson testified today that she has the inability to
11 trust people. I mean, that is a real impact that these
12 cases have, Your Honor. And, you know, I know that the
13 Court is not a big fan of the Sentencing Guidelines
14 because I know the Court finds that there maybe are things
15 that aren't covered within the Sentencing Guidelines, but
16 that is something that is clearly not covered in the
17 Sentencing Guidelines. We don't have a chart for how much
18 do people feel abused, how much do they feel violated, how
19 harmful is it to Cindy Hofer, you know, and the other --
20 the other women who were engaged.

21 I remember at one point in the trial, Your
22 Honor, there was an objection from Mr. Einhorn that we've
23 seen this diamond ring already and somehow the government
24 is just bringing it back. No. It was a different diamond
25 ring, to a different woman, who was told the same lies,

1 and who was engaged to Mr. Connerton, and who willingly
2 handed over money to him. And it's that type of
3 deviousness that is not covered in the Sentencing
4 Guidelines. As I said, we don't have a chart. We don't
5 have a number.

6 And we argued, Your Honor -- and I appreciate
7 the hard work of the probation office, and I think
8 probably they're right. I mean, I do think they're right.
9 You look at vulnerable victims, and you look at what is
10 classically considered a vulnerable victim, whether it's
11 defrauding cancer patients because you've told them you've
12 got a cure for cancer. Well, to some extent Mr. Henry was
13 a victim of a stick, of a dirty needle. He was told, Oh,
14 I've got an invention for that. His defenses were down.
15 He wanted to believe it. He was defrauded. But what's
16 not included in vulnerable victims is the way that
17 Mr. Connerton went online, the way that he targeted a
18 certain profile of person, and the way that he abused
19 their trust, and he stole the money. I think the nature
20 of the way that he went around and targeted his victims
21 makes this more egregious. If this were -- and we put
22 this in our brief, so I won't belabor it, but the way that
23 he went around and looked at a particular profile of
24 person, met them on Match.com, found out whether they
25 lived in Fairfield or Ridgefield; asked, you know, with

1 one woman asked for a picture of her house so that he
2 could, in essence, verify her bona fides as having a lot
3 of money, and then dating them, and then living with a
4 number of them, and then stealing their money. That, to
5 me, is much more devious, much more egregious than someone
6 putting out a generic "invest now," someone putting out a
7 false email blast or just a false, you know, something
8 through a website, invest in this idea, the fact that he's
9 using that abuse of trust. And, again, there is abuse of
10 trust in the Guidelines, but it doesn't fit this kind of
11 thing. It's not public or private trust like an
12 accountant or a bookkeeper. It's just the very nature of
13 the way that he went about stealing money from these
14 people.

15 And then the way, again -- and we listened to
16 Mr. Connerton for an extended period of time -- there's no
17 contrition. There's no remorse. There's no recognition
18 or acknowledgment that he harmed a lot of people. And it
19 just -- it just really, I think, goes not just to the
20 seriousness of the offense but to the content of his
21 character, and the poor content of his character at that,
22 Your Honor, that he can't even stand here today -- and I
23 understand that he is protecting his appeal rights, and I
24 understand that. But one can protect your appeal rights
25 and still show an ounce of contrition or remorse for the

1 fact that people lost money. And we see none of that
2 today. We saw none of that during the trial.

3 And the fact that he says, you know, I want to
4 resume what I am doing, I want to -- I want to get out now
5 and continue my activities, I submit to you, Your Honor --
6 and we mentioned this in our brief. I think it's 3553 --
7 I know it's 3553(a), subsection -- I circled it, I wrote
8 it down, but the subsection on protecting the public. We
9 don't talk about it that much in white collar cases. We
10 talk about that in violent crime cases. We talk about it
11 in gang cases and gun cases and drug cases. This is
12 actually, I think, one of the rare white collar cases
13 where you need to consider separating Mr. Connerton from
14 the public for an extended period of time because, by his
15 own words today, if he's going to get out, he's going to
16 resume his activities. And his activities are fraud. His
17 activities are stealing money from people. And his
18 activities hurt people.

19 And I know that you've read the victim witness
20 letters, I think there are about eight or so of them, but
21 I want to read one of them, Your Honor, and it's from, I
22 think, Bob and Carol Settgast. This is not somebody who
23 dated Mr. Connerton, but they were introduced through a
24 friend. And I think we attached this to our sentencing
25 memo. But she writes:

1 "The greatest toll" -- this is written in the
2 words as if to Mr. Connerton, but I'm reading it to the
3 Court:

4 "The greatest toll your actions have imparted is
5 the damage to the trust and relationship. How does it
6 feel to usher your spouse into financial uncertainty? How
7 does it feel to realize your adult children scrutinize
8 your wisdom and financial planning and how those decisions
9 will have damaging ramifications to the whole family? How
10 does it feel to step into an investment with your own dear
11 sister and her best friend and discover a trusted high
12 school pal" -- that's Mr. Connerton -- "duped them? How
13 does it feel to step up and challenge the integrity of
14 such relationships? Stepping out with courage to say,
15 'Are you sure about this guy, Tom Connerton, because he is
16 not treating me professionally. He will not send proper
17 documents after numerous requests. He's rude. His
18 impetuous nature is cloaked in faux humor. He does not
19 follow through with his word. He's dragging his feet by
20 giving excuses. His actions do not match his words. He
21 is either a terrible businessman or a con."

22 "Mr. Connerton," she writes, "your name says it
23 all; you are a con. You have arrogantly, knowingly and
24 deceitfully provided my family and me with immeasurable
25 loss and pain."

1 And that's, you know, perhaps one of the most
2 important things I want to convey to the Court or
3 underscore for the Court, is it's not just the financial.
4 Yes, this is a serious crime. We see in Attachment A and
5 B that there were approximately 70 victims who lost
6 approximately \$2.2 million. That, by any measure, is a
7 serious crime. But the extent to which they feel
8 additionally violated, the fact that -- the extent to
9 which there's, you know, quoting the Southern District,
10 there's an extra measure of criminal depravity; the fact
11 that, you know, people he knew, who trusted him, and then
12 he dated them and lived with them, and I think the Court
13 should consider this specific targeting of people who were
14 in some sense particularly susceptible to his fraud as
15 something that's not covered in the Guidelines.

16 Another point I want to make, Your Honor,
17 Mr. Einhorn got up and spent a lot of time with the
18 psychological evaluation that I believe you're going to
19 make part of the record, but I do want to point out a few
20 things in the psychological evaluation. And I know the
21 Court has read it. The doctor didn't speak with any
22 victims, with any witnesses, didn't look at the
23 transcript, didn't look at the evidence, spoke with
24 Mr. Connerton for about a total of seven hours. I'd
25 submit, Your Honor, you've spoken to Mr. Connerton and

1 listened to Mr. Connerton for probably more than that,
2 given the arraignment in this case, the hearings in this
3 case, the trial testimony and here today.

4 The doctor went on to point out that they
5 elaborated on the information about Mr. Connerton's
6 brother not because it's relevant, but because the
7 information demonstrates Mr. Connerton's style of
8 communication that leads to confusion. He tends to report
9 details out of context, incomplete information and
10 exaggeration of detail.

11 THE COURT: It's not necessary to read the
12 report into the record. I've read the report; and as you
13 heard, I had colloquy with Mr. Einhorn about the report.

14 MR. McGARRY: Sure. Let me point out one thing
15 that's not in the report, Your Honor, just merging some of
16 the evidence. Mr. Connerton reported to the doctor that
17 aside from those relationships, he's socially isolated,
18 and he's talking about his history. Your Honor, he dated,
19 by our count just on the back of the envelope, Jean
20 Erickson, Margaret Carlson, Lisa Manganiello, Lori Ward,
21 Stacy Maclay, Faith Whitehead, Deborah Hensler and Cindy
22 Hofer, two of which he was engaged to. He wasn't socially
23 isolated. He was using the Internet to meet people, and
24 he was using those personal contacts to enrich himself.

25 Even when talking to the doctor, just like we

1 saw today, he still calls it his glove project. And he
2 goes through -- I mean, she points to the fact about his
3 narcissism, which I know the Court is aware of. But,
4 again, the fact that he continues to insist that this is a
5 viable project. His financial statement indicates he has
6 little, if any, money left, but he still continues to say
7 he's going to pay restitution in the same breath that we
8 show the Court a letter where he's telling WPI he wants to
9 give them his estate. Again, he's contradicting himself.
10 He's not going to make restitution and also give his
11 estate to Worcester Polytech. That doesn't make any
12 sense.

13 Again, Your Honor, this -- and just briefly, I
14 would be remiss if I didn't mention the tax count, which
15 the Court spent some time talking about. I know you
16 haven't forgotten about it. I mean, the tax offense in
17 this case went on for years, I believe starting in 2003.
18 From 2003 to 2015, there were only involuntary payments
19 received as a levy. Looking at the conduct, the fact that
20 he was getting money from criminal activity, the tax
21 Guidelines alone put this Guideline range in 63 to 78
22 months. And we know that there's a need for general and
23 specific deterrence.

24 THE COURT: Well, just to be clear, the
25 statutory maximum on the tax count I think is five years.

1 MR. McGARRY: That is true, but we know that you
2 take, for accuracy in sentencing, that you take the
3 Guidelines and then you apply them across.

4 THE COURT: I understand very well what's going
5 on here.

6 MR. McGARRY: I guess you're saying that my
7 metaphor or my reference doesn't fully hold weight because
8 the tax Guidelines alone would be capped out at five
9 years.

10 THE COURT: Well, you said the Guidelines were
11 over five years. The Guidelines provide, when there's a
12 statutory maximum, that you come back to the maximum. So
13 I'm just correcting the record.

14 MR. McGARRY: I appreciate that, Your Honor.

15 THE COURT: I'm not relying on a
16 misrepresentation about what the Guidelines for the tax
17 counts would be.

18 MR. McGARRY: Sure. But if one were to take,
19 for instance, one money laundering count and the tax
20 count --

21 THE COURT: I get it.

22 MR. McGARRY: Okay.

23 THE COURT: I get it.

24 MR. McGARRY: Fair enough.

25 THE COURT: We've been here two hours now. Is

1 there anything else that the government needs to say in
2 its sentencing presentation?

3 MR. McGARRY: I guess the thing that I would end
4 with, Your Honor, is that I believe, and I think the
5 evidence has shown, that there is value in general
6 deterrence in white collar cases more than other cases. I
7 think the Court, as we cited in our brief, the Second
8 Circuit has found that in a number of cases, including
9 *Cutler*, which is a tax case. So I think that there needs
10 to be a significant sentence for Mr. Connerton in tax
11 cases, in fraud cases.

12 I think there also needs to be specific
13 deterrence as to Mr. Connerton because he does need to be
14 specifically deterred. And there also needs to be
15 protection of the public.

16 I think those are the three biggest factors,
17 other than the seriousness of the offense and the history
18 and characteristics of Mr. Connerton. You know, I look at
19 the numbers, Your Honor, and I think regardless of the
20 number of the Sentencing Guidelines, I mean, I look at all
21 of his conduct, I look at the years of his conduct, I
22 don't think that a sentence of approximately ten years,
23 120 months, or within the Guideline range that you
24 calculated, I don't think that is greater than necessary.
25 I think -- and perhaps we might disagree on how long a

1 sentence needs to be for someone of Mr. Connerton's age,
2 but I think given what he said today, that he wants to
3 resume his activities, I think a sentence within the
4 adjusted Guideline range that you calculated, not because
5 it's a Guideline sentence but because of who he is and
6 what he did, would be an appropriate sentence and no
7 greater than necessary.

8 And before I forget, I do also want to mention
9 we had filed, for housekeeping matters, a preliminary
10 order of forfeiture related to money and the diamond
11 rings, and since we're continuing for restitution, we'll
12 also file a subsequent motion for a final order of
13 forfeiture as it relates to Mr. Connerton.

14 THE COURT: On that point, there may be a
15 miscitation in your motion to 18 U.S.C. Section 981, which
16 I believe is civil forfeiture. 18 U.S.C. 982 is criminal.
17 But you can --

18 MR. McGARRY: Yes, I think under *Jafari*, Your
19 Honor --

20 THE COURT: We'll deal with that. We'll take
21 up -- as you suggested, we'll receive an additional
22 motion. I do intend to order forfeiture in this case. I
23 do intend to enter restitution in this case. The amounts
24 of restitution and forfeiture will be determined at a
25 later proceeding, unless there's an agreement by counsel.

1 MR. McGARRY: Okay.

2 THE COURT: Thank you.

3 MR. McGARRY: Thank you.

4 THE COURT: Mr. Connerton, in deciding how to
5 sentence you today, I have to consider all the factors
6 that are set forth in a statute called 18 U.S.C. Section
7 3553(a). I have done that. I am not going to review each
8 factor with you; but, rather, I'm going to point out the
9 factors that are most important in how I've decided to
10 sentence you today.

11 I'm principally concerned that this is a very
12 serious offense, both in the length of time and in the
13 impact on the victims. That impact is real. It includes
14 emotional distress as well as severe financial distress.
15 People have lost their retirement savings. People have
16 lost their college education savings. And this was a
17 result of the crimes that you committed.

18 The number of victims makes this a very serious
19 offense. And, frankly, the tax angle, the tax conviction
20 makes this a very serious offense. In my view, when
21 people fail to pay their taxes, they are stealing from the
22 United States, meaning they are stealing from everybody in
23 this room, and I take that very seriously. You understood
24 the obligation to pay your taxes and didn't do it. That
25 is, in itself, a significant period of time.

1 The length of time over which this fraud was
2 committed is substantial, and it is significant, in my
3 mind. The fact that you have not given up your continuing
4 efforts to raise money in a way that has so far been
5 fraudulent gives me great concern, and I agree that that
6 is a factor that needs to be taken into account.

7 You have shown no remorse. People who you had
8 personal relationships with lost significant amounts of
9 money due to your activities, and you have shown no
10 remorse. You have not even said "I'm sorry" to them.
11 That is very problematic, in my mind. You have not
12 acknowledged that what you did was wrong, even till today.
13 And we have victims here who have been seriously hurt.
14 They deserve better.

15 I think there is a real risk of recidivism here.
16 I think there is a risk that you do not understand the
17 wrongfulness of your conduct, and therefore you are likely
18 to repeat it.

19 I disagree with the government concerning
20 general deterrence and that general deterrence supports a
21 sentence that is longer rather than shorter. In white
22 collar crime cases, the deterrence, the general deterrence
23 comes from the fact of a sentence of incarceration, not
24 from the length of the sentence of incarceration. You
25 have been incarcerated. I believe that general deterrence

1 has been satisfied.

2 I think the Sentencing Guidelines in this case
3 are an appropriate starting point. I'm not a fan of the
4 Guidelines, as Mr. McGarry noted. I think in fraud cases
5 and in most financial cases they are not a very good proxy
6 for culpability because adding up dollars doesn't
7 translate into how culpable someone is. In this case, I
8 do believe that they're a fair starting point, perhaps by
9 coincidence, but the range that they recommend, 97 to 121,
10 is a range that I am very comfortable with, that I think
11 is an appropriate starting point for deciding about your
12 case, and there's plenty of reasons to be in that range,
13 even if the Guidelines didn't exist, quite frankly.

14 So principally for those reasons, which also set
15 forth my reasons for imposing within the Guideline range
16 the sentence that I intend to impose, it's my intention to
17 sentence you as follows:

18 On Counts 1 through 13, 16 through 31, and 33 to
19 36, to a period of incarceration of 108 months, each of
20 those counts to run concurrently with each other. And on
21 Count 39, to a period of incarceration of 60 months, also
22 to run concurrently with the other counts.

23 On every count of conviction, to a period of
24 supervised release of three years. We'll talk about the
25 conditions in a moment.

1 I am not going to impose a fine on any count of
2 conviction based upon my determination that you cannot
3 afford to pay a fine within the Guideline range. As I
4 noted earlier, I intend to impose a forfeiture order and a
5 restitution order. Those amounts and the victims with
6 respect to the restitution order will be determined at a
7 subsequent hearing.

8 I am required to impose a mandatory special
9 assessment of \$100 on each count of conviction, for a
10 total of \$3,400.

11 During your three years of supervised release,
12 the following conditions of supervised release will be
13 imposed:

14 First, the mandatory conditions of supervised
15 release set forth at Guideline Section 5D1.3A (1) that you
16 not commit another federal, state or local offense.

17 I am expressly waiving the controlled substance
18 testing condition, but I am imposing Number 6, which is
19 that you pay -- make restitution as ordered and you pay a
20 special assessment imposed.

21 I'm also imposing Number 8, which is that you
22 cooperate in the collection of a DNA sample for use by law
23 enforcement.

24 The standard conditions of supervised release
25 set forth at Guideline Section 5D1.3(c) will apply, as

1 will the following special conditions of supervised
2 release.

3 First, that you not have any contact with any
4 investor or victim of this scheme unless, following the
5 probation office's contact with the victim, the victim
6 indicates to the probation office in writing that they
7 wish to maintain contact with you. So you're not to have
8 any contact with them, and the probation office is the one
9 to reach out to determine whether any of those people wish
10 to have contact with you. This includes not just the
11 victims of the offenses of conviction but all of the
12 identified victims which the government has set forth in
13 its proposed restitution order. The purpose of this is to
14 protect those who do not want to be associated with you
15 from any further contact.

16 Second, you must provide the probation officer
17 access to any requested financial information and
18 authorize the release of financial information. The
19 probation office may share financial information with the
20 U.S. Attorney's Office. The obvious reason for this
21 special condition is to permit the collection of amounts
22 due in restitution.

23 Third, you must pay restitution imposed by this
24 judgment in a lump sum immediately. If you are unable to
25 pay the full balance in a lump sum, any remaining balance

1 is payable at a rate of not less than \$500 per month or 10
2 percent of your gross monthly income, whichever is
3 greater. The monthly payment schedule may be adjusted
4 based on your ability to pay as recommended by the
5 probation office and approved by the Court. Again, the
6 purpose of this is to get you to pay restitution as
7 promptly as possible.

8 Fourth, you must participate in a program
9 recommended by the probation office and approved by the
10 Court for mental health treatment. You must follow the
11 rules and regulations of that program. The probation
12 officer, in consultation with the treatment provider, will
13 supervise your participation in the program, and you must
14 pay all or a portion of the costs associated with that
15 treatment based on your ability to pay as recommended by
16 the probation officer and approved by the Court.

17 And fourth, you must not incur new credit card
18 charges over \$300 or open additional lines of credit
19 without the approval of the probation officer. You must
20 not add any new names to any lines of credit, and you must
21 not be added as a secondary cardholder on another's line
22 of credit. Once again, this is intended to permit the
23 rapid payment of restitution.

24 Should you violate any of these terms or
25 conditions of supervised release, you have two years of

1 imprisonment hanging over your head as a penalty, so it's
2 important that you understand and comply with each of
3 these conditions.

4 I am going to recommend to the Bureau of Prisons
5 that they designate you to a low security facility that
6 has mental health treatment and counseling capabilities.

7 Let me hear from either counsel if there's any
8 reason why the sentence I just described cannot lawfully
9 be imposed as the sentence of the Court.

10 MR. McGARRY: I know of no reason, Your Honor.

11 MR. EINHORN: No, Your Honor. Thank you.

12 THE COURT: Mr. Connerton, the sentence I just
13 described is imposed as the sentence of the Court in your
14 case. The judgment will be filed soon. That's going to
15 start the clock running on your time to file a notice of
16 appeal of both your conviction and your sentence. You
17 have 14 days from the entry of the judgment within which
18 to appeal either your conviction or your sentence. Do you
19 understand?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. If you fail to file a
22 notice of appeal within that time limit, you will have
23 waived your right to appeal.

24 THE DEFENDANT: Fourteen days?

25 THE COURT: Fourteen days from the entry of the

1 judgment.

2 THE DEFENDANT: Will Mr. Einhorn be available
3 for that?

4 MR. EINHORN: I'll have it filed probably today
5 or Monday.

6 THE COURT: If you wish to appeal but you cannot
7 afford to do so, you can file a motion to proceed in forma
8 pauperis. If that motion is granted, the Court will waive
9 the filing fee for your appeal and will appoint a lawyer
10 to handle your appeal at no cost to you. Do you
11 understand?

12 THE DEFENDANT: Yes.

13 THE COURT: Is there anything else to take up
14 today?

15 MR. EINHORN: Did I understand Your Honor was
16 going to hold a separate hearing on restitution or just
17 have us file memos?

18 THE COURT: Well, I'd like you to file memos --

19 MR. EINHORN: Okay.

20 THE COURT: -- on both restitution and
21 forfeiture.

22 MR. EINHORN: And forfeiture, yes.

23 THE COURT: To the extent that there is either
24 agreement or I can decide the remaining issues as a matter
25 of law, we will not have a hearing. To the extent that

1 there is a dispute about the amounts or identity of
2 victims, we will have a hearing.

3 MR. EINHORN: Okay, thank you.

4 THE COURT: That will be scheduled as promptly
5 as possible.

6 MR. EINHORN: All right.

7 MR. McGARRY: Do you want to set a scheduling
8 into January for us to do that, or should we propose a
9 schedule and maybe contact Chambers?

10 THE COURT: You can propose a schedule working
11 with Chambers. I do not intend to hold that hearing
12 before the end of the calendar year.

13 MR. McGARRY: Sure. I was going to suggest that
14 the briefings could be in the court in the new year as
15 well.

16 THE COURT: Yes. So why don't you just propose
17 something. I'd like to receive them by the middle of
18 January or so.

19 MR. McGARRY: Okay.

20 THE COURT: If that makes sense.

21 MR. EINHORN: That's fine. Yes, thank you.

22 THE COURT: Very well. And the question would
23 be whether you want to file simultaneous briefs or have
24 the government file first.

25 MR. McGARRY: Since we're talking, to save time,

1 we could go by the 15th, unless it's Saturday or Sunday,
2 but if we go on the 15th, and Mr. Einhorn could have a
3 week or so.

4 MR. EINHORN: That's fine. I'm on trial with
5 Judge Hall at the beginning of the month, but that's
6 enough time.

7 THE COURT: Very well. So the government will
8 file on or about the 15th -- or the 15th, which appears to
9 be a weekday, and you'll file --

10 MR. EINHORN: A week after that.

11 THE COURT: -- a week after that. Very good.

12 MR. EINHORN: That's fine.

13 THE COURT: If either of you requests a hearing
14 on either of these issues, please indicate that in your
15 papers.

16 MR. EINHORN: Okay.

17 THE COURT: All right? Very well.

18 I want to thank the two victims who appeared
19 today for appearing and for sharing with us your feelings,
20 and I hope you're able to get back on your feet quickly.

21 Mr. Connerton, I hope that you use this sentence
22 to your benefit, that you come to terms with what you did,
23 and that you, when you're released, are capable of
24 returning to the community fully, as you described an
25 interest in doing.

1 We will stand in recess.

2 (Adjournment: 12:15 p.m.)

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C E R T I F I C A T E

No. 3:17-cr-00047-sru

United States of America v. Thomas J. Connerton

I, Sharon L. Masse, RMR, 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.

March 3, 2020

/S/ Sharon L. Masse
Sharon L. Masse, RMR, CRR
Official Court Reporter
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Bridgeport, Connecticut 06604
Tel: (860) 937-4177

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

CERTIFICATE
OF SERVICE

THOMAS J. CONNERTON,

Defendant-Appellant.

I, Arza Feldman, affirm, under penalties of perjury, that, on June 23, 2020, the brief and appendix were served via ECF system on counsel of record, Michael S. McGarry, Lauren C. Clark and Sandra S. Glover, and we caused Gibson Moore Appellate Services to serve a copy of Appellant's brief and appendix by first class, on Thomas J. Connerton, 25307-014, Donald J. Wyatt, Detention Center, 950 High Street, Central Falls, RI 02863.

/s/ Arza Feldman
Arza Feldman
Feldman & Feldman