

Pet. App. 1a

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4599

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAWN J. BENNETT,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Greenbelt.
Paula Xinis, District Judge. (8:17-cr-00472-PX-1)

Argued: December 8, 2020

Decided: January 21, 2021

Before KING and QUATTLEBAUM, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by published opinion. Judge Quattlebaum wrote the opinion, in which Judge King and Judge Traxler joined.

ARGUED: Jaclyn Lee Tarlton, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Raleigh, North Carolina, for Appellant. Jennifer Lynne Wine, OFFICE OF THE UNITED STATES ATTORNEY, Greenbelt, Maryland, for Appellee. **ON BRIEF:** G. Alan DuBois, Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Raleigh, North Carolina, for Appellant. Robert K. Hur, United States Attorney, Erin B. Pulice, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greenbelt, Maryland, for Appellee.

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QUATTLEBAUM, Circuit Judge:

Following a jury trial, Dawn J. Bennett was convicted of seventeen financial crimes and sentenced to 240 months of imprisonment. She now appeals, claiming that the district court erred in denying her continuance request, imposing a criminal forfeiture judgment and issuing a procedurally and substantively unreasonable sentence. Finding no error, we affirm.

I.

For many years, Bennett was a successful investment advisor in the Washington, D.C. area. But around 2010, she began a new venture. Bennett decided to create an internet-based luxury sporting goods business—DJBennett.com. The website sold very expensive sporting good items, including “\$502 fishing boots, \$680 skiing hats, and \$13,500 golf bags.” J.A. 237. Although the website was not very profitable, Bennett’s investment business continued to flourish. In 2013, however, Bennett’s investment business started to decline. She then began to focus more on DJBennett.com. Those efforts included seeking financing from commercial lenders and individual investors, including her investment clients.

In order to induce individuals to invest in the website, Bennett exaggerated the business’s successes and inflated sales figures and revenue projections. Bennett also offered attractive terms to her investors. She guaranteed her investors a fifteen percent rate of return, promised them that their investments would be used for business purposes and assured them that their investments were fully liquid. Additionally, she guaranteed her

investors that their investments were backed by her personal wealth. She failed to inform her investors that the website was actually unprofitable or that she was accumulating debt. In some cases, Bennett's fraudulent statements were so convincing that they led to individuals investing their entire retirement savings. Bennett repaid a small number of investors. However, the money came from other investors and commercial lenders rather than business profits. In other words, she borrowed from Peter to pay Paul.

Ultimately, Bennett convinced 46 investors to invest \$20,407,034 in the website. She repaid some investors a total of \$6,100,193, but not the rest. Moreover, the remaining money was largely spent on personal expenses unrelated to the website. For example, Bennett spent large sums of money on Dallas Cowboys tickets, more than \$800,000 on ritual blessings performed by priests in India, \$141,947 on astrological gemstone jewelry, \$68,664 on anti-aging and weight loss treatments and \$57,300 on dermatological treatments. This conduct forms the basis for Bennett's numerous criminal charges.

II.

In August 2017, the government charged Bennett by criminal complaint with wire fraud, bank fraud and making false statements in relation to loan and credit applications. A short time later, a federal grand jury returned a two-count Indictment charging Bennett with bank fraud and making false statements on a loan application. Bennett was represented by various private counsel as well as the Federal Public Defender's Office following the Indictment. Then, in November 2017, a Superseding Indictment charged Bennett with conspiracy to commit securities fraud, conspiracy to commit wire fraud, securities fraud,

wire fraud, bank fraud, and making false statements on a loan application. All told, Bennett was named in seventeen counts in the Superseding Indictment, which included a forfeiture allegation seeking “at least \$14,169,754.” J.A. 84.

After Bennett was arraigned on the Superseding Indictment, the government asked for a continuance, which Bennett opposed. At a January 2, 2018 hearing, Bennett again asked for an earlier trial date due to her pretrial detention. The district court considered the complexity of the case, a co-defendant’s request for a later trial date and the prejudice to the government, ultimately scheduling jury selection for September 4, 2018. On May 30, 2018, Bennett’s then-retained counsel withdrew from the case and the Federal Public Defender was again appointed to represent Bennett. As a result, the district court moved the trial date to October 2, 2018.

On August 8, 2018, Bennett requested another continuance due to health issues and problems with her attorney. During the hearing on Bennett’s request, the district court outlined the accommodations it had made for Bennett to be prepared for trial, including allowing her to review discovery at the courthouse two days a week for six hours each day and ordering the government to produce a variety of evidence and “hot docs” on a rolling basis. In denying the motion, the district court found that Bennett had “chosen not to participate [in her defense] and chosen to make issues that thwart her cooperation with [defense counsel] and the orderly progression of this case.” S.J.A. 162.

On August 28, 2018, yet another retained attorney (“Trial Counsel”) appeared on behalf of Bennett. The following day, he filed a motion to continue the trial. The motion claimed that Bennett had difficulty retaining counsel of her choosing “because of her

incarceration and the freezing of her assets.” J.A. 91. It also indicated that there were several important issues that Trial Counsel needed to investigate prior to proceeding to trial, including retaining experts on the valuation of Bennett’s business and locating and interviewing exculpatory witnesses. The government opposed the motion, noting that Trial Counsel was the “tenth counsel to enter an appearance” on her behalf. J.A. 98. Furthermore, the government argued “[a]ll of the ‘remaining work’ is work that could have been done, and likely was done, by prior counsel.” J.A. 98.

At the August 30, 2018 hearing on the motion to continue, the district court formally relieved the Federal Public Defender’s Office as counsel for Bennett. Prior to doing so, the district court asked Trial Counsel, “if I deny your motion to continue, what will you be doing in this case?” J.A. 102. A discussion about Trial Counsel’s ability to prepare ensued. The district court then offered to assist Trial Counsel in obtaining discovery, but he responded, “I would tell you that discovery is not a problem, and we can review the discovery and be prepared.” J.A. 117.

After analyzing Bennett’s arguments and the government’s opposition, the district court denied the motion to continue. The district court noted that moving the trial date would allow a defendant with financial means to upset the administration of justice by claiming to locate money right before trial, hiring new counsel and then having the newly hired counsel claim they cannot be ready for the previously scheduled trial.

Shortly thereafter, Trial Counsel filed another motion to continue, this time based on Bennett’s need for medical treatment. At a September 13, 2018 pretrial conference, the district court addressed the motion. It found that “it would be fundamentally unfair to

continue the trial, especially in light of the fact that the only new medical information that [it had been provided was] about a concerning lump but one that even the medical providers have noted as benign.” J.A. 130. The court acknowledged that Bennett needed to receive follow-up medical treatment, including an MRI, but found that she would have access to that care prior to trial.

The case proceeded to trial where the jury convicted Bennett of all seventeen counts. The government later moved for a preliminary order of forfeiture seeking \$14,306,842, reflecting the net amount of investments Bennett received minus the amount repaid to the victims. Bennett opposed the request, claiming that the government failed to adequately establish the amount of the forfeiture money judgment. But at the hearing on the preliminary order of forfeiture, Bennett did not object to the proposed preliminary order of forfeiture. The district court entered a preliminary order of forfeiture in the amount of \$14,306,842.

Several months later, the government moved to amend that preliminary order to include specific property to partially satisfy the money judgment. The total monetary amount of the requested forfeiture did not change. Bennett opposed the motion, claiming that “[t]o the extent that the government’s seizure of Ms. Bennett’s untainted assets in January was made pursuant to 18 U.S.C. § 853(e),¹ or an analogous statutory provision, such seizure exceeded its statutory authority.” J.A. 1907 (citation omitted). The district

¹ It appears this is a scrivener’s error and should refer to 21 U.S.C. § 853(e), which outlines the property subject to criminal forfeitures.

court granted the government’s motion, holding that the requested amount reflected the “proceeds of the violation.” J.A. 49, 1934.

The district court then sentenced Bennett. At her sentencing hearing, the district court determined that her advisory sentencing guidelines range was 324 to 405 months of imprisonment. The government recommended a below-guidelines sentence of twenty-five years of imprisonment. Bennett recommended three years. The district court, after evaluating the relevant statutory sentencing factors, sentenced Bennett to 240 months of imprisonment followed by five years of supervised release. It declined to impose a fine, finding “absolutely no justice in a fine when the money can otherwise go to the victim[s].” J.A. 2127. The court then finalized the preliminary order of forfeiture without objection from Bennett. And it imposed restitution in the amount of \$14,504,290 making the entire restitution amount payable immediately so that the government could apply the forfeited assets to the restitution.² Bennett filed a timely notice of appeal.

III.

Bennett raises three issues in this appeal. First, she contends the district court erred by denying her August 29, 2018 continuance motion. Second, she argues the criminal forfeiture order is legally deficient and unconstitutionally excessive. Finally, she contends that her sentence is procedurally and substantively unreasonable. We address these in turn.

² The government notes in its brief that Bennett’s “restitution judgment was slightly more than her forfeiture money judgment because the forfeiture amount was net of amounts repaid to certain investors.” Appellee’s Br. at 19 n.7.

A.

Bennett first argues that the district court erred in denying the August 29, 2018 continuance motion.³ Specifically, she contends the denial of the continuance request forced Trial Counsel to proceed to trial without adequate preparation.

“We review the denial of a motion for a continuance for abuse of discretion.” *United States v. Copeland*, 707 F.3d 522, 531 (4th Cir. 2013) (citing *United States v. Midgett*, 488 F.3d 288, 297 (4th Cir. 2007)). “A district court abuses its discretion when its denial of a motion for continuance is ‘an unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay.’” *Id.* (quoting *Morris v. Slappy*, 461 U.S. 1, 11–12 (1983)).

To assess Bennett’s arguments, we begin with the reasons the district court denied the motion to continue. It explained:

Given that this case has been pending in some form or another since August [2017], finding the kind of block that we need to do this right from all counsel involved, and [Trial Counsel is], indeed, if not the tenth, close to the tenth defense attorney who has entered his or her appearance in this case, I simply cannot move this trial. To move it would basically allow counsel – defendant with resources to find the resources close in time to trial, have that counsel say to me I can’t be ready or I can be ready but I really would wish to be ready later, and then the orderly administration of the case is upset.

Ms. Bennett now has her counsel of choice, and her counsel of choice is of a firm with enough resources and with the able and competent assistance of your client to be ready.

J.A. 116.

³ Bennett has not argued that the district court erred in denying Trial Counsel’s second continuance motion, which was based on Bennett’s need for medical treatment.

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From our review of the record, the district court’s decision was neither unreasonable nor arbitrary. This was not Bennett’s first change of counsel. In fact, she changed counsel multiple times, frequently switching between retained counsel and the Federal Public Defender’s Office. Noting Bennett’s revolving door of attorneys, the district court explained that it would be unfair to the government and the court to undo a trial schedule set after carefully considering the schedules of all involved in setting the date simply because Bennett made another change in her legal team.

Importantly, when Bennett sought to replace the Federal Public Defender with Trial Counsel late in the case, the district court addressed the very concerns Bennett now raises. Before releasing the Federal Public Defender, the court communicated its expectations of a trial date and offered to assist Bennett and Trial Counsel in preparing for trial. In fact, the district court inquired about his ability to be prepared for trial and in particular to review the voluminous discovery in the case. Trial Counsel responded that he would be ready by unequivocally stating, “I would tell you that discovery is not a problem, and we can review the discovery and be prepared.” J.A. 117. Against this record, we conclude that the district court acted well within its discretion in denying Bennett’s continuance request

B.

Bennett next challenges the \$14,306,842 criminal forfeiture order. She contends the order should be vacated for three reasons: (1) there is no statutory basis for the forfeiture; (2) the forfeiture judgment improperly interferes with her ability to pay restitution in violation of 18 U.S.C. § 3572; and (3) the forfeiture judgment is unconstitutionally excessive in violation of the Eighth Amendment.

Prior to addressing the merits of Bennett's arguments, however, we must determine whether the arguments are preserved or whether plain error review applies. While Bennett raised an argument below as to the amount of the criminal forfeiture, she did not raise any of the three arguments now advanced on appeal. Therefore, plain error review applies to these issues. *See United States v. Robinson*, 460 F.3d 550, 557 (4th Cir. 2006) ("If an appellant failed to timely object to an alleged error . . . we are obliged to apply the 'plain error' standard set forth in Rule 52(b).") (citing *United States v. Olano*, 507 U.S. 725, 731 (1993))).

To succeed under plain-error review, Bennett bears the burden to show that: (1) an error occurred; (2) the error was plain; and (3) the error affected her substantial rights. *Olano*, 507 U.S. at 732; *United States v. Knight*, 606 F.3d 171, 177 (4th Cir. 2010). Finally, if the first three prongs are met, we will only exercise our discretion to correct the error if it "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *Olano*, 507 U.S. at 732. The Supreme Court has cautioned that "[m]eeting all four prongs is difficult, as it should be." *Puckett v. United States*, 556 U.S. 129, 135 (2009) (internal quotation marks omitted).

1.

With that exacting standard in mind, we consider Bennett's first argument that there is no statutory basis for the criminal forfeiture. Bennett's explanation of this issue has evolved. After not raising it below, her opening brief argued that 18 U.S.C. § 371, the general conspiracy statute, does not independently authorize criminal forfeiture. In her reply brief, however, she elaborated that a generic conspiracy where the underlying offense

is 15 U.S.C. § 78j(b) securities fraud cannot support a criminal forfeiture judgment. To that end, Bennett relies on a variety of interlocking federal statutes to attempt to demonstrate this point. But even assuming, without deciding, that the district court committed plain error, such error did not affect Bennett’s substantive rights. As she conceded at oral argument, wire fraud forms a permissible statutory basis for criminal forfeiture. Indeed, the Superseding Indictment specifically contains a forfeiture allegation as to the wire fraud counts, which seeks “at least \$14,169,754 in United States currency and all interest and proceeds traceable thereto” J.A. 83–84. Therefore, any error regarding the securities fraud counts did not affect Bennett’s substantial rights. *See Robinson*, 460 F.3d at 557.

2.

Bennett next argues that the district court erred in failing to analyze her ability to pay the forfeiture judgment in addition to the restitution judgment. Bennett’s argument relies on the language of 18 U.S.C. § 3572(b), which states: “If, as a result of a conviction, the defendant has the obligation to make restitution to a victim of the offense, other than the United States, the court shall impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the defendant to make restitution.” Essentially, Bennett argues that the phrase “other monetary penalty” in § 3572(b) includes criminal forfeiture judgments. Thus, she claims, the forfeiture order will prevent her from satisfying her restitution obligations.

While we have not addressed this specific issue, we have held that “[f]orfeiture is mandatory even when restitution is also imposed” because “[t]hese two aspects of a defendant’s sentence serve distinct purposes: restitution functions to compensate the

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victim, whereas forfeiture acts to punish the wrongdoer.” *United States v. Blackman*, 746 F.3d 137, 143 (4th Cir. 2014). Additionally, “the government has the discretion to use forfeited assets to restore a victim whom the defendant has failed to compensate.” *Id.*

Relevant here, the government represented in both the district court and its briefing to us that it intends to apply the forfeited assets to the restitution judgment. We accept this representation that it will fulfill its discretionary statutory authority to help make the victims of Bennett’s criminal scheme whole. *See* 18 U.S.C. § 981(e)(6) (authorizing the Attorney General to transfer forfeited property “as restoration to any victim of the offense giving rise to the forfeiture”). Such an approach would assist rather than impede the fulfillment of the restitution sentence.

The government also provides practical, as well as legal, justification for seeking both forfeiture and restitution. Bennett’s Presentence Report indicated that the current balances of Bennett’s bank accounts “appear to be nominal.” J.A. 2260. However, after the district court entered a Preliminary Order of Forfeiture, the government was able to conduct discovery and identify substantial substitute assets that could be used “to satisfy the previously-entered money judgment.” J.A. 1870. As we noted in *Blackman*, “[r]ealistically, a victim’s hope of getting paid may rest on the government’s superior ability to collect and liquidate a defendant’s assets.” *Blackman*, 746 F.3d at 143. Where, as here, a duly convicted defendant has substantial substitute assets that can be used to satisfy a monetary judgment, forfeiture is often the only means by which the victims can be made whole.

For all of these reasons, we find no plain error.

3.

Last, Bennett argues the criminal forfeiture is unconstitutionally excessive under the Eighth Amendment. Specifically, Bennett argues that the district court “never conducted the required proportionality analysis to determine whether a criminal forfeiture judgment of \$14 million was, in fact, grossly disproportionate to Ms. Bennett’s alleged offenses because it would deprive her of her livelihood when considered in addition to a twenty-year sentence and a \$14 million restitution judgment.” Appellant’s Br. at 32.

The Eighth Amendment provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII. The Supreme Court has “explained that at the time the Constitution was adopted, ‘the word fine was understood to mean a payment to a sovereign as punishment for some offense.’” *United States v. Bajakajian*, 524 U.S. 321, 327–28 (1998) (quoting *Brownning-Ferris Indust. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 265 (1989)) (internal quotation marks omitted). “The Excessive Fines Clause thus ‘limits the government’s power to extract payments, whether in cash or in kind as punishment for some offense.’” *Id.* at 328 (quoting *Austin v. United States*, 509 U.S. 602, 609–10 (1993)) (internal quotation marks omitted). “Forfeitures—payments in kind—are thus ‘fines’ if they constitute punishment for an offense.” *Id.*

“The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish.” *Id.* at 334; *see also Timbs v. Indiana*, 139 S. Ct. 682, 688 (2019) (reiterating that the Excessive Fines Clause has its

roots in the Magna Carta, which “required that economic sanctions ‘be proportioned to the wrong’ and ‘not be so large as to deprive [an offender] of his livelihood’”) (quoting *Browning-Ferris*, 492 U.S. at 271). In order to violate the Excessive Fines Clause, a punitive forfeiture must be “grossly disproportional to the gravity of a defendant’s offense.” *Id.* Courts must weigh a number of factors in determining whether a forfeiture was grossly disproportional, including: (1) the amount of the forfeiture and its relationship to the authorized penalty; (2) the nature and extent of the criminal activity; (3) the relationship between the charged crime and other crimes; and (4) the harm caused by the charged crime. *United States v. Jalaram, Inc.*, 599 F.3d 347, 355–56 (4th Cir. 2010).

Following that standard, after reviewing the record here, we find no error—much less plain error. First, as the government notes, the district court could have imposed a fine of more than \$28,000,000. *See* 18 U.S.C. § 3571(d) (“If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.”). Thus, the criminal forfeiture amount is half of the statutorily authorized monetary penalty. This is nowhere near the type of forfeiture the Supreme Court disapproved in *Bajakajian*, where the forfeiture amount for a reporting violation was more than seventy times the maximum permissible fine. *See* 524 U.S. at 337–38. In fact, we have affirmed a criminal forfeiture judgment of more than *twice* the authorized statutory penalty. *See United States v. Bollin*, 264 F.3d 391, 418 (4th Cir. 2001) (approving \$1.2 million forfeiture judgment when the statutory maximum fine was

\$500,000), *overruled on other grounds by United States v. Chamberlain*, 868 F.3d 290 (4th Cir. 2017) (en banc).

Second, the district court considered the nature and circumstances of Bennett’s crimes. The forfeiture amount was directly derived from the amount of funds fraudulently obtained by Bennett. And the victims’ impact statements and testimony demonstrate that many victims lost their life savings, had to delay retirement, had to sell their homes and were unable to pay for medical expenses and educational expenses for their children. The district court thus found that Bennett’s crimes were “serious and long-running, complex and highly orchestrated, and devastating to generations of investors around the country.” J.A. 2603. It further explained that Bennett’s crimes were “calculating and brazen” and “as dangerous as many other conspiracies . . . whether they be financial, drug, [or] gun.” J.A. 2124. Continuing, the district court stated that Bennett’s conduct caused “a calculated and professional financial hit on each and every [victim].” J.A. 2124. Against this record, the district court’s order of forfeiture is not excessive.

Finally, we have never expressly considered a defendant’s means in evaluating the proportionality of a forfeiture judgment. However, to the extent that it is an appropriate consideration, it is merely one factor to be weighed with all other factors. Standing alone, the fact that Bennett did not have sufficient assets to satisfy the forfeiture judgment is insufficient to render the judgment unconstitutional.

For these reasons, we conclude that that the criminal forfeiture judgment is not unconstitutionally excessive.

C.

Bennett also argues that her sentence is procedurally and substantively unreasonable. Beginning with procedural unreasonableness, “[t]he Supreme Court has mandated that in reviewing any sentence, appellate courts ‘*must first ensure* that the district court committed no significant procedural error.’” *United States v. Provance*, 944 F.3d 213, 218 (4th Cir. 2019) (quoting *Gall v. United States*, 552 U.S. 38, 51 (2007)). “Procedural errors include failing to properly calculate the applicable Sentencing Guidelines range, failing to consider the 18 U.S.C. § 3553(a) factors, and failing to adequately explain the sentence – ‘including an explanation for any deviation from the Guidelines range.’” *Id.* (quoting *Gall*, 552 U.S. at 51).

Bennett claims that the district court procedurally erred by treating the sentencing guidelines range as “presumptively reasonable.” She is correct that in *Rita v. United States*, the Supreme Court held that a district court may not presume a sentence is appropriate because it falls within the guidelines. 551 U.S. 338, 351 (2007). Following the Court’s guidance, we have described giving the guidelines such an effect as applying a “*Rita* presumption.” *United States v. Mendoza-Mendoza*, 597 F.3d 212, 217 (4th Cir. 2010). “If a district court applies such a *Rita* presumption, its sentence is procedurally unreasonable.” *Id.* at 216–17 (citing *Gall*, 552 U.S. at 50).

The question presented here is whether the district court in fact treated the guidelines as presumptively reasonable. To be sure, it stated—during a lengthy sentencing hearing—that the sentencing guidelines were “presumptively reasonable” three times. *See* J.A. 2103, 2118. And to repeat what we said in *Mendoza-Mendoza*, “[s]entencing courts are well

advised to avoid words like ‘presumption’ and ‘obligation.’” 597 F.3d at 218. But there we also clarified as follows:

[W]hat matters on appeal is what a court actually did, not whether a remark here or there, removed from the larger context in which it was made, is on some list of forbidden phrases. If the sentencing court did what it was supposed to do—hearing out both sides and making an individualized assessment in light of § 3553(a)—then it should be protected from claims of having applied a *Rita* presumption.

Id. at 218 (citations omitted). Indeed, remand is not required “in cases where there exists no serious possibility that the district court treated the Guidelines as presumptively binding.” *Id.* at 214.

In applying those principles here, a comparison of this case to *Mendoza-Mendoza* is helpful. There, we vacated and remanded because the district court stated that “unless I find a reason for a departure from those Guidelines, or a variance based on 18 U.S.C. § 3553, then I am obligated to pass a sentence within that Guideline range.” *Id.* at 215. We concluded such emphatic language, and particularly the district court’s statement that it was “obligated” to impose a sentence within the guidelines unless it found a reason not to, established that there was a *Rita* presumption. *Id.* at 219.

In contrast, the record here is quite different. First, the district court did not use such emphatic language. Instead, at the outset of its sentencing analysis, the district court indicated its intent to vary downwards from the guidelines. Specifically, the district court stated:

I start with the guidelines. They are presumptively reasonable. They are incredibly high in this case. An offense level 41 triggers a sentence on the low end of 324 months to 405 months. In Ms. Bennett’s case, if I were to stay within the guidelines -- and even the government recognizes this -- it

would not only be overly punitive, but it would be most certainly a life sentence, and I'm not prepared to do that. So I am prepared to vary, and the question is how much.

J.A. 2118. Next, after entertaining and addressing extensive argument from Bennett's counsel about the § 3553 factors, the district court thoroughly, and on an individualized basis, analyzed those factors, referring to the specific facts of the case and the evidence presented at trial and during sentencing. Finally, the court imposed a sentence that was not only below the guidelines range, but also further below the below-guidelines sentence that the government requested. The sentence was higher than the one proposed by Bennett, but the district court's reasoning in rejecting Bennett's proposal was based not on the guidelines but on the application of the evidence to the § 3553 factors. The totality of the sentencing transcript demonstrates that the district court carried out its statutory duty by listening to the positions advanced by both parties and making an individualized finding pursuant to the § 3553 factors. Therefore, we conclude that remand is not necessary.

As to substantive unreasonableness, Bennett argues that the district court disproportionately relied on the nature of the offense while disregarding the remaining § 3553 factors. We review a sentence for substantive reasonableness by looking at the "totality of the circumstances." *Gall*, 552 U.S. at 51. A sentence that is "within or below a properly calculated Guidelines range is presumptively reasonable." *United States v. Louthian*, 756 F.3d 295, 306 (4th Cir. 2014). On appeal, "[s]uch a presumption can only be rebutted by showing that the sentence is unreasonable when measured against the 18 U.S.C. § 3553(a) factors." *Id.*

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Certain factors—such as her health, the non-violent nature of the crimes, and her family ties—mitigate in Bennett’s favor. However, other factors cut against Bennett, such as the devastating impact of her serious offenses and her failure to accept responsibility for her actions. Here, the district court thoroughly addressed the § 3553 factors, ultimately varying downward from the guidelines range. And unlike the district court, we do consider a within or below guidelines’ sentence to be presumptively reasonable. Bennett has not offered any argument or evidence that should lead us to disturb that presumption.

IV.

Accordingly, for the foregoing reasons, we affirm.

AFFIRMED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4599
(8:17-cr-00472-PX-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DAWN J. BENNETT

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and motion to appoint counsel.

Entered at the direction of the panel: Judge King, Judge Quattlebaum, and
Senior Judge Traxler.

For the Court

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

3 UNITED STATES OF AMERICA)
4 Plaintiff,)
5 vs.) CRIMINAL CASE NO. PX-17-0472
6 DAWN J. BENNETT,)
7 Defendant.)

TRANSCRIPT OF PROCEEDINGS - SENTENCING HEARING
BEFORE THE HONORABLE PAULA XINIS
UNITED STATES DISTRICT JUDGE
WEDNESDAY, JULY 31, 2019; 9:30 A.M.
GREENBELT, MARYLAND

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PROCEEDINGS

(Call to Order of the Court.)

THE DEPUTY CLERK: All rise.

4 The United States District Court for the District of
5 Maryland is now in session, the Honorable Paula Xinis
6 presiding.

7 THE COURT: Good morning, everyone. You all can have
8 a seat.

9 Would the government call the case.

10 MS. PULICE: Good morning, Your Honor. This is
11 United States versus Dawn Bennett. This is Criminal
12 No. PX-17-472. We're here this morning for a sentencing.

13 Erin Pulice and Thomas Windom and Ilissa Gould and Tamera
14 Fine on behalf of the United States, and we're joined by
15 Special Agent Keith Custer from the FBI.

16 We also have a number of victims who are present this
17 morning in the courtroom who I would like to introduce. We
18 have James and Margaret Thur, Rosemary Hesterberg, Diane
19 Mizrahi, Diane Keefe, Jeffrey Lazzuri, Linda Jenkins, and Mark
20 Hale. And I understand that several of them would like to make
21 statements to the Court whenever it's appropriate.

22 THE COURT: Okay. Thank you.

23 MR. JEFFRESS: Good morning, Your Honor. Jon
24 Jeffress and Bill Zapf on behalf of Ms. Bennett.

25 Also in the courtroom are two members of Ms. Bennett's

1 family; Sue Bennett, Ms. Bennett's mother; and Steele Bennett,
2 Ms. Bennett's brother. I know Steele Bennett would like to
3 address the Court also.

4 THE COURT: Okay.

5 MR. JEFFRESS: Thank you, Your Honor.

6 THE COURT: Thank you.

7 All right, just give me one minute.

8 (Brief pause.)

9 THE COURT: All right, let me start by reviewing what
10 I have received and reviewed in connection with today's
11 sentencing. I have re-reviewed the sentencing memorandum
12 submitted by the government at ECF 474. That was back in May
13 before our first sentencing. I've received and reviewed
14 Ms. Bennett's sentencing memorandum at ECF 476, Government's
15 response at 478, supplemental sentencing memorandum at 487, a
16 notice of letter in support of Ms. Bennett of 488, and then
17 various motions to seal, which I believe there is only one
18 outstanding which I will grant, and that's at ECF 489. At 490
19 is the sealed document that the government has most recently
20 submitted, and it is supplemental information regarding one of
21 the victims. So I do appreciate that.

22 Is there anything that you all have submitted that I have
23 not referenced? And I've read all of the victim impact
24 statements, as well as all of the character letters.

25 MR. ZAPF: Your Honor, Bill Zapf.

1 Something that you said. I think you referred to our
2 sentencing memo as 476. Just for the record, that was our
3 response I think to the government's memo. I believe -- and it
4 was -- because it was under seal, I don't have the number at
5 the top, but I think our memo was 471.

6 THE COURT: The original?

7 MR. ZAPF: Yes.

8 THE COURT: And that may be because it says sealed
9 document. So give me a second. I've got the government's. I
10 have got the government's response. I have your recent one.
11 Oh, I think it's put in here. I know I read it. You all have
12 kept me busy.

13 And you're correct, Mr. Zapf. ECF 471 was the original,
14 and I have that and I have read it and all of the attachments.

15 MR. JEFFRESS: Thank you, Your Honor.

16 The only other item I might refer to is the government's
17 -- one of the government's pleadings on forfeiture, which is
18 the motion to amend the preliminary order. On page six, which
19 is -- I'm sorry. Docket No. 469. On page six they talk about
20 various ways that the loss was spent, including DJBennett
21 employee salaries, business rent, attorney's fees, operating
22 expenses. So that's the only other pleading that I might
23 reference in my allocution, Your Honor.

24 THE COURT: Oh, I see. Okay. All right, because I
25 granted that motion. So I, obviously, have read it and

1 resolved it, but I appreciate the heads up that you may be
2 discussing it in your allocution.

3 Okay. Ms. Bennett, the last time we were together I may
4 or may not have asked you this, so I'm going to ask you again.
5 Have you had an opportunity to review the presentence report
6 that was prepared, which is at ECF 477, so that we can go
7 forward today?

8 THE DEFENDANT: Yes.

9 THE COURT: Okay.

10 All right, you all can have a seat.

11 What I propose we do is first resolve -- there are a
12 number, I think three, disputed guideline adjustments. I want
13 to resolve those first and then I will hear from whomever of
14 the victims wish to address me in open court. I have read all
15 of your letters very carefully, and I re-read them in advance
16 of today, but I do want to give you all the opportunity to be
17 heard in open court.

18 So with that, let's start -- and, Mr. Encarnacion, are you
19 filling in for Mr. Mebane now that he has moved on to greener
20 pastures?

21 MR. ENCARNACION: Yes, Your Honor.

22 THE COURT: Okay. Thank you for being here today. I
23 do appreciate it.

24 All right, the adjustments that are in dispute, taken in
25 order, are the sophisticated means adjustment at 2B1.1, Section

1 10. Then we'll discuss the organizer-leader adjustment at
2 3B1.1, Subsection C; and then 3C1.1, the obstruction
3 enhancement.

4 The government wishes to -- had four levels for -- oh, no.
5 I'm sorry. Sophisticated -- we're at sophisticated means
6 first.

7 Okay. The dispute is whether sophisticated means applies.
8 As I understand the law, it is centered on whether the facts of
9 this case take it, in a sense, outside of the garden variety
10 fraud scheme. And I have considered the facts outside the
11 garden variety securities fraud scheme, if you will.

12 I'll hear from either you, Mr. Zapf, or you, Mr. Jeffress,
13 first and then I'll turn to the government.

14 MR. JEFFRESS: Thank you, Your Honor.

15 Your Honor, on sophisticated means, you know, this is
16 simply not a sophisticated means case. I look at this case as
17 really based on two different sets of conduct. One is the
18 Eagle Bank loan and the fraudulent loan application that was
19 submitted by Mr. Mascho which overstated the amount of money in
20 Ms. Bennett's brokerage account. So that's one set of offense
21 conduct.

22 The second one are the misrepresentations to the investors
23 about the financial health of the company, which were mostly
24 contained, based on my understanding of the evidence, in the
25 business plan, which was also prepared by Mr. Mascho but which

1 the --

2 THE COURT: Well, in the business plan, in the profit
3 and loss statements, in the ongoing conduct, in the recorded
4 phone calls that I listened to during the two-week trial. I
5 mean, this was -- there were two sets of books, two sets of
6 realities, and there were different kinds of notes all
7 depending on which victim was on deck for that day; and that
8 changed over time if I've got it right.

9 MR. JEFFRESS: The notes were changed once, yes.

10 THE COURT: And affidavits were obtained from victims
11 to support a FINRA investigation because Ms. Bennett had to
12 fight off the FCC before being charged criminally. But this is
13 not sophisticated?

14 MR. JEFFRESS: I mean, that may be something
15 involving the alleged obstruction but, actually, I don't think
16 it is. I don't think that's part and parcel of the offense
17 conduct in this case which is wire fraud and -- you know, or
18 securities fraud.

19 THE COURT: And securities fraud, right?

20 MR. JEFFRESS: Yes. But the affidavits, you know,
21 that might go to some obstruction allegation but I don't think
22 that would -- we would object to that being considered as part
23 of sophisticated means or --

24 THE COURT: Why would you object to it? It's
25 evidence before me at the trial.

1 MR. JEFFRESS: That's alleged concealment of the
2 scheme. It's not --

3 THE COURT: That's part of the scheme. That's what
4 made it go.

5 MR. JEFFRESS: Well, more -- actually, I think what
6 the government said and what the PSR says is what made the
7 scheme go were the misrepresentations about the financial
8 health of the company.

9 THE COURT: I'm not bound by what the presentence
10 report or the governments says were the facts that I can look
11 to.

12 MR. JEFFRESS: So the note on this says that it has
13 to be not just intricate or complex.

14 THE COURT: Yeah.

15 MR. JEFFRESS: And arguably, you know, what Your
16 Honor is saying might approach one of those, but it has to be
17 especially intricate or especially complex. This just doesn't
18 come close to that.

19 THE COURT: Doesn't come close to it?

20 MR. JEFFRESS: There are misrepresentations about the
21 financial health of a company. That's generic wire fraud to
22 put your investments. I don't think that this meets that
23 standard.

24 I mean, the Eagle Bank loan application, it seems like
25 given Your Honor is in a position where you would not say that

1 just merely overstating the amount of money --

2 THE COURT: I'm not -- I'm putting Eagle Bank to the
3 side.

4 MR. JEFFRESS: Okay. So in just talking about --

5 THE COURT: It's not really -- it's the flea on the
6 tail wagging the dog in this Court's opinion.

7 MR. JEFFRESS: Okay. So we're just talking about the
8 representations to the investors about the financial health,
9 which were I think in telephone conversations and also
10 contained in that one thing. I don't view as overstating a
11 business' revenue or its, you know, financial success or
12 financial health as especially intricate or successful. This a
13 straight forward, I suppose, misrepresentation. I mean, there
14 are tax returns --

15 THE COURT: I wonder if -- but there are attorneys, I
16 believe, who have been practicing law for quite some time who
17 were lured into this scheme and would probably dispute your
18 characterization.

19 MR. JEFFRESS: The tax returns accurately reflected
20 all of the company's income of the business. You know, if you
21 were to do a complex or sophisticated scheme, you would not
22 keep one set of tax returns that revealed every, you know,
23 misstatement that was contained in the --

24 THE COURT: Didn't she have colossal tax problems,
25 though? I mean, we had a tax attorney on deck to testify --

1 THE DEFENDANT: No.

2 THE COURT: -- because there were disputes with the
3 IRS contemporaneous with the scheme.

4 MR. JEFFRESS: My understanding of how the government
5 proved up the financial misrepresentations was largely based on
6 the fact that the tax returns accurately -- that their CPO
7 accurately reflected all of the company's revenue and expenses
8 and everything else in them. And so they put side by side --

9 THE COURT: Ultimately.

10 MR. JEFFRESS: They put them up.

11 THE COURT: Sure, ultimately. But I believe that is
12 quite delinquent in the process. I could be wrong.

13 MR. JEFFRESS: I just don't view that as very complex
14 or sophisticated when you've got a tax filing that reveals
15 every, you know, misstatement that's contained in the business
16 plan or in the statements about the financial health of the
17 company. That's pretty cut and dry.

18 THE COURT: But this is deceiving 40-plus
19 investors -- right? -- with a glossy brochure and follow-up
20 profit and loss sheets and balance sheets and projected future
21 revenues.

22 MR. JEFFRESS: Projected future revenues, Your Honor,
23 I don't even believe you can use, you know, projections as the
24 basis for, you know, the wire fraud count. If that was done --
25 you know, if that was done, I don't think that -- it had to be

1 what the contemporaneous statements were about the present
2 financial health of the company.

3 Giving projections about what --

4 THE COURT: How is that possible? This scheme began
5 with Ms. Bennett sitting down with many of the individuals in
6 this courtroom and said I've got a deal for you, and it's a
7 good one. You're going to get full liquidity, 15 percent rate
8 of return. And look at the projections. That's what they
9 based their trust, not only on historic dealings with
10 Ms. Bennett but on prospective dealings.

11 MR. JEFFRESS: I really -- Your Honor, I've spent a
12 lot of time over the last couple of months reviewing the
13 evidence, and I really don't believe that those statements were
14 false in Ms. Bennett's mind when she made them. I think the
15 only thing that was false was, you know, basically her and
16 Mr. Mascho putting out representations about the existing
17 financial health of the company. And were those materials --
18 were those statements material to the investors? Perhaps they
19 were. But I don't see -- I don't think her optimistic view of
20 where the company was headed was false. I don't believe that
21 for one second.

22 And if you read Anderson --

23 THE COURT: It's not based on reality.

24 MR. JEFFRESS: If you read Anderson --

25 THE COURT: Really? I mean, Ms. Bennett may have had

1 that in her mind, but there is no factual, real factual basis
2 for it.

3 MR. JEFFRESS: Yeah, well, optimism is not a crime.

4 And the other thing is Anderson MacNeal, if you read his
5 grand jury testimony, he was the head of --

6 THE COURT: I read Mr. MacNeal's testimony, and he
7 said he wouldn't have projected out 90 days. Past 90 days is
8 unrealistic.

9 MR. JEFFRESS: Sure. He said that that's -- that
10 anything beyond that is not reliable. I agree, he did say
11 that, yeah, but that doesn't make it a crime to do it.

12 THE COURT: It does when you misrepresent to 41
13 investors.

14 MR. JEFFRESS: Well, misrepresent the existing
15 financial health of the company, which is where I started.

16 But I don't think that that is by its -- I don't think
17 that that's sophisticated. I mean, you know, if you look at
18 the case law --

19 THE COURT: Do you have any authority for me?

20 MR. JEFFRESS: Yes.

21 THE COURT: *Genwright* doesn't get you there.

22 *Genwright* is about tax fraud. It sets out the basic law that I
23 have to go -- it has to go beyond garden variety.

24 MR. JEFFRESS: Are you talking about where they said
25 that the scheme with which a scheme is executed should not be

1 something that the court should consider? Is that -- I'll have
2 to go back --

3 THE COURT: No. *Genwright* is just the general
4 proposition that I may look at the cumulative impact of the
5 scheme in its entirety as sophisticated. I do not need to do
6 this frame by frame and decide whether any particular act is
7 sophisticated. I have to consider all of the facts and
8 determine whether this goes beyond a garden variety intent to
9 defraud.

10 MR. JEFFRESS: I don't think the sophisticated means
11 is whether it goes beyond -- I know Your Honor said that
12 several times, but I don't think it's just whether it goes by,
13 quote, unquote, garden variety embezzlement or, you know,
14 however the Court is characterizing that. I have to say that I
15 disagree with that respectfully.

16 THE COURT: What do you think the law is?

17 MR. JEFFRESS: I think the law is -- I mean, the
18 examples used in the guidelines are when they are offshore, you
19 know, shell companies.

20 THE COURT: So if you don't use a shell company, it's
21 not sophisticated?

22 MR. JEFFRESS: Well, no. That's an example of it,
23 but that takes an extreme amount of sort of advanced planning.

24 And also, I think knowing -- knowing -- a degree of
25 knowingly fraudulent behavior that we don't have here, when

1 you're using shell companies for the sole purpose of, you know,
2 funneling illegal proceeds through them or something, that's,
3 obviously, the prime example used by the guidelines themselves.

4 You know, if you look at the cases, like *United States v.*
5 *White*, you know, the attorney defrauded her client by using
6 false identifications, creating fictitious companies, which is
7 what I just referred to, opening bank accounts under somebody
8 else's name, forging signatures, advising your own client to
9 pay fraudulent IRS notices. That's an example of sophisticated
10 means.

11 You know, *Wolf*; the bank's automatic kickback to straw
12 buyers.

13 THE COURT: But these are different factual
14 constellations which support it, right?

15 MR. JEFFRESS: Yes.

16 THE COURT: That is not the same as saying to me we
17 have an identical scheme where the adjustment did not apply.
18 We have a securities fraud scheme where the investors who were
19 sold convertible notes, if I get it right -- and forgive me if
20 I get the terminology -- I was a liberal arts major, so these
21 don't stick in my head the way they should. But there were
22 notes that were regulated by the SEC.

23 When the SEC comes running, then --

24 MR. JEFFRESS: It changed.

25 THE COURT: Ms. Bennett and Mr. Mascho changed them.

1 MR. JEFFRESS: Yes.

2 THE COURT: And they changed them not only internally
3 but they also get the investors to sign affidavits.

4 MR. JEFFRESS: Yeah.

5 THE COURT: Right? By defrauding them. They didn't
6 forge the signatures, but they pretty much schnookered the
7 investors into signing what -- I heard the testimony -- they
8 didn't agree was true and accurate.

9 MR. JEFFRESS: So one of the notes -- one of the
10 notes is just full of like boilerplate language. It's a
11 five-page note. The other one is like a page and a half. I
12 think the intent --

13 THE COURT: You're doing what *Genwright* says don't
14 do. You're taking each -- you're dissecting each act and
15 saying, well, that wasn't that sophisticated, and that thing
16 over there wasn't that sophisticated, and here over here,
17 that's not sophisticated at all. It's the whole thing. It's
18 the whole multi-year endeavor.

19 MR. JEFFRESS: You know, Your Honor, I think that
20 most of -- I guess I disagree with the government about this.
21 I think most of what Ms. Bennett was doing was trying to build
22 a successful company, and I think the testimony and evidence
23 reflects that, that she thought it was going to be successful
24 and that what she wanted to do more than anything was to
25 actually make these people -- make the invest --

1 THE COURT: But she lied to them.

2 MR. JEFFRESS: She lied to them.

3 THE COURT: She may have thought it was going to be
4 successful, but there is no basis in reality for that.

5 MR. JEFFRESS: And the lie is about the existing
6 financial health of the company. That's the lie. And that
7 is -- and that is what --

8 THE COURT: But that encompasses a lot of facts.

9 MR. JEFFRESS: It encompasses a lot of statements
10 that Your Honor has already referred to that were all actions
11 contained in the business plan that I referred to, which is the
12 P&L statement and everything else.

13 Yes, Bradley Mascho set there and typed up a false
14 statement about the existing financial health of the company,
15 and if we take the light -- the evidence most favorable to the
16 government and accepting the jury's verdict, that was part of
17 the conspiracy with Ms. Bennett, yes. There is that false
18 document.

19 And then there are oral statements made that are basically
20 along the same lines, misrepresenting the existing financial
21 health of the company. I do not believe that's sophisticated.
22 I believe that's the oldest thing in the book. You say, hey,
23 you should come over and invest in my company; I'm doing really
24 well, when, in fact, you're not doing well. That's not
25 sophisticated.

1 THE COURT: Oh, no one would have invested if that's
2 all Ms. Bennett did and we know that.

3 MR. JEFFRESS: No, she --

4 THE COURT: Come on. I've got a bridge in Brooklyn
5 to sell you; come my way.

6 MR. JEFFRESS: Yeah, that's not sophisticated.

7 THE COURT: No, but that's not what she did.

8 So you still haven't convinced me that the adjustment
9 doesn't apply.

10 MR. JEFFRESS: Well, you know, we object. And I
11 understand Your Honor's reasoning.

12 THE COURT: Thank you.

13 Government, I have, obviously, sat through trial and read
14 the presentence report, and the facts within it I think
15 accurately do capture the trial testimony. Is there anything
16 else on the record that you wish to put on the record, rather,
17 to support the adjustment?

18 MS. PULICE: Your Honor, if I may just briefly. I
19 would just like to respond to just two quick things that -- by
20 the defense.

21 First of all, I would just like to make the point with
22 respect to the application of the sophisticated means
23 enhancement. I'm on page 96 of the guidelines here. The Court
24 can consider the concealment of the offense for purposes of
25 considering the sophisticated means enhancement.

1 And I think, as the Court has already accurately
2 summarized, some of the facts that support the sophisticated
3 means enhancement in this particular case, the defendant used a
4 number of different complex financial documents that are
5 certainly beyond the kind of a regular investor in this
6 particular case, including the convertible notes, including the
7 different types of promissory notes, including the business
8 plan, the business plans that changed over time, the profit and
9 loss statements, the revenue forecasts, the revenue forecasts
10 that were emailed, the financial projections that were emailed,
11 her conversations with her victims regarding the health of the
12 company.

13 I think there was testimony from one victim in particular
14 where Ms. Bennett met with that victim in her office and had
15 sketched out on a White Board various graphs about the
16 financial condition and the performance of the company, the
17 risk of the investments.

18 She had several different company names that we heard
19 testimony about, DJB Holding, DJBennett.com, Province of the
20 Dragon. There was testimony from investors that they all --
21 that they believed that they were investing in different
22 things, transdermal matches, oxygen cans, an online clothing
23 business, all different types of -- they were all different
24 versions of the scheme depending on who she was selling her
25 business to and who she was trying to get to investment.

1 She was directing actions of co-conspirators. There was
2 testimony that she tried to relocate her business to New Mexico
3 towards the end of the scheme. She had assisted her victims in
4 liquidating their retirement accounts, provided them advice as
5 to how to do so, had them transfer funds from their retirement
6 accounts back to themselves instead of directly to
7 DJBennett.com in order to avoid detection from regulators. She
8 was back-dating promissory notes. She used funds from high
9 interest commercial lenders in order to repay investors and
10 keep the scheme going.

11 I mean, the entirety of the scheme here is sophisticated.
12 When taken as a whole, this is far more than just a garden
13 variety fraud, and if this is not a sophisticated means, a case
14 that's applicable for the sophisticated means enhancement, I
15 don't know what is.

16 I would also just -- the second point I would like to make
17 is in response to Defense's argument about the application of
18 the *White* case. Lucille White was the case that was tried by
19 my colleague Mr. Windom in front of Judge Grimm, and I think if
20 we look at the facts of that case, where the district court did
21 apply the sophisticated means enhancement, that makes it clear
22 that the sophisticated means enhancement should be applied in
23 this particular case.

24 In that case, Ms. White basically just -- there was one
25 victim. She created fraudulent documents purporting to be from

1 the IRS in order to get that victim to send money that she took
2 herself. It was a straightforward, fairly straightforward
3 embezzlement scheme, and the Court applied the sophisticated
4 enhancement application there, and that was something that was
5 upheld by the Fourth Circuit.

6 So, Your Honor, for those reasons, our position is that we
7 agree with probation that two levels should be added for
8 purposes of the sophisticated means enhancement.

9 THE COURT: Okay. Thank you.

10 All right, I do find that the sophisticated means
11 adjustment applies. In addition to the trial testimony, the
12 testimony summarized in the presentence report -- and I do
13 believe that Ms. Pulice has accurately reflected much of it --
14 I do note that this scheme went on for multiple years. It
15 involved -- it was complex in that it changed over time all
16 depending on what Ms. Bennett needed to do to keep it going.

17 With regard to misrepresentations to the SEC during its
18 investigation and lulling the 41 victims not only into giving
19 once but giving over multiple occasions and assisting
20 Ms. Bennett in keeping the SEC at bay and, in that respect, I
21 think the interplay between the SEC, the victims and, frankly,
22 the IRS supports the adjustment.

23 This is not a garden variety scheme. I note there were
24 more than just -- it wasn't just about a single incident of
25 misrepresenting the financial health of the company as the

1 defense very ably attempts to distill this, but that's not
2 going to win the day here. I saw, as evident in the hundred
3 plus exhibits, probably close to 200 exhibits which were
4 submitted, there were high-end, glossy brochures, spreadsheets,
5 promotional material to lull the investors into believing that
6 the startup was healthy. It went on over time. As the --
7 Ms. Bennett's hope in the success of the company was dashed,
8 she became more desperate, and the scheme became more intricate
9 and protracted.

10 The engine of the scheme, frankly, was Ms. Bennett's
11 longstanding position as a financial advisor. And we don't
12 need to go this far, but I would note that at least according
13 to the documents generated by the SEC and the findings that
14 were made, the reason why the -- many of the long-time
15 investors believed in Ms. Bennett, took her word for it was
16 because she created essentially a pre-scheme to the scheme.
17 There were lots of misrepresentations out there according to
18 the SEC about Ms. Bennett's financial acumen, about her ability
19 to manage a one-billion-plus portfolio, which was all untrue.

20 And so if we were to -- I don't need to, but if I were to
21 look at those facts, they amply support that this was a scheme
22 executed by sophisticated means. So, in my view, the
23 enhancement applies.

24 Next up: 3B1.1, Subsection C, Organizer, Leader. The
25 government is seeking four levels. Probation is recommending

1 two levels. Defense says no levels.

2 I have to say I think four is a stretch. I do not see
3 four as really being on the table. Where I see this living
4 and I -- frankly, Mr. MacNeal said it best. He set up -- if
5 the trial hadn't, Mr. MacNeal's grand jury testimony makes
6 clear that Ms. Bennett truly was running the show. And so then
7 it really -- running the show in setting up the business at
8 issue and directing all of the different moving pieces.

9 And so the question is how many -- in my view, how many
10 individuals were criminal participants, not just participants,
11 in making the scheme go because that is what the adjustment
12 requires. That's the separator between a two versus a
13 four-level adjustment.

14 Who from the defense will be addressing this adjustment?

15 MR. JEFFRESS: Your Honor, me again. Thank you.

16 THE COURT: Okay.

17 MR. JEFFRESS: Your Honor, the only -- I -- you know,
18 obviously, there was no other individual at the trial of this
19 matter who acknowledged any criminal culpability or any kind of
20 conspiratorial participation in the scheme. The only other
21 individual I'm aware of is Mr. Mascho who has pled. He didn't
22 testify. You know, he -- which I, frankly, raise a lot of
23 questions in my mind about why --

24 THE COURT: But, well, he admitted completely to the
25 conspiracy. He pled guilty to --

1 MR. JEFFRESS: Correct. So there is no doubt that
2 there is a predicate for conspiratorial liability between him
3 and Ms. Bennett. The question is whether she was directing any
4 of his actions, and I don't see any of that.

5 The government --

6 THE COURT: From the trial transcript? From two
7 weeks of --

8 MR. JEFFRESS: Well, he didn't testify.

9 THE COURT: Okay. So? He testified through his
10 emails. He testified through the victims who testified to what
11 Mr. Mascho would say at Ms. Bennett's direction.

12 MR. JEFFRESS: So, you know, he, obviously, did a lot
13 of things, and I think he did a lot of things on his own. And
14 I think there is, you know, obviously, a legal basis and a
15 basis for the Court to find that there is conspiratorial
16 liability between the two.

17 But I don't think there is any basis, because I haven't
18 seen his testimony. They didn't bring him here. We haven't
19 seen -- I'm not aware even that he testified in front of the
20 grand jury. I may have missed something. But, you know, he
21 has never come and said this.

22 And so, I mean, all we have really is the government's
23 representation or proffer that, hey, this guy was acting at her
24 direction when, you know, he testified in front of the SEC or
25 made statements to FINRA or did various things. But it's just

1 not there. Like, they haven't given us the substance of it.
2 And, you know, I have to think that that's because there is
3 something wrong.

4 But regardless of whether there is something wrong or not,
5 like, it's just not there. They have the burden, and they
6 haven't offered any evidence to show that he was acting at her
7 direction. The mere fact that she's -- you know, he's down the
8 vertical chain in the corporate structure is not enough. You
9 know, they have to show that basically she was directing
10 criminal activity by him, and there is just no allegation --

11 THE COURT: If my memory serves me right, the
12 testimony was that he was creating all of the -- many of the
13 financial documents, and he was soliciting and obtaining the
14 affidavits alongside Ms. Bennett and, it's fair inference, at
15 her direction. I'm sure the government will point -- well,
16 you're saying there is nothing there. So I'm sure the
17 government is going to point to me where the fair inference is
18 that it was at Ms. Bennett's direction.

19 MR. JEFFRESS: Well, inference, that's where I have
20 to disagree with Your Honor. I think alongside is a good
21 characterization, and that's actually, in the less guarded
22 moments, when addressing this issue directly, they characterize
23 it. They say that he was with her every step of the way or
24 nearly every step of the way.

25 You know, so, you know, I don't see any evidence that he

1 was acting at her direction with respect to criminal activity.
2 If it's there, then let's see it, you know, and we'll have a
3 chance to contest it, and we'll have our Sixth Amendment right
4 to contest it and come in and say why it's not credible or
5 something like that; but we haven't gotten that far here.
6 There is nothing there. Like, let's bring him in.

7 THE COURT: What Sixth Amendment right are you
8 referring to?

9 MR. JEFFRESS: To contest the evidence against
10 Ms. Bennett, to test the --

11 THE COURT: For guideline adjustment?

12 MR. JEFFRESS: Sure. They have the burden, Your
13 Honor. They have to profer --

14 THE COURT: No, no, no. That's different than a
15 Sixth Amendment confrontation right. Are you talking about a
16 Sixth Amendment confrontation right?

17 MR. JEFFRESS: I still have a right to know what the
18 evidence is that would support the enhancement and not just an
19 inference that --

20 THE COURT: Mr. Mascho's guilty plea.

21 MR. JEFFRESS: I'm sorry?

22 THE COURT: Mr. Mascho's guilty plea.

23 MR. JEFFRESS: Mr. Mascho did plead guilty to
24 conspiratorial liability, yes.

25 THE COURT: We have his guilty plea, right?

1 MR. JEFFRESS: We have -- yes, we have a copy of his
2 guilty plea. But, you know, that's it and that's all. And
3 that's not enough.

4 You know, I just don't understand why if this was truly
5 the case and if the government was really going after this
6 enhancement and thought it was applicable, why they would not
7 have produced an affidavit or something else that shows that he
8 was acting at the direction of Ms. Bennett. I don't have that,
9 you know, I'm -- and therefore I, obviously, never had a right
10 to cross-examine him or anything like that. You know, there is
11 just not enough there to find this, Your Honor, and that's our
12 objection.

13 THE COURT: Okay. So that's the ground on which you
14 object; that there is no evidence that Mr. Mascho was taking
15 the direction of Ms. Bennett. Am I getting that right?

16 MR. JEFFRESS: I mean, you know, Mr. Mascho
17 ultimately benefitted a lot more financially --

18 THE COURT: I'm just asking a direct question which
19 is: Is that the ground on which you're objecting to the
20 adjustment?

21 MR. JEFFRESS: And I also think there is evidence to
22 support the fact that he would -- he was financially motivated,
23 and he did take these actions by himself. So it's not just a
24 lack of government evidence. He actually benefited financially
25 from the scheme much more than Ms. Bennett did who was the net

1 Tooser overall. Okay? She lost her entire forfeiture
2 investing in DJBennett.com.

3 THE COURT: At the time of her arrest -- you're
4 saying now, but at the time of her arrest she had more art,
5 more things, more stuff, two penthouses, a \$10,000 a month pad
6 in -- New Mexico was it? Sante Fe?

7 MR. JEFFRESS: A lot of that was preexisting.

8 THE COURT: Well, she didn't give it up to make her
9 business go. She lived quite well while she was defrauding
10 most of these --

11 MR. JEFFRESS: She invested \$18 million of her own
12 money in this scheme, \$18 million.

13 THE COURT: But she took 21, gave some of it back,
14 but that doesn't -- it doesn't erase the criminal conduct.

15 MR. JEFFRESS: Well, I'm not saying --

16 THE COURT: Simply because you gave some of your
17 stuff away but you lived quite well --

18 MR. JEFFRESS: Not just gave some of your stuff
19 away --

20 THE COURT: It's not doing the job you wish it to do.

21 MR. JEFFRESS: Almost all of that money -- I mean, it
22 was spent on things like employee salaries, on inventory, on
23 operating expenses. This was -- you know, I mean, I think --
24 you know, it's very important, Your Honor, respectfully, in our
25 opinion that, you know, we recognize that this was a legitimate

1 company, which it was. It had real sales. It had real
2 inventory and real --

3 THE COURT: There were but the comparison is a corner
4 store to Marriott International. It may have been a corner
5 store, but it wasn't what Ms. Bennett was telling the victims.
6 And so your definition of a viable company, again, doesn't do
7 all the heavy lifting in this regard.

8 MR. JEFFRESS: Well, I mean, you know, it hadn't
9 turned the corner, you know, the way most online retailers do
10 until very late in their existence into a profitable company,
11 and that is true; but that doesn't mean that her ambitious
12 goals for the company weren't genuinely held and weren't
13 actually possible, because they were.

14 You know, I mean, the evidence I think overall, if you
15 look at this, really strongly supports that view of what was
16 going on here which was that she had ambitious goals for the
17 company and she hadn't gotten there yet. Yes, that is true.
18 The business failed ultimately.

19 But anyway, on this point, you know, they have got to
20 produce the evidence, Your Honor. That's only fair. They have
21 got to show us where Mr. Mascho is saying, hey, listen,
22 Ms. Bennett directed us and allow us to contest that. And they
23 haven't done that. They haven't done that in their sentencing
24 memo, and I haven't seen the evidence otherwise.

25 So, yes, respectfully, we do object to that enhancement.

1 THE COURT: Okay.

2 Ms. Pulice or Mr. Windom, where is quite specifically the
3 evidence that Ms. Bennett directed Mr. Mascho in this scheme?

4 MS. PULICE: Your Honor, I think we can look
5 specifically to the trial testimony alone for evidence that she
6 was directing Mr. Mascho in the scheme. I think it's a fair
7 inference based on the testimony that we heard and the
8 documents that we saw.

9 To begin, there was a -- nearly all of the investors who
10 testified had direct contact with Ms. Bennett. There were very
11 few who had contact with Mr. Mascho.

12 Of course Mr. Mascho is not without criminal liability
13 because he was involved in the scheme as well. He was -- but
14 the testimony and the documents primarily indicated that
15 Mr. Mascho was involved in sort of the paperwork aspect. So he
16 was the one who was drafting the false affidavits. He was the
17 one who was emailing investors. He was the one who was
18 assisting investors with liquidating their retirement accounts
19 and making sure that those funds went back to the investors and
20 then that those investors directed the funds to DJBennett.com
21 in order to avoid regulators. He was the one who was dealing
22 with Ms. Bennett in the tax return preparer in order to have
23 the taxes prepared. And so he was sort of the back-office
24 engine, if you will.

25 THE COURT: And he admitted to as much in his

1 Statement of Facts supporting his guilty plea, correct?

2 MS. PULICE: That's correct, Your Honor, and that's
3 consistent with what he admitted in his Statement of Facts in
4 his guilty plea.

5 In addition, as the Court mentioned, the grand jury
6 testimony from Anderson MacNeal that the defendant submitted as
7 part of their sentencing exhibit corroborates that Ms. Bennett
8 was the one who was running the show. She was the one who was
9 directing the actions of everyone at the business, and that's
10 also consistent with the testimony that we heard from the other
11 employees of the business, both from Ms. Bennett's own witness
12 who was her IT guy, as well as from Mark Collins.

13 That's also consistent with the documents that we saw, the
14 emails from some of the other employees, including John Koorey,
15 including Mr. Mascho, and including anyone else who would have
16 worked with the business whose emails were introduced at trial.

17 So for those reasons, Your Honor, we believe that at least
18 a two-level enhancement is appropriate in this particular case.

19 The guidelines also discuss that the Court can consider
20 whether the activity was otherwise extensive. So the Court can
21 consider not just the number of participants but also the
22 width, the breath, the scope, complexity, and the duration of
23 the scheme when considering whether the activity that the
24 defendant was involved in was otherwise extensive.

25 And so, Your Honor, for those reasons, a two-level

1 enhancement is certainly appropriate in this particular case.

2 THE COURT: All right. I agree that the two-level
3 enhancement is appropriate.

4 I don't believe, out of an abundance of caution and
5 looking at it -- what evidence squarely supports the
6 adjustment, it -- the defense's argument largely, if not
7 exclusively, rests on whether Ms. Bennett directed Mr. Mascho.
8 And I think circumstantially the evidence is there. The
9 evidence was there at trial but most directly from the facts to
10 which Mr. Mascho admitted that the government could prove and
11 admitted were true, accurate, and provable beyond a reasonable
12 doubt in his attached -- in the Statement of Facts supporting
13 his guilty plea.

14 Mr. Mascho admitted that at Ms. Bennett's direction -- and
15 I'm reading verbatim to what Mr. Mascho agreed. At
16 Ms. Bennett's direction, Mascho helped Ms. Bennett draft the
17 convertible notes and promissory notes, prepare the business
18 plan that Bennett used to convince investors to purchase the
19 convertible notes and promissory notes, helped BGFS investors
20 liquidate their retirement and investment accounts so that the
21 investors could reinvest their money in DJBennett.com
22 convertible and promissory notes and, along with Bennett,
23 convinced investors to roll over their investments in
24 DJBennett.com's convertible notes into DJBennett.com promissory
25 notes.

1 I do find that this is sufficient, in addition to the
2 trial testimony, to support the two-level adjustment for
3 organizer, leader based on Ms. Bennett being the head shot
4 caller, top banana at DJBennett.com and then directing, at a
5 minimum -- maybe not everything that Mr. Mascho did but
6 certainly key aspects of the scheme to assure that it worked.
7 So I do find two levels will apply.

8 That leaves us with the 3C1.1 obstruction adjustment.

9 MR. JEFFRESS: Your Honor, I guess there are several
10 different areas where the government has tried to make this
11 argument, and I guess -- you know, if the Court wants to direct
12 me; otherwise, I can just address each one.

13 THE COURT: So let me give you some thoughts. The
14 obstruction adjustment is broad. It's wide-ranging. It can
15 encompass lots of different conduct. The conduct in my view
16 which most squarely applies is what began from the moment
17 Ms. Bennett was arrested and ordered by not one but two maybe
18 three, four courts not to do, which was contact the famous 40
19 on the list.

20 MR. JEFFRESS: Sure.

21 THE COURT: Do not contact them.

22 MR. JEFFRESS: Uh-huh.

23 THE COURT: They are witnesses. They are victims.
24 Don't do it.

25 And the lion's share of at least the first 200 ECF entries

1 are for detention hearings --

2 MR. JEFFRESS: Yeah.

3 THE COURT: -- and bail reviews. And I can also go
4 through them in robust detail, but what they paint is the
5 evidentiary picture that Ms. Bennett wouldn't take no for an
6 answer and would not desist even when multiple courts told her
7 not to do it.

8 So Note 4 of this adjustment, as the examples have covered
9 conduct, notes that the adjustment applies if the individual,
10 the defendant, threatens, intimidates, or otherwise unlawfully
11 influences a co-defendant, witness, or juror, directly or
12 indirectly or attempts to do so. So we don't even have to get
13 into whether it was successful. Although, I would submit to
14 you the evidence demonstrates initial success.

15 I sat in a detention hearing where Mr. Lazzuri was called
16 by the defense but later testified to -- not for the defense.

17 So I have to tell you, just on Note 4(a) alone, the
18 adjustment applies in my view.

19 MR. JEFFRESS: So, Judge, I think that this issue
20 sort of like captures the whole case for me, which is that, you
21 know, she did -- she violated the Court's order. There is no
22 question. But what was her intent? What was her intent? Was
23 her intent to influence the noteholders to lie or somehow
24 obstruct justice because she felt that she had done something
25 illegal and she wanted them to cover for her? Or was it her

1 intent that she thought she was building something that was
2 correct and true and ultimately going to be successful, and she
3 wanted the noteholders to retain their faith in her.

4 THE COURT: She wanted them to invest, to keep on
5 investing.

6 MR. JEFFRESS: And why invest?

7 THE COURT: She was pushing --

8 MR. JEFFRESS: Yeah, and why invest?

9 THE COURT: -- through Mr. Koorey.

10 MR. JEFFRESS: For her own financial benefit or to
11 build something that would ultimately reward them as well as
12 her.

13 Judge, there is no question in my mind that that's what it
14 was; the whole thing. Like, she was trying to build something,
15 that she is very hard-headed, stubborn, whatever you want to
16 say. But was her intent -- this is very critical for this
17 enhancement. Was her intent to influence them to lie on her
18 behalf about, you know -- I don't know -- whether she told them
19 the financial state -- what she said about the financial state
20 of the company or something like that? Or was it just to say,
21 hey, stay with me, keep your faith in me, you know, this
22 company is ultimately going to be successful.

23 And there is no evidence, none, to support the fact that
24 she was trying to influence them to lie for her. None. And
25 the Court even said that at the time. You know, I have the

1 hearing transcript from one of the detention hearings that Your
2 Honor referred to, September 29, 2017, noting that the
3 government's proffer regarding the context, the substance of
4 the conversations between Ms. Bennett and the noteholders
5 certainly -- the Court said, Certainly it goes to what we
6 already know. The historic fact that Ms. Bennett violated this
7 Court's release order in spades. It's less probative. It
8 doesn't move the needle that much more.

9 THE COURT: That was in September?

10 MR. JEFFRESS: Yes.

11 THE COURT: So by December, when Ms. Bennett is
12 opening up a Swiss-encrypted email account, because she would
13 not stop contacting the victims and, through Mr. Koorey, was on
14 the victims to keep giving her money, and as a matter of fact,
15 there were hours and hours of jail calls, because Ms. Bennett
16 at that point was saying to me -- I can't remember. There
17 was -- let me out or -- oh, no. It was the argument that I
18 have no lawful authority to maintain the No-Contact Order
19 because she's detained. That was that hearing.

20 MR. JEFFRESS: The question is not whether she made
21 contact with them. She did. The question is whether -- what
22 was her intent in doing? So was she trying to obstruct justice
23 by having them lie?

24 THE COURT: No, but she was trying to influence them
25 and, in my view, criminally.

1 MR. JEFFRESS: Influence doesn't do that.

2 THE COURT: There was an indictment that says your
3 entire business plan is a fraud, that your hope and dreams are
4 unfounded and unrealistic.

5 MR. JEFFRESS: That's what they say, yes.

6 THE COURT: Yes. And you know that.

7 MR. JEFFRESS: That's what they say. That's right.

8 THE COURT: And the defendant knows that.

9 MR. JEFFRESS: Knows that they say that.

10 THE COURT: And the Court said stop it. And once,
11 twice, three times I invoke my inherit authority to stop
12 influencing the witnesses.

13 MR. JEFFRESS: Well, influencing --

14 THE COURT: Yes.

15 MR. JEFFRESS: -- to do what?

16 THE COURT: To give money.

17 MR. JEFFRESS: To do what -- to give money. Okay.

18 Okay.

19 THE COURT: Yeah, yeah. And asking for \$25,000
20 and --

21 MR. JEFFRESS: Yeah, so she --

22 THE COURT: No, because this is important. So
23 September -- you can quote me September, but fast-forward four
24 months later and Ms. Hesterberg, Mr. Lazzuri, Mr. Grimaldi, and
25 -- I have Eccleston -- I don't think it was mister. I don't

1 remember -- was contacted through the business manager at
2 Ms. Bennett's direction, and she kept pressing him, and he kept
3 saying -- because I listened to the tape. I don't know if you
4 did. He kept saying, I shouldn't be talking to you.

5 MR. JEFFRESS: Yeah.

6 THE COURT: You shouldn't be talking to me. You
7 shouldn't be asking me to do this. Talk to your lawyers.

8 MR. JEFFRESS: Yeah.

9 THE COURT: And she kept saying no, no, no. I know
10 what I'm doing. And you need to -- you need to be more
11 forceful. Don't be you; be me.

12 MR. JEFFRESS: So, again, I do think that
13 demonstrates a violation of the Court's order, but I think we
14 all recognize and the Court recognizes a mere violation of the
15 Court's order does not constitute obstruction.

16 THE COURT: But it does if she attempts to influence
17 witnesses.

18 MR. JEFFRESS: To do what?

19 THE COURT: Give her money.

20 MR. JEFFRESS: To give her money? No, I don't think
21 that constitutes obstruction.

22 THE COURT: In the context of this fraudulent scheme?

23 MR. JEFFRESS: That's to keep her business going.

24 That's not to influence these proceedings or to procure false
25 testimony or to present them from cooperating with the

1 government or anything like that.

2 THE COURT: If this isn't obstruction -- to take a
3 quote from Ms. Pulice -- I don't know what is.

4 MR. JEFFRESS: So it would be if she contacted them
5 and said, look, I need you to not cooperate with the FBI. I
6 need you to tell them that -- you know --

7 THE COURT: I think that was actually earlier. That
8 was during -- in September where I gave Ms. Bennett the benefit
9 of the doubt, because there were a number of witnesses who were
10 being grand-juried at the time. They were going before the
11 grand jury, and they were actually telling the case agent that
12 they had not talked to Ms. Bennett. And yet, in fact, I
13 remember one very vividly, in fact, had talked to Ms. Bennett
14 and was maintaining to the case agent she had not.

15 MR. JEFFRESS: Okay. But my point is that trying to
16 obstruct these proceedings by trying to procure false testimony
17 is not what she did. And so insofar as everyone saying that
18 those contacts were for that purpose, that's not true.

19 THE COURT: But I don't need to find that to find the
20 adjustment applies. I need to find that Ms. Bennett unlawfully
21 influenced a witness directly or indirectly or attempted, or
22 attempted to do so.

23 MR. JEFFRESS: In order to obstruct --

24 THE COURT: This is a two-level adjustment to capture
25 months of flouting this Court's order. We haven't even gotten

1 to what happened with the property, and I can find that as an
2 alternative basis, because to sit here in January and hear from
3 Ms. Bennett's prior counsel that they know that property is off
4 limits, that they are not to negotiate that, only to find out,
5 after everybody represents it's kumbaya, all the defense
6 holding hands telling me, no, we know -- we know we can't -- we
7 can't negotiate that property, we can't sell that property;
8 only to find out that not only did Ms. Bennett not file with
9 the land records my lien but then entered into an agreement
10 with her prior counsel that gave prior counsel the authority to
11 negotiate that property and then came to court and maintained
12 that they hadn't put those properties up for sell when, in
13 fact, they did.

14 And it was Mr. Windom who had to show me Zillow when --
15 when the attorneys -- with Ms. Bennett standing right there
16 saying these are the lawyers I want.

17 MR. JEFFRESS: The government hadn't proffered that
18 as a basis for the obstruction.

19 THE COURT: No, I'm saying I can find that.

20 MR. JEFFRESS: You can find that on your own.

21 THE COURT: Sure. I'm saying I don't need it, but if
22 the Fourth Circuit needs it, they have it.

23 MR. JEFFRESS: Well, I don't think that that's been
24 well-developed in the papers, and I don't -- I, obviously, have
25 not been able to talk to Ms. Bennett's previous counsel about

1 that specific issue. They wouldn't communicate with us about
2 that. But, you know -- so I didn't -- I'm not able --

3 THE COURT: Are you saying for the court above me
4 that there is an alternative basis that I don't need to reach
5 but they may?

6 MR. JEFFRESS: I'm sure the Court understands our
7 argument, that I think -- you know, in terms of influencing
8 testimony falsely -- at this trial or these proceedings, we
9 don't think that happened. We think she encouraged them to
10 stay with her, to invest, you know, be -- that, you know -- I
11 do think that she thinks of them -- at the time and maybe still
12 thinks of them as people she had very strong loyalty to and
13 wanted to communicate to them that, you know, let's stay
14 together on this; but I don't think it was an attempt to
15 influence their testimony. She didn't think she did anything
16 wrong. So, you know, that's at the time.

17 So that's where I think we come out on that, and that's
18 our objection, Your Honor. Thank you.

19 THE COURT: Thank you, Mr. Jeffress.

20 THE COURT: Mr. Windom? Ms. Pulice?

21 MS. PULICE: Thank you Your Honor.

22 Just very briefly, I think Mr. Jeffress' point here was we
23 need to look at Ms. Bennett's intent and whether it was her
24 intent to influence some of these investors who she was
25 contacting to lie to the government during the course of this

1 investigation.

2 And, Your Honor, I would submit to the Court that based on
3 the evidence at trial, if we look at her prior conduct with
4 respect to the FINRA investigation and with the SEC
5 investigation, it establishes a pattern, and the pattern is to
6 obstruct those investigations. The clear pattern is to
7 obstruct those investigations.

8 And that's what her intent was when she was contacting the
9 investors in this particular case over orders of multiple
10 judges in this district and other districts, through the course
11 of multiple detention hearings and, even though she was
12 represented by numerous attorneys who were perfectly capable of
13 contacting these particular investors on her behalf, she didn't
14 go through the appropriate channels. Instead, she contacted
15 them directly herself over the order of the Court.

16 The testimony at trial that I would specifically reference
17 was -- first, with respect to the FINRA investigation, there
18 was testimony that FINRA was investigating DJBennett.com and
19 Ms. Bennett's sale of convertible notes; and during the course
20 of that investigation, Ms. Bennett instructed some of the
21 victim investors who testified to ignore calls from FINRA.

22 And then we heard that she herself lied to FINRA when she
23 was interviewed by them in November of 2015, claiming that she
24 had never obtained or attempted to obtain money from investors
25 in DJBennett.com when, in fact, at that point she had obtained

1 million of dollars of investor funds at the time she was
2 interviewed.

3 THE COURT: So what if the argument, though, is made
4 that that's really all part and parcel of the offense conduct
5 and it's captured within those guidelines -- which is primarily
6 why I looked, because I thought it was most squarely supported,
7 frankly, by the post arrest, post offense conduct -- that that
8 doesn't get us into is this in some ways -- although I think
9 the law on this is pretty bad, but -- is this in some ways
10 double counting to say that FINRA and pre-arrest conduct can
11 qualify for the adjustment?

12 You may very well be right, but if we're looking at post
13 arrest conduct, am I all washed up that the number of detention
14 hearings we had with this -- in this respect would not also
15 independently support the adjustment?

16 MS. PULICE: Your Honor, my argument is not- is with
17 respect to determining what her intention was --

18 THE COURT: I see what you're saying.

19 MS. PULICE: -- when she was directly --

20 THE COURT: -- it informs the later conduct.

21 MS. PULICE: That's correct, Your Honor.

22 THE COURT: Got it. Okay.

23 MS. PULICE: It's informative of exactly what
24 Ms. Bennett was trying to do when she was violating the Court's
25 order time and time again.

1 And the second point is with respect -- the pattern
2 continued with the SEC investigation with Mr. Mascho who, under
3 Ms. Bennett's direction, lied in his deposition numerous times
4 claiming -- and that was well developed in his plea Statement
5 of Facts, claiming that he had not done any work in connection
6 with the convertible or promissory notes. He couldn't recall
7 whether Ms. Bennett had accepted investor money. He couldn't
8 recall whether DJBennett was experiencing financial problems in
9 2014.

10 So, again, it's this pattern of conduct of Ms. Bennett
11 doing the -- doing -- making direct efforts to obstruct all of
12 these investigations, the FINRA investigation, the regulatory
13 investigation, the SEC investigation, and then, of course, the
14 government's investigation in this particular case. And I
15 think that her intention is captured by this pattern.

16 MR. JEFFRESS: Your Honor, just with respect to the
17 Mascho thing -- I think there is also the fact that FINRA is
18 not a government agency and that is not the same investigation.
19 That's a separate investigation. So we object on that ground.
20 I think that is stated in our papers.

21 And then also know that I find it very hard to believe
22 that they are mentioning Bradley Mascho as obstruction with the
23 SEC given that Mr. Mascho's plea agreement does not include a
24 two-point enhancement for obstruction. If he's the one that
25 Ms. Bennett allegedly persuaded to obstruct justice and he's

1 the one that gave the testimony, then why in the world wouldn't
2 they ask for a two-point obstruction enhancement in his plea
3 agreement? They can't have it both ways on that. That's not
4 fair and that's not logically consistent.

5 MS. PULICE: Your Honor, I can respond to that, and
6 that is because Mr. Mascho pled guilty to a false statement
7 charge, and under 3C1.1, the obstruction enhancement would not
8 be applicable since he actually --

9 THE COURT: It doesn't matter and here's why. The
10 adjustment applies in my view -- and I'm just going to read for
11 the benefit of everybody here and into the record. I take the
12 government's point that there is a pattern pre arrest which
13 supports an intent to influence, guide, and make sure that the
14 victims do what Ms. Bennett wants and that continued after her
15 arrest.

16 So here are just some of the facts that in my view support
17 the adjustment. Ms. Bennett was initially released with the
18 first judge out in New Mexico ordering that she not contact 40
19 victims. It was an order of the Court. And within two hours
20 of release, Ms. Bennett is home. She's face-timing and having
21 other contact with individuals on that no-contact list.

22 Ms. Bennett then appears a couple of days later in this
23 court and is put on release initially, and Mr. Windom actually
24 spots Ms. Bennett on her attorney's phone and is suspicious.
25 It turns out that his suspicions were well-founded because

1 instead of going directly home, as the Court ordered her to do,
2 and maintain the no contact with 40 victims, Ms. Bennett goes
3 the other way on the Beltway. She's missing in action for two
4 and a half hours. She buys a burner phone, which is not
5 exactly what folks with the best of intentions do. She then
6 makes 133 separate contacts with individuals on the no-contact
7 list.

8 There is no challenge to the propriety of the no-contact
9 list at that time. It was an order of the Court.

10 When talking to the individuals, she describes the
11 investigation as, quote, a witch hunt. There were witnesses
12 who Ms. Bennett had told -- had contact and were asked to deny
13 the substance of the contact. And that's at the transcript --
14 I have pages 10 and 11, ECF 59 is at least my notes.

15 Other witnesses did deny having contact with Ms. Bennett
16 altogether when clearly they did from the phone records. There
17 were contacts that went on for a solid week. Eight total hours
18 of prohibited contact when you add up all the time on the
19 phone. At the time Ms. Bennett was aware that the same
20 individuals were being contacted to appear before the grand
21 jury and give sworn testimony.

22 In connection with one of these earlier hearings, I note
23 that there had been an affidavit which supported the complaint
24 against Ms. Bennett, and the affiant, being the case agent,
25 noted that Ms. Bennett had coached at least one employee

1 regarding the SEC investigation -- and this goes to intent,
2 intent with regard to how Ms. Bennett operates. With regard to
3 this witness, the affidavit notes that Ms. Bennett directed him
4 to be nice but confused, be nice but incompetent.

5 We can then fast-forward to the December 5th hearing which
6 is the hearing on the defense's motion for clarification as to
7 whether the No-Contact Order will stay in place because
8 Ms. Bennett was now detained based on her historic inability to
9 follow this Court's direction. At that time, I found it was my
10 inherent authority that I could base and continue this
11 No-Contact Order, and the facts supporting that decision
12 included some of the following: That there was, in fact,
13 efforts on Ms. Bennett's part to obtain a Swiss-based encrypted
14 email account so she could continue to tell the victims that
15 the health of the company is still full well. She wanted to, I
16 believe, if my memory serves me right, publish a newsletter
17 about the ongoing health even though this case was in full
18 force.

19 There were five individuals whom she had Mr. Koorey
20 contact who were on the no-call list. At the time she was
21 pressing to have them all invest more money, and she was, in my
22 view and I will make this as a finding, absolutely lying to
23 those investors and making promises she could not keep about
24 returning that money in short order with a handsome profit.
25 And there is absolutely no basis given the charges that

1 Ms. Bennett was facing and what we now know to be the robust
2 evidence against her to have made those statements.

3 If that's not attempting to influence a witness, well,
4 then we're living in an alternate reality. That alone, in my
5 view, justifies the two-level upward adjustment.

6 I believe that the court above me could also look to the
7 January '18 and May 2018 conduct with regard to the property
8 that this Court always believed was secured. I personally
9 don't believe, for what it's worth to the Fourth Circuit, for a
10 second that this was a mistake on Ms. Bennett's part that was
11 promulgated by Mr. Schamel and some confusion in the office.
12 And what I'm referring to is the failure to record with the
13 land records my court order restraining those properties.

14 Ms. Bennett, if nothing, is sophisticated, and she is
15 careful, and that was just one more, in my view, attempt to
16 circumvent and disregard this Court's order.

17 So if the Fourth Circuit wishes to look at an alternative
18 basis, I direct them to that post offense conduct.

19 So based on what we've discussed, the two-level adjustment
20 applies.

21 All right, where are we with regard to total offense
22 level? And, Mr. Encarnacion, do you -- have you been following
23 all of that? Do you need any clarification from me?

24 MR. ENCARNACION: No, Your Honor.

25 THE COURT: Okay.

1 So that, I believe, puts us at a final offense level of
2 41. Am I getting that right? I have 27 when considering base
3 offense level, plus 20 levels upwards for the loss; substantial
4 financial hardship to five or more victims, plus 4; violation
5 of securities laws as a registered broker/dealer, plus 4.
6 Those were the uncontested adjustments at a 35. Sophisticated
7 means 37; organizer, leader 39; obstruction 41.

8 Am I getting it right?

9 MS. PULICE: Yes, Your Honor.

10 THE COURT: And then a Criminal History I.

11 All right, before we get to the 3553(a) arguments, I will
12 hear from anyone who wishes to be heard in court and then,
13 Mr. Jeffress, if you wish to have any of the family speak.

14 MR. JEFFRESS: Thank you, Your Honor.

15 THE COURT: Okay.

16 MS. PULICE: Thank you, Your Honor. I would like to
17 introduce Ms. Linda Jenkins.

18 MS. JENKINS: Good morning, Your Honor.

19 THE COURT: Good morning.

20 MS. JENKINS: Thank you for taking the time to listen
21 to my testimony today. I'm representing myself and my husband,
22 Michael Jenkins. I would just like to read my statement. I'm
23 out of my comfort zone, so I would like to read it to you.

24 THE COURT: Let me ask you, Ms. Jenkins, have I --
25 have you been in court for other proceedings and some of the

1 trial as well?

2 MS. JENKINS: I have, yes.

3 THE COURT: Okay. Now I can put a name to the face.

4 MS. JENKINS: Okay.

5 THE COURT: Because I remember seeing you.

6 MS. JENKINS: Okay, thank you.

7 First I would like to thank you for allowing me time to
8 explain how the fraud committed by Dawn Bennett has impacted my
9 husband and myself. We have always lived a very simple, no
10 frills life and living within our means.

11 Our association with Dawn Bennett began approximately
12 30 years ago. Dawn spoke at our real estate office where I was
13 a realtor. She spoke on the importance of retirement savings
14 and how we could obtain a secure future. Knowing that we need
15 to continue saving for our retirement, Mike and I met with Dawn
16 immediately.

17 On our first meeting, we were both very impressed with her
18 knowledge and general personality. She seemed a good fit for
19 us. Over the years we built a very trusting and confident
20 relationship with Dawn Bennett. Dawn went through our many
21 changes in life, births, deaths, celebrations, and retirements.
22 We never had any reason to doubt her advice, although many
23 times it was above our head risk statistics and how the changes
24 would enhance our portfolios. She was the professional in our
25 financial future. It was a business relationship but with a

1 strong trust and confidence, as I stated earlier.

2 Only until recently have we learned the hard way. We
3 trusted Dawn on her advice -- I'm sorry -- one too many times.
4 It did not come quick or easy our decision to follow Dawn in
5 her new endeavor, all the time pounding in our heads that with
6 the upcoming election, the market was going to crash and people
7 were going to lose everything.

8 We have never taken risks with our future, knowing we had
9 limited assets to last us through retirement. Mike and I
10 studied and thought long and hard before agreeing to her plan.
11 We both said several times in our discussion Dawn has never
12 advised us wrong. So the decision was made and the funds were
13 transferred.

14 Dawn always needed the transfers ASAP, which should have
15 been a red light for us, but, again, it was a long and trusting
16 relationship.

17 On we go until contacted by the FBI that Dawn had been
18 arrested. And I might just add as a footnote we were told not
19 to speak with the FBI, and we did not for a couple of the phone
20 calls through Agent Custer.

21 THE COURT: You were told by who?

22 MS. JENKINS: By Dawn not to -- she kind of
23 enlightened us of some of the issues she was having, and she
24 named many famous people that had gone through the same thing
25 and that she was fighting it, and her attorney bills were quite

1 Large. And it's 30 years. I mean, I don't know why we would
2 have been looking for red lights, quite honestly.

3 For a week or so we were in disbelief. Surely there had
4 been a mistake. We didn't even answer the call to Agent Custer
5 right away. We called Brad Mascho, and he had no knowledge of
6 any such thing and had not been in contact with Dawn for some
7 time. You know the rest of the story.

8 As our stomachs and hearts sunk, we were totally in
9 disbelief and panicked over what could we do. How would we get
10 our money back? How long would this take? Et cetera, et
11 cetera.

12 We called her office several times, and one of her
13 employees assured us there was plenty of money available, and
14 we just had to wait until Dawn was allowed to conduct business
15 for us to receive our funds. On and on.

16 And now it's settled in. Many sleepless nights not
17 knowing where to turn, not wanting our family to know how
18 desperate this entire situation was playing on our hearts
19 heavily. You see, we were in Dawn Bennett's office less than a
20 year before, and she showed us around her spacious offices. We
21 sat in the conference room while she poured statistic reports,
22 et cetera, et cetera, to try and convince us to give her the
23 rest of the money in our accounts with Brad. She even threw
24 Brad under the bus and said he didn't know what he was doing.
25 We spent almost three hours with her.

1 In doing so, when the news broke about her arrest, my
2 husband said, Linda, there is no way Dawn would sit to our face
3 and lie about all the plans and how much our funds would grow
4 if any of this was really going on. Same story every day. Her
5 attorneys were working on it. This was the end of our
6 conversations with the office, as the numbers were
7 disconnected.

8 We were receiving checks monthly previously to supplement
9 our social security funds, and that is what we had saved for,
10 knowing social security is not going to get you through life.

11 Mike told Dawn over and over, you know, Dawn, you have our
12 life savings, and this is what we are going to live on. And
13 she told him over and over, Michael, there is no way I would
14 jeopardize what you and Linda have worked to save.

15 I did ask Dawn what would happen if we needed our money
16 back. She said she could return our funds if needed, said that
17 she had an extensive art collection and other assets, that if
18 that should occur, she could even liquidate her own assets but
19 that would never happen. She said she had a large part of her
20 own money invested in the company and would not jeopardize
21 herself if she wasn't confident that it was going to be
22 successful.

23 As we have gone through all the processes in the past two
24 years and reality had to hit, my husband is now working at
25 Walmart making \$12 an hour. As you probably know, at age 73 it

1 is difficult to get a job with any long-term financial
2 security.

3 Mike was enjoying retirement, long walks, relaxing, and
4 picking up a few new hobbies that he never had time for,
5 experiencing for the first time in 35 years of not getting up
6 at 4 a.m. and fighting traffic to his job at Xerox Corporation.
7 Mike worked on multi-million dollar equipment for years. So
8 coming down to Walmart is a long fall, something we never
9 thought would be in our future.

10 For myself, I always had quote, unquote, fun jobs after I
11 retired from real estate, many different jobs working in
12 boutiques, working for an office for a period of time. I
13 always enjoyed working and people. For myself, I've always had
14 fun jobs since my retirement. The fun has been taken away from
15 both of us. I now have several part-time jobs. At age 69,
16 again, not too many jobs available for our future financial
17 security.

18 We have taken many steps through the years planning for
19 this time in our lives. Many years ago we secured a long-term
20 insurance policy. Our concern even years ago was leaving a
21 spouse with mounting medical bills should one of us need
22 nursing home or rehab therapy. The policy will now have to be
23 cancelled, as the monthly premium is not one that we can afford
24 to continue. Most, if not all, of the money we have paid will
25 now be lost.

1 Our lives have been built on having time together in these
2 senior years knowing we had peace of mind that we have done all
3 we could to provide for each other. Never have we taken
4 elaborate vacations, bought expensive cars, jewels, furniture,
5 et cetera. Living within our means was the only way we could
6 prepare for our future.

7 For those of you that may have recognized me in previous
8 trial hearings, you noticed that my husband was not with me.
9 Mike has suffered one heart attack a few years ago, and this
10 entire situation has me on edge for the suffering emotionally
11 that we have both done. My oldest daughter, Tracy, has been by
12 my side throughout the trial, which I'm very grateful. Mike
13 has so many emotions about Dawn Bennett that he could not sit
14 in the courtroom and even look at you at that time. So he has
15 not been in any of the proceedings.

16 In closing, I would like to add that our future looks very
17 dim. We are a very close family with two daughters, a
18 son-in-law, two granddaughters, and now we're blessed with our
19 first great grandson. Sadly, there will be empty seats at many
20 family functions now for birthdays, holidays, and just
21 impromptu get-togethers. We have many family traditions that
22 we have carried on for years; however, it's very hard to ask
23 for time off when you're counting on every penny to sustain
24 your daily living.

25 For our family, it has been a very sad and emotional time.

1 There will be no more family vacations, let alone one for Mike
2 and myself.

3 And my last statement, Your Honor, I am asking that Dawn
4 Bennett be given the same life sentence that she has given to
5 our family. For our family, these changes will be forever
6 through no fault of our own.

7 And I thank you very much for your time.

8 THE COURT: Thank you.

9 MS. PULICE: Your Honor, the next victim is Mark
10 Hale.

11 MR. HALE: Good morning, Judge.

12 THE COURT: Good morning.

13 MR. HALE: My name is Mark Hale, and I'm here
14 representing myself and my wife. I am a victim of Dawn
15 Bennett's fraud. I was a long-time client of hers since the
16 days that she was with Legg Mason.

17 I lost \$200,000 in her fraudulent scheme. That money was
18 to be used as part of my retirement. It is now lost forever.
19 It is no longer available to me or to my family.

20 I'm 63 years old. I had hoped to retire in 2018, but now
21 I am still working to earn money to add to my savings in order
22 to try to recover some of the lost funds. This has had a
23 negative effect on my overall disposition and well-being.

24 After being informed by the Justice Department that I was
25 a victim of her scheme, and over the course of days, weeks,

1 months, and years that followed, I have experienced fear,
2 anxiety, depression, loss of sleep, just about everything that
3 you can come up with. Some of it has faded over time as time
4 has passed, but the since of dread about what I lost still
5 creeps into my mind from time to time.

6 In terms of Ms. Bennett's sentencing, I would like to see
7 the maximum sentence imposed. She has betrayed my trust, the
8 trust of my family, the trust of many others here, and
9 basically played us all for fools.

10 I discovered that even as things were unraveling for her,
11 she still continued to call and say how pleased I would be with
12 the investment and that the initiatives were performing beyond
13 her expectations. I could never reconcile that. Until this
14 day I am very distrustful of letting other investment
15 professionals handle my money.

16 So in closing, I would like for us all to remember who the
17 victims are here in this case. It is not Dawn Bennett. We
18 were victimized by her, and a lot of us can't recover from
19 that; and if there is any justice at all, it would be that the
20 victims get first consideration in any compensation that may
21 come out of this case before other parties that stake claims to
22 the money that she basically wasted.

23 Thank you, Judge. I appreciate it.

24 THE COURT: Thank you.

25 MS. PULICE: Your Honor, if I could just have a

1 moment to just touch base with two of the other victims who
2 indicated they may want to speak.

3 THE COURT: Sure.

4 (Brief pause.)

5 MS. PULICE: Your Honor, next is Ms. Diane Keefe.

6 MS. KEEFE: Hello, Judge. My name is Diane Keefe.

7 It is with much anxiety that I come here today to face
8 Dawn knowing how egregiously she betrayed my trust in you --
9 her. I had entrusted a bulk of my savings to you. You knew I
10 took it -- a hit in the 2008 market crash, and I was very
11 reluctant to take a chance.

12 You reassured me on several occasions that you had
13 \$26 million in artwork as security. You led me to believe
14 another correction was on the horizon, sending me articles and
15 current even -- news events to support your belief and that
16 your promissory notes would be a safe harbor for short-term to
17 see me through the correction.

18 I reiterated to you on several occasions I could not tie
19 up my savings long term since -- since I would hope to be
20 retiring soon. Excuse me, I'm sorry. I began drawing on my
21 savings. Six to nine months was my maximum horizon.
22 Foolishly, I believed you cared and were interested in my
23 well-being. You even offered to help me, care for me while I
24 was recovering from cancer surgery.

25 During my grand jury testimony, I painfully listened to

1 the attorney itemize the endless list of personal bills my
2 savings went to pay off. That was my retirement healthcare
3 needs -- for my healthcare needs. Where is the \$26 million to
4 pay for all of your own bills? What kind of person is so
5 callus?

6 Further, to make my situation more painful, my job
7 position will terminate in September, and I have skid
8 (phonetic) savings to help me going forward.

9 That's all I have to say.

10 THE COURT: Thank you, Ms. Keefe.

11 MS. PULICE: Your Honor, next is Ms. Jean Dalmas.

12 MS. DALMAS: Your Honor, my name is Jean Dalmas.

13 Dawn, you have ruined my life. You took everything. All
14 my life savings is gone as well as the inheritance that my
15 father left me. I am not an experienced investor and you knew
16 that.

17 I'm 65 years old, Your Honor, and I was planning to retire
18 next year. That can't happen now. I expect that I'll be
19 working into my 70s in order to save enough money that I can
20 retire and hopefully have money for healthcare. I fear I may
21 never get to retire now.

22 I've been seeing a psychiatrist and a therapist for
23 reoccurring suicidal thoughts because of you, constantly
24 re-living this ordeal. I just keep waiting for the next person
25 to screw me. I have no sense of dignity anymore. My doctor

1 says I'm a recurring severe, major depressive disorder now, and
2 I'm currently taking a cocktail of medications to keep me
3 stable.

4 I have also developed hand tremors which don't help me at
5 work. You knew I worked for the Army.

6 Let me tell you something. I'm required by law to
7 self-disclose to the head of military security significant life
8 changes in my finances, especially regarding money. I then
9 become a positive risk and a possible risk for subversion and
10 un-American activities. To disclose my situation was
11 incredibly emotional and embarrassing.

12 Judge, I'm sure that she's a threat to the community.
13 Prior to this she had lost her security license to fraud and
14 mismanagement. I'm certain that she would attempt her crimes
15 all over again. She poses a great threat to the community
16 because of her predatory nature. She not only lied to me, but
17 she lied frequently and easily. She purposely used misleading
18 information and preyed on my inexperience. I trusted her
19 personally for financial decisions for more than 20 years and
20 she deceived me.

21 As I said, she had already given up her license before I
22 invested with her, which I didn't know. She continued to
23 defraud the people who trusted her, including me. She
24 presented me with false profits and promised repayment any time
25 I needed the money but never did.

1 And Dawn, to sell your personal items was heinous. That
2 money was to be restitution for all of us victims to split.
3 You were screwing us even from your jail cell. You played me
4 with your ideas about research for products that would help
5 soldiers, and I fell for it. I even went so far as to talk
6 about my nervousness, and you said to me, how much of a burden
7 it was to be responsible to all of your investors. What a
8 crock of shight (phonetic).

9 Your Honor, she is heartless, ruthless, selfish, and
10 cruel, and other words I can't say here. I lost all of my
11 money. Being convicted of 17 counts, each count is the average
12 of 20 years a piece. I urge you to imprison her for the
13 maximum sentence, 50 years at least, with no parole.

14 Thank you very much.

15 THE COURT: Thank you.

16 MS. PULICE: Your Honor, Jeffrey Lazzuri.

17 MR. LAZZURI: I don't know if I can do this or not.

18 Your Honor, there is nothing I can tell you that you
19 haven't already heard. Hearing these other statements, it was
20 like taking my own story and putting my name on it, but it
21 wasn't me.

22 When Keith came into my office, I didn't even believe him.
23 I didn't want to believe him. I've invested with Dawn since
24 Legg Mason. I don't know if they knew or not, but I lost
25 \$3 million. Everything was taken care of.

1 I'm not as bad off as the rest of the people that have
2 talked because I've got a longer runway ahead of me as far as
3 work is concerned.

4 And I'm done. You've heard what you need to hear.

5 MS. MIZRAHI: Your Honor, Dawn sits there like stoic,
6 knowing that she's hurt all of us.

7 You've ripped us all up. Our lives are destroyed. And
8 you didn't care if I had cancer, and you took advantage of me.
9 And I'm speaking with everyone. I hope you rot in jail. You
10 are pure evil, and you deserve everything you get. And I don't
11 forgive you. I really tried to forgive you but I can't,
12 because you're really evil.

13 So you look at these people -- when your friend was
14 talking last time, you acted like you were disengaged or
15 whatever. You're just evil. Just looking at you, I feel like
16 I'm looking at Satan. You're evil, Dawn, and I hope you get
17 the max.

18 Thank you.

19 THE COURT: Ma'am, could we have for the record your
20 name?

21 MS. MIZRAHI: Diane Mizrahi, the one that had cancer
22 and she didn't care.

23 Thank you, ma'am.

24 MS. PULICE: Your Honor, that concludes the
25 statements from the victims.

1 THE COURT: Okay.

2 Why don't we take a ten-minute break.

3 MR. JEFFRESS: Thank you, Your Honor.

4 THE DEPUTY CLERK: All rise.

5 This Honorable Court now stands in recess.

6 (Recess taken, 11:06 A.M. - 11:17 A.M.)

7 THE DEPUTY CLERK: All rise.

8 This Honorable Court now resumes in session.

9 THE COURT: All right, you can all have a seat.

10 Mr. Jeffries, Mr. Zapf, do you wish to call your witnesses
11 now or within your presentation?

12 MR. JEFFRESS: Right now would be fine, Your Honor.

13 Mr. Bennett can go. We have Steele Bennett, Ms. Bennett's
14 brother.

15 THE COURT: Sure.

16 MR. BENNETT: Good morning.

17 THE COURT: Hi, Mr. Bennett.

18 MR. BENNETT: How are you?

19 THE COURT: Good.

20 MR. BENNETT: You know, following all of the comments
21 that everybody made, it's obviously a tough thing for the
22 family, but I can tell you the majority of the people who have
23 stood up here have known Dawn for decades. She's not -- nobody
24 changes like that. Nobody becomes evil, quoting some of the
25 people. They just don't.

1 There's facts that were never brought to light in this
2 case. There's just realities, and I hope some day everybody
3 learns it.

4 But from Dawn's perspective, you know, has she paid?
5 Obviously not in the eyes of the people behind me. But we're
6 talking about someone that lost everything. She has the shirt
7 on her back, and she has the family behind her that raised her.
8 She has lost friends, clients who were friends, relatives who
9 basically won't talk to her. And as I go through this list, I
10 can think of -- the saddest part of me or the saddest part of
11 this whole thing for me is parents.

12 Her parents are elder. And her father, being the proudest
13 man I know, being a person by the book, a person that worked
14 for the government for 35 whatever years -- that will do that
15 to a person -- he's really a shell of a man because he has to
16 deal with this and the unknowns for his daughter and the
17 unknowns for himself and his wife as they kind of try to find
18 their way through this.

19 Dawn is -- despite what everybody might think in this
20 room, she really did give a damn, and the 30 years that she was
21 your money manager hopefully proved that. The 50 years that
22 she has been my sister has proved it.

23 I wrote you a letter, Judge, explaining my position,
24 everything I felt. It's all straight up. It's all real.
25 There are bad people in this world. And, again, despite what

1 everybody thinks, she's not one of them.

2 Thanks.

3 THE COURT: Thank you.

4 MR. JEFFRESS: Your Honor, that's our only -- that's
5 the only person who is speaking for the family. We don't have
6 anyone else to call.

7 THE COURT: Okay. All right. And I did read all of
8 the letters of support from Ms. Bennett's family and do
9 particularly note that she obviously means the world to them
10 and has done a lot of good especially, I did note, for her
11 nephew who, you know, credits a lot of who he is and how he got
12 to where he is to Ms. Bennett. And so the family knows, and I
13 see the family here as victims of a different flavor, frankly,
14 but you're victims in that you had nothing to do with this and
15 yet you are taken through it.

16 So I just want you to know that I recognize that, and I
17 recognize your severe distress in having to have lived with
18 this new realization, and being here today in support of
19 Ms. Bennett means a lot to this court, and I encourage you to
20 continue being there for her.

21 And with that, Mr. Jeffress.

22 MR. JEFFRESS: So, Your Honor, would you like me to
23 address the 3553(a) factors first?

24 THE COURT: So let's get a couple of things cleared
25 up. With regard to the presentence report, we're at an

1 advisory guideline range of 324 months on the low end to
2 405 months on the high end. I adopt the presentence report in
3 all other respects, given the adjustments that we've -- that
4 I've resolved.

5 And with that, yes, because we're at the 3553(a) stage.

6 MR. JEFFRESS: Thank you, Your Honor.

7 First I'll address the history and characteristics. And
8 Your Honor just touched on some of the things that I was going
9 to touch on, which is, obviously, she comes from a, you know,
10 very hard-working, loving family. They all have a very strong
11 work ethic. They grew up together in a very close, you know,
12 loving and supportive situation.

13 You know, I think what struck me about it was what they
14 wrote about Dawn which was that, you know, she was essentially
15 the glue to the family, sort of the wrangler of them in terms
16 of keeping people together, keeping them in touch, keeping them
17 part of the family in which Your Honor referred to with respect
18 to Sky Bennett, which is Ms. Bennett's nephew. You know, even
19 after the divorce where her brother divorced Sky's mom, she
20 still -- she was the one who kept Sky. And this is coming from
21 Sky's letter to you. She was the one that kept Sky close to
22 the family and involved and coming to all of the different
23 events and made, you know, to feel part of the family still.
24 And that's Dawn to all of these people.

25 You know, I think people look at her -- at the

1 hard-headedness and the stubbornness and the sort of
2 independence that she has, and she is all of those things I
3 think, and people recognize that.

4 You know, I think her brother Steele didn't just mention
5 it here but there was a very -- you know, despite growing up in
6 a loving family, she was in a very abusive relationship when
7 she was in college at the University of Utah where that
8 culminated in her partner throwing her down the stairs and, you
9 know, she suffered injuries. But what Steele wrote about that
10 was that from that time on in college, she never relied on a
11 man or a partner to support her. I don't think she ever really
12 trusted that anyone would take care of her after that.

13 She went at life and her career on her own, and I think
14 that is largely why she has this sort of, you know, independent
15 streak where she does what, you know, she -- she is an
16 entrepreneur who is very, you know, hard-headed and positive
17 that what she's doing is right.

18 And I think what she did here was, you know, she was
19 trying to build a company and thought that -- you know, was
20 very confident in the success of that, and that was what was in
21 her mind and it was almost -- you know, more than anything, she
22 thought that she would be able to some day, you know, do
23 everything that was needed in order to make this into a
24 financial success story.

25 And, you know, I have to -- and that would ultimately

1 reward the investors, not just by paying them back the
2 principal that they invested but by making them an enormous
3 profit. That was her dream, and that remained her dream
4 throughout all of this.

5 And as Your Honor has pointed out, even after, you know,
6 she was indicted in this case and the government saying, no,
7 you know, we think this is illegitimate, she still believed in
8 her dream. And, you know, in maintaining that vision, if there
9 is a fault here, I think that's what it was is that she clung
10 to it despite, you know, evidence from the outside that, you
11 know, ultimately this isn't going to succeed.

12 You know, I've been doing this job for, you know, almost
13 20 years now, and I've represented many defendants in Ponzi
14 scheme cases where they were taking money out to buy fancy cars
15 and to live a high Lifestyle and everything. This is not a
16 Ponzi scheme case.

17 She believed -- a Ponzi scheme case is when you're doing
18 it for the purpose of rewarding yourself financially. She was
19 doing it for the purpose of creating a successful company.
20 That was her motive throughout all of this. And that included
21 not just the benefits that were obtained for herself but the
22 benefits that she would obtain for those who believed in her
23 along the way and invested in her company.

24 THE COURT: We both know that an element of the Ponzi
25 scheme kind of fraud is not self-reward. That isn't the

1 signature of a Ponzi scheme. Ponzi schemes come in different
2 flavors. They boil down to robbing Peter to pay Paul --

3 MR. JEFFRESS: Yeah.

4 THE COURT: -- and misrepresentations of all
5 different varieties. So --

6 MR. JEFFRESS: But the question is whether it's
7 ultimately going to be -- you know, whether it's ultimately a
8 real company that has the chance for success, whether that's
9 the real purpose of it or whether you're just doing it --

10 THE COURT: There is no evidence that this was a real
11 company that had the chance for success.

12 MR. JEFFRESS: Well, I don't believe that, Your
13 Honor.

14 THE COURT: Are you going to cite me, as you did in
15 your memorandum more than once, the expert whom I struck?
16 Because --

17 MR. JEFFRESS: Oh, Mr. Van Zandt?

18 THE COURT: -- I struck him at trial because he had
19 absolutely no basis for his opinion. So I'm certainly not
20 going to credit it at sentencing, and I find the repeated
21 reference to him to be somewhat disquieting because of my order
22 striking him and saying, you know, this expert was on the stand
23 showing me he had absolutely no basis, no comparators, no
24 nothing, zero; took up my time, took up the government's time
25 with this notion that this company had any viability and had

1 nothing to back it up.

2 So the fact that you're then citing him to me again --

3 MR. JEFFRESS: Well, I didn't just do that but --

4 THE COURT: No, no, in your pleadings. It just
5 seemed appropriate to say I would like to know what the basis
6 of your proffer is because I don't see it in your pleadings.

7 MR. JEFFRESS: Well, I would say more actually -- you
8 know, Your Honor said that you reviewed the testimony from the
9 head of merchandizing at DJBennett.com, Anderson MacNeal, who
10 is a witness that the government called to the grand jury. And
11 I know that Your Honor has had a chance to review that. You
12 know, he's talking about inventory. He's talking about
13 employee salaries. He's talking about --

14 THE COURT: On a good month it was \$30,000 in
15 revenue, on a good month. Now, I don't have the glossy
16 photograph -- brochure in front of me, but the representations
17 to the victims weren't anywhere near the reality that
18 Mr. MacNeal testified to. So I'm not sure how, again, this
19 supports your argument that this could have been a viable
20 company that would, as you say, pay the victims back ultimately
21 and then some. That would have ever --

22 MR. JEFFRESS: Okay. So I think we can criticize it
23 from the outside and say, you know, this doesn't look good to
24 us as a business plan, but I think what's very hard to do and
25 certainly what Mr. MacNeal did not believe is that that was

1 what was in Ms. Bennett's mind. What was in Ms. Bennett's mind
2 was very much that this was going to be a successful company,
3 and I'm going to do --

4 THE COURT: It wasn't in Ms. Bennett's mind. He had
5 very limited, as I read the grand jury, very limited
6 information.

7 MR. JEFFRESS: Well, he had all kinds of interactions
8 with Ms. Bennett when she was talking about opening up the
9 market in China, where she talked about all of the inventory.
10 I mean, they had inventory in China.

11 THE COURT: He knew what Ms. Bennett told him.
12 That's not transparency.

13 MR. JEFFRESS: Those things were true. They had
14 employees. They paid employee salaries. They paid Bonnie
15 Peterman over a million dollars to be one of their, you know,
16 lead marketing consultants over the course of five years.

17 THE COURT: I agree with you but, once again -- you
18 know, you're looking at me with that quizzical look as if I'm
19 going a little bit battie. Running a corner store and
20 representing to the investors that this is going to be, you
21 know, the next Google is the apt analogy. There is no way you
22 can convince me based on what Mr. MacNeal said that these
23 representations were anywhere close to accurate. These were
24 lies. They were lies to the investors.

25 MR. JEFFRESS: I think it depends on which

1 representations we're talking about, but certainly I think that
2 she had the aspirations to one day make this a big company. I
3 think that's what's uncontested. I mean --

4 THE COURT: But it's about the veracity and the
5 reliability and the reality. I mean, sure, there's lots of
6 folks out there who are extremely dangerous because they are
7 delusional. So, yes, you can -- you don't have to convince me
8 that Ms. Bennett had in her own mind great aspirations. But
9 they were so dangerously misguided that she sent 40 individuals
10 to their financial graves. I mean, that's what I've heard.
11 That's what I've read. That's the evidence.

12 So, again, I'm not sure what the endgame is here with
13 regard to mitigation.

14 MR. JEFFRESS: So, I mean, I guess the contrary
15 argument is that, you know, this company was fatally flawed
16 from the beginning, notwithstanding, you know, whether the
17 government's investigation -- or anything like that. I don't
18 see the basis -- Look, I respectfully disagree. I don't see
19 the basis for --

20 THE COURT: Well, respectfully, I'm telling you where
21 you might want to live right now is whether the advisory
22 guideline range are sufficient but not greater than necessary
23 to achieve the purposes of sentencing. Trying to convince me
24 that this was altruistic or somehow all going to work out in
25 the end is going nowhere. Quite frankly, I think it's

1 disrespectful to some degree to the victims.

2 MR. JEFFRESS: Well, Your Honor --

3 THE COURT: And I've held my powder on it, but I've
4 got to tell you, sitting through two weeks of this trial and
5 months of pretrial back and forth and reading everything I've
6 read and watching a room full of pain, including Ms. Bennett's
7 family, I owe it to you, respectfully, to tell you that dog is
8 not going to hunt.

9 MR. JEFFRESS: And I do think we can certainly
10 validate all of that pain without saying that, you know, this
11 was a fraud from the get-go. It just wasn't.

12 I'll move on, Your Honor.

13 Your Honor, on, you know, Ms. Bennett's health, she's now
14 been detained at the, you know, Chesapeake Detention Center for
15 two years. I know Your Honor is very familiar with the
16 institution.

17 THE COURT: Do you have any updates on Ms. Bennett
18 having gone through any further diagnostic testing or any
19 further diagnoses? Because the last I remember it, there was
20 concern --

21 MR. JEFFRESS: Yes.

22 THE COURT: -- that she wasn't getting the care and
23 treatment she needed, but it's frankly -- I haven't heard much
24 recently I think because Magistrate Judge Sullivan was handling
25 a good part of the detention issues.

1 MR. JEFFRESS: Yeah, and we anticipated having her --
2 you know, we didn't anticipate, you know, her being here as
3 long as she's been. I know it was our -- you know, we agreed,
4 obviously, to continue the sentencing further, but so for that
5 reason, you know, we haven't had a medical doctor go back in
6 there.

7 But even from, I mean, both the Department of Corrections,
8 you know, medical people and then from the expert that
9 previously consulted -- that previous defense counsel had
10 retained to evaluate Ms. Bennett, it doesn't seem to me there
11 was a whole lot of different -- that she is someone with very
12 serious medical problems. She has blood consistently in both
13 her stool and her urine. She -- you know, that's, obviously, a
14 very troubling sign to any medical professional about what may
15 be going on.

16 THE COURT: Well, let me put it this way. Since
17 trial have there been any further -- any testing, any
18 diagnostics, any records that you want to submit to me to bring
19 me up to speed on Ms. Bennett's physical condition?

20 MR. JEFFRESS: No. I think our sentencing memo has
21 the most recent information. Can I have one second, Your
22 Honor?

23 MR. ZAPF: I believe that the first one has the most
24 recent.

25 THE COURT: Okay.

1 MR. ZAPF: She has -- and I've just gotten
2 confirmation. And before then I was not aware of any further
3 treatment since that sentencing memo was submitted. No further
4 testing either, no diagnostics.

5 THE COURT: All right. So that would be at ECF 471.
6 Am I right?

7 MR. ZAPF: Yes, Your Honor.

8 THE COURT: Okay. Thanks.

9 MR. JEFFRESS: I mean, the most recent medical
10 information is attached to our sentencing memo but a lot of it
11 does come from late 2018, Your Honor.

12 But, you know, I mean, even their own, you know, unbiased
13 doctor -- in other words, independent medical professionals,
14 ones that weren't associated with the defense -- talk about
15 multiple mass lesions. You know, she's got all kinds of
16 gynecological problems. Like I mentioned, the presence of
17 blood in her stool and in her urine. You know, Dr. Gerber, the
18 one who opined in 2018, basically said the failure that was
19 ongoing in Chesapeake Detention Center to address her medical
20 condition was, quote, a deviation from the applicable standard
21 of care; and if the symptoms presented by Ms. Bennett are not
22 quickly assessed to rule out serious conditions, demonstrate a
23 deliberate indifference to a serious medical need.

24 And look, I don't doubt that they are doing, you know,
25 what they can there, but it's obviously very limited. And

1 Ms. Bennett is 58 years old and has a number of serious issues.

2 You know, in addition to the medical problems that are
3 going untreated there, you know, we had a psychologist go visit
4 her who, you know, diagnosed her with major depressive
5 disorder, which is sort of unsurprising for someone who has
6 been in that situation without, you know, adequate exercise,
7 without sunlight. There is no -- essentially, you know, in a
8 cell for nearly two years now, which is a very long term of
9 pretrial incarceration. And, you know, I know there are
10 various reasons for that, but it doesn't change the fact that
11 that's been her reality for almost two years now.

12 So, you know, that in itself has been much harder for her
13 than it would be, obviously, if she were in the Bureau of
14 Prisons or on the outside. And, you know, it's exacted an
15 enormous toll on -- you know, the government claims that this
16 is somebody who will never comply. She's been through hell and
17 back. You know, I wouldn't wish what she's been through in two
18 years on my worst enemy. It is an extremely painful, difficult
19 situation. And it's not just, you know, the effect that it's
20 had on her health but also, you know, the studies that we cite
21 in our papers about older inmates who are incarcerated and how
22 much difficult it is for them to have to experience those
23 conditions.

24 Your Honor, if I could just -- one more thing on the
25 expense stuff, I do just want to make sure everyone

1 understands. Okay, things like -- you know, what we've made a
2 big point here about is that this was a disregarded entity,
3 meaning that Ms. Bennett did not draw a salary.

4 You know, I've looked at comparable sentences that have
5 been given out in large fraud cases. You know, you start with
6 some of the biggest ones like *Enron*. Right? Andy Fastow who
7 was the architect of Enron which caused, you know, thousands of
8 shareholders to lose their life savings and impact -- dwarfs
9 anything that this could possibly have. You know, he received
10 a sentence of 10 years. That was before cooperation. It was
11 later cut to six based on his cooperation.

12 But the other thing that Andy Fastow had was he made a
13 salary during all of that. He was compensated. You know, he
14 was given millions of dollars to do what he wanted with. So if
15 he had spent it on, you know, Puja.net, or whatever he spent it
16 on, it wasn't an issue because that was his money to spend.
17 That obviously wasn't the case here, and that's one thing we
18 would ask the Court to consider.

19 I think the evidence of expenditures --

20 THE COURT: I understand it and I take the argument
21 for what it's worth, but the larger picture, though, is that
22 all of which was Ms. Bennett's choice for her own selfish
23 reasons. I mean, the fact that she didn't take a salary but
24 you're saying, well, consider the Hindu prayers and the gems
25 and the \$10,000 a month rent and the plastic surgery, whatever,

1 you know, personal expenses that effectively was her salary
2 again is eclipsed by the ongoing representations to the victims
3 to get them to pay more to her that we saw in, you know, vivid
4 technicolor through the government's summary charts that would
5 no sooner hit the bank and go right back out to where
6 Ms. Bennett wanted it to go.

7 MR. JEFFRESS: She invested \$18 million of her own
8 money. The accountant who came in here -- she invested her
9 entire fortune into this company, and she lost it all too.

10 THE COURT: It's hard, though. It's really hard for
11 me to give that, again, all the weight that you wish for it --
12 for me to give when I saw how Ms. Bennett lived and surrounded,
13 absolutely surrounded by luxury.

14 MR. JEFFRESS: That was her living situation before
15 DJBennett.com ever started also, though.

16 THE COURT: I understand that, but she made the
17 choice not to change her lifestyle one IOTA as she was lying to
18 the 40 victims who needed that money the most. That's a really
19 difficult pill to swallow that, well, just because she had
20 750 pairs of shoes and \$2 million in art and two penthouses
21 before the scheme started, it somehow mitigates the fact that
22 she would keep her lifestyle just the way she liked it and
23 repeatedly impress upon the victims the need to give her more
24 money.

25 MR. JEFFRESS: Well, in any event, all of that is

1 gone. Every last dollar. And not just the money that she, you
2 know, received as proceeds of the alleged fraud but also, you
3 know, the government is going to take everything she owns in
4 order -- as what's called substitute assets. So even the money
5 she made legitimately before this --

6 THE COURT: There is no dispute that the victims are
7 entitled to their money, right, every dollar?

8 MR. JEFFRESS: Every dollar, including -- that's
9 right, including money that -- and we're not opposing it.
10 Including money that came from -- that she made before this
11 ever started. Her entire life savings, everything she ever
12 made is going to the victims, you know, and that's the law and
13 that's what it will be.

14 THE COURT: This is not the kind of situation
15 where -- you know, we do have individuals who voluntarily and
16 willingly not only, you know, admit guilt, and we can quibble
17 about whether -- or not quibble. I think we're having a
18 healthy debate on whether or not it's fair in the guidelines to
19 adjust downward when one does -- or adjust upward when one --
20 we can have a healthy debate about whether it's fair to punish
21 someone for going to trial. Okay? So that's not this.

22 What I'm thinking about are the individuals who not only
23 admit guilt but also voluntarily, willingly cooperate in making
24 sure that the victims receive compensation sooner rather than
25 later, stop the bleeding sooner rather than later, realize when

1 you're on the sort of losing end of this venture; none of which
2 happened here. I mean, this case has been kicking and
3 screaming the entire way in terms of getting the victims any
4 compensation. Am I not entitled to consider that?

5 MR. JEFFRESS: But that wasn't her intent, Your
6 Honor. She ultimately thought the company was going to succeed
7 and that they would get their money back.

8 THE COURT: No, I'm talking about the last 24 months.
9 I mean, the company didn't succeed.

10 MR. JEFFRESS: No, I know.

11 THE COURT: And the walls were closing in not only
12 with the SEC investigation but this investigation, and for
13 months and months and months and months and months all we've
14 been talking about is how Ms. Bennett really has lost
15 everything. Until we got to trial, we really had very little
16 evidence, obviously, before me about the victims, and my point
17 is in all that time Ms. Bennett had a choice. She could have
18 chosen at any point to say, you know what, enough is enough.
19 Even if I disagree that I'm criminally guilty, I'm going to
20 start doing what I need to do to make sure the victims are
21 repaid. And none of that ever happened.

22 So, again, this notion that, you know, Ms. Bennett lost
23 everything has limited weight in the context of this case.

24 MR. JEFFRESS: Well, I mean -- okay. I guess what
25 I'm talking about is she has nothing left. So, you know, in

1 terms of the goals of punishment and everything, certainly one
2 thing that the Court can consider is that anything that she's
3 ever had on this planet has been taken from her. I think that
4 would be an appropriate thing to consider in the sentencing.

5 And does she want it to go to the victims? Yes,
6 absolutely.

7 THE COURT: I'm about to pitch the ball back to you.

8 MR. JEFFRESS: Okay.

9 THE COURT: So stay with me.

10 Where I'm troubled is what sentence is effectively a life
11 sentence because of Ms. Bennett's age and physical condition
12 and is that just punishment. So just so you all know that,
13 that's what I'm struggling with is that I credit -- and I hope
14 the victims understand how much I credit their pain and their
15 suffering, but a life sentence is a -- is a heavy punishment
16 and it is reserved often for those who have taken the life
17 physically of another. It is reserved for really the most
18 egregious of offensive.

19 And I haven't decided yet where I am, but what I'm
20 struggling with is what sentence is sufficient but not greater
21 than necessary to give Ms. Bennett an opportunity to
22 reintegrate.

23 MR. JEFFRESS: Yeah, to make amends. And a big part
24 of that and what she wants more than anything is to pay these
25 people back.

1 THE COURT: But there is no evidence of that, and
2 that's the problem that I'm having. What evidence -- this is
3 an evidence-based -- you cite me Nancy Gertner. You give me a
4 letter of support which, frankly, seems to me like a thinly
5 veiled judicial opinion, expert opinion as to how I should look
6 at the law. So we'll put that to the side because you haven't
7 mentioned it but I have.

8 Nancy Gertner is all about evidence-based sentencing. So
9 when you proffer to me something and I ask for the evidence,
10 that means point to me in the record, point to me somewhere
11 where Ms. Bennett has demonstrated this intent to repay.

12 MR. JEFFRESS: Well, I mean, she did repay
13 6.1 million.

14 THE COURT: No. That's money she paid back during
15 the scheme.

16 MR. JEFFRESS: Sure.

17 THE COURT: Right, to keep evidence -- to keep
18 investors at bay. That's not repaying. That's keeping it
19 going. That's the robbing Peter to pay Paul. So let me throw
20 some money your way, keep you fat, dumb, and happy. That's how
21 these schemes work. I'm talking about since or at any point
22 what evidence do you have that there was an intent to repay?

23 MR. JEFFRESS: Well, it's very -- you mean intent to
24 repay during the --

25 THE COURT: Anytime. Just give it to me.

1 MR. JEFFRESS: Well, I know that's what she's going
2 to say, that she wants more than anything to repay these
3 people. But it didn't matter --

4 THE COURT: Well, I haven't seen it yet so --

5 MR. JEFFRESS: In any event, she'll be under the
6 control of the court when she gets out, and restitution will be
7 mandatory, and they will get repaid through whatever she makes.
8 She won't have the ability not to pay.

9 THE COURT: It will be the better part -- I'm not --
10 I'm not imposing the sentence you recommend. Okay? So -- and
11 the sentence I'm thinking about, it's going to be a minute
12 before Ms. Bennett is employed again.

13 Is it really the position of the defense that the victims
14 73, 69, 87 -- Ms. Thur is 87. Ms. Mizrahi is still dealing
15 with her -- they are really going to wait for Ms. Bennett to
16 get out and start making restitution?

17 MR. JEFFRESS: Look, we will do whatever the Court
18 wants, and she will do whatever the Court wants in order to pay
19 these people back as fast as possible. I know for a fact that
20 that's what she wants more than anything out of this.

21 THE COURT: That is why it took until now. Because
22 if I'm getting it right, we now have an agreement on
23 restitution and forfeiture?

24 MR. JEFFRESS: Yes.

25 THE COURT: We do? We have an agreement? Is there

1 going to be an agreed upon restitution amount, forfeiture,
2 money judgment? Because the last time we were in court, we
3 were -- I did grant the motion to amend the preliminary order
4 of forfeiture, but if I -- I thought that we were still in a
5 holding pattern as to whether there was an agreement. Am I
6 right about that?

7 MR. JEFFRESS: No, what's been happening is they are
8 providing us with appraisals for our, you know, input and so
9 forth into all of her property, which is, again, everything she
10 owns and has ever owned; and they are -- you know, for
11 auctioning it off. And we're taking a look at those and giving
12 our input. So that's been the process that's been ongoing so
13 far.

14 I don't anticipate, you know, bickering over the
15 restitution amount or ultimately probably the forfeiture
16 amount. I mean, we, you know, would like to get maximum value
17 for the property, but that money is not going to her; it's
18 going to them -- it's going to the investors. We fully
19 acknowledge that. We've never opposed that.

20 Now, legally --

21 THE COURT: You've never opposed that, Mr. Jeffress.
22 You've never stood in front of me and opposed it, but --

23 MR. JEFFRESS: They seized it too early under the
24 law. Like, that's our obligation to bring to the Court's
25 attention, but we ultimately said we weren't going to pursue

1 that issue because, you know, we couldn't take possession of
2 the property and sell it off. So I think there have been
3 things that we've done to try to speed this along.

4 Look, that's what she wants more than anything. She
5 wanted to sell all of that stuff and pay back these
6 noteholders. I don't know what else she could have done, Your
7 Honor, I really don't, besides pleading guilty, you know, in
8 something that she didn't believe she did -- she, you know, had
9 the required intent. So other than that, I really don't know
10 what other available options there were for her or her counsel
11 during that whole time.

12 And, in fact, you know, Mr. Boyle consented to them
13 seizing the property at that early stage, which is why I think
14 ultimately we were going to hear about waiver. So there were
15 steps taken to provide that property to them as soon as
16 possible.

17 Well, Your Honor, I mean, you know, given her housing
18 situation and everything else, I do think -- you know, and
19 also, when you look at comparable sentences, especially for
20 people in her age range -- I mean, you know, the Enron people,
21 those people ended up with 20 years. Andy --

22 THE COURT: You didn't brief those. The ones you
23 briefed, in my view, are not comparable, but those are the ones
24 that I really drilled down on. If you want to talk to me about
25 Mr. Epstein or Mr. Byung Bang or Mr. Dominici or even

1 Mr. Coutu, I'm happy to engage you. But I'm not going to
2 engage --

3 MR. JEFFRESS: So, you know, I think that there is --
4 Your Honor, obviously, sentenced Mr. Bang. You know, and it
5 was a sad case where there was a gambling addiction so there
6 was, you know, something mitigating in that respect.

7 THE COURT: Well, that's how the government found him
8 actually is because it was so bad and so longstanding that he
9 had popped up on the government's radar, and that's how the
10 case was unfolded. And if you talk about an individual who was
11 as contrite and remorseful from jump, it was Mr. Bang.

12 MR. JEFFRESS: But, I mean, the case did involve 7
13 million in embezzlement. So in other words, not paying
14 salaries of employees, not paying for inventory and everything
15 else. You know, paying for -- you know, just going right in
16 his pocket. That case also involved, you know, the creation of
17 sort of fictional companies in order to hide the money.
18 Concealment. You know, we don't have those things in this
19 case.

20 So, you know, he received a sentence of I believe -- Your
21 Honor sentenced him to 48 months. You know, it sounds -- I
22 mean, I think it sounds like an appropriate sentence, but I
23 don't think that that -- I think the fact that he embezzled the
24 money, just outright stole it, where as here it was part of a
25 larger ambition to build a company, reflects favorably here.

1 THE COURT: And I could flip the script on that in a
2 heartbeat. I could argue back to you that it was an addiction,
3 a DSM diagnosis that caused Mr. Bang not to put it in his
4 pocket but to spirit it away at the casinos with absolutely --
5 and he tried to get help. I mean, if you read the hearing or
6 came to the hearing, you would have heard that. He didn't
7 just, you know -- it was his own private hell that he lived in.

8 And so I think one can make the argument that is a
9 qualitatively different scenario than what we have here. I
10 think the first time I saw Mr. Bang was at his guilty plea. He
11 had already come to the full reality of his criminal offense
12 and apologized openly to the victims at his guilty plea.

13 MR. JEFFRESS: Right. So, you know, that raises an
14 important point which is what role does the trial penalty or
15 the denial of guilt, you know, have in this process? You know,
16 under the guidelines it has a three point, you know, range.
17 You get three points for acceptance.

18 Ms. Bennett has not gone gently into the government's view
19 of this case. I agree with that. She's raged at it. But what
20 is that worth? And that seems to be much of what's been
21 driving the government's sentencing position is that she's not
22 agreed. She's not gone --

23 THE COURT: But the government's recommendation is
24 squarely within the range with acceptance.

25 MR. JEFFRESS: Well, but the guidelines --

1 THE COURT: I'm just saying that, you know, I think
2 we're still -- I'll give you the acceptance point. We're still
3 at 235 to 293 under the guidelines, and the government is
4 recommending, I believe, 25 years. Right? So we're at the
5 high end of -- with acceptance.

6 MR. JEFFRESS: And so then there is, you know, one of
7 the issues with 2B1.1 and should the Court vary downward based
8 on the fact that, you know, the scholarly and judicial
9 criticism of that guideline, especially as applied to cases
10 like this -- the ABA guidelines that we submitted to Your
11 Honor, they sort of re-imagined -- you know, and that was Judge
12 Gertner and then Judge Bennett and --

13 THE COURT: Right, and it drew a distinction. I
14 didn't get into the weeds on it because, frankly, I have to be
15 trained up on the guidelines as well as the 3553(a) factors.
16 But if I understand the big dividing line, it's between
17 predatory and opportunistic behavior.

18 MR. JEFFRESS: I think -- no, it goes predatory and
19 then it goes to what's called legitimate ab initio, which is
20 when you begin a company with --

21 THE COURT: And I reject that. I reject that theory.
22 I cannot have 40 victims and each and every one of their
23 letters, and each and every one stood here -- the individuals
24 who stood here today said she repeatedly lied to my face. She
25 knew how sick I was. She knew that we were counting on this

1 money and lied openly about the health of this company not
2 once, not twice, repeatedly throughout. That is predatory
3 behavior, and I reject that the ABA guidelines make any
4 difference in this case.

5 MR. JEFFRESS: Well, I respectfully disagree. I
6 think she started the company when the most honest intentions.
7 And then you're right, when the walls started closing in and
8 stuff like that, that may be where the misrepresentations were
9 made.

10 But Your Honor, I mean, the fact that she wanted this to
11 be a successful company and for these people to benefit -- her
12 mother's estate, I mean, her living estate is one of the
13 investors in this case. Her sister was one of the investors in
14 this company. These are people she loves and who love her.

15 Look, I have spent a lot of time with her now. I will
16 tell you, she cares about what happens to other people. She is
17 not the monster that the government has painted her out to be.
18 She has real sympathy for other people, and she has real
19 sympathy for the people in this room. It is legitimate. It is
20 legitimate. And we can pretend that she's a monster and
21 everything else --

22 THE COURT: I'm not -- I'm not suggesting that it's
23 not messy. It's very, very messy. Individual's intentions are
24 complicated, but to -- where you started this conversation was
25 that I should adopt the ABA guidelines, and you cite to me

1 judges with many more years of experience than me who are
2 steeped in the guidelines, and I get it. I, too, have a
3 healthy appreciation for the fallacy in certain places in the
4 guidelines. I'm saying this is not that case.

5 MR. JEFFRESS: Your Honor -- okay.

6 THE COURT: I'm just --

7 MR. JEFFRESS: All right. So --

8 THE COURT: That's where I am.

9 MR. JEFFRESS: You know, we have a -- as Your Honor
10 has acknowledged, we have someone who knows how to have loving
11 relationships with those around them, with those around her,
12 including those she does not need to like Sky. Okay?

13 We have someone who is very ill. We have someone who has
14 been locked up under extremely demeaning, harsh, you know,
15 soul-crushing conditions for almost two years now. You know,
16 we have someone who can -- you know, Ms. Hesterberg, who is
17 here, when she came to the hearing before, it was much like
18 what some of these others have said; but then at the end of it,
19 she said, Your Honor, I don't want you to lock her up for a
20 long time. I want you to put her back out where she can begin
21 paying restitution, begin earning money that can go to pay back
22 the noteholders like herself. And she can do that. She is
23 talented. She is driven --

24 THE COURT: Ms. Hesterberg is now raising her hand.
25 So I'm not quite sure what Pandora's box you've opened up, but

1 I will say that when you're done, if Ms. Hesterberg wishes to
2 respond, I will let her.

3 MR. JEFFRESS: I'm just quoting --

4 THE COURT: I understand that, but the import of it
5 -- because I was here, too -- was the victims should be paid
6 back in any way, Judge, you can ensure that. But I have to
7 live within the bounds of reality, and there is no way to both
8 satisfy 3553(a) and all of the prongs of 3553(a) and release
9 Ms. Bennett any time soon. And certainly not to the tune of
10 what you recommend which would be within months of now.

11 MR. JEFFRESS: Well, what we would like is for
12 Ms. Bennett to be able to pay back the people in this room. I
13 think that is ultimately what many of them would like. So just
14 in -- as Your Honor considers this, we respectfully request
15 that you also consider that that can be possible, especially
16 given, you know, Ms. Bennett's talents, her ability, her drive.
17 She can do this.

18 You know, we can validate -- and we should -- the anger,
19 the suffering that is in this room with these victims without
20 continuing to tear up other people, without, you know, taking
21 it all out on someone in sort of an eye for an eye Old
22 Testament way. We can do that --

23 THE COURT: I guess -- Mr. Jeffress, I don't mean to
24 be as litigious with you. I didn't come out here thinking that
25 I would have this like, you know -- I feel like I'm pulling out

1 the swords. But, frankly, that's not what this is about. This
2 is -- it really is a struggle to fit the evidence within the
3 3553(a) factors and then arrive at a sufficient but not greater
4 than necessary sentence, and I'm starting with these guidelines
5 which, you know, are quite high.

6 MR. JEFFRESS: Yes.

7 THE COURT: Although, I'm not there, because I do see
8 it as a life sentence, but it's not a matter of -- at least in
9 my view -- retribution. Maybe where it's coming from is a
10 sense that the victims really do need -- and the facts of the
11 case really do need to be put in better context, and some of
12 the things that you're telling me, I'm pressing for the
13 evidence because I don't see the evidence. If I saw the
14 evidence, maybe I wouldn't be so swords out.

15 MR. JEFFRESS: I mean, she was 50 years on this earth
16 without so much as being arrested before. You know, this is a
17 first time offense.

18 THE COURT: That -- no. No. Getting pulled over for
19 DUI is a first time offense. You can't defraud 40 victims over
20 many, many months, if not years, and roll the clock back to
21 2009 when there were, you know -- just happened to pick up a
22 colossal misrepresentation that set Ms. Bennett's career
23 aflight, which is why the victims, you know, stayed with her,
24 in part, and enjoined, in part. That's not a first time
25 offense.

1 MR. JEFFRESS: Well, I mean, there's no other
2 conviction, Your Honor. That was my only --

3 THE COURT: Yeah, and I can point to you many, many
4 cases where that's also true in the white collar and the
5 non-white collar context and individuals are doing life
6 sentences. That's not a first time offender. So, but, you
7 know.

8 MR. JEFFRESS: Well, some of the biggest white collar
9 cases out there, *Enron*, *Tyco*, *Adelphia*, none of those people
10 received sentences of the length that the government is
11 requesting. None of them did that much time. You know, Andy
12 Fastow who, again, was an amoral person who scammed thousands
13 of people out got a 10-year sentence before cooperation and
14 ultimately received after cooperation 6 years.

15 You know, Jeffrey Skilling has already been released.
16 These are people who caused hundreds of millions of dollars --

17 THE COURT: Well, maybe that's a fallacy in those
18 sentences because, frankly, historically, if you look, I
19 actually happen to agree that the guidelines back in the day
20 were not as -- and I represented lots of white collar folks and
21 did you know -- it's a very hard position that you're in. I've
22 been there, but it is a mismatch.

23 MR. JEFFRESS: So the *Epstein* case that Your Honor
24 referred to, you know, I did think that that was more egregious
25 than this. He was -- you know, it was just -- I mean, he ended

1 up getting 135 months I think, but it was far more egregious
2 that what happened here. I mean, that was just an outright
3 scam. You know, he was just -- you know, there was no desire,
4 ultimately, to build anything. There were no legitimate, you
5 know, like intent there in terms of structuring a company or
6 anything like that. He was just -- it was just an outright
7 fraud. It was stealing and he received --

8 THE COURT: And I can, again -- and this is the
9 problem with the need to avoid unwarranted disparity. If
10 anyone is listening, that's the place where we have got to do a
11 better job of having a real conversation with evidence.
12 Because I can also tell you Mr. Epstein had lots of issues that
13 Ms. Bennett did not have and lots of demons, both physical and
14 mental and that, you know, science has shown us move people to
15 do things that would otherwise not be done. And he pled
16 guilty, accepted responsibility, and, nonetheless, got 11 years
17 from Judge Bredar with, you know, significant mitigation.

18 So -- and the nature of the scheme was so different. I
19 mean, he was selling -- he was the one that was selling light
20 bulbs to nonprofits.

21 MR. JEFFRESS: I mean, it was just an outright fraud.

22 THE COURT: This is an outright fraud to the 40
23 victims who are here. So you can continue to bang the drum.
24 My point is really a bit -- it's a bit different. With regard
25 to the need to avoid unwarranted disparity, you're not -- you

1 know, this isn't the first conversation I've had.

2 MR. JEFFRESS: Sure.

3 THE COURT: The cases are often a mismatch, and they
4 really just end up being this conversation that develops kind
5 of into a tit for tat or look over here, no, look over there.

6 You take one data point or two or three, perhaps, in

7 Mr. Epstein's case and ask me to draw comparisons --

8 MR. JEFFRESS: Yeah.

9 THE COURT: -- and it really is, in my view,
10 inconsistent with what we're also asked to do as judges which
11 is take the very factually rich tapestry of the offense and the
12 person who committed it and come to an evidence-based sentence.

13 MR. JEFFRESS: Yeah. Well, I mean, on that, Your
14 Honor, just one more point which is that the evidence shows and
15 the scholarship shows, as long as we're focusing on this, that
16 the length of the sentence really doesn't matter that much in
17 terms of deterrence specifically or generally. It's more the
18 certainty of getting caught. I mean, the evidence
19 overwhelmingly shows that.

20 And so whether this is, you know, three years like we're
21 asking or five years or ten years, it really doesn't make any
22 difference in the long term either for general deterrence or
23 for specific deterrence. So it doesn't real serve the goals of
24 sentencing. And that scholarship is there, and we cited it in
25 our papers. And so for what that's worth, respectfully, Your

1 Honor.

2 And I know Ms. Bennett also wants to address the Court.

3 THE COURT: Ms. Bennett, do you wish to address the
4 Court now, or would you wish to do so after the government?
5 Because I typically give you that choice. So you can speak now
6 or after the government tells me what they want me to know.

7 THE DEFENDANT: I can wait. Thank you.

8 THE COURT: Okay.

9 MS. PULICE: Your Honor, I'm not sure if now would be
10 an appropriate time to inquire whether Ms. Hesterberg would
11 like to say something?

12 THE COURT: Sure. You can go ahead.

13 MS. HESTERBERG: Can I make just one brief comment?

14 THE COURT: Of course. Do you wish to approach the
15 podium.

16 MS. HESTERBERG: No. I don't need to come up.

17 With regard to your statement, for the record, I'm sure
18 that I did not say I want a short sentence. What I suggested
19 was while she was in jail, what I asked the judge to be
20 considerate of was I don't want her watching TV. I don't want
21 her going to the gym. I don't want her taking long walks. I
22 want her working while she was in jail to pay the money back to
23 all of the people.

24 That's all, Your Honor.

25 THE COURT: Thank you, Ms. Hesterberg.

1 Okay, Ms. Pulice.

2 MS. PULICE: Thank you, Your Honor.

3 Your Honor, the government submits that a sentence of
4 25 years incarceration to be followed by 5 years or supervised
5 release is a sufficient but not greater than necessary sentence
6 to satisfy the goals of sentencing in this particular case.

7 The government is requesting the same life sentence, in the
8 words of Ms. Jenkins, that Ms. Bennett inflicted on the victims
9 in this particular case, and we made that recommendation also
10 taking into account some of the 3553(a) factors that weigh in
11 Ms. Bennett's favor.

12 I know the Court is very familiar with the nature and
13 circumstances of the offense, this longstanding fraud that
14 caused over \$20 million in losses in less than 3 years to 46
15 different investors, and I would like to -- I'll return to some
16 of the specifics of the fraud and some of the lies that she
17 told to her victims, but I would like to start my presentation
18 by focusing on the impact to the victims in this particular
19 case and what it's meant to them.

20 And I think that in the defendant's papers they cited this
21 ABA report from the Economic Crimes Task Force, and I think
22 that's helpful in some regard in considering the impact to the
23 victim -- the victims in this case, and I think that also
24 weighs in favor of the government's proposed sentence of
25 25 years.

1 The ABA's report suggests certain criteria to focus on
2 when evaluating victim impact, and that criteria includes the
3 vulnerability to the victims, the significance of the loss, and
4 other non-economic harm that the victims have suffered. And,
5 Your Honor, based on this criteria, the victim impact is at its
6 highest level which further warrants a 25-year sentence in this
7 particular case.

8 This particular case has to do with individual victims who
9 suffered real and appreciable harm that they may never recover
10 from, and as the Court knows, for the most part, these are
11 hard-working individuals who were coming towards the end of
12 their careers or who were already retired. During the course
13 of trial, we heard from a receptionist at a doctor's office, a
14 realtor, an attorney. We heard from a retired bridal
15 consultant, a retired travel agent, a retired secretary from
16 the World Bank, a retired government contractor, and retired
17 FBI agent. Many of them mentioned that they were suffering
18 from health problems or that they were caring for ailing family
19 members, and these were all facts that were known to the
20 defendant at the time she stole their money.

21 She stole money from a cousin's special needs trust. She
22 understood that this rate of return was necessary to care for
23 this particular victim -- for this particular victim. She
24 stole from cancer survivors, from widows, and she was -- she
25 knew that many of these people were relying on their life

1 savings in order to live out the remainder of their lives.
2 These were highly vulnerable victims, and she stole nearly all
3 in many instances of the funds that they had worked hard for
4 and that they had set aside.

5 With respect to the significance of the loss, as I
6 mentioned, the victims were -- many of the victims in this case
7 were already retired or planning to retire in the near future.
8 And, again, Ms. Bennett, because she was their investment
9 advisor, she knew how much money that they had accessible to
10 them and how much cash they had on hand. She knew their risk
11 tolerance. In many cases that risk tolerance was quite low,
12 and she capitalized on some of their fears.

13 We heard that many of these people lost money that they
14 had inherited, that they had been saving for their children and
15 their grandchildren's educations. We heard from one particular
16 victim, Ms. Barney, who was using every last penny to pay for
17 her husband's care who was in assisted living. Ms. Barney told
18 Ms. Bennett time and time again that she could not afford to
19 lose a dime of her money. Again, Ms. Bennett took hundreds of
20 thousands of dollars from Ms. Barney.

21 We heard from a number of individuals who had to extend
22 their careers so that they could try to make up for some of the
23 money that Ms. Bennett stole from them. Again, the
24 significance of the loss with respect to these victims is at
25 its highest.

1 With respect to other non-economic harm, the third factor
2 that the ABA report suggested the Court consider, that was also
3 expressed pointedly here today through the victims who spoke
4 with the Court, and it's also expressed pointedly through their
5 victim impact statements. They expressed complete and utter
6 betrayal on the part of Ms. Bennett. She gave numerous
7 assurances that they would be taken care of, and this was
8 something that was built, in part, on their relationship that
9 they had established over the course of decades for many of the
10 victims here.

11 The victims expressed their complete and utter disgust and
12 just complete loss of trust based on someone who they had --
13 who was advising them on some of -- on most important matters.

14 In the defendant's papers as well she concedes in her
15 submission that the victim impact in this particular case was
16 high. There is just no getting around that, and, Your Honor,
17 that's one of the primary reasons that the government is
18 recommending a sentence of 25 years.

19 Turning back to the nature and circumstances of the
20 offense, as the Court knows, this was a fraud. This was a
21 multi-faceted fraud associated with Ms. Bennett's sell of
22 convertible notes, with her sell of promissory notes, and with
23 the loans that she attempted to -- that she negotiated on
24 behalf of her company. Again, \$20 million in less than three
25 years from over 46 different investors, and DJBennett was in

1 financial distress even before Ms. Bennett started to solicit
2 investments from the investors in this particular case.

3 Ms. Bennett knew that the company was overdrawing its
4 accounts, that it was losing millions of dollars every single
5 year, that in its very best year it lost over \$1.9 million.
6 And the crux of this case is really about the lies that she
7 repeatedly told to the investors and the combination of lies in
8 an attempt to get them to invest their money, their life
9 savings, their hard-earned pennies into her company.

10 She lied repeatedly about the financial condition of the
11 company, about its operating performance, about the risks of
12 the notes and the promissory notes, and she lied about how she
13 would be using their proceeds, all information that was
14 material in order to get these investors to invest. And if the
15 investors had known, they certainly would not have given her
16 the money.

17 She told them that she would pay them 15 percent rates of
18 return. Not a single investor who testified before this Court
19 received a 15 percent rate of return. She told them that their
20 investments were highly liquid. They were not. She told them
21 that their investments were risk free and that they could get
22 their money back at any time. They certainly were not.

23 She told these investors that their investments were
24 backed by the company's assets, and many times she told the
25 investors that she -- that their investments were backed by her

1 personal wealth. The evidence at trial showed that at the time
2 she made many of these statements, she had already pledged
3 100 percent of the company's assets as collateral for other
4 loans and was deep in debt herself.

5 THE COURT: Ms. Pulice, on that point, do we have a
6 better ballpark on what the current seized assets, the value of
7 them are?

8 MS. GOULD: Your Honor, the complex -- the marshal's
9 Complex Asset Team is actually here in the courtroom observing
10 today. They have been working very hard with their appraiser
11 to get the total value of the assets. They, I believe, have
12 just finished an estimate. We have provided all of the
13 appraisals. They can probably speak better to the total
14 number, but we have provided appraisals to Defense. I don't
15 think we've received any feedback from Defense on those
16 appraisals, but I know the marshal's is working to do whatever
17 they can to make sure that they maximize --

18 THE COURT: Well, I'm interested in getting as -- you
19 know, as best as you can a good-faith estimate, because the
20 defense has represented that this is everything Ms. Bennett
21 owns and worked hard for and that it is all designed to help
22 pay back the victims. I think everyone here is interested
23 in -- it's a factor and it's important at sentencing to at
24 least have some sense of what the value is. And my
25 understanding is the last time we continued this case, it was

1 so that we would have a better estimate today. In part, that
2 was part of the reason why we continued it.

3 MS. PULICE: Your Honor, Court's indulgence.

4 THE COURT: Sure.

5 (Brief pause.)

6 MS. GOULD: Your Honor, may I have a minute to
7 consult with the marshals?

8 THE COURT: Sure. Why don't you go ahead and do
9 that, Ms. Fine and Ms. Gould, and let Ms. Pulice know when
10 you're ready. And if you want to continue while we get that
11 information.

12 MS. PULICE: Thank you, Your Honor.

13 Your Honor, turning back to the nature and circumstances
14 of the offense, again, Ms. Bennett used the information that
15 these people had entrusted her with to manipulate them into
16 investing and to manipulate them into keeping their money
17 invested. Again, because she was their investment advisor and
18 she knew how much money they had and she knew what information
19 that they valued in making investment decisions, she
20 manipulated them.

21 For example, Ms. Dalmas told the Court earlier today that
22 Ms. Bennett explained to her that her money would be helping a
23 product that would help soldiers. Ms. Keefe told the Court
24 that she was concerned about market volatility. These are just
25 two instances where Ms. Bennett was capitalizing on the

1 priorities of these particular investors and the information
2 they had entrusted her with in order to steal their money.

3 I think the evidence at trial also demonstrated
4 Ms. Bennett's persistence in the fraud, that she would not take
5 no for an answer. There were a number of emails, from
6 instance, from Mr. Fox who expressed reticence at investing,
7 and she persisted and eventually convinced him to invest nearly
8 all of his life savings in this particular fraud.

9 She then lied to the investors about how she would be
10 spending their money. She repeatedly told the investors that
11 she would be spending where money simply for business purposes.
12 In fact, she was purchasing new expensive jewelry when the
13 company was having its most catastrophic year. She purchased a
14 rare yellow sapphire for \$79,000 within one week of getting a
15 payment from that special needs trust. She was spending
16 exorbitant fees on attorneys who were completely wholly
17 unrelated to DJBennett.com. She was paying -- she paid \$60,000
18 of investor money for a house, the Rancho Sante Fe in Sante Fe.
19 She was paying money for these ritual blessings, for her own
20 personal cosmetic treatments, and for that luxury suite at
21 Cowboy's Stadium. The evidence showed time and time again that
22 Ms. Bennett was the only person who benefitted from this
23 particular fraud.

24 Again, the case -- the defendant here seems to view the
25 fact that her business actually existed as some sort of

1 mitigating factor, that it had real employees, real products,
2 and real expenses; but I think that sort of overlooks what this
3 case is about, and the case is not about the fact that the
4 business existed. The case is about the repeated lies that
5 Ms. Bennett told her investors about the business despite the
6 fact that she knew she could not do so. The lies were
7 essential to the fraud, and the lies were probative of her
8 intent here.

9 THE COURT: But I think the defense's point is really
10 there is a difference and a difference that the sentence should
11 account for when one just, you know, completely makes up a
12 venture. It doesn't exist. It's from whole cloth. And when
13 one has a legitimate entity, trying to get it off the ground,
14 and exaggerates and certainly misleads but misleads for this
15 sort of larger legitimate goal, what do you say to that? I
16 mean, there is evidence that Ms. Bennett really was launching
17 this luxury sporting good company.

18 MS. PULICE: Your Honor, so I think the fact that the
19 business existed and that Ms. Bennett at a certain point in
20 time very early on before this fraud began was intending to run
21 the business and was intending to run it such that it would be
22 successful, of course, and we have taken that into account in
23 our recommendation.

24 However, at the time this fraud began, at the time she
25 began deceiving investors and repeatedly lying to them and the

1 actions that she took both to cover her tracks and to make sure
2 that the investigation would not succeed are the actions of
3 someone who is motivated by greed and entitlement. They are
4 not the actions of someone who is focused on keeping a business
5 running, and I think the spending evidence is indicative of
6 that.

7 Even -- I think we saw during trial even while the
8 business was continuously overdrawing its accounts, while she
9 was struggling to pay rent, struggling to keep the lights on,
10 she was spending hundreds of thousands of dollars on cosmetic
11 treatments, on astrological gems, and on prayers, all of which
12 were paid for with business funds. This is not someone who was
13 making strides in her own personal life or curbing her own
14 expenses in order to advance the business, the business
15 interest, and that was a theory that was debunked at trial.

16 And, again, I think -- I mean, I don't know that I need to
17 touch on this much, but this myth that the company actually had
18 some value and might have succeeded but for the government's
19 intervention, I mean, I think that's a line that Ms. Bennett
20 had peddled to a number of the victims in this particular case
21 during the course of this investigation; and there was simply
22 no support indicating that throughout the course of trial.
23 There is just no reality for that.

24 This was not the next Amazon. This was not some novel
25 tech startup. This was a failing online retail business. This

1 was a money pit that the finances bore out and that Ms. Bennett
2 new lost millions and millions of dollars every year and that
3 showed no signs of improvement, and that's a fact that was
4 supported by the defendant's own witness at trial who testified
5 on cross that the website only sold several units of clothing a
6 day.

7 This was a fraud and Ms. Bennett knew it. It was not
8 just -- this was not just a one-time event arising from a
9 split-second decision made under financial duress. This was a
10 fraud. This was a product. This was a series of decisions
11 that Ms. Bennett made over the course of three years where she
12 showed increasing desperation, and we saw that culminating at
13 -- some of the evidence at trial. I think that her desperation
14 was culminating towards the end of 2017, the summer of 2017
15 when she made that trip with Ms. Keefe down to Fidelity to help
16 Ms. Keefe withdraw her -- liquidate her retirement funds, when
17 she visited Ms. Viray at her home to try to convince Ms. Viray
18 to invest her funds in the account.

19 It was within Ms. Bennett's power to rectify her crime, to
20 shut her business down at any point, and to make personal
21 financial sacrifices in order to repay some of those investors,
22 none of which she ever did.

23 Now, turning to the history and characteristics of
24 Ms. Bennett, some of those certainly weigh in her favor, and we
25 factored those into our recommendation of 25 years. She

1 graduated from high school. She has a degree in political
2 science from the University of Utah. She had a relatively
3 privileged upbringing, especially compared to many defendants
4 who appear before this court, and she clearly has a supportive
5 family. She has no history of substance abuse, no mental
6 health history. She's clearly intelligent and hard-working,
7 and she has a lengthy employment history going back to when she
8 began as an investment advisor in 1987 and then when she
9 started her business.

10 She had every opportunity here to lead a successful and
11 law-abiding life, yet Ms. Bennett chose to abandon any sort of
12 honest work in order to enjoy her lavish lifestyle, and that
13 was despite the resources that were available to her, and that
14 was despite the support of a loving family. She still managed
15 to commit this horrendous crime.

16 On top of that, given her history and characteristics, she
17 knew better. She was trained in securities. She was licensed
18 several times over. She knew that she could not lie to her
19 investors. She was -- as a registered investment advisor, the
20 evidence in trial showed that she was required to take certain
21 trainings, that as part of her duties and responsibilities with
22 Western International, both Western International and FINRA
23 prohibited her from borrowing money from clients, but she did
24 it anyway, and she lied to Western International and to FINRA
25 about it.

1 Now, at the time she began the fraud, she had been an
2 investment advisor for over 25 years, and she knew that given
3 the liabilities that she was incurring and that her business
4 was incurring, there was no possible way that she could begin
5 to pay these people back, yet she persisted in the fraud.

6 With respect for -- with respect to the need for the
7 sentence to reflect the seriousness of the offense, as I've
8 mentioned, this is an incredibly serious offense, especially
9 given the harm that she's caused to the victims. Again, the
10 impact to these victims will last years and in some cases
11 generations.

12 I think it's also worthy of mentioning the swiftness with
13 which she caused such financial ruin. This was \$20 million
14 stolen from over 46 people in just three years. And she
15 persisted in her fraud even in light of the numerous
16 investigations that threatened to uncover what it was that she
17 was doing, and that persistence indicates an incredibly high
18 chance of recidivism, which I think is probably the most
19 important point that we've considered in our recommendation,
20 and that is deterrence. So with respect -- and when I say
21 deterrence, I mean both specific deterrence and general
22 deterrence.

23 So beginning most importantly with specific deterrence,
24 the pattern of conduct in this particular case has indicated
25 that there is literally nothing that can stop this particular

1 defendant, not even an order from this court, and because of
2 that, she is certain to re-offend if she were released. She
3 cannot be trusted to abide by the laws. She cannot be trusted
4 to abide by any sort of financial regulations. She's
5 demonstrated that throughout her dealings with FINRA, through
6 her dealings with the SEC, with respect to the material
7 misrepresentations that she's made time and time again, with
8 respect to the lies she's made to her investors, with respect
9 to the conduct that she demonstrated in this particular case,
10 and her flagrant violations of the Court's orders. She simply
11 cannot be trusted.

12 And as we stand here today, I think it's also worth noting
13 that never once has she expressed remorse for pilfering the
14 life savings of her friends and family. She has not expressed
15 remorse for the toll that her crimes have taken on these
16 people's lives and mental and emotional well-being. Instead,
17 she's maintained that she's, in fact, the victim here. And,
18 Your Honor, again, we take that incredibly seriously in our
19 25-year recommendation.

20 Turning next to general deterrence, general deterrence is
21 also a significant concern for the government in this
22 particular case. We're not focusing solely on the loss amount,
23 of course, but the loss amount alone makes this a significant
24 case.

25 As we cited in our papers, the Sentencing Commission keeps

1 data regarding average loss amounts for cases that are
2 sentenced under 2B1.1. In 2017, the median loss amount was
3 \$140,000 of all cases sentenced under 2B1.1 in the United
4 States. In 86 percent of those cases, the loss amount was
5 \$1.5 million or less.

6 So here the loss amount is -- the actual loss amount to
7 victims is over \$14 million, and the amount that Ms. Bennett
8 stole from victims is over \$20 million, and those figures
9 easily put that case -- put this particular case, put
10 Ms. Bennett's fraud in the top 15 percent of cases nationwide.

11 THE COURT: And the guidelines reflect that, though.

12 MS. PULICE: The guidelines do reflect that.

13 THE COURT: And, you know, the government's
14 recommendation I note is significantly lower than what's
15 presumptively reasonable according to the law in this -- the
16 Supreme Court and the Fourth Circuit --

17 MS. PULICE: That's correct, Your Honor.

18 THE COURT: -- with respect to the guidelines. And
19 they are presumptively reasonable. They're based on evidence.
20 And you're going significantly lower than that. I may not in
21 the end agree with you totally, but I note that you're basing
22 that, if I understand your allocution correctly, on the
23 individual history and characteristics of Ms. Bennett apart
24 from this offense.

25 MS. PULICE: Yes, Your Honor. That's correct.

1 There is also -- I think it's also worth noting that there
2 has been some publicity surrounding this case, and because of
3 that, the sentence that this Court determines has the potential
4 to resonate, first of all, with any individuals who might be
5 faced with the opportunity to defraud, such as Ms. Bennett, but
6 also with respect to two important industries, the financial
7 services industry, as well as in the Internet startup
8 community.

9 I think with respect to the financial services industry,
10 as the Court knows, Ms. Bennett had a long career. She was
11 featured in various industry publications. She hosted a radio
12 show, and I think it's safe to say that the financial services
13 industry may pay attention to the sentence that she's given
14 today since it's part and parcel with the crime that she
15 committed.

16 Also, with respect to the Internet startup community,
17 these are private companies that aren't regulated that tend to
18 fly below the radar. So I think it's important for the Court
19 to send a message that it's important for people who are
20 seeking investments to be completely honest and forthcoming and
21 to provide reliable information to their investors; and if they
22 don't, they will be punished accordingly.

23 With respect to the need to provide the defendant with
24 educational, vocational training, medical care, other sort of
25 correctional treatment, I think that's a factor that weighs in

1 the defendant's favor in this particular case.

2 And I also wanted to respond briefly to some of the
3 defendant's arguments. First of all, I think Mr. Jeffress has
4 stated that Ms. Bennett invested \$18 million of her own money.
5 I think that figure is closer to \$8 million. It's clear that
6 she did invest her own money, and she did lose her own money in
7 this particular case, and we do view that as a mitigating
8 factor which is why we're recommending the sentence that we're
9 recommending, a 25-year sentence.

10 However, despite the defendant's losses in this particular
11 case, her own financial losses, she had tremendous financial
12 wealth to lose. And on top of that, what she lost pales in
13 comparison to the figures that she stole from these particular
14 people.

15 With respect to the comparable sentences that were cited
16 to by the defense, I think I wanted to touch briefly on the
17 *Byung Bang* case which was actually, as Your Honor knows, this
18 was my case in front of Your Honor. In that particular case, I
19 think another important distinguishing factor is that in
20 addition to the fact that Mr. Bang accepted responsibility
21 nearly as soon as he was interviewed by law enforcement, he
22 also set aside funds for the victim in this particular case,
23 which was just one victim and which was Montgomery County; and
24 he was willing to pay those over even before we had a vehicle
25 to accept that money. And so I think --

1 THE COURT: Although, in fairness to the defense, the
2 way it was presented at sentencing was the victim, being the
3 County, meant that kindergarten children were without programs
4 and schools weren't being -- the wings weren't being built. I
5 mean, you were very persuasive in that that one victim really
6 represents a constellation of individuals in a community
7 harmed.

8 So but I hear your point that there was -- it went to some
9 of my questions of Mr. Jeffress about acknowledging your
10 wrongdoing comes in many forms, including early repayment of
11 monies; and so on that point, your point is well-taken.

12 MS. PULICE: Thank you, Your Honor.

13 So I really think that there are no comparable sentences,
14 especially in this particular district, but in light of all of
15 the 3553(a) factors and in light of the incredible harm that
16 Ms. Bennett has caused to these particular victims, the
17 government's position is that a 25-year sentence is
18 appropriate.

19 We'd also request the imposition of restitution and
20 forfeiture. If the Court has any questions on that, again, we
21 have representatives from the forfeiture unit who are
22 available.

23 THE COURT: Yeah, I do hope to get a better sense of
24 where we are with that.

25 (Brief pause.)

1 MS. PULICE: Your Honor, I have some answers from our
2 forfeiture unit with respect to some of the appraisals. So
3 certainly there are no guarantees because, again, the values
4 are going to be what the market bears out when these assets are
5 actually liquidated, but with respect to the personal property,
6 the estimate is between \$1 million and \$1.5 million of
7 estimated value at liquidation.

8 And the government is going to continue to look for other
9 substitute assets, but again --

10 THE COURT: That's everything which is unencumbered
11 including art and --

12 MS. GOULD: Your Honor, that's everything excluding
13 the vehicles.

14 THE COURT: So including the artwork for which I
15 understand there are liens associated with them?

16 MS. GOULD: We haven't had the opportunity yet to
17 look into the third-party claims to the art. That's something
18 that will come after, after we do notice and publication.
19 That's the current estimated liquidation value of the property
20 that was seized.

21 THE COURT: Okay.

22 And remind me, Ms. Pulice, was there any equity in the
23 penthouses?

24 MS. PULICE: No, Your Honor. It was below the equity
25 threshold, the forfeiture equity threshold.

1 So if there are no additional questions from the Court,
2 Your Honor, we would submit on our papers and on our
3 recommendation that the defendant be sentenced to 25 years.

4 THE COURT: Okay. Let me just make sure as well that
5 we're still dealing with current numbers here. The restitution
6 amount is \$14,306,842?

7 MS. PULICE: Your Honor, the restitution amount is
8 \$14,504,290, and the forfeiture amount is \$14,306,842.

9 THE COURT: And why is there a difference there?

10 MS. PULICE: So, Your Honor, we briefed this in our
11 original sentencing submission. So the restitution reflects
12 the amount of money that the victims lost to the scheme.

13 THE COURT: Okay.

14 MS. PULICE: And it's higher in this particular case
15 because -- we have given Ms. Bennett credit for some of the
16 money that she repaid in full. So the restitution amount is
17 higher because several investors were either repaid in full or
18 minimally profited from the scheme.

19 And so when we were calculating the forfeiture amount,
20 that's just her ill-gotten gains; so what Ms. Bennett actually
21 kept. And so the forfeiture amount is actually -- is lower
22 because we've given her credit for those amounts.

23 THE COURT: Okay. And let's practically play this
24 forward. It's the government's intent, obviously, to proceed
25 with forfeiture. The preliminary order becomes final as of

1 today. Third-party claimants will then have their right to lay
2 -- ask this Court to call it, whether the property goes to
3 forfeiture or goes to them; and then whatever is the remainder
4 and forfeited to the government will then be applied toward
5 restitution to pay back the victims. Am I getting it right?

6 MS. FINE: You are, Your Honor. The order becomes
7 final as to the defendant today. We are going to then
8 immediately do notice of publication, and our staff knows that
9 this case is a priority. That starts that claims period which
10 is roughly 60 days after the notice or 30 days after the end of
11 the publication. And then, as you've described, there will be
12 claims, adjudication of claims, and then disposition of the
13 property; and at that point our financial litigation unit is
14 also on standby to do what's called a petition for restoration
15 that would allow transfer of the money from the asset
16 forfeiture fund where it goes out to the liquidation over to
17 the Clerk of Court where it can be paid out in restitution.

18 And I should just note as well that we continue to look
19 for substitute assets, and we are actually actively doing that
20 at this point.

21 THE COURT: Okay. Thank you, Ms. Fine.

22 Okay, so \$14,504,290 is the government's final restitution
23 figure. Am I right about that?

24 MS. PULICE: Yes, Your Honor, that's correct.

25 THE COURT: Okay.

1 Mr. Jeffress, Mr. Zapf, any dispute with that number?

2 MR. JEFFRESS: No, Your Honor.

3 THE COURT: Okay.

4 All right, Ms. Bennett, this is now your opportunity, if
5 you wish, to be heard. You do not have to. I will not hold
6 your silence against you, but it is important that you know you
7 have the floor to address me, your family, the individuals who
8 are here today.

9 You have to do so from your chair, please. Thank you.

10 And you can stand or sit; it's up to you.

11 THE DEFENDANT: Okay. Good morning and thank you.

12 I just want to say this is a very personal statement for
13 me, and it's especially difficult to voice because there is
14 just so much to tell that is sorrowful and full of deep, deep
15 contrition.

16 I want to begin with a heartening fact, a true fact about
17 the most wonderful group of people that were harmed. I'm
18 sharing this with you, first and foremost, my friends, the
19 DJBennett.com noteholders who, again, are my family and
20 friends. I know that going through the beginning phase of this
21 process has probably made everyone believe the worst of me, and
22 it's my humble wish that all of us affected by the situation
23 will find some reason to reclaim some of the hope and
24 conviction we have lost as we move on.

25 The second reason for this expression of remorse was to

1 give thanks. I know that nothing on this earth fulfilled me
2 like learning and processing and serving alongside all of you
3 these last 30 years plus. I respect no one's opinion more than
4 yours, and I have no greater proof of God's grace in my life
5 than you. Words don't exist to tell you how much you mean to
6 me and how sorry I've been to put you through this hell. So
7 many ups and downs, twists and turns. I placed no offering on
8 the altar of God that did not cost you dearly one way or
9 another, and I am beyond humbled with a bone deep desire to see
10 my hurting friends and family made whole.

11 2017, '18, and '19 have been the worst and hardest years
12 of my life, which my sadness and regret is fathomless.
13 Inevitably, this ordeal over the past nine years will be a
14 permanent scar where the skin will remain mortally thin and the
15 nerves more sensitive. It will never, ever heal.

16 The work required to square my moral and ethical
17 responsibility, to continue to repay loans that were given to
18 DJBennett.com are a priority still. And, yes, I know the
19 mental scars are there for good, but if I can get released from
20 prison and start working to pay restitution, then the victims
21 can begin living again. That's all I want. That would be the
22 triumph and the only triumph for my emancipation.

23 Even though this experience has been austere, it has
24 reminded me that there is always some sort of light within the
25 darkness, and so with iron resolve, with the past year and a

1 half, I've been working with Western Securities to set up a
2 program to begin paying restitution to the DJBennett
3 noteholders. This is a responsibility that Western and I hold
4 firm to. And know this, your money is not and has never been a
5 bargaining chip. It's Western's desires -- Western Securities'
6 and my desire to settle as many of the promissory notes as
7 possible in the near future. Hopefully, with being discharged
8 from jail, I will work with them even closer to expedite the
9 payments so the worst will be finally over for all of you; your
10 renewal has begun.

11 I don't ever believe I will disassociate myself from the
12 shame with which this situation has branded me. I am so
13 profoundly humiliated that it will be difficult to ever shake
14 it off. It has put me at odds with my own identity. All I
15 care about is those who lost come out the other side whole.

16 The torment of this case and 22 months of jail with no
17 relief will not peter out or defuse in time. It will very much
18 be present and its effects forever on me. As I have shared
19 with my family and lawyers since day one, this simply
20 unbearable-to-live-with grief and depression has well-tipped
21 the scales against D.C. survival for me in or out of prison.
22 This experience is so vivid that it annihilates the present and
23 the future. This is the beginning of another struggle, a
24 lifetime pursuit of redemption.

25 Punishment for me began in 2017 when I was incarcerated,

1 and unless you've lived in a cell with no human contact, not
2 enough food to sustain you, and constant abuse due to your age,
3 skin color, religion, and sexuality, it is hard for an outsider
4 to comprehend that liberation from prison will not mean
5 immediate relief. It will actually mean that the hard work has
6 only begun.

7 I'm not arrogant. I have learned and will not punch
8 forward into the same faults, and as a work in progress, I
9 continually take lessons from this hard experience. I'm
10 forever branded with the reminder that DJBennett noteholders
11 had seeked and required truth and strength from me. Character,
12 as we all know, is a matter of continuing progress, and I take
13 it very seriously.

14 I believe our planet is hungry for genuinely changed
15 people. Everybody thinks of changing humanity but nobody
16 thinks about changing himself. I, more than ever, want to be
17 among those who believe that inner transformation of my life is
18 goal worthy, especially to continue my work of taking children
19 out of sex trade.

20 I built the not-for-profit *theyarejustkids.org* around the
21 belief that the greatest problems on earth are moral and
22 spiritual. Unless you can make some progress in those realms,
23 we may not even survive as a world, as this is how advanced
24 cultures have declined in the past.

25 Since its inception, They Are Just Kids has been and I

1 hope will continue to make worldwide partnerships with priest
2 communities. Our job is to tie together these communities with
3 children that have been sold into sex slavery where there are
4 no families, where there's no order, where there is no hope.
5 We will strive to continue to build sanctuaries to give
6 structure, discipline, spirituality, morality, life, and a lot
7 of love to these broken children. It is for this reason
8 *theyarejustkids.org* must continue no matter what.

9 As I stand before you, I've caught a glimpse of the
10 remaining years of my life, and I swear an oath that if I'm
11 released, I will live the rest of my years paying back my
12 noteholders. I would bear public testimony to them. I would
13 be an improved person. I would help more children in need, and
14 I would strive to make whatever world in which I found myself
15 better for them and my family.

16 I'm at a turning point. I've had an epiphany. My soul
17 has taken a giant step forward and shifting into high gear. I
18 will truly believe that all men and women are my brothers and
19 my sisters.

20 Even my mom, 82, and dad, 88, are part of this oath. It's
21 always painful to watch someone you love or change or to lose
22 them at any age. It's hard for all of us. So I know everyone
23 here can appreciate the poignancy.

24 In the Bennett household, it was supposed to be my duty as
25 caretaker since I do not have my own finally and my skill set

1 Tends itself to the job. However, it's been my brother Steele
2 who has rearranged his life and juggled to take over my charge
3 just to be involved in their caretaking. With a sizeable
4 amount on his plate, he has become overwhelmed and has
5 sacrificed his own health, his own well-being, and his
6 relationship with his wife and children. His health is
7 breaking down. It's been difficult on him, so much so he had
8 his gall bladder removed last year due to unease stress and
9 exhaustion.

10 With much respect, I would like the Court to make me
11 primary caretaker for my parents, and I only ask mercy from all
12 of you in order to get started.

13 Lastly, I was not prepared to undergo such severe
14 punishment from the onset of this case, but because I did, an
15 entirely hidden world was presented to me. I need to thank the
16 hundreds of accused, convicted, and imprisoned women with whom
17 I have lived and worked with these past two years. They have
18 taught me much about hope, justice, and mercy. I'm especially
19 humbled by the victims and survivors of violence, the criminal
20 justice professionals, and those who have been condemned to
21 unimaginably small and painful spaces and have shown tremendous
22 courage and grace. Like many things in life, the most
23 important issues can't be understood from a distance. You have
24 to get close.

25 Given that mandate, for the past 22 months, I've been

1 writing the dramatic narratives of these women for them to
2 share with their legal team, judges, and families. These
3 stories take their reader to the very place most of them never
4 want to go, however, at the end, make them grateful for the
5 powerful things they might find there. It has transferred my
6 understanding of this fractured system where I believe there is
7 endless opportunity to do something about the incarcerated and
8 its impact on our collective soul as a country.

9 Thus, I proposed to Chesapeake Super Max Case Management
10 Supervisors that I help them develop an inmate story-telling
11 program that brings in pro bono professional authors to
12 interview and then articulate the stories in a more elegantly
13 crafted and eminently readable way. I strongly believe a
14 program such as this will make an inflection point in the
15 national conversation around punishment and incarceration with
16 its value even being greater than it could be in order to show
17 the power of compassion to fix a broken world within our own
18 world, a world that is almost entirely hidden from our sight.

19 I thank you, Judge Xinis, for opening my eyes.

20 We're all implicated when we allow other people to be
21 mistreated. An absence of compassion can corrupt the decency
22 of a friend, a noteholder, a company, a community, and a
23 nation. Fear and anger can make us vindictive and abusive and
24 unjust, and until we all suffer from the absence of mercy and
25 we condemn ourselves as much as we victimize others, the more I

1 reflect on this entire experience the more I believe it's
2 necessary to recognize that we all need mercy, we all need
3 justice, and, perhaps, we all need some measure of unmerited
4 grace.

5 Diane Keefe, Jean Dalmas, Jeff, Diane Mizrahi, Mark Hale,
6 Linda and Mike, Rosemarie, I am intent on paying every penny
7 back to you, and I have the ability to do it. I just would
8 like the opportunity to put that forth.

9 Thank you.

10 THE COURT: Thank you, Ms. Bennett.

11 (Conference at the Bench.)

12 It is the policy of this Court that every guilty plea and
13 sentencing proceeding include a bench conference concerning
14 whether the defendant is or is not cooperating.

15 (Open court.)

16 THE COURT: So I want to start by saying that,
17 Ms. Bennett, I, maybe for the first time in nearly two years,
18 see a glimmer of your accepting the nature of this crime, the
19 gravity of it, the seriousness of it, and I strongly encourage
20 you to keep looking inward and to keep focused on that because
21 it seems like that will be the way in which you can -- you may
22 not be able to financially pay anybody back for some time, but
23 that doesn't mean you can't make amends in a larger context,
24 and that is keep working with the people who you will meet.
25 Keep making connections with individuals who need human

1 connection.

2 It is not lost on me that, as your attorney said, prison
3 is soul-crushing, and that's why it's so deeply distressing
4 every time I have to sentence an individual. You are no
5 exception in that regard, but my hope is that with the right
6 intentions -- and you're bright and you are diligent and you
7 obviously have great love from your family -- you can make
8 significant, good progress with individuals you meet along the
9 way; and so it is, again, my hope that you do so. And maybe
10 there is, in a sense, a rough justice behind that.

11 I start with the guidelines. They are presumptively
12 reasonable. They are incredibly high in this case. An offense
13 level 41 triggers a sentence on the low end of 324 months to
14 405 months. In Ms. Bennett's case, if I were to stay within
15 the guidelines -- and even the government recognizes this -- it
16 would not only be overly punitive, but it would be most
17 certainly a life sentence, and I'm not prepared to do that. So
18 I am prepared to vary, and the question is how much.

19 My mandate is to impose a sentence that is sufficient but
20 not greater than necessary to achieve all the purposes of
21 sentencing. So as I equally give weight to the evidence at
22 trial, the evidence that's presented to me by the victims, each
23 and every one of you who have written letters, I have read
24 them, and I have listened to each and every one of your words
25 today, and it is truly palpable the pain in this room. And so

1 no one should say that a, quote, white collar offense or
2 economic crime doesn't cause devastation and actual injury. It
3 does. Each and every one of you bear witness to that.

4 I have to balance all of those things to come up with a
5 sentence that's not one day greater than necessary to achieve
6 all the purposes of sentencing, and I'm prepared to go through
7 the factors because I think it's important for you all to hear
8 them as I see them and the evidence in which they are based.

9 Let's start with the history and characteristics of
10 Ms. Bennett. It's without dispute that Ms. Bennett is very
11 intelligent. She's very hardworking. She put her entire being
12 into her career at a time and in an industry where women were
13 not front and center, and that is a hard road to take, and she
14 took it. It came to a terrible demise in this case, but it is
15 certainly recognized and will be recognized in my sentence.

16 It takes a woman of incredible strength and resilience to
17 do what she did on the legal end of things, and I note that. I
18 do note that prison has been very difficult for you -- I've
19 seen it. I've watched it -- both physically and mentally, and
20 I take that into account as well.

21 I credit each and every one of the letters that your
22 family has written to me about you being truly the glue of
23 their family, and there is a hole that's left because you won't
24 be there and have not been there, and I take that into account
25 as well. And that's largely, frankly, why I don't believe a

1 sentence within the guideline range is appropriate, as does the
2 government.

3 I do hope that you receive -- and you keep in strong and
4 close contact with your counsel about your medical needs. If
5 you wish -- and Mr. Jeffress and Mr. Zapf, I'll hear from you
6 when we get to the judgment about specific designation. If
7 Ms. Bennett wishes to be designated to a medical facility, I'm
8 happy to recommend that. I take that into account as well in
9 determining the sufficient but not greater than reasonable
10 sentence.

11 Let's talk for a moment, though, about the seriousness of
12 this offense. From where I sit, I don't think I could say it
13 and capture it better than you all have in your letters and
14 today, and I want you to know I recognize each and every one of
15 you. For your purpose -- for your privacy sake and your
16 purpose, I'm not going to name each and every one of you, but I
17 will pick out to me some of the key pieces that are evidence of
18 the seriousness of this offense, just how remarkably
19 devastating and heinous this crime has been.

20 The dollars in some ways don't even capture it because the
21 dollars are representative of all that you worked hard for and
22 lost and all of the security that you worked hard for and lost.
23 And so your words, in my view, say it best.

24 One individual writes, I'm close to 75. I wanted to slow
25 down and look at retirement but extended my career so I could

1 try to make up for some of the money that Ms. Bennett stole to
2 [sic.] me.

3 Another couple writes, We lost our entire savings, life
4 savings which were to be used to pay for the husband's medical
5 bills and the long-term care which expires in a year, and there
6 is no money left for that long-term care.

7 Another victim who is 87 years old who was actually quite
8 measured in what she said and wished to see happen in this
9 court said, quote, It's not a comforting thought that I might
10 not have enough income for the remaining years of my life if I
11 don't recover what belongs to me. And based on what the
12 government tells me, there is not much to recover.

13 Another couple says, We're forced to sell our home and
14 relocate away from friends.

15 Ms. Bennett, you talk about your living conditions that
16 you're facing. Individuals who have to give up where they've
17 lived for three decades and find somewhere else that they can
18 make it on a very limited income is just tragic.

19 I was planning to retire at 62 another victim writes, but
20 will not be able to do that given the loss of my retirement
21 money.

22 Another writes, Ms. Bennett has robbed me of all of my
23 inheritance.

24 Another says, She's betrayed me of my trust. Played me
25 for a fool.

1 I think we've heard that today as well.

2 Another individual who I remember testifying at trial said
3 Ms. Bennett convinced him to give all of their money knowing
4 full knowledge that my wife had severe depression, a central
5 nervous system disorder, was bedridden, and has a tumor. I
6 believe a brain tumor.

7 Another writes, I didn't just lose a ton of money; I was
8 betrayed by a friend.

9 I watched the video of one of you personally being driven
10 by Ms. Bennett to clear out your life savings on the promise
11 that you will make the return that Ms. Bennett assured.

12 Until just a few moments ago, Ms. Bennett, you were
13 completely unrepentant and without any remorse and that really
14 speaks to deterrence. I know the literature on which
15 Mr. Jeffress cites, but you are not in the heartland of most of
16 these cases, and your actions speak of an individual who will
17 stop at almost nothing to get what you believed you wanted and
18 was -- whether it be for the good of your company or the good
19 of yourself or both, because, as we talked about, intentions
20 are messy -- you were not going to be deterred.

21 So the sentence certainly has to be lengthy enough to
22 assure that this in no form will occur again by you and send
23 the message when one engages in a scheme of this kind of
24 devastation -- so many people over so long without any regard
25 for the humanity behind it. After agency upon agency and

1 individual attempts to -- individuals and whole groups of
2 investigators attempt to shut it down, at every turn
3 Ms. Bennett threw up her road blocks so that she could continue
4 to take what didn't belong to her. The sentence has to be
5 significant to send a message of general deterrence.

6 The need to avoid unwarranted disparity I have to tell you
7 is one of the most vexing -- as we talked about -- aspects of
8 sentencing. I find the comparators to be not comparators at
9 all, maybe because, as Ms. Pulice says, there is no comparison,
10 certainly, that I have yet seen to this kind of offense, and
11 there is limited value in the comparators that the defense has
12 shared with me.

13 The two cases cited to me by Judge Bredar were so
14 factually and otherwise distinct, they don't hold a candle to
15 this case. Mr. Bang we've discussed at length. And Mr. Coutu,
16 Judge Gertner's case, was an individual who, in Judge Gertner's
17 view, and I credit her finding, had his back against the wall
18 with a family company that had been run for 25 years. That's
19 not this. He had stolen from the bank and that's -- stole
20 \$6 million, but that's not this. And many of the aggravating
21 factors at issue here, not at issue in Judge Gertner's case.

22 And so I question that letter of support which says that
23 this case was followed quite closely and that Mr. Coutu would
24 be a comparator. Not a comparator. And I do encourage people
25 who think longer and harder of sentencing to come up with a

1 better way to discuss the need to avoid unwarranted disparity
2 because this picking one aspect of a case and saying it's a
3 comparator really is not -- it's actually, in my view, for what
4 it's worth, contrary to the purposes of sentencing. We're
5 supposed to look at all the facts and give a very rich and
6 robust analysis, and I don't find that that -- it was lacking
7 here.

8 Promote respect for the law and provide just punishment.
9 This crime was as calculating and brazen, as dangerous as many
10 other conspiracies that come into this court, whether they be
11 financial, drug, gun. It is -- it was, in my view, based on
12 the evidence that I heard, a calculated and professional
13 financial hit on each and every one of you.

14 And it began, Ms. Bennett, frankly, from, you know, years
15 before you attempted to begin DJBennett.com. It's really
16 unfortunate to read that your success in many ways was built on
17 some significant misrepresentations that everybody in this room
18 relied upon -- and others who are not here in trusting you with
19 their monies. So this sentence does need to be extremely
20 significant to promote respect for the law and to mete out
21 justice.

22 Now, what is that sentence going to be? It is not going
23 to be the guidelines. It's not going to be what the government
24 recommends, but it's going to be what, in my view, is
25 sufficient but not greater than necessary and quite lengthy.

1 When I look at the guidelines, I recognize that many of
2 the aggravators have been captured in multiple adjustments, and
3 I have adjusted for that, but the loss is real, and this isn't
4 a loss that was, you know -- this isn't a case in which the
5 loss overstates the seriousness of the offense. Each and every
6 individual who is struggling to make ends meet and having to
7 work for minimum wage knows that the loss is very, very real.
8 So I don't -- loss adequately -- the guidelines capture the
9 harm in that regard.

10 There are some adjustments that I do believe over-punish
11 if I were looking at the guidelines.

12 And in the end, it's my view that the sufficient but not
13 greater than necessary sentence will be 240 months custody of
14 the Bureau of Prisons. Ms. Bennett, you'll receive credit for
15 the time that you've served, and there are, you know,
16 sentencing initiatives that may reduce your sentence even
17 further with regard to any good-time credit that you may
18 receive. This will be followed by five years of supervised
19 release.

20 And in addition to the standard conditions of supervision,
21 you will provide the probation office with access to any
22 requested financial information and authorize the release of
23 any financial information. Probation may share that financial
24 information with the U.S. Attorney's Office.

25 You will incur no new credit charges or open up additional

1 Lines of credit without the approval of the probation officer,
2 and you're not to work in any type of employment in the finance
3 industry without prior approval of probation. So it's not like
4 you can't do it, but I want probation involved. This is not a
5 situation where we're going to let the watchful eye of
6 probation stray very far away from you.

7 There will be a special assessment of \$1,700. Am I right
8 about that, Government?

9 MS. PULICE: Yes, Your Honor.

10 THE COURT: Okay. And that's \$100 per count. That
11 will be payable while -- during the course of your supervision.
12 I won't make that payable now. As well as restitution, it will
13 begin -- payments toward restitution will begin within 30 days
14 of your release.

15 This is a bit because it's going to be quite some time,
16 and your financial earning capacity is unknown at this point,
17 and my mandate is to figure out a monthly payment that after
18 expenses you can afford. At this point I will make that \$250
19 per month. Obviously, at the time, as you are in release, the
20 government and probation and your defense counsel can weigh in
21 as to whether that is an appropriate amount and ask me to
22 adjust upward or downward given your financial circumstances.

23 There isn't going to be a fine, in large part, because I
24 want every single dollar that is recovered, apart from the
25 special assessment, to go to the victims. So there is

1 absolutely no justice in a fine when the money can otherwise go
2 to the victim.

3 Full restitution amount is \$14,504,290. I will -- the
4 preliminary order of forfeiture becomes final, and we will
5 proceed from here.

6 Any aspect of the sentence that I have neglected to
7 address?

8 MS. PULICE: Your Honor, just one issue. With
9 respect to the restitution payments, the government would
10 respectfully request that the Court order that the restitution
11 be payable immediately. And I understand that's because with
12 respect to the forfeiture process, it might be difficult for us
13 to request permission from the Attorney General to apply the
14 forfeited assets to restitution if the restitution is not due
15 for quite some time.

16 MR. JEFFRESS: We agree.

17 THE COURT: Okay, in that respect?

18 MR. JEFFRESS: Yes.

19 THE COURT: What I will be clear, though, on is that
20 Ms. Bennett is not to participate in the inmate financial
21 responsibility program. I'm not going to make her a member of
22 that program. The program has more problems than it's worth.
23 But, okay, we can change that then to payable immediately.

24 And then with regard to the remainder while on
25 supervision, it will be payable in monthly installments. Okay.

1 All right, any other aspect of the sentence I have not
2 addressed?

3 MS. PULICE: Your Honor, just one other issue. With
4 respect to the disputed guidelines issues, is it safe to assume
5 that the Court might have arrived at the same sentence
6 irrespective of the --

7 THE COURT: Yes.

8 MS. PULICE: -- disputed guidelines issues?

9 THE COURT: Thank you for reminding me of that.

10 I think I am -- I would be at the same place regardless,
11 and I would make that alternative finding. And I do believe
12 that we're -- if I had made -- found in favor of the defendant
13 on all disputed adjustments, we would be on the high end, I
14 believe, at a level of 210 months, and I would not find that
15 sufficiently punitive for all the reasons we've discussed and
16 would upwardly vary to 240 months.

17 MR. JEFFRESS: Your Honor, could we have a
18 recommendation for Butner, the federal medical center there;
19 and then number two would be Alderson, please.

20 THE COURT: Got it. No problem.

21 Can I clarify one thing, though, that Ms. Bennett said in
22 her allocution -- and I'm curious about it -- with regard to
23 repayment of the victims. Ms. Bennett referenced working with
24 Western International to make sure that promissory notes are
25 paid.

1 MR. JEFFRESS: Yes. Four of the current victims -- I
2 think maybe some in this room -- have settled their restitution
3 claims with Western -- have settled their restitution, which
4 should be subtracted from -- the amounts paid should be
5 subtracted from the restitution amount.

6 THE COURT: Any -- there seems to be surprise on the
7 other side here.

8 MS. FINE: Your Honor, we would have to look at the
9 settlement agreements, but I'm not certain that they have -- I
10 think they have settled claims against Western. I don't think
11 they have settled restitution, and I understand that they have
12 settled for pennies on the dollar, which would be less than
13 they might obtain through restitution. So we would have to
14 look at the specific agreements to determine whether they are
15 applicable to be -- that restitution is applicable to be
16 adjusted in any way.

17 THE COURT: Okay.

18 MS. FINE: I can't make that -- I can't accept that
19 without looking into the matter.

20 THE COURT: Okay. And there isn't some independent
21 initiative or program other than Western settling civilly that
22 anyone is aware of? That's what I thought I heard, and I
23 wanted to make sure that -- for all of the individuals who are
24 listening out there, if there was such a thing, let's hear
25 about it; if not, then let's clarify it.

1 MS. PULICE: Your Honor, we certainly have no
2 information in that -- to that regard.

3 MR. JEFFRESS: What was that?

4 MS. PULICE: We have no information --

5 MR. JEFFRESS: Oh, okay.

6 MS. PULICE: -- about any independent --

7 MR. JEFFRESS: Well, the attorney for Western has
8 informed us that four of the noteholders have settled with
9 Western and have been paid amounts -- not the full amount, I
10 think, of what the notes were but have been paid, you know,
11 thousands of dollars. We can provide that to the Court or to
12 the government or -- but I think ultimately the amounts that
13 they've recovered should be subtracted from the restitution.
14 That would be our position.

15 THE COURT: Well, I have imposed restitution as of
16 today. They weren't given to me -- the evidence wasn't given
17 to me. The first time I heard of it was from Ms. Bennett, and
18 it sounded as if it were like an ongoing initiative that
19 Western was going to make it right or attempt to make it right,
20 and I wanted to understand.

21 MR. JEFFRESS: And it would be our position that even
22 if the Court sets that restitution amount today, we should be
23 able to submit that they've been paid these amounts to
24 probation.

25 THE COURT: I see. So it would be to reduce the

1 figure.

2 MR. JEFFRESS: That's correct.

3 THE COURT: Well, I'll leave that up to you all. I

4 just wanted to make sure. So there are four settlements.

5 Nothing in the pipeline going forward?

6 MR. JEFFRESS: I don't know about who is negotiating
7 with Western at this point, but there have been four
8 settlements is what we heard from the attorney.

9 THE COURT: Okay. All right, that's all the evidence
10 we have.

11 MS. FINE: Your Honor, even if there were four
12 settlements -- and I don't know if that's true or not -- then
13 the claim would simply be a transfer to Western. In other
14 words, if Western has paid someone a hundred cents on the
15 dollar, that debt doesn't go away. Western has now paid it,
16 and they are entitled to the restitution that that victim would
17 have recovered. And so I don't believe it's going to affect
18 restitution at all.

19 THE COURT: Okay. Well, if it does and you have
20 different views on that, brief it and let me know what the
21 authority is to do something differently, but at this point,
22 the restitution figure will remain untouched.

23 MR. JEFFRESS: And, Your Honor, because there will be
24 an appeal, we do object to, you know, the issues in our papers
25 and that we've raised here today to the Court's imposition of

1 sentence.

2 I also object to, you know, the government's sort of
3 clarification that this would have been the sentence that Your
4 Honor would have imposed anyhow, which was not part of the
5 Court's sentence until the government brought it up.

6 THE COURT: Although, I do note it's in my notes. So
7 if you wish for me to review with you my notes, including the
8 things that I chose not to say --

9 MR. JEFFRESS: I'm sure Your Honor understands this
10 will be appealed, and so we want to protect the record. Thank
11 you.

12 THE COURT: I understand that, and I appreciate your
13 diligence in that regard.

14 So let's make sure we're clear with regard to the 17
15 counts. Count One has a statutory maximum of no more than five
16 years imprisonment. So as to Count One, the sentence is,
17 obviously, 60 months. It will run concurrently with Counts Two
18 through Five, which are 240 months, and that is the statutory
19 maximum in those cases -- in those counts, as well as Six
20 through Fifteen, all concurrently. Count Sixteen and
21 Seventeen, same sentence, all concurrently.

22 With regard to supervised release, the five-year term is
23 associated with Counts Sixteen and Seventeen. Those carry a
24 term of supervised release of five years. Those terms will run
25 currently. With regard to Counts One through Fifteen,

1 supervised release will be three years to run concurrently to
2 each other, as well as to Counts Sixteen and Seventeen.

3 There is no fine imposed.

4 Anything else about the sentence that I need to discuss
5 with you all before I advise Ms. Bennett of her appeal
6 rights -- which she's obviously fully aware of given
7 Mr. Jeffress' proffer, but I just want the record to be clear.

8 MR. JEFFRESS: No, Your Honor.

9 MS. PULICE: Not from the government, Your Honor.

10 THE COURT: Okay.

11 Ms. Bennett, you have 14 days to note your appeal. So do
12 please speak to your counsel timely about that because you have
13 to note your appeal within 14 days.

14 And with that, we are adjourned.

15 THE DEPUTY CLERK: All rise.

16 This Honorable Court now stands adjourned.

17 (The proceedings were adjourned at 1:10 P.M.)

18

19 I, Marlene Martin-Kerr, FCRR, RPR, CRR, RMR, certify that
20 the foregoing is a correct transcript of the stenographic
21 record of proceedings in the above-entitled matter.

22

23 Dated this 25th day of September, 2019.

24

/s/

25

Marlene Martin-Kerr
Federal Official Court Reporter

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