No. _____

Seventh Circuit Appeal No. 24-2298

IN THE

SUPREME COURT OF THE UNITED STATES

MITCHELL MELEGA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

APPENDIX C – MITCHEL MELEGA'S SENTENCING TRANSCRIPT

Adam Stevenson
Clinical Professor
Supreme Court Bar No. 295931

University of Wisconsin Law School
Frank J. Remington Center
975 Bascom Mall
Madison, WI 53706
Phone: (608) 262-9233
Email: adam.stevenson@wisc.edu

Attorney for Petitioner,
MITCHELL MELEGA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	Criminal No. 4:20-40056
MITCHELL ALLEN MELEGA, et al., Defendants.	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES E. SHADID
SENTENCING HEARING
JULY 23, 2024; 2:37 P.M.
PEORIA, ILLINOIS

APPEARANCES:

For the Government:
JOHN K. MEHOCHKO, ESQUIRE
JENNIFER L. MATHEW, ESQUIRE
Asst. United States Attorneys
1830 2nd Avenue
Rock Island, Illinois 61201
(309) 793-5884

For the Defendant:
MARIBETH EGERT DURA, ESQUIRE
Dura Law Office
4507 N. Sterling, Suite 301
Peoria, Illinois 61615
(309) 686-0895

Jennifer E. Johnson, CSR, RMR, CRR
U.S. District Court Reporter
Central District of Illinois

Proceedings recorded by mechanical stenography; transcript produced by computer

EXHIBITS

	PAGE
GOVERNMENT'S EXHIBITS:	
Exhibit Numbers C-4 through C-30	7
Exhibit Numbers 12-7 and 12-54	23
DEFENDANT'S EXHIBITS:	
Exhibit Number 1	4
Exhibit Numbers 2 and 3	34
Exhibit Number 4	35

(Proceedings held in open court.)

THE COURT: All right. This is the United States v. Mitchell Melega, who's present with Miss Dura in 20-40056. Mr. Mehochko and Miss Mathew present for the government.

This matter's set for sentencing today pursuant to a plea previously tendered a couple months ago.

Parties have received a presentence report. It appears there are some objections that we need to address.

Are the parties ready to proceed?

MR. MEHOCHKO: Yes, Your Honor.

MS. DURA: Yes.

THE COURT: Okay. Miss Dura, the first one has you objecting to the enhancement for sophisticated means referencing page 14, paragraph 54.

Wish to make any further argument on that?

MS. DURA: Judge, I would just add that -- or ask you to rely also on Defendant's Exhibit 1, the transcript which, I believe, we tendered yesterday, and that I would wish to move into evidence.

THE COURT: Okay. First of all, is there any objection to that transcript being moved into -- or

being entered into evidence?

MR. MEHOCHKO: No. I'm assuming that we're talking about the transcript of the defendant's interview with the agents, and we do not object to that.

THE COURT: Is that correct, Miss Dura?

MS. DURA: That is, Your Honor.

THE COURT: And that was printed out for me as well, and I have it right here.

So Defendant's 1 will be admitted.

(Whereupon, Defendant Exhibit Number 1 was admitted.)

THE COURT: Okay. Go ahead with further -- any argument then.

MS. DURA: Other than that, Judge, I'll just rely on the transcript.

THE COURT: Okay. Then will you be relying on the transcript then, same for the objections for adjustment for aggravating role, referencing page 14 and 15, and adjustment for mitigating role in the offense is your objection number three, and that's paragraph 57? And as well -- well, then departure will be -- I don't know. Maybe it will be -- will you be relying on the transcript as well to reference your fourth objection, page 24,

paragraph 122? You believe there's a reason for departure?

MS. DURA: I will be relying on that transcript for all of those objections except the last one.

THE COURT: Okay. All right then. Would you like to make argument?

MS. DURA: I would. I would.

THE COURT: Go ahead.

MS. DURA: Your Honor, as far as who managed or who -- what people Mr. Melega managed in, in his duties at I-80, the transcript would indicate that he oversaw a Catherine Nicols and a Robert Brewer, who were just staff underneath him, and, as an aside, a Lois Estabrok who was the accountant for Jones Leasing and JP side.

Basically, he reported to Erik, the owner and the president of the company I-80 and Jones Leasing and, and the JP corporation as well. Erik was the president. Everything had to pass through the president. He had to sign off on the certificates to obtain loans from the banks. Erik was the one that benefitted from the activities. He bought -- he bought several houses. He bought a car for a relative. He bought a house for a relative. He

profited off of those rental units, and he was the one that also -- the company and he, as president, filed bankruptcy because of the inability to pay off their debts. If you look -- so everything had to come through Erik.

So the basis of my argument is that he and Mitch are not on the same level, that he's a minimal participant and, therefore, the adjustment should be made.

THE COURT: Okay. Mr. Mehochko, on those points?

MR. MEHOCHKO: Are we still on the sophisticated means objection?

THE COURT: 1, 2 and 3 -- I think basically -- did you argue all; 1, 2 and 3?

MS. DURA: I also -- I argued the sophisticated -- just relied on the transcript for that because it does set forth the process so --

THE COURT: Okay. Then just Number 1, the sophisticated.

MR. MEHOCHKO: Start with that one then, Judge?

THE COURT: Yes.

MR. MEHOCHKO: The government does have some evidence to present. We have a series of exhibits

here. These were originally trial exhibits so the numbering scheme may not make that much sense, but they are Exhibits C-4 through C-30. And these are side-by-side comparisons. On one side we have the invoices that were submitted to the bank; on the other side we have the invoices -- the genuine invoices that came from the various companies that sold those vehicles.

And I would move to admit those.

THE COURT: Okay. Any objection to those being admitted?

MS. DURA: No.

(Whereupon, Government Exhibit Numbers C-4 through C-30 were admitted.)

THE COURT: One question I have is -- I think I understand the argument, but just because somebody reports to somebody, and somebody else signs off on everything doesn't mean that the scheme can't be sophisticated, is it? I mean regardless, Mr. -- as I see the role here, this is a relatively intricate scheme, I guess, for lack of a better word, to actually go through the procurement and production of false documents even though he might have reported to Jones.

Is there not -- is your client denying that

the documents were fraudulent?

MS. DURA: He's not denying that the VIN numbers were changed. I mean, he did not -- that wasn't his department; that's not what he did.

So ours is -- my argument is more of trying to get money to pay off other debt, you know, so, I mean, that's not that sophisticated.

THE COURT: Okay. Go ahead, Mr. Mehochko.

MR. MEHOCHKO: Hand up those exhibits, Judge.

With respect to the sophisticated means enhancement, as the Court can see -- and these are -- I can just generally explain to the Court, on the left-hand side we have various invoices that were provided to First Midwest Bank, and that's noted at the bottom of the page. So, for instance, first one, Government's C-4, the invoice on the left-hand side that purports to be an invoice -- sales invoice from ETI or Equipment Technology, LLC, that is the invoice that was provided to the bank. Those were provided by this defendant, Mr. Melega. That is an altered invoice.

The invoice on the right is the legitimate invoice. That was the one provided by ETI. The VINs weren't altered, but the other -- the key alteration and the theme that the Court will see

throughout these is the sales amount was altered.

The sales amount -- the legitimate sales amount on C-4 was $36,377. The defendants altered that invoice and submitted to the bank with a new, fraudulent amount of $47,300.

And the exhibits -- and I would add, those alterations, those forgeries are very convincing. If you didn't know which one of these came from the original source and which one came from the bank, it would be very, very difficult, if not impossible to tell. This isn't a situation where somebody took whiteout and just sort of covered up a letter or number and wrote something in. These are very sophisticated forgeries and really, I would say, not detectable by bank personnel.

Many of these involve ETI. Some of these involve other vendors that the business bought vehicles from. Ritchie Brothers is an auction company. They altered the purported sale prices of some of those vehicles. That's in C-30.

C-29, Main Street Motors is a small, owner-operated used car business in Idaho. That's a fairly -- the invoice in that was also altered. That looks like something that was printed on a dot matrix printer. We're going back 20 or 30 years

ago, but the amounts on that were altered in a very convincing fashion such that it made it very, very difficult for this fraud to be detected.

The Court can flip through these exhibits; you'll get a flavor for them very quickly. But the common denominator here is that those sale amounts were very convincingly altered and forged, and so that's part of the sophisticated means argument.

THE COURT: Is it your position that Mr. Melega is the one that actually altered these?

MR. MEHOCHKO: We don't know who altered them, Judge. Mr. Melega admitted in his interview with the agents that he knew that they were altered. He knew that he was submitting false invoices to the bank. I think at one point in his interview he claimed that that was something other people did, but that he knew it was being done, and that Mr. Jones regularly directed that these things be done and submitted to the bank in order to raise additional funds as needed. And Mr. Melega told him when those additional funds were needed, and he, of course, then executed the scheme.

And I think it's worth pointing out, we're talking about the scheme. We're not talking about what the defendant himself personally did. We're

talking about the nature of the scheme and the, the defendant's knowledge of the nature of the scheme, not what he himself personally did.

So he had full knowledge that those false, altered, fictitious invoices were being submitted to the bank.

As is set out in the presentence report, the nature of the scheme was also extensive. This took place for over -- at least over a year, potentially longer. The indictment period that begins in August of 2016 and continues through November of 2017, there were 110 vehicles that were purchased fraudulently for a total of $5.3 million. That's 110 fictitious, false, fraudulent, altered invoices that were submitted and prepared in connection with this -- with this case.

So that is an extensive time period. It's an extensive fraud. It's a high dollar amount of fraud. And, of course, as I said, this isn't just simply what I would call the garden-variety fraud.

And in preparing for today's hearing, I think it's -- I think an illustrative example would be there were several ways this fraud was committed. There were the invoices that were altered and submitted to the bank, and then the bank advanced

loan proceeds based on those invoices, but the other thing that was done is the bank would also advance funds for improvements to the vehicles. The parties bought used vehicles; they refurbished them and then sold them once they'd been fixed up. And the bank also financed 80 percent of the improvements. So if they spent $30,000 to improve the vehicle, the bank would fund them 80 percent of that.

Another part of the fraud was that they would just bump that improvement amount up. There wasn't any sort of documentation required. They would just tell the bank, *We spent* -- instead of 30,000, *We spent 40,000*, and the bank would advance 80 percent of that.

And in articulating the sophisticated means argument, I think that's the difference here. If all we had was that type of fraud where they're just representing to the bank, *Hey, this cost us $40,000,* instead of $30,000, it's certainly -- it's still fraud, it's still aggravated, it's still wrong, but it's not necessarily sophisticated.

But when we're talking about an extensive scheme involving millions of dollars over this extensive time period and very good forgeries and

alterations of invoices, now that's taken us beyond the realm of garden-variety fraud and into something that's much more sophisticated and, I would submit, falls within the scope of what the guidelines are contemplating here.

It required a level of planning and concealment in excess of the typical bank fraud case, and that's the kind of things that the cases talk about. Is this something that's above and beyond what you see in a typical fraud case? And I would say based on the time period, the amount, just keeping track of all these fraudulent transactions and then submitting those forged invoices, that takes this out of the scope of the garden-variety fraud and into the sophisticated fraud.

MS. DURA: Judge, could I just -- one thing.

THE COURT: Yes.

MS. DURA: If you look in Defendant's Exhibit Number 1, the transcript, at the 12:24.265 entry, it says -- well, I'll just go back a little bit further than that.

At 12:17. Question: "So when you went to purchase the truck, who would be involved in purchasing the truck?"

And at 12:24, answer from Melega: "Jordan Jones was the purchaser, which is his brother."

Question: "Okay. All right."

Answer: "And he'd create like a folder, and it has specs in it, retail price, what he thought the recon was in it, and then he would put that folder on Erik's desk for approval."

Question: "Okay."

Answer: "Then when Erik signed off on that, then it would make its way up to me."

"How did he get it? Via email, physical copy?"

Answer: "Physical. Sometimes it went to transportation first," et cetera.

But a little bit further down the road there: "Then Mr. Melega would submit it to the bank. The bank would then -- if they approved it would then deposit the money requested into the Midwest -- or into the I-80 bank account."

That's the shortened version of what was going on. The longer version is set forth in 23 -- recorded in number 23 through 30 series to get the long version of what actually was going on, so I would just ask you to refer to that.

THE COURT: Okay. Mr. Mehochko, anything

further?

MR. MEHOCHKO: I don't think -- I'm just talking about the sophisticated means. Is that -- are we on that right now at this point, Judge?

THE COURT: Yes.

MR. MEHOCHKO: I don't have anything beyond that other than to say that I don't think anything in that transcript contradicts what I just said. The defendant admitted that he knew about those altered invoices. He denied doing it, but he knew about it, and he submitted them to the bank, knowing they were altered.

THE COURT: So part of the Probation response indicates that Mr. Melega actually physically altered some documents, would make excuses when bank examiners would show up for inspections. Is that -- is there -- is that true or not?

MR. MEHOCHKO: As far as Mr. Melega physically altering the exhibits, I don't believe we have indications of that.

I should -- I should mention, one of the things that Mr. Melega did do is the bank inspectors would periodically come out to do inspections, and he would participate in concealing what had been going on from them.

Now, other people took, I would say, more of a lead role, but Mr. Melega was certainly involved in that as well and knew that they were involved in that.

I believe at one point he discusses some sort of fake VIN stickers being created, not by him but that he had knowledge of those being created and put on vehicles to make it appear that certain vehicles were on the premises when, in fact, they were not.

So that would -- I guess that would be another thing that I would add to support the sophisticated means.

Specifically I'm talking about -- it looks like we're at, oh, around the 52:06 mark. And if the Court begins at the beginning of the page and then reads down, they were talking about creating documents for vehicles that were never on the lot.

Answer from Melega is: "He used to have -- he used to take like, I don't know, these yellow stickers out."

Question: "When you say he, who do you mean?"

Answer: "Erik."

Question: "Okay."

Answer: "He would direct -- and I'm not sure

someone out in the shop, and they would make like -- I would imagine they would be like alternate VIN number stickers or something to that nature."

And that's from around 52 minute mark continuing through 52:28.

MS. DURA: That's an "imagine." I mean, he says, "I would imagine."

THE COURT: Okay. Well, I think, though, this still fits, the knowledge and the -- and part of the redirecting or hiding of assets, knowing they were fraudulent would qualify this as well for the sophisticated means enhancement. I'll find for the government.

Let's move on to -- two and three kind of go together. One, you were asking for an adjustment for aggravating role and asking -- and then number three, the adjustment because you actually believe it's a mitigating role.

So let's argue those two together.

MS. DURA: Yeah. So we would submit that Mr. Melega was not a leader, organizer, manager, supervisor in the offense. We would submit that the owner of the company who approved everything, who directed everyone, who owned the majority shares of the business, who was the person who

benefitted from this fraud was the one that had the aggravating role in the offense and was the major participant.

Mr. Melega was an employee that worked under Mr. Jones' direction. He was a salaried employee commensurate with the standards of a staff accountant or a controller.

On the other hand, as I pointed out, Mr. Jones benefitted greatly from the fraud by buying and collecting rents on houses, giving cars and houses to his family members with moneys from the fraud. As I pointed out, the -- everything had to go through Mr. Jones. He had to sign off on everything. He had to sign off on the borrowing-based certificate, and he is the only one that received the benefits from the conduct.

As far as 3B1.1(c), in the commentary there is a -- I cited 3B1.1(c) commentary. "For example, a defendant who does not have a proprietary interest in the criminal activity and who is" -- or he receives simply being paid -- I'm sorry -- "and is simply being paid to perform certain tasks should be considered for an adjustment under this guideline. The fact that a defendant performs an essential or indispensable role in the criminal

activity is not determinative. Such a defendant may receive an adjustment under this guideline if he or she is substantially less culpable than the average participant in the criminal activity."

So I indicated I thought he should be considered a minor participant -- so I think I misspoke when I argued -- and receive a two-level reduction.

There is commentary in that transcript regarding whether he received bonuses. I would just say this. I would also direct your attention to 1:54. There are two places where he is asked if he received anything as a benefit from the fraud. I don't think that the transcript is clear, but I'm going to just direct your attention to 1:54 where it talks about that -- okay.

Answer -- this is 1:54:04.214: "Just one quick question. Did at any point -- did -- were you ever reluctant or anybody you know of reluctant, and Erik offered some sort of incentive to continue forward with the fraud?"

Answer: "No. Most of it was just --"

And then: "Like through bonuses" -- this is a question: "Like through bonuses or through something like that?"

Answer: "No, but he would -- might do that just, you know, not like just 'cause of this reason. Just because, 'Hey, you're doing a good job here,' slap on your back here, you know. What was the question again?"

Special Agent: "Just if he ever gave you any incentives for continuing the activity."

Answer: "No, it wasn't directed like that. I think most of it was, 'Hey, you know, you guys want a job, you need to keep the doors open, you know, we've gotta get through this tough spot to get where we need to be,' you know."

Special Agent: "Okay."

Answer: "It was more like a threaten for your job, you know, and your way of life."

Question: This -- strike that. That's when it ends.

So I would just point that out. I don't think it's clear whether he got a bonus for the fraud or not, but it is something that I know the government's going to bring up and that it's -- I just don't think it's clear that it's from the fraud. It could be -- I would suggest it could be the -- from his employment there.

THE COURT: So whether or not he benefitted

from criminal activity, you're not -- are you denying that he understood the structure and the scope and participated in the execution?

MS. DURA: He played a part. Yes.

THE COURT: Okay. All right. Mr. Mehochko?

MR. MEHOCHKO: Well, just to pick up on that, that transcript point, Judge, and the portion that Miss Dura read from was at the end of the interview, and the question was whether anybody was ever reluctant.

"Were you ever reluctant or anybody you know of reluctant and Erik offered some sort of incentive to continue forward with the fraud?"

And the answer to that was, "No."

There wasn't some sort of a bonus or an incentive given if someone was reluctant, but there were bonuses given for conducting the fraud, and that was discussed earlier in the interview. And specifically I'm at around the 48 minute mark, and I -- in retrospect I wish this transcript had page numbers; that would make life a lot easier. But it's around the 48 minute mark of the interview. The agents are asking -- they're talking to Mr. Melega about the fraud. He's admitted at this point that he had knowledge of the fraud, that he

knew what was going on. And by the way, he's got a professional background. He's got an accounting degree, an undergrad, and a master's and MBA. And the questions that the agents are putting to him is basically, why in the world would you put yourself in the middle of this?

This is beginning at 48 minutes, 1 second into the interview.

Question: "So why are you putting yourself in the middle of this?"

Answer: "The middle of it? Like" -- interrupted.

Question: "Yeah. Like you're the one providing" -- interrupted.

Answer: "I mean, I'm making a pretty okay living. I had a family. I just can't up and quit. I figure I might as well see this through to the end, and he was throwing me a bonus every now and then."

So that's the -- that's the direct question, *Why are you doing this?* and the answer is, *I'm making a good living,* and he was getting a bonus.

He knew full well the scope of what he was up to and that was the motivation for doing it. And I think both of those answers are consistent.

There's no indication that Mr. Melega was a reluctant participant in this. This wasn't a situation where he was reluctant and had to be convinced, cajoled, bribed into doing it. He was a willing and, I would say, pretty good participant. He did a pretty good job of the fraud.

I have a couple of emails from Mr. Melega that I'd like to hand up in support of the role enhancement. These again are trial exhibits. They're labeled as Government's Exhibit 12-7 and 12-54. And I provided copies to Counsel.

Move to admit them.

THE COURT: Any objection to these?

MS. DURA: No.

(Whereupon, Government Exhibit Numbers 12-7 and 12-54 were admitted.)

MR. MEHOCHKO: This goes to the aggravating role and supervising other people in the fraud, and specifically the first one of those emails is Government's 12-7. And to set the stage for this, this is -- this is at the very beginning of the scheme so we're in August of 2016. And I'm looking in the -- this is also discussed in the PSR at paragraph 24. The business finds themselves shorthanded and in need of funds so the defendant

sends an email to one of the salespersons, Sean Young, and the email reads as follows: "Per Erik, can you get with ETI" -- to Sean Young -- "and let them know that we are looking to settle up a substantial portion of what we owe no later than Friday."

These are the vehicles that had already been financed, but that money hadn't been used to buy those vehicles.

"With that said, we need to request invoices on future trucks that will be available to us. Let them know that we need those ASAP so we can plan for future purposes and not run into the same kind of cluster F and eliminate any issues with payments in the future."

And then -- so there's no misunderstanding of what the intent of this is. Mr. Melega spells it out.

"The idea behind this is to receive new invoices so we can floor those with the bank and pay off the outstanding inventory, the vehicles they already have received loans for. This is the goal of this email, to get new invoices that we can float to front past invoices and then repeat the cycle going forward."

The only thing he left out was "to commit bank fraud going forward," but that is what he is spelling out. To defraud the bank, tell them that we're purchasing these vehicles and then divert those funds for other uses.

He's directing Mr. Sean Young to get those VIN numbers from ETI. Young obtains those VIN numbers, and those VIN numbers are what are then used -- and then in turn used to, within a couple of days, create fraudulent invoices that Mr. Melega then turns around and submits to the bank in support of those loans. So he's directing Mr. Young. He says, "Per Erik," but, of course, Melega is the one directing Young what to do. So he is supervising, directing another person.

Government's Exhibit 12-54 is another email from Mr. Melega. This is to Kim Thompson and Tonya Marr with a copy to Erik Jones. And this involves the real estate side of the house. As the PSR indicates, some of these loan proceeds were being diverted to buy rental houses which were then being fixed up and either resold or rented out. And there's a similar fraudulent scheme going on in connection with those where the improvements on the houses were being fraudulently inflated in order to

get more money out of the bank, just as they were with the vehicles.

So this is the letter from -- or this is the email from Melega. This is dated October of 2016. "This house is a steal at 69,000." He discusses what he sees the vehicle (sic) appraising at based on the credentials and the recent sales in that neighborhood. "The improvement list only has $31,930 worth of renovations, bringing the grand total to $101,430."

"Kim, after you do your research and you conclude a feasible appraised amount, this is the amount you will need to compare to the overall projected investment. Banks will always finance based on the lower of the two, a/k/a total investment versus appraisal, so in this case I believe it would be beneficial to get that improvement amount as close as you can to 130,000 so we can utilize as much of the remaining proceeds as possible."

"I would work with Tonya and Bob tonight at the meeting and see what type of improvements we can slip into this estimate to bump that number. It will be important that the inflated improvements are something the appraiser can't put his eyes on

from the road."

Something the appraiser would be unable to independently verify.

"By the time he does his re-evaluation after completion, we will hopefully have a tenant moved in, and it would make it more difficult for him to assess internal renovations. Please have this complete so we can send to Beth tomorrow. The appraiser has been ordered."

He's directing them exactly how to execute the scheme to defraud the bank to inflate those improvements, to do them in such a way that they can't be verified from, from the street. He is the controller of this company. He is Mr. Jones' right-hand man. I don't think anybody disputes that Mr. Jones was setting the overall direction, the tone, directing Mr. Melega that, *We need to get more money. Figure out a way to get more money,* and Melega figured out how to get more money, and he directed other people to support him in doing so.

There are three aggravated role gradations in the guidelines. We're not talking about a situation where he supervised five or more participants in the fraud. We're talking about the

lowest of those three grades. He was an organizer, leader, manager, or supervisor in any criminal activity other than the more aggravated versions described in A and B.

Those two emails alone, I would submit, establish that he was. But beyond that, he was the financial controller of the company. He was managing the document flow. As that interview indicates, he would get documents from other individuals within the company, and then he would submit them to the bank in connection with financing the loan proceeds and the fraud.

So the government would submit the defendant has certainly earned an aggravating role. The two-level enhancement for aggravating role we believe is appropriate.

For the reasons -- the same reasons that's appropriate, the government submits that a mitigating role is not appropriate in this case. This is not a situation where the defendant is some kind of an unknowing dupe and is just doing what he's told and doesn't realize the scope of his activity. He's pled guilty and has admitted to participating in a bank fraud conspiracy and various wire frauds. He is knee-deep in the fraud

here and certainly knew full well what he was doing.

One thing that was pointed out to me, and I bring it up only to the extent that there's some question about the aggravating role, is that there is also an enhancement under 3B1.3 for abuse of position of trust which we don't contend applies here, but use of a special skill which could apply to someone with an accounting background like Mr. Melega. Now, that enhancement is not to be applied in cases in which the defendant also receives an aggravating role such as we contend is appropriate here.

So we're not asking the Court to impose that enhancement, but in the event that the Court does not apply the aggravating role enhancement or believes the aggravating role enhancement is not appropriate, that then opens up the possibility of this position of -- or the special skill enhancement.

So I bring that up only just to say that in the event that we get there, that's something that, I think, we need to talk about. I don't believe that we get there for the reasons that are set out in the PSR objection response and for the reasons

that I've argued here today, but I wanted to bring that to the Court's attention.

MS. DURA: Judge, if I could just say one more thing.

THE COURT: Go ahead.

MS. DURA: It has never been our position and it is still not our position that Mitch authored this email that is referred to as Government Exhibit 12-7. As you see, there's no signature on it. The language is not his language. That is in the transcript as well. And that doesn't take away that he's admitted to committing these offenses and being a part of it, but this is a piece of the whole thing, and we're not going to -- we can't sit still and say this is an email that he wrote when this -- he's never admitted to doing this email. It's been floating out there.

And, and I don't think it takes anything away from his plea of guilty, his admissions that he is responsible for this, his letter to the Court where he also admits he was responsible for this, but I do want to clear this. And if you compare the language that's in his statement to the Court in this email, this is not his language. So I just want to clarify that.

So that's all I have to say.

MR. MEHOCHKO: We're talking about Government's 12-7?

MS. DURA: Yes.

MR. MEHOCHKO: The signature line reads, "Mitch Melega, MBA, Controller, I-80 Equipment & Jones Lease Properties," and then there's the business address. It's from Mitch Melega, and the address -- the email address is Mitch@i80equipment.com. It's to Sean Young with a CC to Erik Jones.

MS. DURA: Not a signature. Anybody could have jumped on that.

MR. MEHOCHKO: There is a signature on the email.

MS. DURA: Well, if you compare it to the signature that's in 12-54, there's a signature. That's all I'm saying.

And I'm specifically saying 12-7, it's always been his position he did not generate that email.

MR. MEHOCHKO: You're talking about the cursive font on 12-54 at the bottom of the email?

THE COURT: I don't think -- okay. So Miss Dura has indicated her position on that.

I think with regard to 2 and 3 that it is

clear that he supervised or controlled somebody, one or more of the participants, specifically one participant and, therefore, he qualifies for the enhancement.

I don't believe he qualifies as a minor or minimal -- or mitigating role under 3B1.2 because, frankly, I don't see how this scheme gets accomplished without both he and Mr. Jones.

So I'll find -- I'll adopt the government's position on 2 and 3.

Now with regard to 4, I don't know that I have to take a position on this as it doesn't affect the guideline range. I'm free to depart or vary from the guidelines if I choose to do so.

MS. DURA: I agree.

THE COURT: Okay. So I'm going to enact -- or Rule 32, won't affect guidelines.

Okay. Does that address the -- all of the objections that you have, Miss Dura?

MS. DURA: Yes, Your Honor.

THE COURT: Okay. And there are no objections from the government so I'll adopt the presentence report today which would have then a total offense level of 30, Criminal History Category of I, guideline range of 97 to 121 months. There is, on

Counts 10 through 12, a statutorily authorized maximum sentence of 120 months so the guideline range becomes 97 to 120 months on those counts. There is supervised release of five years per count on Counts 1 through 9, two to five years and one to three years on Counts 10 and 12. Ineligible for probation. A fine of $30,000 to $11,044,310. Restitution is in the amount of $4,840,944.63. That would be joint and several with Mr. Jones. And a $1200 special assessment which comes from $100 per count on each of Counts 1 through 12.

Given my rulings, do the parties agree those are the guideline provisions?

MR. MEHOCHKO: Yes, Your Honor.

MS. DURA: Yes, Your Honor.

THE COURT: Okay. Any further additions or corrections to be offered to the presentence report?

MR. MEHOCHKO: No, Your Honor.

MS. DURA: Judge, I do have two exhibits that I thought were -- had been filed with the Court but apparently have not, and they're letters from --

THE COURT: All right. Do you want to send those up?

MS. DURA: Yes. Defendant's Exhibit 2 is a

statement from Deacon Paul Nappi. And Defendant's Exhibit Number 3 is a letter from Cody Melega.

THE COURT: Okay.

(Whereupon, Defendant Exhibit Numbers 2 and 3 were admitted.)

(A pause was had in the record.)

THE COURT: Okay. All right. Any formal evidence to be tendered from either side?

MR. MEHOCHKO: No, Your Honor.

THE COURT: Arguments -- Miss -- any formal evidence, Miss Dura?

MS. DURA: Judge, could -- can I have just a second?

THE COURT: Sure.

(Defense counsel and the defendant conferred off the record.)

MS. DURA: Judge, yes, I had a question. There were two letters that individuals sent to the Court that were, I think -- were the Defendant's 2 and 3. There may be a third one that is the case, and it's from Stephen Melega who is Mitchell's father.

Do you have that? It's a one-page.

THE COURT: No. And I don't see anything filed either.

MS. DURA: Can I hand it up?

THE COURT: Sure. Absolutely.

MS. DURA: Defendant's Exhibit 4 for identification.

(Whereupon, Defendant Exhibit Number 4 was admitted.)

(A pause was had in the record.)

THE COURT: Okay. Argument as to sentencing alternatives.

MR. MEHOCHKO: Judge, I know the Court is familiar with the scope of the fraud in this case, but I think it bears repeating because some of the letters -- including the one I was just handed -- would lead me to believe that the defendant hasn't been completely honest with his friends and family about the scope of the fraud in this case and what he himself personally did.

He was an accountant. He had an MBA. He was the controller of I-80 Equipment, the chief financial officer, essentially, of that company whose business was to purchase these bucket trucks -- used bucket trucks, refurbish them, and then resell them.

They had a loan with the bank to do that, and Mr. Jones and Mr. Melega hatched a scheme, as is

set out in the presentence report, to take those bank loan proceeds that were to be used to finance the purchase of those trucks and divert them to other uses -- divert them to other uses within the company, divert them to other uses outside the company. There's been some talk about real estate, a real estate side of the business, the Jones Lease side of the business or J -- JP, I think it is, JP Properties or JL Properties -- Jones Lease Properties, excuse me, whereby Mr. Jones had this real estate business where he was buying and selling houses and renting houses. And a substantial amount of the money that this entity and this defendant, Mr. Melega, borrowed or caused to be borrowed from the bank was diverted, not used for the purposes that the loan agreement provided, not used for the purchase of bucket trucks which were supposed to secure those loan proceeds in case something went wrong and the bank had some security in the form of that truck, but they were diverted to other uses, to purchase that real estate to do whatever, whatever the daily needs of the business were. That's the -- that's the nature of the fraud in this case. That's the nature of the funds that were redirected.

What seems to be unclear is the defendant's role in it. And it's not unclear to the Court, I know, because the Court's got the benefit of the presentence report, and the defendant has pled guilty to conspiring to defraud that bank and to executing that scheme to defraud the bank, but that scheme involved altering invoices that were provided the bank that, when I-80 Equipment went to purchase a vehicle, they were provided an invoice and that invoice was then provided to the bank, and the bank loaned 80 percent of the purchase price toward the purchase of that vehicle.

This defendant and Jones and others took part in a scheme to defraud the bank, to alter those invoices, to inflate the amounts that were purchased or to just flat-out create invoices out of thin air for vehicles that the business never bought. They took that money, and then they used it for other purposes.

And the bank was, in fact, defrauded, and the bank was defrauded significantly. This involved at least 110 vehicles over the time period charged in the indictment, 110 false, fraudulent invoices, false, fraudulent loans that this defendant orchestrated. And this defendant -- make no

mistake -- was the one sending those false invoices to the bank. This defendant is the one telling the bank, *This is what we're buying, and this is how much -- this is how much we're paying*, in the form of those email transactions.

And then he's taking the payments that are made by the bank, deposited into the company's bank account and disbursing them out, knowing full well they're not being used to purchase those vehicles, knowing they're being diverted to other uses -- to purchase properties, to pay other debts of the business, to pay suppliers. Paint suppliers would be a big one that comes to mind because they weren't -- they weren't keeping up with those bills.

So this defendant knew full well what he was doing. This isn't a situation where he's simply in the -- in the financial officer seat and all this stuff is moving through and, *I'm responsible because people were committing fraud unbeknownst to me*. He knew full well what he was doing as he admitted when he pled guilty in this case.

And I say that again because in reviewing some of these letters, it doesn't seem as if he has been very truthful. There's talk about his honesty, his

integrity; he has no previous history of acting outside the norms of our society based on truth and fairness.

That's certainly not true in this case -- and I'll get to it later, but this isn't the first time something like this has happened with this defendant with his employment.

So make no mistake, this defendant is a fraudster. He knew full well what he was doing and appears to be minimizing, at least to friends and family, which is troubling, I would submit, for the Court in connection with imposing a sentence and the various 3553 factors that the Court can consider and must consider in imposing an appropriate sentence.

As has already been alluded to here, but I think it bears repeating, this defendant was the financial brains of this operation. Mr. Jones laid out the, I would say, broad strokes, the strategy, *We need to do this. We need to do that. I need money for this. I need money for that.* But this defendant was the detail person. This defendant was in charge of executing it, and this fraud simply wouldn't have been possible without him doing that.

As I mentioned, he's got a degree in accounting; he's got an MBA. He was the controller of the business. He was responsible for the finances, interfacing with the bank, keeping track of these fraudulent loans, keeping track of these fraudulent improvements, and this involved a significant amount of money over a significant amount of time.

And I think it bears repeating; I mentioned it in the last sentencing: This wasn't simply one bad decision. This wasn't just a bad day where he did something that was out of character. This was a series of decisions on a nearly daily basis, if not weekly basis to continue to perpetuate this fraud, and it just continued to grow and continued to grow and continued to grow until now we're into the millions. This was large scale; this wasn't small time.

Mr. Jones certainly couldn't have done it without this defendant. Mr. Jones did benefit; that's true. He was the owner of the business. He was the one, I would say, building the real estate empire or at least maybe that's how he saw it. But this defendant executed; this defendant received bonuses for his conduct; this defendant had a good

job by his own admission in his interview there. He knew what he was doing was wrong. He admitted that, too, but he wasn't willing to walk away.

Now the question is, Was that because he liked the money? Was that because he wanted to continue to keep it concealed from the bank? I would say it's probably both. But this defendant's right in the middle of it. He's not some sort of innocent bystander who somehow just got caught up in something over his head. He executed a very sophisticated and complicated scheme to defraud not just First Midwest but Northwest Bank as well.

And I alluded to it before, but the thing that I think is really striking here, and I think that might very well be news to some people is that this isn't the first time the defendant's engaged in this kind of behavior. Paragraph 88 of the presentence report indicates he was fired from his previous employment for stealing from the company and its employees. Employed by Full Circle Services, in Independence, Iowa, from July of 2007 until November of 2013, worked as a finance specialist. His employment was terminated based on two instances of misconduct. The first was he was provided with a company credit card, and he used

the points from the company purchases for his own personal use. Not good, but it's certainly not the crime of the century.

The thing that I think is particularly aggravating and I think the Court needs to take very close notice of in crafting a sentence under 3553 is the second point there. He stole from his fellow employees. It was determined for the tax years 2011, 2012, Mr. Melega shorted 116 staff members their state and federal withholdings in amounts ranging from anywhere from $2 to $27 and then attributed that withholding towards his own tax bill during those tax seasons. So he took the money that that company was withholding from those employees' paychecks, and he applied it toward his own tax owed. Fortunately, the company detected that. It looks like the defendant's wages were garnished for the employee credit card abuse and also the $1,685 of employee tax withholding that he stole. And make no mistake, he stole it, and he applied it to his own tax bill.

That's not -- that's not someone who's led an otherwise law-abiding life. That's not someone who has no previous history of acting outside the norms of our society. That's not someone who has

consistently demonstrated honesty and integrity. That's a thief. And he left that job in November of 2013, and he went right over to I-80 Equipment where he began in the finance department and, ultimately, became the controller of the business.

And the question that I've asked myself -- and I don't know the answer to it -- is whether Mr. Jones knew about that prior conduct and viewed that as a bonus, as a good factor and someone that might be able to help him embark on a scheme like this or whether Mr. Jones didn't know about it either. I don't know, and I suppose to some extent it doesn't really matter, but it gives us an idea about this defendant's character, and it gives us an idea about how he came to be involved in the fraud that he was involved in.

I don't think it's quite as coincidental or by happenstance as he would have the Court believe or have the agents believe, for that matter, in the course of that interview.

The defendant did write a letter to the Court. I've reviewed that letter. I submit it's not mitigating; it's aggravating. That letter, again, reads like somebody who just really had no idea what was going on, was just there, all these things

were going on around him and, *Yeah, I'm responsible because I pled guilty,* but, you know, this is something that happened to him rather than something that he did.

There's a lot of talk about the hardship he's faced as a result of his conduct. A couple things I want to point out to the Court -- and I'm not going to go through all of them because I think the Court can get a very good flavor for this defendant's attitude. Beginning at the top of page 2, he says, "This indictment ultimately broke up my family. It built walls around hearts and shattered trusts and surrounded everything I cared about in a cloud of calamity. It took my son and daughter and put distance between myself and them."

That's not something the indictment did; that's something this defendant did. That indictment is simply an allegation of what this defendant did, and by the way, it's an allegation this defendant has pled guilty to and admitted doing. The defendant's own conduct is the reason that he finds himself in the situation that he's in. This isn't something that was done to him; this is something that he did and that he did on a repeated basis over -- well over a year

consistently.

I would argue based on some of the things in this letter the defendant is coming very close to losing acceptance of responsibility. I'm not arguing that he should, but I'm arguing that he's coming very close to it.

Page 3 he talks about feeling sorry for himself, "coming up with excuse after excuse, deny, deny, deny and/or give up on life," and he says he did have those moments, and he did have those thoughts, but then he realized that, "regardless of the truth" -- quotes in original -- "regardless of innocence or guilt, regardless of motive or lack of, I, me, am 100 percent responsible for putting myself in that position at I-80 Equipment."

He says he's responsible, and then he says, "I am responsible for being ignorant and passive to the things going on around me. I am responsible for not removing myself from the circumstances and jeopardizing my family's future."

This is not somebody who was a passive participant. And again, I'm not going to belabor the point, but this defendant actively took part in this fraud. He says prison doesn't rehabilitate a person like him. Prison is not for people like

this defendant. In his words, his rehabilitation is the journey that he's been on already, that he's been punished enough and that, I would say, that the impact on his family, that his family might face as a result of his actions are not his fault but everybody else's fault. It's our fault for holding this defendant accountable for his actions and that that is -- that is the real tragedy here. That he at one point says this isn't about his family. He doesn't care about him; he cares about his family, I should say.

So I think the overall tone of this letter is the defendant sees himself as a victim. He's not a victim. He's the one who perpetrated this fraud, he's the one who committed this fraud, he did it on a continuous basis, and it's not out of character. It's perfectly in keeping with this defendant's character based on his prior actions.

So, this is serious criminal conduct. As the Court well knows the 3553 factors that guide this Court's sentence include a number of factors. I would say looming large here is the need to, one, deter others from committing this kind of offense and, two, punish this defendant for his criminal conduct. It was extensive, it was long term, and

it's not the first time. The fact that he wasn't criminally charged in connection with the theft at his prior employment is certainly lucky for him, but I don't see that being a mitigating factor.

And I would also point out in his letter he asks the Court to give him a second chance. And he's not really asking for a second chance. I would say, based on that, he got a second chance. He wasn't criminally prosecuted for that prior theft. He's asking this Court for a third chance, after orchestrating a significant fraud that caused the loss of over $4 million to these victims in this case. He expects to apparently walk out of this courtroom without receiving a custodial sentence. I don't think that's appropriate, and I don't think the 3553 factors call for that.

One factor I think the Court does need to consider -- and it's a little bit of a difficult situation -- is the defendant Mr. Jones in this case, the co-defendant, received a 54-month sentence just about an hour earlier, and he received that sentence as part of a plea agreement that he negotiated with the government. This defendant declined to enter into a similar agreement. So while the Court does need to avoid

unwarranted disparities between co-defendants, the fact that Mr. Jones entered into a plea agreement with the government and this defendant did not is certainly one distinguishing factor.

I think there are some others. Mr. Jones pled guilty first. He admitted his criminal culpability early on. I don't believe Mr. Jones has wavered in quite the way that Mr. Melega has. He's fully accepted responsibility. Certainly didn't attempt to minimize or portray himself as a passive participant or someone who didn't really fully understand what was going on.

Mr. Jones didn't steal from his prior employer. Mr. Jones hasn't displayed this kind of pattern of activity. And Mr. Jones wasn't someone with an accounting degree and an MBA.

So there are a number of factors here that distinguish this defendant from Mr. Jones. And as far as hierarchy, criminal culpability goes, I think they certainly were working together. As I said before, Mr. Melega was the detail guy; Mr. Jones was the big picture guy. I don't believe Mr. Jones could have perpetrated this fraud without the defendant.

I think it's an open question whether this

defendant could have perpetrated it without Mr. Jones. I think the evidence -- and this isn't a personal opinion; this is the evidence; this is the PSR -- demonstrates the intricate nature of this scheme that this defendant was able to execute. Mr. Jones wasn't the brains of this operation; that was Mr. Melega. So I think, arguably, Mr. Melega is more culpable than Mr. Jones just based on various roles within the operation. And if they had both -- if they were both otherwise similarly situated, I think there would still be an argument for Mr. Melega to receive a higher sentence. I think it would be a more difficult argument. I think the Court, all else being equal, would have been justified in imposing the same sentence on both of those defendants, but we've got distinguishing factors here that I would say change that, and they're the ones that I just discussed -- the fact that Mr. Jones entered into a plea agreement with the government to a specific range, the fact that this defendant did not plead guilty and admit responsibility until very shortly before trial, the fact that he had that prior theft from his employer and from his fellow employees, and the fact that he

had that educational background that Mr. Jones didn't, I think, calls for a higher sentence.

The guideline range in this case is 97 to 121 months. That's certainly a significant sentence, but I don't think it would be out of line for this defendant. The average sentence appears to be somewhere in the range of 72 to 74 months for someone with this defendant's criminal history profile and guideline profile. That's based on the addendum to the presentence report. I don't think that would be out of line either. But what I would say is that this defendant should not get the benefit of the plea agreement that he did not enter into, the plea agreement that Mr. Jones did enter into. And so I don't believe the Court should feel itself bound or limited in any way by the consideration that Mr. Jones received when this defendant wasn't willing to enter into that same agreement.

That, along with those other aggravating factors I mentioned, I think, calls for -- I would ask the Court to impose a guideline sentence in this case. I think the bottom of the guidelines is probably fine; I think that's appropriate, but I don't see a reason why this defendant ought to get

-- ought to get a break based on Mr. Jones' plea agreement.

So that would be the recommendation of the government, along with the five-year term of supervised release. We would ask the Court not to impose a fine so that that money could be used for restitution purposes. It's highly unlikely that the victims are going to receive any kind of real restitution in this case just based on the amount and the defendant's financial profile, but in the event that he is able to generate an income, that ought to go toward restitution rather than a fine.

So that would be the government's recommendation.

THE COURT: Thank you, Mr. Mehochko.

Miss Dura.

MS. DURA: Thank you.

Your Honor, several individuals wrote letters to the Court. Those individuals know Mitchell Melega way more -- or way better than anybody in this -- anyone else in this courtroom, and I take issue with the fact that Mitch has fooled all these people throughout his whole life, culminating in this offense for which he is -- stands here to be sentenced. The fact that he didn't take the plea

agreement actually put him in a worse situation because he's looking at no confinement to a sentence in front of this Court. So to ask you to punish him for not taking the deal, I think, is, is -- wouldn't be appropriate.

He ended up pleading guilty to all 12 counts. He accepted his responsibility. He pretty much gave -- through that transcript and through his non-custodial statement back in 2019, February of 2019, he pretty much provided the government with a case against him that culminated in these charges. It was with his cooperation upon himself telling the agents at that -- in that statement what was going on in the company, and, obviously, the government -- that was a big factor of how the government made its case against Mr. Melega.

So getting back to my first sentence when I came to the podium about these people that are telling the Court what Mitchell Melega is like all have similar adjectives for him which, I think, makes it more credible. It's easy to take shots at Mitch Melega based on the offense because, yeah, he does -- he's convicted of 12 counts. He stands before the Court for that. But what is Mitchell Melega really like? And from these letters -- you

know, he's got some letters from family; he's got some letters from an employer who happens to be -- also be a relative; he's got letters from the mothers of his children; and he's got letters from his -- one of his -- or his daughter's maternal grandfather.

The theme in this is -- well, let's just go down them. The mom says he's a loving father, a son -- a loving son, loving grandson, adored by his children. He's a hard worker. He's caring, financially supporting to people, emotionally supporting to people, helpful, has zero previous criminal history.

His cousin Cody who was his -- or is his boss, he had -- he had been his -- Mitch was his employee for the last two years. He has integrity, diligence and devotion to family, approaches every task with dedication and commitment, striving to do what is right even with -- when faced with challenges. He's a pillar, support. He's devoted to his family, puts them before himself. He's trustworthy. He's a source of support for people.

The deacon, Deacon Paul Nappi. Honest member of community, provider for his family, helpful.

Jenna, the mom to his son. He's caring,

supportive, not a detriment to society. How difficult would it be to go through life without him. He provides both financial and emotional support.

And if you recall, their son was diagnosed with Type I diabetes this year, and those things -- getting him on the right path health-wise has also been going on while Mitchell's been awaiting sentencing and out on bond. And he has been providing financial support which would be things such as health needs for diabetes and nutritional support for his son.

But most importantly, his son's mother, Jenna, is concerned that his absence will be at a time when his son needs his father. And so it's not just health-wise, although that's a major factor; it's also a young man coming up into society. As he approaches adulthood, she would like him -- Mitchell -- to be around to help the son through difficult times that he might be facing as he approaches adulthood.

His daughters, the maternal grandfather, Kirk Epperly, same thing. A good father, supportive to his family, supports them, and he's concerned about what impact his absence will be on his daughter --

on his granddaughter, sorry.

Alyssa Epperly, the mother of his daughter. Supportive, affectionate, and present dad, good co-parent, respectful.

This isn't someone that doesn't have anything to do with his children and now is saying, *Hey, would you come and write me a great letter?* That's not what's happening here. They are telling you how good of a father he is, what their concerns are, how can -- how can -- or what they would like to see. And they would like to see, obviously, him be in their lives presently, continue to be in their lives presently as opposed to incarceration.

Mitchell's father: Loving father, supportive father. He says in his statement, you know, honest person with integrity, love him with all my heart. He's a wonderful, good, kind and caring person.

All of them are asking you to have mercy on him today.

I did not read Mitchell's statement as one not accepting his responsibility, one portraying himself as a victim of anything. I think he brings up a good point in his statement, and I think it was referenced in the deacon's statement too about what's happened since all this -- since all this

happened. And so basically since the last four years, he's been out with pending charges and the roller coaster that that would involve, having to report to Pretrial Services, having relationships ruined. It seems like this coincides with perhaps the -- maybe the breakup of Alyssa and himself and that relationship.

And he knows why. He knows. It's like, you know, Alyssa, I think, maybe people came to the conclusion that, *Hey, I need somebody that I can rely on more, and I need to move on*. That's not unusual, and that's not unreasonable for somebody to think like that. And so -- but that goes back to Mitchell being involved in this offense so we can't blame Alyssa for feeling that way.

But it's wrecked relationships, and he's saying that.

And I think what he's trying to convey to this Court is that he understands that everything that has happened to him is on him and -- but he wants the Court to know what those things are, and that's what I gleaned from his statement.

Having something like this over your head, even if you are out of custody, is taxing. It's hard, and it's mentally stressful. And I would

just ask the Court to consider that just because he's been out of custody, this has not been any picnic for Mitchell or anything easy for Mitchell.

You know, then it goes into his work -- his work. I mean, his work will always be affected by these offenses. He will never be able to work in the same capacity as what he was working with I-80.

I want to -- I do want to talk a little bit about his length of time at I-80 and what his duties were, and that's in Defendant's 1. He was a -- he worked at I-80 for four years. I-80 was in existence before him and up -- and during that four years, he came in as a staff accountant. He worked as a staff accountant for one and a half years. Then he became the senior accountant and was at that job for a year. And then he was assigned the financial controller when the financial controller left the business.

Now, whether the financial controller left because he saw some things he didn't like, I don't know. I don't know. But when Mitch says, *Yeah, I wish I had had the wherewithal to, you know, realize what was going on before it was on top of me and then -- and maybe left instead of doing what this involved*, again, I don't see that as

minimizing his behavior or anything else.

I do know this, and I will still submit this because I've heard Counsel say without Mitch Melega, the scheme would not have been able to take place. I doubt -- I don't agree with that because Erik was calling the shots, and Erik could have put anyone in there to do what was being done. It wasn't -- this wasn't a situation where it was Erik Jones and Mitchell Melega; that's it. There were several departments of which this information that eventually went to the bank had been in two or three different other people, all -- well, yes, all coincidentally with the last name Jones putting information into -- for instance, Jordan Jones, the brother of Erik, putting in invoices into the file. Then it might go to another person in Transportation or maybe not, but it eventually went to Erik who was directing it in the first place, and Erik signed off on it. Then the file went to Mitch. Then he put the information -- then he submitted it to the bank. It wasn't something where it was Mitchell and Erik.

I would say that the scheme could not have taken place had Erik not been involved because he was the boss, he was giving the direction, and he

-- and it makes sense because he's the only one really that benefitted from, from this fraud -- and his family.

But taking all of that into consideration, we are asking you that he be able to serve a sentence that does not take him out of the community, that keeps him in the life of his family and of his children most importantly. We believe that the Court should consider him -- some of the things that, you know, he's been going through since being out and that he acknowledges that, *Hey, I deserve it. This is what I'm going through. I deserve it*.

But it hasn't been easy at all, and that, I think, can be common in people that have never -- that don't have -- that come before the Court with no criminal history.

So I'm asking the Court to again keep him in the community and to allow him to be there for his children, and I do think that -- and I would also encourage the Court to sentence him to a sentence where he can do that in the community.

So that's all I've got. Thank you.

THE COURT: Thank you, Miss Dura.

Mr. Melega, at this time you have an opportunity to make a statement if you wish. You

can do so from there, you can go to the podium, whatever you're most comfortable with. I just ask that if you do so from there that you pull the microphone close to you so I can hear you.

THE DEFENDANT: I'm not prepared to make a statement, but I, I do feel like I need to say something.

I, I don't -- it's -- I do take responsibility for the things and actions I've had in the past and the things that I've done and been a part of. Much like I've said in the past, that's not the person I am now. I'm not that person. I have no desire whatsoever to ever set foot in the financial field again. I have completely -- I found a different version of myself. I've been humbled this entire experience.

And all I want to do -- and I don't care what it takes. All I want to do is rebuild my family, and I want to be an example and have experience in this life that I can only pass along through my own mistakes and my shortcomings. Everything that was said today is -- it sounds terrible. It sounds absolutely horrible. It's stunning. And it's tough to listen to, and it's tough to comprehend that I had a part in all that. And more than

anything else in the world -- there's nothing I wouldn't do to take any of it, absolutely any of it back or take a step back or any -- I can't explain it.

I just know the toughest thing that I go through every single day is saying good-bye to my daughter like it's a countdown. Like this is the last day I say good-bye to her. My four-year-old daughter is my absolute world, and she doesn't deserve this because she wasn't even around when this stuff happened. Her innocence, her genuine -- just an amazing little girl that I -- that I really struggle with every single day that I'm putting this through her -- her through this.

And I just want to learn from it. I just want to be a better person, and I just want to have the opportunity to be able to rebuild my family and kiss her at night and give her a hug and, and work and strive to be a better father, a better Christian and a better example for, for my son and daughter.

I'm sorry. And I'm, I'm pleading for mercy at the end of the day. I absolutely am. And I just hope that I'll be able to wrap my arms around my daughter by our choice for the rest of our lives as

long as we can, and I don't want to miss a moment in her life. I don't want to miss her childhood.

And I stand here as a changed person. I am not that person. I will never be that person. I swear on every ounce of my energy and body and my being that I will never, ever, ever even think about any kind of unlawful or untruthful or dishonesty or whatever you want to call it -- fraud, whatever it is. Like I -- that's not -- I don't want -- that's not me. That's not who I am, and that's not where I've been.

And it really has been a tough time, and I -- this is the culmination of all that. And it's, it's tough because it's not -- it's definitely something you don't feel like you're ever gonna walk away from.

So I'll sit up here and blabber all day because I really don't know what to say or how to express my feelings in this regard, but I am truly apologetic, and I'm sorry for the things that I participated in. And I just hope that I can continue to be a father for my son and my daughter at the end of the day. That's all -- that's all I care about in all this.

So I thank you, Judge.

THE COURT: Thank you.

The gentleman in the blue shirt has his hand up, but I want to wait --

GALLERY MEMBER: My name --

THE COURT: I'm going to let Miss Dura visit with you first and decide whether she wants you to be called to testify.

(A pause was had in the record.)

THE COURT: Miss Dura, anything?

MS. DURA: No.

THE COURT: All right. The Court, having considered all the information before it which includes the presentence report as prepared by Probation, which includes the sentencing guideline calculations, the exhibit attached to the presentence report which included a transcript of questions and answers with agents, all of the letters that were also attached in support of Mr. Melega and including the ones that were tendered today, the arguments of counsel, the statement of Mr. Melega, the factors as set forth in 3553, the Court has heard two very different stories today. One, an argument by Mr. Mehochko of relative equal culpability between Mr. Jones and Mr. Melega in terms of the actual offense conduct

even though they had different roles -- there were other aggravating factors that Mr. Mehochko indicated, but as far as the offense conduct.

And then the second story that I heard was process what Mr. Jones wanted, blind to the consequences of what he was doing and apparently ignorant in some regards of what was actually occurring.

Now, I don't know if that was intended to be the message that I heard today, but it is what I heard in part.

And then Mr. Melega, an opportunity to make a statement, made a statement and, in doing so, said he had no desire to set foot in the financial field again, humbled by this whole experience, apologized for his participation or role, but it is unclear to me what position the defense actually takes as to what that participation was or what that role was.

I don't hear -- or didn't hear that that role actually included a knowledge and an awareness and actual execution of the scheme that Mr. Melega, in fact, pled guilty to.

So the offense conduct as set out in the presentence report, while the roles were different, to me the conduct could not have been accomplished

one without the other. So while their roles are different, the culpability is very similar.

So that leads me to a starting point where Mr. Jones was sentenced, and there's quite a difference in the guideline range from where Mr. Jones was sentenced and what the guidelines say for Mr. Melega, but I do think that Mr. Mehochko makes a point on the difference, and I do believe the nature and circumstances of the offense are as set out in the presentence report; that this was a complex scheme and relatively sophisticated over the course of a relatively lengthy period of time.

The history and characteristics of Mr. Melega are that but for the instances set out in paragraph 88 of his prior employment, has lived a life free of criminal conduct.

The offense conduct is serious so the sentence needs to reflect the seriousness of the offense. It also needs to afford adequate deterrence. And given that this may be, arguably, the second go-around for Mr. Melega, there is a need to protect the public from further criminal conduct. So in trying to avoid unwarranted disparity, those are factors the Court considers.

The Court also considers the factor that I

believe that Jones has fully accepted his responsibility, and I'm just not convinced that Mr. Melega has, but I don't believe that a sentence in the guideline range is necessary to be sufficient but not greater than necessary to comply with the purpose of the Act.

So it's instructive to me -- and I don't always rely on this, but it is instructive to me the information that Probation also provides about median sentences and average sentences for others similarly situated, and so I think today that is the appropriate place to find ourselves.

So it will be a sentence of 75 months to the Bureau of Prisons. That will be followed by a period of supervised release that will consist of five years on each of Counts 1 through 9 and three years on each of Counts 10 through 12 to be served concurrently.

Mandatory restitution in the total amount of $4,840,944.63 shall be ordered payable to the following victims: First Midwest Bank, $4,367,945.19 and $472,999.44 to Northwest Bank. Interest on restitution shall be waived. That shall be joint and several with Mr. Jones.

Upon release from confinement, Mr. Melega will

make monthly payments of at least 50 percent of his disposable income per month during the term of supervised release or until the restitution is paid in full.

I'll find no ability to pay a fine, so no fine is imposed.

While on supervised release, not commit another federal, state or local crime, not possess a controlled substance. Submit to one drug test within 15 days of release from imprisonment and at least two thereafter as directed by Probation. Cooperate in the collection of DNA as directed by Probation or the Bureau of Prisons.

In addition, Miss Dura, I have carefully considered and reviewed paragraphs 102 through 110 of the presentence report that set out further proposed conditions of supervised release. I find that there's no objection to those.

Do you believe that any further reading or explanation for your client is required?

MS. DURA: No, Your Honor.

THE COURT: I find each is an appropriate and necessary part of the sentence and will maximize the possibility that Mr. Melega will successfully complete his term of supervised release and make --

hereby order the conditions to be made part of the formal sentence.

Special assessment of $100 is payable on each count for a total of $1200. I'll recommend you serve your sentence in a facility as close to your family in Moline as possible and further recommend you serve your sentence in a facility that will maximize your exposure to educational and vocational opportunities.

I believe that I could have justified a guideline sentence today. I chose not to because of the average or median sentence imposed across the country and because of the -- what I thought might be a little more -- much more in disparity between yours and Mr. Jones' sentence, but earlier this afternoon Mr. Jones made it clear about his acceptance, and I just was less than satisfied, Mr. Melega, about yours. So that's where we find ourselves.

You have appeal rights. You have 14 days to do so or ask Miss Dura to do so on your behalf.

Is there anything else before we recess?

MR. MEHOCHKO: Judge, if the Court could make a record that -- I believe you have, but just for the record that you've addressed all of the

defendant's arguments in mitigation?

THE COURT: Miss Dura, have I addressed all of your arguments -- your objections and arguments in mitigation?

MS. DURA: Yes, Your Honor.

THE COURT: All right. Thank you.

We'll be in recess.

MS. DURA: Judge, just --

THE COURT: Oh, there will be a report date.

MS. DURA: Yes, that's --

THE COURT: October 1, 2024, at 2:00 -- by 2:00.

COURTROOM DEPUTY: Court is in recess.

(Proceedings concluded at 4:20 p.m.)

CERTIFICATE OF OFFICIAL REPORTER

I, Jennifer E. Johnson, CSR, RMR, CBC, CRR, in and for the United States District Court for the Central District of Illinois, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 28th day of August, 2024.

/s/ Jennifer E. Johnson
JENNIFER E. JOHNSON
CSR, RMR, CBC, CRR
License #084-003039