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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND/NORTHERN DIVISION
UNITED STATES OF AMERICA

CRIMINAL NO.

v.

WMN 07-570

CHRISTOPHER CARTWRIGHT,

October 29, 2008

Defendant

_____ /

TRANSCRIPT OF SENTENCING

BEFORE THE HONORABLE WILLIAM M. NICKERSON,
UNITED STATES DISTRICT SENIOR JUDGE

APPEARANCES:

On behalf of the United States:

Mark Pletcher, Esquire

John Terzaken, Esquire

On behalf of the Defendant:

Richard Levitt, Esquire

Raymond Granger, Esquire

Reported By:

Jacqueline Sovich, RPR, CMR, FOCRR

Official Court Reporter

1 (PROCEEDINGS)

2 THE COURT: Be seated, please. Gail?

3 THE CLERK: Yes.

4 THE COURT: Call the case, or do you want Mr.
5 Pletcher to call the case?

6 THE CLERK: The government can call the case.

7 MR. TERZAKEN: Good morning. John Terzaken for the
8 United States. Along with me is Mark Pletcher, and Shurdell's
9 our agent, from DCIS.

10 The case is United States versus Christopher
11 Cartwright, WMN 07-570. We're here for sentencing.

12 THE COURT: Thank you.

13 MR. LEVITT: For Mr. Cartwright, Your Honor, Richard
14 Levitt and Raymond Granger.

15 THE COURT: Let's see. Mr. Cartwright was here back
16 on July 29th, and at that time entered a plea to Count 2,
17 charging conspiracy to commit wire fraud.

18 A judgment of guilt is entered as to Count 2.

19 Mr. Levitt, I'm sure you've been over the presentence
20 report with your client?

21 MR. LEVITT: Certainly, Your Honor.

22 THE COURT: It appears that the presentence report
23 essentially tracks the agreement that was entered into between
24 the parties with regard to guideline calculations.

25 So I take it that there are no issues that counsel

1 have with respect to the presentence report as it calculates
2 the guidelines; is that correct?

3 MR. LEVITT: Yes, that's correct.

4 MR. TERZAKEN: Nothing from the government, Your
5 Honor.

6 THE COURT: Ordinarily, in a situation like this, I
7 would adopt the guidelines with respect to their calculations,
8 but in fact I find that difficult, given the loss aspect here.
9 And there is a dispute between the parties with respect to
10 restitution. And so I think that's a matter that needs some
11 further discussion.

12 I have a sentencing memorandum from the government
13 dated October 20th, which I have reviewed. It's in letter
14 form, but in essence a sentencing memorandum from Mr. Levitt,
15 18 pages with attached exhibits, which I've reviewed.

16 There's also been an indication that there may be
17 some witnesses offered to testify. Mr. Terzaken, Mr. Pletcher,
18 is Miss Kropp here? Is she expected to testify?

19 MR. TERZAKEN: No, she's not, Your Honor. Your Honor
20 should have received a victim impact statement or a letter.

21 THE COURT: I have a letter.

22 MR. TERZAKEN: With the Court's indulgence, we'd like
23 to read that into the record but, she won't be appearing today.

24 MR. LEVITT: Judge, if I may, with respect to the
25 restitution, there is no dispute between the parties, meaning

1 Mr. Cartwright and government, with respect to restitution.
2 Never has been.

3 And this morning actually I provided to the
4 government a check in the full amount of the restitution to
5 Avcard.

6 THE COURT: All right. I stand corrected. I guess I
7 picked that up from the presentence report, which indicated
8 that the restitution matter was in dispute.

9 MR. TERZAKEN: Similarly address for the Court the
10 issue of loss. I believe there's no issue between these
11 parties with respect to the loss calculations provided by the
12 government, which ultimately resulted in the restitution amount
13 that's already been paid by the defendant.

14 I think probation's reference to the dispute on loss
15 was simply that, at the time of the plea agreement, the loss
16 issue was left open for the parties to determine prior to
17 sentencing.

18 THE COURT: All right. Mr. Levitt, with regard to
19 testimony, I think I did have a letter from you indicating
20 you'd like to present Mr. Cartwright's father as witness?

21 MR. LEVITT: Your Honor, we had earlier also provided
22 the Court the name of Mr. Cartwright's wife, Yulia. It's
23 really with the Court's indulgence, each of them, meaning the
24 wife Yulia and his father John, to make brief statements to the
25 Court. It's not in the way of factual testimony. They have no

1 factual testimony to give. It's really a brief statement to
2 the Court with respect to sentencing, if the Court would
3 indulge them. I don't think either estimate would take more
4 than one or two minutes.

5 THE COURT: All right. We could either do that now
6 or wait until it's time for Mr. Cartwright to make his
7 allocution, if he wants to do that or whatever.

8 MR. LEVITT: With the Court's permission, I would
9 make the following suggestion. I think the government may have
10 an explanatory statement to provide to the Court, and if the
11 Court would indulge the government first, and then probably I
12 would, speak with the Court's permission, and then Mr.
13 Cartwright's father and his wife and then Mr. Cartwright.

14 THE COURT: All right. Do you want to do that now,
15 or do you want to hold off?

16 MR. TERZAKEN: It depends on how the Court would like
17 to proceed.

18 MR. TERZAKEN: The government is prepared, based on
19 the Court's expression on our recent conference call about the
20 factual basis of the case, we thought we might give the Court a
21 brief resuscitation of the count the defendant is in fact
22 guilty pleading and some of the background facts of that,
23 before we go into the recommended sentence, and the defendant
24 has an opportunity to respond.

25 THE COURT: That might be helpful.

1 MR. TERZAKEN: I'll do that, then, thank you Your
2 Honor.

3 With the Court's permission, I'd like the use some of
4 these exhibits, and I also have a handout copy to extend to the
5 Court. May I hand these up?

6 THE COURT: Please.

7 (Pause.)

8 MR. TERZAKEN: Your Honor, the background to this
9 particular sentencing hearing against Mr. Cartwright relates to
10 his pleading guilty to Count 2 in the indictment. And one of
11 the things that the government wanted to express this morning,
12 or explain better to the Court, is the difference between what
13 the count we're proceeding on this morning and the counts
14 obviously that are going to proceed forward against Mr.
15 Bittenbender and Mr. Wilkinson at a later date.

16 In particular, just to point out there are in fact
17 three counts in the indictment. Count 1 is the 371 count,
18 which relates to conspiracy to defraud the government.

19 Count 3 relates to a conspiracy to steal trade
20 secrets.

21 Count 2, the operative count here, is a conspiracy to
22 commit wire fraud. But it actually has two objectives. One of
23 those objectives was the deprivation of the honest services of
24 Matthew Bittenbender, and that is in fact the count Mr.
25 Cartwright has pled guilty to.

1 The background to that particular count relates to
2 what was charged as a conspiracy between and among four
3 defendants, including a fifth individual, Matthew Bittenbender;
4 that is, a conspiracy between Mr. Cartwright, Mr. Wilkinson,
5 their companies, Far East Russia Aircraft Services also owe
6 referred to as FERAS, and a company called Aerocontrol Limited,
7 fares, and Mr. Wilkinson, as the Court knows, were also named
8 entities and named individuals in the indictment.

9 The other company on the other side is a company
10 called Avcard, which is in fact a victim of the crime that
11 we're here to talk about this morning, and Linda Kropp is the
12 principal at Avcard who submitted the letter to the Court.
13 Matthew Bittenbender is another defendant in this case who was
14 the employee at Avcard whose services were essentially deprived
15 from Avcard by these individual as a result of the conspiracy.

16 The crime, in essence, in this case is distilled in a
17 consultancy agreement that was ultimately reached between the
18 defendants and Mr. Bittenbender. And that was for him to
19 perform certain services for them with respect to contracts
20 given out by an agency known as the Defense Energy Support
21 Center. It's also referenced at times as DESC. That's how we
22 would generally reference it.

23 That's in sum and substance the responsibilities that
24 he was hired for and agreed to by the parties are summarized in
25 this agreement. And you'll see in paragraph 1, probably easier

1 to see on your version, DESC is specifically listed as the
2 governmental agency whose services he's going to be providing
3 to the defendants.

4 To give the Court a little bit of background on DESC,
5 you haven't had an opportunity to hear from those witnesses,
6 the Defense Energy Support Center is essentially an arm of the
7 Office of the Secretary of Defense or the Department of
8 Defense. It is the agency or field unit responsibility for
9 procuring, among other things, fuel for the United States
10 military, including in this instance we're talking about here,
11 fuel that's used in aircraft for the military worldwide.

12 The kinds of contracts that DESC was letting in this
13 case and that Mr. Bittenbender was hired to assist the
14 defendants in putting together bids for were Intoplane and
15 something called PC & S contracts or Post Camp and Station
16 contracts.

17 This graphic just sort of breaks down very simply
18 what those required. The Intoplane is simply filling up,
19 literally putting the fuel into the plane what they were
20 providing services for. Post camps and station is sort of a
21 fancy way of basically saying providing that fuel to immovable
22 objects, things like bladders, tankers, those sort of things
23 where the fuel will be used at a later time.

24 The contracts that Mr. Bittenbender ultimately
25 assisted the defendants with are those that were primarily at

1 issue in this case, are three fold, one is the 46 contract,
2 which was an Intoplane contract. It related to 109 locations
3 around Europe, Asia, and Asia. Some of them for example was a
4 place called Rokow, Poland.

5 And basically what they were required to do there was
6 provide the service of Intoplane fueling. They bid on those
7 various locations. You'll see on the map here just some of the
8 locations ultimately that the defendants worked with Matthew
9 Bittenbender in preparing their bids for, and those are the
10 ones reflected in purple on the chart here.

11 A second contract we referred to as the Baku
12 contract, it also has A solicitation that ends in 1 2, and I
13 won't bore the Court with the lengthy solicitation number.

14 Essentially, this was for Baku Abu Bijan. There was
15 a location there. It was an Intoplane service that the
16 defendant was bidding on, providing Intoplane Services at Baku
17 Abu Bijan. That's reflected in the chart here in red.

18 And the final contract was a contract referred to at
19 Bagram contract. And that was for the provision of post camp
20 and station fuel; that is, fuel tankers and bladders at Bagram
21 Air Force Base in Afghanistan.

22 Where the relationship between these parties
23 ultimately ends is with the firing of Matthew Bittenbender from
24 Avcard once Avcard discovers this relationship between Mr.
25 Bittenbender and the defendants.

1 Over his period of working for the defendants while
2 he's providing these services on these various contracts, he's
3 paid through Aerocontrol by the defendants.

4 This last exhibit just references some of the
5 specific documents from Matthew Bittenbender's files where he
6 was wire-transferred money from Aerocontrol for payment for his
7 services as a consultant under those consultancy contracts.

8 This sort of sums up what we've been showing to the
9 Court this morning. The facts of this case basically boil down
10 to the hiring of Matthew Bittenbender as a consultant by the
11 defendants at the same time that he was providing similar
12 services to his current employer, Avcard.

13 Those services in this case being preparing bids and
14 contracts with the Department of Energy, Support -- sorry. The
15 Defense Energy Support Center, or DESC. And those contracts,
16 again referencing specifically Baku, Bagram and the 46
17 solicitation for airports basically around Eastern Europe.

18 The United States has recommended a sentence in this
19 case that the Court received in the sentencing memorandum of 14
20 months incarceration, a criminal fine of \$30,000, restitution
21 to the victim of the offense, in this case Avcard, in the
22 cumulative amount of \$40,926 and 75 cents, which, as Mr. Levitt
23 pointed out, has already been paid in full by the defendant.
24 And a special assessment of \$100. Finally, a period of
25 supervised release of two years.

1 This basically, this recommendation comes out of the
2 parties' plea agreement. It's consistent with the guidelines
3 analysis that the parties agreed to. And as Your Honor
4 mentioned, it's consistent with at least the probation report
5 that we had seen earlier in terms of the guidelines calculation
6 being correct.

7 Finally, as the government had pointed out in its
8 sentencing recommendation, we believe in this case that the
9 sentence that we have proposed, that being the 14 months
10 incarceration and the \$30,000 fine, appropriately reflects the
11 seriousness of this offense.

12 For one point, as we pointed out the contracts that
13 were at issue here, the services that were actually solicited
14 from Mr. Bittenbender relate to military contracts. These are
15 contracts for the provision of fuel for, among other things,
16 use in airplanes that may be sent into combat. This was not
17 asking Mr. Bittenbender to moonlight to sell hotdogs. This was
18 to work on contracts to support military personnel.

19 And DESC takes seriously the integrity of those
20 people it deals, with because provision of fuel to the military
21 is a serious job.

22 Finally, we'll also point out that Linda Kropp has
23 submitted a statement to the Court. I'd like, with the Court's
24 permission, to read that statement into the record.

25 THE COURT: All right. Go ahead.

1 From the desk of Linda Kropp, Miss Kropp writes "Dear
2 Judge Nickerson, I know that you will soon be considering the
3 sentencing of both Paul Wilkinson and Christopher Cartwright in
4 the matters to which they have already pled guilty.

5 "I know that you are very familiar with the facts of
6 their actions in this case. So I won't speak to them here.
7 However, I would appreciate the opportunity to convey to you
8 the harm their actions have caused both the company and myself.

9 "I started this company in 1984 as an entrepreneurial
10 venture for a local company PHH Group. I ran it for them as
11 part of their aviation group for four years.

12 "PHH then put all seven of their aviation companies
13 up for sale as a group. In 1988, the group was sold to a Swiss
14 company, and I did a simultaneous transaction to buy back the
15 company I had started.

16 "I was not a wealthy person, so I took out a second
17 mortgage on my home, borrowed \$100,000 from a former boss, and
18 got the Swiss company to take back a subordinated note for
19 \$250,000, and financed the rest with a bank loan from a local
20 bank.

21 "On the first day, we were leveraged 47 to 1.
22 Because we were so heavily leveraged, my agreements with the
23 bank insisted that I take only a small salary and plow all the
24 earnings back into the company for many, many years.

25 "Needless to say, the company took almost all of my

1 time and efforts, and virtually all of my personal net worth
2 was tied up in it.

3 "Over the years, it grew and prospered, and we were
4 able to employ about 75 people. One of those people was
5 Matthew Bittenbender. When he came to us, he'd been a
6 purchasing manager with the Baltimore Zoo. He knew nothing
7 about aviation, credit cards, or jet fuel sales. However, he
8 was young, enthusiastic and eager to learn.

9 "By the time he joined us in 1998, the company had
10 already developed a significant business relationship with the
11 U.S. military. Because of that, our business outside the
12 United States was growing quickly.

13 "I was personally handling a large part of this
14 business. I took Matt under my wing and began to teach him
15 this business. It enabled him to gain a broad international
16 view of business and interact with customers and suppliers
17 around the world. He did not report directly to me, but I
18 continued to teach him the ins and outs of this segment of our
19 business. And he would often come to me for advice in his daily
20 work. This would include counseling when he would have
21 friction with his supervisors on various issues.

22 "There is no doubt that some other employees saw him
23 as a favorite to me. I absolutely trusted him and saw him as
24 100 percent loyal to the company and to myself.

25 "When the actions of Mr. Wilkinson Mr. Cartwright and

1 their companies and Mr. Bittenbender came to light, I was
2 devastated. Aside from the financial and organizational harm
3 this did to the company, I felt a terrible personal betrayal by
4 Mr. Bittenbender and a personal assault by Wilkinson and
5 Cartwright.

6 "I know that maybe hard for you to quantify these
7 feelings, but I can assure that it's taken a strong emotional
8 toll on me. This company and its employees were my life, and
9 these actions changed it forever.

10 "I believe that others will be quantifying the extent
11 of the financial losses the actions in this matter have caused,
12 so I will not discuss them here. And I wish that I could
13 quantify the value of the trust and faith I put in Mr.
14 Bittenbender and the emotional cost of his betrayal and Mr.
15 Wilkinson and Mr. Cartwright's assault on the company I spent
16 24 years to build. I assure you that it's substantial.

17 "Thank you very much for the opportunity to write you
18 about this today. I hope you will take these thoughts into
19 consideration when you formulate your sentences.

20 "Very respectfully, Linda Kropp, signed as President
21 CEO of Avcard."

22 And to the extent the Court has any concerns about
23 the relative comparability of the sentence in this case for an
24 honest services violation versus others of those that have been
25 given out around the country or in this district itself, we

1 thought we might point the Court to at least three particular
2 decisions or sentences that had been handed down in this
3 particular area relatively recently or at least from this
4 district.

5 One is United States versus Chapman, which was a case
6 here in the District before Judge William Quarles, a case that
7 involved, among other things, defrauding a very large pension
8 fund. The sentence in that case was 60 months for each offense
9 to run concurrently. And the case number in that case was WDQ
10 0-0301. That was here in the District of Maryland, and the
11 sentence was issued in February of 2007.

12 Another case we thought we might point the Court to
13 is a case out of the Fourth Circuit which involved honest
14 services and was reviewed by the Fourth Circuit. That's United
15 States versus Vinyard. The case cite for that case is 266 F.
16 3d, 320. And that, again, is out of the Fourth Circuit in 2001
17 1. There were convictions on 14 counts involving honest
18 services theory. There the sentence handed down was 70 months.

19 Finally, and I think more by way of sort of recency
20 in comparison to the seriousness of the job of Mr. Bittenbender
21 versus some of these other situations where individuals didn't
22 hold a serious responsibility when their services were deprived
23 from their employer, we might point the Court to the recent
24 case of United States versus Donahoe, who was the referee from
25 the NBA that got a lot of press relating to his gambling

1 antics. Mr. Donahee has recently pled guilty and had been
2 sentenced by the Court to 15 months in prison for depriving his
3 employer, there the NBA, of the intangible rights of his
4 employer.

5 Here we'd submit to the Court that when we're talking
6 about the intangible rights of an employee, the Court has to
7 look to the seriousness of the actual work that was done by the
8 employee. And again direct the Court back to the fact that we
9 were talking about is military contracts.

10 I'll give the Court the case cite, number for the
11 Donahee case is case number 07-CR-587 and that's from the
12 Eastern District of New York.

13 THE COURT: Is there any similarity between those
14 cases and this other, than that they were cases involving the
15 deprivation of the right to honest services?

16 MR. TERZAKEN: They were cases -- well, the
17 similarities I think drawn are simply, as the Court notes, with
18 respect to the deprivation of honest services. And we'd point
19 them out to the Court really to point more to the fact that
20 this crime in and of itself is a serious crime. There has been
21 some suggestion, I believe, by the defendants that merely
22 pleading guilty to a felony alone is punishment enough for an
23 honest services offense.

24 And the United States doesn't agree with that
25 proposition for, among other reasons, that other courts have

1 similarly held that, and in this case again we're talking about
2 the military contracts, and these services were significant
3 ones.

4 THE COURT: The deprivation of honest services is
5 simply another form of fraud.

6 MR. TERZAKEN: Exactly.

7 THE COURT: Each case stands on its own, does it not?

8 MR. TERZAKEN: It does. We're simply offering it to
9 the Court for comparative value, that's all.

10 With any other requests from the Court, the United
11 States does intend at the sentencing to request and orally move
12 the Court to dismiss against Mr. Cartwright Counts 1 and 2 --
13 or 1 and 3, the remaining counts that he's not being charged
14 with, and that's upon the Court's sentencing of the defendant.

15 THE COURT: Those counts will be dismissed.

16 I'm curious as to why it is that, with respect to Mr.
17 Cartwright as opposed to Mr. Wilkinson, and I expect Mr.
18 Bittenbender, although I haven't seen anything on him yet, why
19 there is such a difference with respect to the claimed loss
20 that occurred.

21 MR. TERZAKEN: I'm happy to explain that to the
22 Court. Part of what we started out was to talk about the
23 respective counts. And here is, I think we've explained to the
24 Court on other occasions, and again here is that the crime
25 ultimately that Mr. Cartwright is pleading to is for his role

1 in basically bringing on as an employee Matthew Bittenbender.
2 And that is at the same time knowing that he was also an
3 employee of Avcard. That's where his conduct basically begins
4 and ends.

5 So there was work performed as an employee for the
6 company, and that at the time he was performing that work, Mr.
7 Cartwright also understood that he was working for Avcard.

8 The other crimes in this case, Counts 1 count 2 with
9 respect to its second objective, which is the theft of
10 confidential business information, and Count 3, the actual
11 theft of the trade secrets relate to what actually happened in
12 that relationship once Mr. Wilkinson and other defendants
13 picked up that relationship and began working with Matthew
14 Bittenbender.

15 And as a result of that relationship, as will be
16 discussed later on, was the loss to among other entities Avcard
17 in its actually bidding scenarios and to DESC and
18 administrative costs and ultimately reletting those contracts.

19 Here there is a very clear division with respect to
20 the honest services pieces of this, the actual hiring of
21 Matthew Bittenbender with knowledge of his working for Avcard,
22 and then the misuse of that relationship by the other
23 defendants to basically injure both Avcard and DESC. That's
24 why the loss figures divert.

25 I'll also note to the Court in the government's

1 sentencing memorandum with respect to Mr. Wilkinson, we point
2 out that, with respect to the second objective of Count 2, Mr.
3 Wilkinson is also assigned the same loss as we're talking about
4 here. It's just that the loss is greater because Count 1, the
5 second objective of Count 2, and Count 3 have other losses
6 associated with them.

7 THE COURT: So I guess the basic question, then, is
8 why Mr. Cartwright is only here facing a sentence with respect
9 to Count 2 and not Counts 1 and 3?

10 MR. TERZAKEN: The facts in this case and the
11 parties' agreement in this case focuses on his accepting
12 responsibility for the hiring of Matthew Bittenbender at the
13 point that he understood that he was working at Avcard.

14 And that's what he's taking primary responsibility
15 for and the government believes he should take primary
16 responsibility for.

17 With respect to the other actions, the government and
18 the defendant have agreed that, by taking responsibility for
19 that, the person who had primary responsibility for misusing
20 the relationship that was drawn was Mr. Bittenbender, Mr.
21 Wilkinson, and the companies that they worked for, those being
22 FERAS and Aerocontrol.

23 THE COURT: All right. Mr. Levitt, I'm hesitating
24 only because, as I went over all of this before taking the
25 bench, I was frankly considerably puzzled over this issue with

1 regard to the loss and the guideline calculation, such a
2 disparity between the various defendants with respect to that.

3 And I understand that there has been an agreement
4 with respect to the loss and that the restitution in that
5 amount has even already been paid.

6 Nonetheless, I'm still curious as to this loss
7 figure. I guess one would have to conclude that the loss to
8 Avcard with respect to deprivation of honest services being
9 equal to the roughly nine months of the conspiracy that Mr.
10 Bittenbender paid during that period of time reflects, I
11 suppose, a reasonable estimate of what the loss is. But should
12 one reasonably assume that Avcard received nothing from
13 Bittenbender's work whatever he did during that nine-month
14 period?

15 MR. LEVITT: Judge --

16 THE COURT: It's just a very strange loss approach.

17 MR. LEVITT: Yes. And it's something that we
18 discussed internally as well, whether or not \$40,000, which was
19 the total amount that Bittenbender was paid during the nine
20 months by Avcard, is an accurate reflection of what Avcard in
21 fact lost as a result of us hiring him as a consultant during
22 that period of time. And I think it could be reasonably argued
23 both ways.

24 I mean, I could argue to the Court, for instance,
25 that Avcard still had some benefit from his employment during

1 that period of time. I think, in fairness, if I were an
2 employer, and I had an employee who was being disloyal during a
3 nine-month period of time and in fact consulting on behalf of
4 another company, I think I would consider it a complete loss to
5 myself.

6 I know, for example, I'm not sure what Maryland law
7 is on the issue, I can tell you, for example, in New York law,
8 if an employee is in that position, and acts disloyalty -- acts
9 disloyally, he's required actually to relinquish his entire
10 salary during his entire tenure with his employer. That's how
11 strict the law is in New York with respect to a disloyal
12 employee.

13 It's not a battle, although I think we could have
14 made the argument that it was less than \$40,000, it's not a
15 battle, frankly, we wanted to pursue. We recognized, and Chris
16 recognizes -- excuse me for calling had him Chris -- Mr.
17 Cartwright recognizes that what he did was wrong, and he didn't
18 want it to seem in any way that he was trying to minimize the
19 fact that he hired somebody who he knew at the time was working
20 for Avcard, even though he thought first that Bittenbender
21 would leave Avcard, he knew after Bittenbender did not leave
22 Avcard and didn't do anything about it.

23 So he recognizes that he caused that loss, and it's
24 just not a battle that we wanted to wage, frankly.

25 With respect to the Court's underlying question about

1 the reasons for the disparity, I can't speak, obviously, for
2 Paul Wilkinson, who's very well-presented, and I know there are
3 issues concerning the loss calculation with respect to Mr.
4 Wilkinson, and I'm not here to address that in any way.

5 And the Court knows that Mr. Cartwright and Mr.
6 Wilkinson have been close for years, and it's not my place to
7 do that.

8 I will say this, however, the government during its
9 presentation, Mr. Terzaken, during his presentation, showed the
10 Court the contract that was entered into, the consultancy
11 agreement, and that's something that Mr. Cartwright was
12 involved in negotiating.

13 And frankly, the e-mails during that period of time
14 between them show that this was a very hard-fought negotiation,
15 and the concept was at the time that Bittenbender would be
16 consulting with Avcard and FERAS with respect to the DESC
17 contracts, but it was not contemplated at the time he was
18 hired, and certainly Chris had no idea, Mr. Cartwright had no
19 idea that Mr. Bittenbender would be stealing information in
20 order to do so.

21 It was strictly a consultancy contract. Mr.
22 Bittenbender knew the business, the DESC business. It was not,
23 frankly, something that Mr. Cartwright was particularly
24 interested in getting into the DESC business.

25 But Mr. Wilkinson was interested in getting into that

1 area of the business. Mr. Cartwright was the person who
2 negotiated contracts in the companies, and that's why he was
3 pulled in to negotiate this particular contract.

4 And, as I said, it was kind of a hard negotiated
5 consultancy contract. But Mr. Cartwright's work within these
6 companies, FERAS and Avcard, really had nothing to do with DESC
7 contracts.

8 In the sentencing letter that we provided the Court,
9 you'll see the various things that Mr. Cartwright was doing
10 over a period of time, and the DESC contracts was not one of
11 them. He was doing a thousand different things. He was pulled
12 in a thousand different directions in his own neck of the
13 woods, so to speak. He wasn't particularly interested in the
14 DESC contracts at all.

15 I think that's the reason, and properly so the
16 reason, for the disparity with regard to the pleas of guilty
17 and with regard to the loss calculation.

18 And to the extent that the Court has additional
19 questions concerning them, I'm more than happy, you know, to
20 answer those or any other questions that the Court has.

21 I know Your Honor now has a huge amount of
22 information. You have not just the presentence report, you may
23 have what may have been an overly lengthy sentencing letter
24 from us, perhaps an excess number of letters from us as well.
25 I'm sure the Court read it all very carefully, and I thank you

1 for that.

2 And you have the government's letter and its
3 presentation as well today.

4 One of the things that we did in this case, which,
5 frankly, I have not done in 30 years of practice, is Mr.
6 Granger, my co-counsel, and I came with Mr. Cartwright to
7 Washington about a month ago, and we sat down with the
8 government. The government provided us an opportunity to let
9 Mr. Cartwright address the government, essentially and answer
10 any questions it might have. And we sat with the government
11 probably for about an hour and three quarters talking to the
12 government.

13 Actually, I didn't talk, Mr. Cartwright did. That's
14 something I've never done in 30 years except with respect
15 obviously to a cooperating witness, and that's not Mr.
16 Cartwright.

17 But nonetheless, it was important for us, and it was
18 important for Mr. Cartwright to speak to the government. I
19 mean, he wanted to talk to the government. He wanted to tell
20 the government who he was. He wanted to provide an opportunity
21 to answer any lingering questions about the case, and he did
22 that.

23 And, frankly, it was most unusual, and I would say I
24 would never in a million years had done that unless I felt that
25 we would have the government's open and objective ear, and I

1 think we did. You know, we would listen and I think the
2 government was willing to listen with an open mind, I think
3 they did, and that I'm actually thankful for.

4 I'm not sure it's something I'll do again in the near
5 future, maybe in another 30 years, I'll have the opportunity to
6 do that once again.

7 I've gotten to know Mr. Cartwright as well as a
8 lawyer can get to know a client over the period of months that
9 I've been representing him. And if there's one thing that I
10 can say with absolute assurance here, Judge, is that Mr.
11 Cartwright every day of his life now beats himself up as a
12 result of the conduct that resulted in his plea of guilty.

13 He is a person who has always prided himself on doing
14 the right thing and treating people fairly and ethically even,
15 and I might say especially, when nobody's watching him.

16 And so the conduct that brings him here today is
17 something that he has spent a very good amount of time thinking
18 about. Although he's an entrepreneur, who's quite able to make
19 decisions, he's also somebody who ruminates quite a bit. And
20 he's ruminated over this an extraordinary amount.

21 And I don't say this lightly, because I've had very
22 lengthy conversations with Mr. Cartwright where I think I've
23 been more of a sounding board than anything else, and he's just
24 going on and on and on about how he did this stupid thing and
25 why did he do it and he shouldn't have done it, and he feels

1 horrible, and he hurt so many people.

2 And it got to the point where I would try to put
3 things in perspective for him and to remind him he's obviously
4 a lot more than the conduct that brought him before you today.

5 And I think maybe he's beginning to get that. But
6 it's taken him quite a while.

7 I mean, there are clients that I have, frankly, who
8 never get it, who enter pleas of guilty and, you know, for the
9 rest of their lives, they're complaining about how they
10 shouldn't have pleaded guilty and how it was a setup and how
11 they were treated unfairly.

12 And then there are clients like Mr. Cartwright who do
13 get it, and perhaps get it even to a greater extent than their
14 lawyers and their loved ones want them to get it, because it
15 almost at some point becomes debilitating.

16 I believe that the letters that we've submitted to
17 Your Honor provide a very substantial glimpse into the kind of
18 person who's standing before you for sentencing, and the
19 letters to my mind were truly extraordinary. I mean, they're
20 not just platitudes of generalities. They're all very
21 anecdotal.

22 You know, you have these people who have known Chris
23 since he was a little boy, who have taken such to delight in
24 watching him grow into a very successful and honorable and
25 honest and caring and giving young man.

1 And others are from former employees of his who
2 relate to the Court very specific stories about deeds that he's
3 done for them or for others, in some instances at great
4 personal peril. But he views himself as a person who can be
5 counted on, and that's the way he's lived his life.

6 You've seen many letters from colleagues of his who
7 talk about just a core of decency and integrity that he has.
8 And that's something that I have seen as well in my own
9 dealings with Mr. Cartwright, to an extraordinary extent.

10 And so what is a fair, what is a fair and reasonable
11 sentence for Mr. Cartwright?

12 The guidelines say -- excuse me. 18 USC 3553(a) says
13 that a sentence should be sufficient but no greater to achieve
14 the purposes of sentencing. And, obviously, that means a range
15 of possible sentences is possibly reasonably.

16 The government says that 14 months is a reasonable
17 sentence. Well, maybe it is.

18 But I also respectfully suggest to the Court that a
19 sentence of probation with full restitution, which the Court
20 knows has been made, and community service would also, I
21 respectfully suggest to the Court, be a reasonable sentence.

22 And to the extent that both of those sentences might
23 be reasonable, then under the statute, the Court should impose
24 a sentence that's no greater than that necessary to fulfill the
25 purposes of sentencing.

1 And I want to make clear, the government said -- and
2 I don't think they mean to limit my argument in any way, but
3 they said, well, you know, Mr. Levitt says or the defense says
4 that it's sufficient that he's been convicted of a felony.
5 Well, he hasn't just been convicted of a felony. He's lost \$13
6 million in equity in his companies, companies that he spent the
7 better part of his adult life building up because of the fraud
8 that he engaged in and because of the charges that were
9 brought. He has lost \$13 million in equity.

10 He spent the last many, many months this entire year
11 essentially torturing himself concerning the conduct that led
12 him to be here today. He's paid \$40,000 in restitution. He's
13 paid substantial legal fees. He will live with this the rest
14 of his life.

15 I was talking about to one of my colleague yesterday
16 who was in an airport and saw an aviation magazine. He and
17 Paul Wilkinson's names were on the cover of that magazine with
18 respect to their pleas of guilty. Throughout the industry, it
19 is known that he has been convicted of these offenses, and they
20 may well think he's been convicted of worse, because it was
21 more alleged in the indictment than that to which he pleaded
22 guilty to.

23 So, no, it's the not just the felony conviction. And
24 anybody who knows about what has happened to Mr. Cartwright as
25 a result of his misconduct and as a result of it, of the

1 charges, I think anybody who knows that, who would then
2 contemplate doing the same thing, would be insane, would be
3 absolutely insane, regardless of whether he receives probation
4 or a sentence or whatever it happens to be.

5 So in terms of the concept of general deterrence, I
6 can't imagine someone who's similarly situated not be, not
7 being deterred if they know what has befallen Mr. Cartwright as
8 a result of his fraudulent conduct and as a result of this
9 case.

10 I saw on the way down on the train, Your Honor,
11 yesterday, I saw an article from the Washington Post from last
12 February, although I've heard something quite similar more
13 recently saying that we now have incarcerated in this country
14 2.3 million people. So we have incarcerate more than one
15 percent of our entire population.

16 And the article in the Washington Post said that that
17 is now more by far both in raw terms, raw numbers and also in
18 terms of percentage of population that any other country in the
19 world, and the next closest country is China, and they're far,
20 far below us.

21 I respectfully suggest to the Court that there is a
22 way of fashioning a sentence here which does meet the needs of
23 the sentencing statute, but which also permits Mr. Cartwright
24 and his family to begin rebuilding his life and to give him a
25 chance to get back into business and at the same time to give

1 back to society, rather than taking from society as a ward of
2 the federal government, so to speak.

3 And I would also point out, I'm not sure how
4 important this is in the Court's calculus, he was a very
5 important and becoming more important person within the
6 competitive field. And by the competitive field, I mean the
7 business that he was in. He was an important component, and so
8 his companies Avcard and FERAS in terms of competing for this
9 kind of business, this is a small business to begin with. And
10 it's become a lot smaller because the business has consolidated
11 a great deal over the last few years.

12 A company called Tramp Oil was sold to company called
13 World Fuels just a year or two ago for I think \$80 million.
14 Avcard, Miss Kropp's company, was sold to World Fuels last year
15 for 50 or \$55 million. So the business has been consolidated a
16 great deal.

17 We have consulted with experts in the field who have
18 told us that if Mr. Cartwright were to receive a non
19 incarceration sentence, he would likely, he would have a much
20 better chance of being removed quickly from the so-called
21 excluded persons list that prohibits him from being involved in
22 any way regard to a government contract.

23 And again, I'm not suggesting that that should play
24 an overriding role in the calculus, but, you know, to the
25 extent there's a societal interest in keen and fair and open

1 competition, I think that that's something that Mr. Cartwright
2 was providing and can provide in the future.

3 And so, Your Honor, I think that a sentence of
4 probation with community service, and recognizing that he's
5 paid the restitution, is a sentence that would in fact send the
6 necessary message. It would serve the purposes of sentencing,
7 but at the same time, Your Honor, it recognizes to Mr.
8 Cartwright that, yes, you've done something wrong. Yes, you've
9 been required to plead guilty for. Yes, you have justifiably
10 lost quite a bit, but the Court, as a representative of society
11 at whole, also recognizes that there's a time, there's a time
12 for everything.

13 And there's a time to finally say to Mr. Cartwright,
14 okay, it's time for you to get reintegrated into society. It's
15 time for to you begin to put this behind you.

16 We recognize that you've been remorseful, that you've
17 paid your restitution, that you've lost essentially the entire
18 equity of your companies that you built up over the years,
19 that you've had to face your friends and your family and your
20 wife and your daughter, and you have to deal with this, but
21 we're going to now let you go deal with it as a person in your
22 home and in your community, rather than in a federal prison.

23 I respectfully suggest that that time has come, Your
24 Honor, and I ask you please to consider it. And with the's
25 Court's permission, I would ask Chris's father John to very

1 briefly address the Court, and then his wife Yulia.

2 THE COURT: Fine, I'm glad to hear from you.

3 MR. LEVITT: Mr. Cartwright, would you come forward,
4 please? Stand right here.

5 MR. CARTWRIGHT: Your Honor, my name's John
6 Cartwright. I'm Chris's father. Chris is my only child and is
7 one of only four blood relatives in my entire family. Even
8 including our relatives by marriage, ours is a very small
9 family, and the impact of this case amongst a smaller group has
10 been devastating and has been felt by all.

11 Of course, no one has been more affected than Chris
12 and his wife Yulia and daughter Alexis. They were living and
13 working in Berlin when they came to California in December,
14 2007 to spend Christmas with me. We had a wonderful Christmas
15 together, but that was the last time we were happy as a family.

16 I make my living as a pilot, and for the last 30
17 years, I've been flying corporate airplanes worldwide. On
18 numerous occasions, Chris's company FERAS has provided ground
19 handling services to the companies I have flown for.

20 FERAS has been critical to the success of corporate
21 aircraft trips in remote cities in Russia and central Asia,
22 such as Novosibirsk, Almaty and Khabarovsk, where a good
23 handler can mean the difference between a routine stopover and
24 a logistic and bureaucratic nightmare.

25 It was with tremendous pride that I would hear

1 favorable comments about FERAS and Chris from other corporate
2 pilots, both those that I flew with and those from other
3 companies that I would meet in hotels or airport briefing
4 rooms. FERAS had an enviable reputation in corporate aviation,
5 built on 15 years of hard work and sacrifice.

6 Chris was a pioneer in the feel of corporate aviation
7 in the former Soviet Union, endured some very uncomfortable
8 living condition for many years. I witnessed this myself on
9 visits to him in Khabarovsk and Moscow, where the winters are
10 absolutely brutal. Personally, I would have given up and come
11 home, but he was sure that it would all be worthwhile, and his
12 achievement in the success of FERAS proved him correct.

13 Now his reputation has been sullied by a felony
14 conviction that he will have to carry with him for the rest of
15 his life. I can't begin to describe how sad this makes me. It
16 is some comfort that he has confronted his wrongful deed and
17 taken responsibility for it. I believe that this is the first
18 step in the healing process that will be ongoing.

19 The felony on his record will reduce future
20 opportunities and close doors. But I and many of my industry
21 colleague believe in Chris, his ability to rebuild. There is
22 still a lot of good will toward Chris among the pilots who knew
23 him personally, and I get e-mails almost daily asking about him
24 and wishing him well.

25 Chris needs to start to repair the damage that has

1 been done over the last nine months to both his family and his
2 employees, many of whom are ready to go back to work as soon as
3 there is a job for them.

4 Although Chris has lost nearly everything he has
5 worked hard for for 15 years, I have confidence in his ability
6 to rebuild if given the chance to do so. I feel that he still
7 has much to offer and can again become a productive contributor
8 to society as soon as he's given the opportunity.

9 For these reasons, I respectfully ask you to be
10 lenient in your decision. I am confident that such leniency
11 will be repaid to society and to our family because I know
12 Chris wants very much to redeem himself. Thank you.

13 THE COURT: Thank you.

14 MR. LEVITT: May I ask Yulia Cartwright to come
15 forward, Your Honor?

16 THE COURT: Yes.

17 MR. LEVITT: Thank you.

18 MS. CARTWRIGHT: Your Honor, my name's Yulia
19 Cartwright, and I'm Chris's wife. Thank you for giving me an
20 opportunity to speak to you honestly and openly about the
21 enormously difficult decision you're about to make own.

22 Chris can speak to you about his own feelings of
23 remorse and shame. Those feelings are deeply personal. I want
24 to talk to you about how these events have affected our family
25 life. In doing so, I want you to know that I fully understand

1 as there are many additional matters that you must consider in
2 arriving at a just sentencing. It may be that these other
3 matters are more important. But this is what I know most
4 about, and I hope you will find what I have to say meaningful,
5 and you'll consider it in making your decision.

6 The social stigma attached to Chris's indictment and
7 guilty plea is enormous. Chris has never shied away from
8 taking responsibility for his actions, and we are truthful and
9 open about it with anyone we know and meet, not wishing to
10 gloss over or discount his role.

11 Consequently, everyone of our friends, colleagues,
12 neighbors, and parents and in our daughter's preschool know
13 about our situation. This is our community, our home, the
14 place where our daughter is going to attend school. Friends
15 who have known us for years have been very supportive and stood
16 by us. However, new acquaintances often judge us very harshly
17 based on Chris's guilty plea of and threat of jail. This is
18 something I, Chris, and our daughter Alexis will have to
19 struggle for the rest of our lives and will be deeply affected
20 by it.

21 Chris was will always tell you my daughter and I are
22 the most important things in his life. I certainly know that
23 to be true, and I love him very much for that. Yet I know how
24 important Chris's career, his company, has been to him. And he
25 is shattered that his actions have tarnished his good name and

1 reputation. The indictment and guilty plea have robbed us of
2 financial security that Chris has worked so hard to be for us.
3 Chris has received no income since his arrest many months ago,
4 and there is no definite potential on the horizon.

5 Yet, in the past three months prior to his sentencing
6 date, Chris's main concern was not his future professional life
7 or money, but how Alexis and I will be without him if he's
8 jailed and how this separation will impact our daughter. I
9 have to admit that the thought almost paralyzes me and I have
10 trouble visualizing lives possibly away from Chris.

11 Chris and I have only one child and we try hard as we
12 can to be good parents. We often joke as we should not have
13 put all our eggs in one basket, but Alexis is all we have, and
14 she's our life. We love her enormously and strive to shelter
15 her from the current situation.

16 However, just a few months ago she asked us what
17 does the word "plea" and "jail" mean? Her question knocked the
18 wind from us and made us incredibly sad. Alexis is only four
19 years old, and despite our greatest efforts to protect her, she
20 senses unhappiness and strain in Chris and I, and she's
21 affected by it.

22 In the past ten months, we have been blessed with the
23 support of our friends and colleagues. I hear a lot that we'll
24 be okay, that we are young and have full lives ahead of us,
25 that in five years this, experience will become a distant

1 memory.

2 I appreciate their belief in us, and I know they mean
3 well. However, I can assure you that nothing about this
4 experience will ever be forgotten, our lives will never return
5 to what they used to be.

6 The strain of the indictment Chris's guilty plea, the
7 social stigma in our community have tested our friendships, our
8 marriage, and our faith in each other more than we ever
9 expected and feared. We will never want to forget or repeat
10 this.

11 I want to speak to today for myself, my daughter, who
12 is waiting for us outside this courtroom, and for Chris to show
13 you the financial and emotional toll the past ten months have
14 had on us. Yet, we are a family, and I have an unshakable
15 faith in Chris and support and stand by him. My deepest wish
16 is for Chris, Alexis and me to be not separated so that we can
17 start to piece together our lives.

18 I hope you will take my appeal to you, Chris's
19 remorse, and his full acceptance of responsibility in the
20 consideration and making a decision regarding his sentencing.
21 Thank you.

22 THE COURT: Thank you.

23 MR. TERZAKEN: Just a few final words?

24 MR. LEVITT: And then Mr. Cartwright?

25 MR. TERZAKEN: Did you want to hear from Mr.

1 Cartwright?

2 THE COURT: Go ahead.

3 MR. TERZAKEN: Just to address some of the points
4 that were raised, obviously, the defendant in the plea
5 agreement had reserved his right to argue the 3553(a) factors,
6 as is customary under the law.

7 The parties have agreed to a guideline sentence
8 which, as the Court mentioned, is consistent with probation's
9 report.

10 But I'd ask the Court when you're considering the
11 3553(a) factors, to remember what this case involves, which
12 essentially boils down to fraud, which was directed at and
13 involved the government.

14 These were contracts, what this man was hired to do
15 was work on military contracts, contracts for fuel for the
16 provision of, among other things, movement of military
17 personnel in and out of war zones, airplanes sent into combat,
18 and provisions sent to servicemen and women on the ground.

19 This is a serious offense, and the questions under
20 3553(a) require this Court to consider what is just punishment,
21 what is adequate deterrence to the public to say what should
22 this person believe they're going to be punished for if they
23 engage in fraud, particularly fraud that involves the United
24 States military. That's what the United States would ask the
25 Court to consider.

1 THE COURT: All right. Mr. Levitt?

2 MR. LEVITT: Yes. I wanted to turn it over to Mr.
3 Cartwright, because I know he wants to speak to the government.
4 I would like to emphasize, as the government's said, we agreed
5 on a guideline sentence, we agreed to what the guidelines are.
6 We obviously didn't agree to a guideline sentence, because it
7 was contemplated that we would be making an application for a
8 non guideline sentence. I know the Court knows that from our
9 submissions. I just wanted to make clear that was so.

10 And certainly we don't minimize Mr. Cartwright's
11 conduct in any way. It's important to understand that his
12 conduct involved hiring Mr. Bittenbender while he was working
13 for Avcard. It didn't obviously contemplate at all anything
14 having to do with comprising military, and I know the Court
15 knows that from the nature of the plea. I just wanted to make
16 sure that that was perfectly clear.

17 But with the Court's permission, I would ask Mr.
18 Cartwright to address the Court.

19 THE COURT: All right. Mr. Cartwright?

20 THE DEFENDANT: Thank you. Your Honor, whenever I
21 need to talk to someone about a serious matter, I try to put
22 myself in his or her shoes. And so as I thought about what I
23 would say to you this morning, I asked myself what I would hope
24 to learn from a defendant who chose to speak to me before
25 imposing sentence.

1 So forgive me for reading this, I didn't want to
2 forget anything.

3 I think I would like him to tell me something I may
4 not already know, that he would tell me what is really on his
5 mind so I can hear from his own lips what he thinks about what
6 he did, its impacts on others, and how he sees his future.
7 And so that is what I'll try and do.

8 They say there are several stages of grief, and I
9 know from personal experience that this is true. I have also
10 found there are several mental and emotional stages one goes
11 through, or at least I went through when charged with a crime.

12 First, there was confusion about what was happening
13 when I was awakened in my hotel room in New York and arrested
14 on January 6th, 2008. I was in New York to meet partners, to
15 pitch an entirely new business that I had worked for an entire
16 year to prepare.

17 After being arrested, I spent the night in local
18 federal jail and was bailed out two days later. As I read and
19 digested the charges, confusion changed to anger and anger to
20 denial. How could the government have charged me with such
21 crimes when I insisted to myself I did nothing wrong?

22 My anger only increased when, as a result of the
23 charges and the conduct of others who sought to take advantage
24 from my comprised position, I began losing control of my
25 companies and saw all my equity in them slipping away, equity

1 I'd spent the bet part of my adult life building up.

2 I quickly went from someone who was able to bring
3 financial security to his family with many millions of dollars
4 in stock ownership to someone who was losing it all and now had
5 mounting bills and no income, on top of the prospect of a trial
6 and the possibility of a lengthy sentence.

7 I was wearing an ankle bracelet. My movements were
8 restricted. It became difficult or impossible to conduct
9 business. My family life became anxious and stressful, and all
10 the time I was thinking about what would happen to my wife
11 Yulia and my daughter Alexis.

12 I was thinking fast and I was angry. My life became
13 simply me bouncing from one emergency to another, and I felt
14 like the Dutch boy with the finger in the dike, but there are
15 too many holes and not enough fingers.

16 But through it all, we had to prepare for trial, and
17 we did, and eventually received the discovery, and I began to
18 focus during quieter moments on exactly what it was that I did.

19 In the discovery, were hundreds of e-mails from
20 Matthew Bittenbender. The vast majority were between
21 Bittenbender and Paul, but some went to me as well.

22 I, in fact, was very involved in negotiating the
23 terms of the consulting agreement, and what they showed was
24 that I did precisely what I eventually pleaded guilty to doing.
25 I entered into a consulting agreement with Bittenbender at a

1 time when I knew he was still working for Avcard.

2 I did not require him to leave Avcard as a condition
3 of our association. At the time he was hired, I believed he
4 would be leaving Avcard soon, but in fact he did not. And
5 later I later learned that he had not.

6 Why didn't I do anything when it became clear he had
7 not left Avcard? I could tell you how enormously busy I was
8 during this period of time, and how the DESC contracts that he
9 was consulting about were not my concern, that I was focused on
10 other aspects of the growing business. Those things are all
11 true, but they are part of the denial stage. And I've gotten
12 far beyond that.

13 The truth is that while Bittenbender was still
14 consulting with us, there came a point in time that I learned
15 he was still working for Avcard, and that's all I really needed
16 to know to require me to take action, but I didn't.

17 And so I tolerated, permitted, and my failure to act
18 ignored his conflict of interest. It is this conflict that the
19 government offered to permit me to plead guilty to just days
20 before trial, and I did, because I am guilty of it.

21 I realize I had jeopardized years of hard work and
22 comprised my own sense of personal and business ethics. More
23 important, I had put my family at risk. I cannot overstate to
24 you what this realization did to me. And I guess you could
25 call this the acceptance, guilt, and change stage. I began to

1 torture myself internally. I was fundamentally flawed. I was
2 an awful person. I put my livelihood and, more importantly, my
3 wonderful wife and beautiful daughter in jeopardy because of my
4 own stupidity, poor judgment, and wrong decisions.

5 I talked about this incessantly with my lawyers, how
6 could I be so stupid? And so given the opportunity to plead
7 guilty to conduct that accurately reflected my guilt, I took
8 it.

9 And for a while I continued to beat myself up on a
10 daily basis ashamed of myself and angered beyond belief of what
11 I had brought upon those who love me. It came close to
12 paralyzing me from dealing with the many responsibilities I had
13 still with my businesses, my employees, and my family.

14 But during the last several weeks, my attitude has
15 begun to change somewhat. My understanding and acceptance of
16 my responsibility has not diminished. I'm beginning to see
17 things a bit more in perspective.

18 During the process of preparing for sentencing, my
19 lawyers asked me to obtain letters from my family and friends
20 as well as from business acquaintances and colleagues. The
21 people I asked were happy even anxious to help me however they
22 could, just as I would be anxious to help them if the tables
23 were turned.

24 And then I started receiving and reading these
25 letters. It was almost like being the Jimmy Stewart character

1 in that movie "It's a Wonderful Life." I felt like I was being
2 permitted to hear my own eulogies. It has given me
3 perspective. It has let me understand that I am more than the
4 worst thing I have done in my life. It has made me even more
5 grateful for my friends and family, and for my employees and
6 business associates who have taken the time to tell you
7 something about me.

8 It has reminded me of who I am and what is most
9 important to me. It also reminded me that I have the love and
10 support of many, many people behind me.

11 Your Honor, I can honestly say to you that,
12 throughout my life, I have tried to be a fair and kind person.
13 I tried to bring out the best in others. And I like to see
14 others succeed and excel. I really have honestly tried my best
15 to be a model citizen and a good person, a good husband and a
16 good father and a great employer as well.

17 A month or so ago, the government attorneys gave me
18 the chance to meet with them, and I spoken with Mr. Fletcher
19 and his colleagues for nearly two hours. I wanted them to
20 understand me a little more and to answer any questions they
21 had about my conduct. I truly hope they saw me for what I
22 believe I am and what I think is reflected in the letters that
23 have been given to you, a hard-working business person, good
24 father and husband, but one who made an uncharacteristic
25 mistake, which is also a crime.

1 I have agonized over the past ten months about how my
2 moral compass even briefly went wrong on me. I am not going to
3 provide any explanations or excuses, because there are none
4 that are valid. My crime was inexcusable and inexplicable, and
5 for this I apologize to you, to the government. I apologize to
6 Linda Kropp the owner of Avcard, who is entitled to the
7 undivided loyalty of Mr. Bittenbender. And I apologize to my
8 employees who have always trusted me and whose jobs have been
9 jeopardized by my conduct.

10 Most of all, I apologize to my wife Yulia for putting
11 her through this, endangering our family's economic and
12 emotional security.

13 Looking forward, my failings and my crime will
14 provide me with a solid map down the right path in the future.
15 My conviction will be a constant and painful reminder of my
16 wrongful conduct as I fight the social stigma as my wife and
17 daughter suffer from labels and as I face a possible lifetime
18 lockout from being an executive.

19 My failures have resulted in the loss of a stable and
20 peaceful home for my wife Yulia and my daughter Alexis, my
21 entire income lost, plus shareholder equity which I worked all
22 my life to build, which is pretty much all I had.

23 And now I face the most painful thing imaginable to
24 me, the possibility of time away from my loving family that
25 needs me. I would not wish what we have endured in the past

1 ten months on anybody.

2 Your Honor, I would never squander any leniency or
3 compassion you might show to me for so many reasons, not only
4 because that would be contrary to everything I believe in to my
5 very core, but also because if you let -- sorry. But also
6 because if I let you down, you may then deny some other
7 deserving person similar compassion in the future. That is
8 something I could never live with.

9 I know, Your Honor, you will do what you believe is
10 right, and I am fully prepared to accept whatever decision you
11 make. I got myself into this predicament, and if there's one
12 principle I live by and what I want to teach my daughter is
13 that you take responsibility for your conduct, and that's what
14 I'm prepared to do. Thank you.

15 THE COURT: All right. All sentencings I find to be
16 difficult tragic in various respects. This is certainly a
17 tragic one and very unusual set of circumstances.

18 I can't recall a criminal sentencing proceeding that
19 got to this point where I had not indicated for the record what
20 my calculation of the guidelines was. But I haven't done that,
21 and the reason is the difficulty that I expressed early on that
22 I had with respect to the calculations, in particular with
23 respect to the loss.

24 I am for purposes of the sentencing accepting the
25 guideline calculations that are set out in the presentence

1 report. I use that word rather than "adopting," because it's
2 not as clear as I would like it to be with respect to the loss
3 figure. But it certainly is not unreasonable to accept what
4 has been presented as the loss here.

5 So the bottom line with respect to what we're looking
6 at in terms of guidelines is Offense Level 13, adjusted offense
7 13, Criminal History Category I, 12 to 18 months range of
8 sentencing.

9 Fine range of 3,000 to \$30,000. Supervised release
10 of two to three years.

11 And a special assessment of 100 dollars.

12 I'm going to enter a restitution order given the
13 agreed amount of the loss, and my understanding that
14 restitution has in fact already been paid. Nonetheless, the
15 record will reflect the entry of an order of restitution in the
16 amount of \$40,926.75 payable to Avcard.

17 Considering the guidelines and the basic question as
18 to whether a sentence within the guideline range would serve
19 all of the pertinent sentencing factors that are set out in
20 Title 18, Section 3553, brings me to the conclusion that the
21 guideline range sentence would not serve all those factors.
22 And so I'm going to impose a variant sentence based on the
23 following findings with respect to the sentencing factors.

24 Looking, first of all, at the nature and the
25 circumstances of the offense, to say the least, this is an

1 unusual fraud case. Not simply because it represents one of
2 those relatively unusual forms, the deprivation of honest
3 services, but it's unusual because essentially what appears
4 here is scheme that really didn't begin as a scheme but
5 apparently became one to gain a commercial advantage.

6 It certainly was not at its inception, in any event,
7 a clandestine unwritten conspiratorial type of an agreement to
8 engage in a criminal venture.

9 I don't think I've ever seen a conspiracy fraud case
10 where there was an open written arm's length contract entered
11 into, intended obviously to be a legally enforceable contract,
12 consulting contract with Mr. Bittenbender.

13 It's not entirely clear at what point in time it
14 became apparent to Mr. Cartwright that this did encompass a
15 criminal aspect to it, but it appears clear that that wasn't
16 the understanding at the outset.

17 In considering a sentence in a fraud case, one looks
18 at intended harm or actual harm. Here the intended harm to
19 Avcard is certainly not currently apparent on the face of the
20 basic facts. And it would have been an interesting case to
21 present to a jury, but I am satisfied that there's enough here
22 to warrant submission to the jury of the economic harm to
23 Avcard was reasonably foreseeable to the defendant. So the
24 nature and circumstances of the offense are unusual.

25 Looking then at the history and characteristics of

1 this defendant, you have a 42-year old college graduate,
2 married, three-year old daughter, obviously from what I have
3 been presented with and what I've heard today an exceptionally
4 strong family unit, strong family support.

5 And even though Mr. Cartwright has been charged as a
6 co-conspirator in a scheme to commit wire fraud, and even
7 though he's pled guilty, the evidence depicts an individual who
8 has never been, nor would I expect in the future that he would
9 be inclined toward criminal activity or any activity that may
10 border on a criminal act.

11 The individual that I see before me appears to be an
12 exceptionally intelligent, well-educated, energetic highly
13 motivated young man, who has invested considerable time and
14 effort and talent and resources in building and expanding
15 businesses that have succeeded, and, in my view, have provided
16 a visible example in a number of foreign jurisdictions of
17 American knowhow and some significant improvements in a sector
18 of international travel and service.

19 Mr. Levitt has articulated Mr. Cartwright's
20 additional and apparently unsolicited cooperation with the
21 government by reason of the recent proffer that was made.

22 In addition to all this exceptional talent and
23 entrepreneurial effort, Mr. Cartwright appears to have been
24 able to maintain a very stable and nurturing family life, which
25 is unusual.

1 I received a number of letters that Mr. Levitt
2 submitted from people, a test to the defendant's proclivity
3 toward helping others in a variety of ways, all of which attest
4 to an unusually favorable background, with positive input into
5 the community wherever the defendant has gone.

6 There are other sentencing factors that I have
7 considered and have been spoken to by both sides, the
8 seriousness of the offense. Knowing participation in an
9 unlawful conspiracy in violation of a federal law is, of
10 course, a serious matter.

11 It does appear, however, that Mr. Cartwright's
12 involvement in all of this was as a much less culpable
13 participant than others.

14 With respect to considering just punishment, Mr.
15 Cartwright has articulated in his allocution a number of things
16 that occurred to me, but he's articulated a lot more eloquently
17 than I'd thought about, to have been indicted, arrested as he
18 has described, now to be saddled with the tag as a convicted
19 felon, to have gone through the considerable agony and the
20 expense leading up to today, and face the stigma of all of this
21 in the future, provides considerable punishment in itself.

22 It's been indicated that there's been something like
23 a \$13 million loss of equity in his businesses. Certainly the
24 damage to the businesses and Mr. Cartwright's personal
25 reputation, which were built on I think about 15 years, if I'm

1 recalling correctly, of hard work and sacrifice, that's a lot
2 of damage. And this by itself, in my view, affords adequate
3 deterrence to any further criminal conduct.

4 I couldn't be more confident that the public need not
5 worry about any future criminal conduct on the part of Mr.
6 Cartwright.

7 Those are essentially my views on the 3553(a)
8 sentencing factors. Based on all of those views, my conclusion
9 is that a sentence that would be commensurate with a guideline
10 level somewhere between an adjusted offense level of 7 and 9 is
11 a more appropriate disposition.

12 And without projecting what may be likely in respect
13 to sentencings to come with respect to Mr. Wilkinson or Mr.
14 Bittenbender and corporations, my conclusion is that, with
15 respect to Mr. Cartwright, a sentence to a term of probation is
16 altogether appropriate.

17 Accordingly, Mr. Cartwright's going to be sentenced
18 to a term of probation of three years. The order of
19 restitution has already been indicated as a part of the
20 sentence and apparently has been paid.

21 The conditions of the probation are going to be in
22 addition to the standard conditions that are noted on the
23 judgment form. And, in that respect, I'm going to suspend the
24 drug monitoring condition. There is certainly no evidence of
25 any substance abuse.

1 I'm going to require that Mr. Cartwright perform 500
2 hours of community service at the direction of the probation
3 officer.

4 Because of the restitution order and the considerable
5 expense already incurred by Mr. Cartwright, I'm going to waive
6 the imposition of a fine.

7 Of course, a special assessment must be paid, and I
8 assume that will be paid today, if it hasn't been paid.

9 Mr. Cartwright has waived his right of appeal,
10 reserving it only if a sentence had been based upon an adjusted
11 offense level of 13, which it was not.

12 Mr. Terzaken has already moved for the dismissal of
13 Counts 1 and 3, and I think I already dismissed them. If I
14 didn't, they're dismissed.

15 I think that covers it, unless counsel have any
16 questions.

17 MR. LEVITT: Judge, is it necessary for the Court to
18 formally exonerate bail and to order that the bracelet be
19 removed? I'm not sure if that's required technically.

20 THE COURT: I think it's not required, but if it is,
21 it will be removed.

22 MR. LEVITT: Thank you.

23 MR. TERZAKEN: Nothing further from the government.

24 THE COURT: All right. Thank you, counsel. I
25 appreciate your assistance in making everything a lot clearer

1 than it was.

2 MR. LEVITT: Thank you, Judge.

3 THE DEFENDANT: Thank you.

4 THE COURT: You're welcome.

5 (Proceedings adjourned)

6

7 I, Jacqueline Sovich, RPR, CM, do hereby certify
8 that the foregoing is a correct transcript from the
 stenographic record of proceedings in the above-entitled
 matter.

9

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11 _____
 Jacqueline Sovich
 Official Court Reporter

DATE

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