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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE SUSAN ILLSTON

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	
)	
VS.)	NO. CR. 09-00110 SI
)	
AU OPTRONICS CORPORATION; AU)	
OPTRONICS CORPORATION AMERICA;)	
HSUAN BIN CHEN, AKA H. B. CHEN;)	
HUI HSIUNG, AKA KUMA,)	
)	SAN FRANCISCO, CALIFORNIA
DEFENDANTS.)	THURSDAY
)	SEPTEMBER 20, 2012
)	

TRANSCRIPT OF PROCEEDINGS

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FOR PLAINTIFF

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(FURTHER APPEARANCES ON FOLLOWING PAGES)

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(202) 637-5719**BY: CHRISTOPHER HANDMAN, ESQUIRE****ALSO PRESENT: LINH HA, CORPORATE REPRESENTATIVE**

PROCEEDINGS; THURSDAY, SEPTEMBER 20, 2012

THE CLERK: CRIMINAL 09-0110, UNITED STATES VERSUS HUI HSIUNG, HSUAN BIN CHEN, AU OPTRONICS CORPORATION AND AU OPTRONICS CORPORATION, AMERICAN.

COUNSEL, PLEASE STATE YOUR APPEARANCES.

MR. OSTERHOUDT: GOOD MORNING, YOUR HONOR. WILLIAM OSTERHOUDT, WITH BRIAN BERSON AND CHRIS HANDMAN, ON BEHALF OF DR. HSUING WHO'S PRESENT.

THE COURT: GOOD MORNING.

MR. ATTANSIO: GOOD MORNING, YOUR HONOR. MIKE ATTANASIO, ALONG WITH JOHN CIESLAK, ON BEHALF OF HSUAN BIN CHEN WHO IS HERE TODAY.

MR. JENKINS: GOOD MORNING, YOUR HONOR. KIRK JENKINS ON BEHALF OF AU OPTRONICS CORPORATION.

THE COURT: GOOD MORNING.

MR. RIORDAN: DENNIS RIORDAN ON BEHALF OF THE CORPORATION AS WELL, AUO AS WELL, YOUR HONOR.

THE COURT: GOOD MORNING.

MS. BOERSCH: GOOD MORNING, YOUR HONOR. MARTHA BOERSCH ON BEHALF OF AUO, THE CORPORATION.

AND I WANTED TO INTRODUCE LINH HA REPRESENTING THE CORPORATION.

THE COURT: GOOD MORNING. SAY THAT NAME AGAIN.

MS. BOERSCH: IT'S LINH HA. FIRST NAME LINH, LINH

1 LAST NAME HA, H-A.

2 **THE COURT:** AND THAT'S AUO AND AUOA OR JUST AUO?

3 **MR. HA:** JUST AUO, YOUR HONOR.

4 **THE COURT:** OKAY. THANK YOU.

5 **MR. CLINE:** GOOD MORNING, YOUR HONOR. JOHN CLINE FOR
6 AUO AMERICA. AND KC MAXWELL IS MY CO-COUNSEL. SHE'S BACK
7 THERE.

8 **THE COURT:** DO YOU HAVE A CORPORATE REPRESENTATIVE?

9 **MR. CLINE:** I DON'T THINK WE DO. I THINK MR. HA CAN
10 REPRESENT AUOA.

11 **MS. TEWKSBURY:** GOOD MORNING, YOUR HONOR. HEATHER
12 TEWKSBURY ON BEHALF OF THE UNITED STATES. I'M HERE WITH PETER
13 HUSTON, JON JACOBS, AND BRENT SNYDER.

14 **THE COURT:** GOOD MORNING.

15 **MR. MABIE:** AND, YOUR HONOR, CHARLIE MABIE, U.S.
16 PROBATION HERE FOR AARON TAM.

17 **THE COURT:** GOOD MORNING. IS THAT EVERYBODY? AND WE
18 HAVE WHATEVER INTERPRETERS WE NEED?

19 **THE INTERPRETER:** YES.

20 **THE CLERK:** YES.

21 **THE COURT:** YOU MAY BE SEATED IF YOU LIKE. WE HAVE A
22 LOT TO TALK ABOUT. I HAVE SOME ISSUES I WANT TO GO OVER. AT
23 THE END I'LL BE HAPPY TO HEAR ANYTHING ANYONE WANTS TO SAY.

24 AND MS. TEWKSBURY, WOULD YOU PLEASE MAKE SURE THAT I
25 REMEMBER TO ASK THE DEFENDANTS IF THEY WOULD TO ELOCUTE AT THE

1 END OF THE DAY? OKAY.

2 THE DEFENDANTS IN COURT THIS MORNING, AU OPTRONICS
3 CORPORATION, WHICH I'LL SOMETIMES CALLED AUO; AU OPTRONICS
4 AMERICA, WHICH I'LL SOMETIMES CALL AUOA; MR. HSUAN B. CHEN, WHO
5 I'LL SOMETIMES CALL H.B. CHEN, IF THAT'S ALL RIGHT; AND MR. HUI
6 HSUING, WHO SOMETIMES IS CALLED KUMA, AND IF THAT'S OKAY, I
7 SOMETIMES WILL CALL HIM KUMA ALSO BECAUSE I CAN PRONOUNCE THAT
8 A LITTLE BETTER, THESE FOUR DEFENDANTS HAVE BEEN CONVICTED OF
9 ONE COUNT OF 15 USC SECTION 1, WHICH IS PRICE FIXING. THEY
10 WERE CONVICTED ON MARCH 13TH OF THIS BASED ON A JURY VERDICT.

11 I HAVE RECEIVED AND REVIEWED THE FOLLOWING:

12 FOR EACH DEFENDANT I'VE RECEIVED AND REVIEWED A
13 PRESENTENCE REPORT AND SENTENCING RECOMMENDATION AND ADDENDUM.

14 FROM THE PLAINTIFF, THE GOVERNMENT, I HAVE RECEIVED A
15 SENTENCING MEMO WITH MANY ATTACHMENTS, INCLUDING DECLARATIONS,
16 AND A REPLY SENTENCING MEMO. AND I HAVE RECEIVED THE
17 GOVERNMENT'S OPPOSITION TO THE DEFENDANT'S MOTION TO STAY
18 SENTENCES PENDING APPEAL.

19 FROM AUO, I HAVE RECEIVED THE AUO SENTENCING MEMO
20 PART ONE; THE AUO SENTENCING MEMO PART TWO; THE AUO SENTENCING
21 MEMO PART TWO, JENKINS DECLARATION; THE AU SENTENCING MEMO PART
22 THREE; AUO'S RESPONSE TO THE GOVERNMENT'S SENTENCING MEMO
23 CONCERNING THE APPLICATION OF THE GUIDELINES AND CONDITIONAL
24 REQUEST FOR EVIDENTIARY HEARING; AND THE AUO RESPONSE TO THE
25 GOVERNMENT'S SENTENCING MEMO CONCERNING 3553 AND 3572; AND THE

1 AUO MOTION FOR A STAY PENDING APPEAL AND PAYMENT IN
2 INSTALLMENTS.

3 FROM AUOA, I'VE RECEIVED THE AUOA SENTENCING MEMO AND
4 THE AUOA MOTION FOR STAY PENDING APPEAL AND PAYMENT IN
5 INSTALLMENTS.

6 FROM MR. H.B. CHEN I'VE RECEIVED HIS, MR. H.B. CHEN'S
7 SENTENCING MEMO AND MOTION FOR DEPARTURE; MR. CHEN'S OPPOSITION
8 TO THE GOVERNMENT'S SENTENCING MEMO; AND MR. CHEN'S MOTION FOR
9 BAIL PENDING APPEAL.

10 FROM KUMA, I RECEIVED THE SENTENCING MEMO, MR. KUMA'S
11 SENTENCING MEMO, AND KUMA'S REPLY SENTENCING MEMO, AND HIS
12 MOTION FOR BAIL PENDING APPEAL.

13 IS THAT EVERYTHING? YES? ALL RIGHT.

14 SO, MR. HA, YOU'RE SPEAKING HERE AS A REPRESENTATIVE
15 BOTH OF AUO AND AUOA; IS THAT RIGHT, SIR?

16 **MR. HA:** YES.

17 **THE COURT:** DID YOU HAVE AN OPPORTUNITY TO REVIEW THE
18 PRESENTENCE REPORT THAT WAS PREPARED ABOUT AUO AND AUOA?

19 **MR. HA:** YES, I DID, YOUR HONOR.

20 **THE COURT:** MR. CHEN, DID YOU HAVE A CHANCE TO REVIEW
21 THE REPORT THAT WAS PREPARED ABOUT YOU?

22 **DEFENDANT CHEN:** YES.

23 **THE COURT:** AND MR. KUMA, DID YOU HAVE A CHANCE TO
24 REVIEW THE REPORT THAT WAS PREPARED ABOUT YOU?

25 **DEFENDANT HSIUNG:** YES.

1 **THE COURT:** ALL RIGHT. THANK YOU.

2 I NOTE, FROM HAVING REVIEWED THE PRESENTENCE REPORTS,
3 THAT THERE WERE CERTAIN UNRESOLVED OBJECTIONS, AND I'M GOING TO
4 GIVE YOU MY VIEW ON THOSE AT THIS TIME AND ON EVERYTHING ELSE.
5 AS I SAY, AT THE END, YOU MAY COMMENT.

6 I AM PREPARED AT THIS TIME TO OVERRULE ALL OF THE
7 OBJECTIONS THAT WERE LISTED. THAT WAS OBJECTIONS ONE THROUGH
8 SEVEN FOR AUO. THAT WAS OBJECTIONS ONE THROUGH SIX FOR AUOA.
9 THAT WAS ONE THROUGH ELEVEN FOR H.B. CHEN, AND OBJECTIONS ONE
10 THROUGH EIGHT FOR KUMA. THOSE ARE THE OBJECTIONS THAT WERE
11 LISTED AND ARTICULATED IN THE PSR'S THEMSELVES.

12 I AM PREPARED TO FIND THAT THE VOLUME OF COMMERCE
13 ATTRIBUTABLE TO THE DEFENDANTS MUST BE ESTABLISHED BY A
14 PREPONDERANCE OF THE EVIDENCE AS A SENTENCING FACTOR.

15 THE COURT HAS HAD THE OPPORTUNITY TO HEAR
16 MR. LEFFLER'S TESTIMONY AT TRIAL, AND I'VE REVIEWED THE LEFFLER
17 DECLARATION AND ANALYSIS THAT WAS INCLUDED IN THE SENTENCING
18 MEMORANDUM. I'VE ALSO HAD A CHANCE TO REVIEW DR. HALL'S
19 ANALYSIS, AND I FURTHER DID HEAR FROM MR. DEAL AT TRIAL.

20 I HAVE RECEIVED CONSIDERABLE BRIEFING ON THE
21 SENTENCING, HUNDREDS OF PAGES, AND IN EVALUATING ALL OF THIS
22 AND -- WELL, THE BRIEFING HAS EVALUATED IT, AND THE BRIEFING
23 HAS ARTICULATED AT SOME LENGTH AND IN CONSIDERABLE DETAIL
24 DEFENDANTS' VARIOUS POSITIONS ON ALL THESE ISSUES.

25 I AM PREPARED TO FIND THAT THE RECORD IS ADEQUATE TO

1 SUPPORT THE VOLUME OF COMMERCE AFFECTED TO BE \$2,340,000,000,
2 AND I AM PREPARED TO OVERRULE THE REQUEST FOR AN EVIDENTIARY
3 HEARING ON THIS MATTER. I THINK THE RECORD SUFFICIENTLY
4 SUPPORTS THAT FINDING.

5 THE COURT DISAGREES THE DEFENDANTS' CHALLENGES TO AND
6 ARGUMENTS ABOUT 18 USC 3571, WHICH IS THE ALTERNATIVE FINE
7 STATUTE, AND I AGREE WITH THE GOVERNMENT THAT THE MAXIMUM FINE
8 IN THIS CASE IS ONE BILLION DOLLARS.

9 THE COURT DISAGREES WITH THE CHALLENGES TO THE
10 PRESENTENCE REPORTS AND THE CHALLENGES TO THE GOVERNMENT'S
11 CALCULATIONS CONCERNING AFFECTED COMMERCE. AND I DISAGREE WITH
12 THE CHALLENGE TO THE 20 PERCENT PROXY ANALYSIS AND THE
13 GUIDELINES.

14 I AM PREPARED TO FIND THAT THE GUIDELINE ANALYSIS FOR
15 THE INDIVIDUALS THAT'S SET OUT IN THE PSR'S IS CORRECT. I
16 BELIEVE THE FOUR-LEVEL UPWARD ADJUSTMENT FOR ROLE IN THE
17 OFFENSE UNDER 3(B)(1.1)(A) IS APPROPRIATE. THESE INDIVIDUALS
18 WERE ORGANIZERS OR LEADERS OF A CRIMINAL ACTIVITY THAT INVOLVED
19 FIVE OR MORE PARTICIPANTS AND WAS OTHERWISE EXTENSIVE.

20 AND I ALSO AGREE THERE SHOULD BE NO DOWNWARD
21 ADJUSTMENT FOR ACCEPTANCE OF RESPONSIBILITY.

22 THE CALCULATION ON THE GUIDELINE ANALYSIS THAT'S SET
23 OUT IN THE PSR'S AND WHICH THE COURT IS PREPARED TO ACCEPT IS
24 AS FOLLOWS:

25 FOR AUO, THE PSR SUGGESTS THAT THE GUIDELINE RANGE IS

1 A FINE BETWEEN \$936 MILLION AND \$1.872 BILLION COMPUTED ON THE
2 GUIDELINE AS FOLLOWS:

3 TWELVE IS THE BASE OFFENSE LEVEL UNDER 2(R)(1.1)(A).
4 ADD 16 OFFENSE LEVELS FOR THE SPECIFIC OFFENSE IN THAT OVER
5 \$1.5 BILLION IN COMMERCE WAS ATTRIBUTABLE TO THE DEFENDANTS,
6 GIVEN THE ESTIMATE OF 2.34 BILLION PANEL SALES THAT AFFECTED
7 U.S. COMMERCE. THAT GIVES YOU TOTAL OFFENSE LEVEL OF 28.

8 THE BASE FINE IN THE GUIDELINES IS 20 PERCENT OF
9 AFFECTED COMMERCE UNDER 2(R)(1.1)(D)(1). THAT IS \$486 MILLION.

10 THEN THE CULPABILITY SCORE CALCULATED UNDER 8(C)(2.5)
11 IS FIVE FOR THE BASE CULPABILITY SCORE, UP FIVE MORE FOR
12 INVOLVEMENT IN OR TOLERANCE OF CRIMINAL ACTIVITIES WITH OVER
13 5,000 EMPLOYEES, AND AT LEAST ONE INDIVIDUAL WITH A HIGH
14 LEVEL -- WITH ONE INDIVIDUAL WITHIN HIGH LEVEL PERSONNEL
15 PARTICIPATED IN AND CONDONED THE OFFENSE. THAT'S UNDER
16 8(C)(2.5)(B)(1)(A)(1).

17 THAT GIVES YOU A TOTAL CULPABILITY SCORE OF TEN.
18 THIS GIVES YOU MULTIPLIERS BETWEEN 2.0 AND 4.0 BY APPLYING
19 8(C)(2.6) TO THE CULPABILITY SCORE OF TEN. THIS GIVES YOU A
20 FINE RANGE OF BETWEEN \$936 MILLION AND \$1.872 BILLION UNDER
21 8(C)(2.7). THE GUIDELINES PROVIDE FOR PROBATION BETWEEN ONE
22 AND FIVE YEARS AND A MANDATORY SPECIAL ASSESSMENT OF \$400.

23 WITH RESPECT TO AUOA, THE ANALYSIS IS SIMILAR
24 ALTHOUGH SLIGHTLY DIFFERENT. THE FINE THERE IS BETWEEN \$842.4
25 MILLION AND \$1.684 BILLION COMPUTED AS FOLLOWS:

1 THERE'S THE BASE OFFENSE LEVEL OF 12, 16-LEVEL
2 INCREASE FOR THE SPECIFIC OFFENSE, GIVEN THE ESTIMATE OF
3 2.34 BILLION IN PANEL SALES THAT AFFECTED U.S. COMMERCE. THAT
4 GIVES YOU 28 AS A TOTAL OFFENSE LEVEL. TWENTY PERCENT OF
5 AFFECTED COMMERCE WOULD AGAIN BE 468 MILLION. HOWEVER, THE
6 CULPABILITY SCORE DIFFERS A LITTLE BIT. THERE WOULD BE FIVE AS
7 A BASE CULPABILITY SCORE, UP ONE FOR INVOLVEMENT IN OR
8 TOLERANCE OF CRIMINAL ACTIVITIES.

9 AUOA IS A SMALLER COMPANY, OVER TEN EMPLOYEES, AND AT
10 LEAST ONE INDIVIDUAL WITH SUBSTANTIAL AUTHORITY PARTICIPATED IN
11 AND CONDONED THE OFFENSE. THAT'S UNDER 8(C)(2.5). THAT'S JUST
12 UP ONE. UP THREE -- AND THIS IS SLIGHTLY DIFFERENT FROM AUO AS
13 WELL.

14 UP THREE FOR OBSTRUCTION OF JUSTICE, IN THAT THERE
15 WAS THE INSTRUCTION TO DESTROY DOCUMENTS. THAT'S UNDER
16 8(C)(2.5)(E), AND THAT GIVES YOU A TOTAL CULPABILITY SCORE OF
17 NINE. THEREFORE, THE MULTIPLIERS ARE BETWEEN 1.8 AND 3.6, AND
18 THE FINE RANGE IS BETWEEN 842.4 MILLION AND 1.684 BILLION, WITH
19 A MANDATORY SPECIAL ASSESSMENT OF \$400 AND A PROBATION
20 GUIDELINE OF ONE TO FIVE YEARS.

21 WITH RESPECT TO MR. CHEN, THE SENTENCING RANGE WOULD
22 BE 121 TO 151 MONTHS, BUT BECAUSE 120 MONTHS IS THE MAXIMUM
23 PERMISSIBLE SENTENCE, THAT IS THE GUIDELINE RANGE, 120 MONTHS.
24 YOU GET THERE AS FOLLOWS:

25 TWELVE IS THE BASE OFFENSE LEVEL UNDER 2(R)(1.1)(A).

1 YOU ADD 16 FOR THE SPECIFIC OFFENSE GIVEN THE VOLUME OF
2 AFFECTED COMMERCE. YOU ADD FOUR FOR AGGRAVATING ROLE IN THE
3 OFFENSE, AS MR. CHEN WAS A LEADER OR -- ORGANIZER OR LEADER OF
4 AN ACTIVITY INVOLVING MORE THAN FIVE PEOPLE. THIS GIVES YOU A
5 TOTAL OFFENSE LEVEL OF 32, AND I FIND NO OTHER ADJUSTMENTS ARE
6 WARRANTED.

7 THE CRIMINAL HISTORY IS ONE. THAT'S BECAUSE THERE
8 ARE ZERO POINTS, THERE IS NO CRIMINAL HISTORY. THAT GIVES YOU
9 THE 120-MONTH GUIDELINE RANGE. GUIDELINE FINES IS ONE MILLION
10 DOLLARS. THE SPECIAL ASSESSMENT IS ONE HUNDRED DOLLARS. AND
11 THE PERIOD OF SUPERVISED RELEASE UNDER THE GUIDELINES IS ONE TO
12 THREE YEARS.

13 WITH RESPECT TO MR. HUI HSUING, MR. KUMA, THE
14 SENTENCING RANGE IS THE SAME, EXACTLY THE SAME AS FOR MR. CHEN,
15 AND, THEREFORE, YOU GET -- AND THE CRIMINAL HISTORY IS ZERO
16 POINTS, EXACTLY THE SAME. AND SO THE GUIDELINE RANGE IS 120
17 MONTHS. GUIDELINE FINE IS \$1 MILLION. SPECIAL ASSESSMENT IS
18 ONE HUNDRED DOLLARS. AND THE SUPERVISED RELEASE IS ONE TO FIVE
19 YEARS.

20 HAVE I GOT THAT WRONG?

21 **THE CLERK:** YOU SAID ONE TO THREE ON...

22 **THE COURT:** I'M SORRY. ONE TO THREE YEARS.

23 NOW, WITH RESPECT TO THE CORPORATE DEFENDANT AUO, THE
24 PROBATION OFFICER HAS RECOMMENDED A \$500 MILLION FINE, THREE
25 YEARS OF PROBATION CONDITIONED ON ADOPTING AND IMPLEMENTING AN

1 ANTITRUST COMPLIANCE PROGRAM, AND CONDITIONED ON FORMAL AND
2 PUBLIC ACKNOWLEDGMENT OF THE OFFENSE, AND A \$400 ASSESSMENT.

3 THE GOVERNMENT IN ITS PAPERS HAS REQUESTED A ONE
4 BILLION DOLLAR FINE, HAS REQUESTED PROBATION CONDITIONED ON AN
5 ANTITRUST COMPLIANCE PROGRAM AND THAT AN INDEPENDENT MONITOR BE
6 HIRED.

7 THE DEFENDANT ARGUES THAT IT SHOULD PAY NO GREATER
8 THAN EITHER \$100 MILLION OR NO GREATER THAN \$285 MILLION BY WAY
9 OF FINE.

10 FOR AUOA, THE PROBATION OFFICER HAS RECOMMENDED NO
11 FINE, A THREE-YEAR PERIOD OF PROBATION CONDITIONED ON ADOPTING
12 AND IMPLEMENTING AN ANTITRUST COMPLIANCE PROGRAM AND A \$400
13 SPECIAL ASSESSMENT.

14 GOVERNMENT HAS REQUESTED NO FINE AND PROBATION
15 CONDITIONED ON AN ANTITRUST COMPLIANCE PROGRAM AND HIRING OF AN
16 INDEPENDENT MONITOR, AND THE DEFENDANT REQUESTS NO FINE.

17 MR. CHEN -- AS TO MR. CHEN, THE PROBATION OFFICER HAS
18 RECOMMENDED A 120-MONTH PRISON SENTENCE, A \$500,000 MILLION --
19 A \$500,000 FINE, A \$100 DOLLAR SPECIAL ASSESSMENT, AND THREE
20 YEARS OF SUPERVISED RELEASE.

21 THE GOVERNMENT HAS REQUESTED A 120-MONTH IN PRISON
22 AND A ONE MILLION DOLLAR FINE.

23 THE DEFENDANT HAS REQUESTED A LOT LESS THAN THAT,
24 MAYBE SEVEN MONTHS, BUT A LOT LESS, AND A SMALLER FINE AND NO
25 SUPERVISED RELEASE.

1 OKAY. STRIKE WHAT I JUST SAID ABOUT WHAT THE
2 DEFENDANT HAS REQUESTED.

3 MR. CHEN HAS REQUESTED A DOWNWARD DEPARTURE, SAYS
4 HE'S NOT IN THE HEARTLAND, AND HE WANTS A LOT LESS AND A
5 SMALLER FINE.

6 AS TO MR. KUMA, THE PROBATION OFFICER HAS RECOMMENDED
7 120 MONTHS IN PRISON, A \$500,000 FINE, A ONE HUNDRED DOLLAR
8 SPECIAL ASSESSMENT, THREE YEARS OF SUPERVISED RELEASE.

9 THE GOVERNMENT HAS REQUESTED 120 MONTHS IN PRISON AND
10 A ONE MILLION DOLLAR FINE. AND MR. KUMA'S LAWYERS HAVE
11 REQUESTED A LOT LESS, MAYBE SEVEN MONTHS, MAYBE LESS, A SMALLER
12 FINE AND NO SUPERVISED RELEASE.

13 THIS WAS A SERIOUS AND A FAR-REACHING CONSPIRACY.
14 IT'S THE COURT'S FINDING THAT IT WAS PROVED BEYOND PERADVENTURE
15 AT TRIAL THAT THIS CONSPIRACY EXISTED AND WAS AFFECTED AND
16 CAUSED EXACTLY THE DAMAGES SET OUT.

17 THE COURT FULLY AGREES WITH THE JURY'S VERDICT BASED
18 ON THE OVERWHELMING EVIDENCE AT TRIAL.

19 THE COURT ALSO AGREES THAT THE FINANCIAL CONSEQUENCES
20 TO THE U.S. MARKET WERE ENORMOUS.

21 THE COURT RECOGNIZES THAT OTHER DEFENDANTS ADMITTED
22 THEIR CONDUCT AND GOT OUT EARLY, AND SOME COOPERATED. THE AUO
23 DEFENDANTS DID NOT DO THAT. BUT THE TRIAL MADE IT CRYSTAL
24 CLEAR THAT THEY ARE GUILTY.

25 AS TO THE CORPORATIONS ON THE SENTENCE, IT'S

1 DIFFICULT TO KNOW EXACTLY THE SENTENCE HERE. THE COURT AGREES
2 WITH THE PROBATION OFFICER THAT ANY FINE AS TO AUOA WOULD
3 EFFECTIVELY BE PILING ON, SO I'M NOT GOING TO IMPOSE A FINE ON
4 AUOA.

5 AS TO AUO, THE GOVERNMENT HAS REQUESTED A ONE BILLION
6 DOLLAR FINE TO UNDERSCORE THE SERIOUSNESS OF THE MATTER. THE
7 PROBATION OFFICER HAD RECOMMENDED A \$500 MILLION FINE FOR THE
8 SAME REASON. AND THE COURT IS PREPARED TO SENTENCE IN
9 ACCORDANCE WITH THE RECOMMENDATION OF THE PROBATION OFFICER.

10 I FIND THAT HERE THE FINANCIAL RAMIFICATIONS TO THESE
11 DEFENDANTS HAVE ALREADY BEEN MASSIVE, AND THEY ARE NOT OVER
12 YET. THERE'S STILL A LOT OF CIVIL SUITS OUT THERE. THE DIRECT
13 PURCHASER PLAINTIFF CLASSES, THE INDIRECT PURCHASERS PLAINTIFF
14 CLASSES HAVE BEEN PAID LARGE AMOUNTS. OTHER ACTIONS ARE STILL
15 IN PROGRESS AND WILL LIKELY RESULT IN FURTHER PAYMENTS.

16 THE COURT AGREES WITH THE PROBATION OFFICER THAT NO
17 SEPARATE RESTITUTION SHOULD BE AWARDED SINCE THE CIVIL ACTIONS
18 ARE EFFECTIVELY MAKING PAYMENTS TO THE VICTIMS.

19 THE COURT PREFERS THAT AUO PAY THE VICTIMS NOT -- AS
20 OPPOSED TO FINES. SO I AM PREPARED TO FIND THAT A \$500 MILLION
21 FINE IS ENOUGH, BUT NOT EXCESSIVE.

22 I DO WANT TO SAY THIS: AUO AND AUOA AND THE
23 INDIVIDUAL DEFENDANTS HERE HAVE PRODUCED AN EXTREMELY USEFUL
24 PRODUCT, AND IT REALLY HAS CHANGED THE WORLD; HOW WE LIVE, AND
25 HOW WE FUNCTION, AND HOW WE PROCESS INFORMATION, AND HOW WE

1 LIVE OUR LIVES, AND HOW WE CONDUCT OUR GOVERNMENT. SO, I DON'T
2 MEAN IN ANY WAY TO DENIGRATE THE IMPORTANCE OF THE PRODUCTS
3 THESE DEFENDANTS HAVE SUPPLIED TO THE WORLD. THEY ARE VERY
4 IMPORTANT, AND I THINK THAT WE NEED TO ASSURE THAT BUSINESSES
5 PRODUCING USEFUL PRODUCTS WITH SERVICES TO PROVIDE TO THE
6 COMMUNITY AND THE WORLD NOT BE PENALIZED TO THE POINT WHERE
7 THEY ARE NO LONGER ABLE TO DO THAT.

8 SO I THINK THE ONE BILLION DOLLAR FINE REQUESTED BY
9 THE GOVERNMENT, ALTHOUGH DRAMATIC, IS SIMPLY SUBSTANTIALLY
10 EXCESSIVE TO THE NEEDS OF THIS MATTER.

11 I FIND THAT -- I BELIEVE THAT THE FINES THAT HAVE
12 ALREADY BEEN IMPOSED, THE FINES THAT AUO WILL BE PAYING, THE
13 MONEY THAT'S BEEN PAID OVER TO THE VARIOUS VICTIMS IN THESE
14 CASES, PLUS THE TRIAL, PLUS THE ENORMOUS COSTS IN MONEY AND IN
15 TIME AND IN EMOTION OF THESE TRIALS HAS -- CERTAINLY HAD GOTTEN
16 THE ATTENTION OF THE DEFENDANTS IN THIS CASE, AND THAT'S WHY I
17 FIND THAT \$500 MILLION IS ADEQUATE BUT NOT EXCESSIVE.

18 I WANT TO SAY SOMETHING ELSE BOTH ABOUT THE
19 CORPORATIONS AND ABOUT THE INDIVIDUALS. I WILL GET TO THE
20 INDIVIDUALS IN A MINUTE. BUT VERY OFTEN WHEN ONE COMES TO TIME
21 OF SENTENCING AND DEFENDANTS ARE ASKED IF THERE'S ANYTHING THEY
22 WOULD LIKE TO SAY, THEY VERY OFTEN SAY: OH, I RECOGNIZE THAT I
23 MADE POOR CHOICES IN THIS CASE, AND THAT MY JUDGMENT WAS POOR,
24 AND I APOLOGIZE FOR MY POOR JUDGMENT AND MY BAD CHOICES.

25 MY RESPONSE TO THAT IS VERY OFTEN THAT YOU MADE FAR

1 MORE THAN BAD CHOICES IN THIS CASE, YOU COMMITTED FELONIES, AND
2 LET'S GET ON WITH IT. IN THIS CASE, THOUGH, I THINK THAT THOSE
3 EXPLANATIONS ACTUALLY ARE QUITE APT.

4 THERE WAS ENORMOUSLY BAD JUDGMENT EXERCISED BY THIS
5 CORPORATION, THESE DEFENDANTS, AND THE OTHER CORPORATIONS
6 ENGAGED IN THIS CONDUCT, AND THEY MADE POOR CHOICES, AND
7 THEY'RE BEING -- BECAUSE THOSE INVOLVED CRIMINAL CHOICES, THEY
8 ARE BEING PUNISHED FOR THOSE CRIMES. THAT'S REALLY WHAT WAS
9 HAPPENING IN THIS INSTANCE, AND SO I THINK THESE PUNISHMENTS
10 ARE APPROPRIATE FOR THAT.

11 AS TO MR. CHEN, HE WAS THE PRESIDENT AND THE CHIEF
12 OPERATING OFFICER OF AUO. HE'S 60 YEARS OLD. HE HAS NO
13 CRIMINAL RECORD. HE'S A WELL-RESPECTED CITIZEN OF TAIWAN.
14 HE'S INTELLIGENT. HE HAS A STRONG WORK ETHIC. HE'S AN
15 INDUSTRY LEADER. HE HAS STRONG FAMILY RELATIONSHIPS. HE'S
16 WEALTHY. HE IS GENEROUS WITH HIS PERSONAL WEALTH.

17 THE GUIDELINES REQUIRE AND THE 3553(A) FACTORS
18 REQUIRES THAT THEIR SENTENCE BE SUFFICIENT BUT NOT GREATER THAN
19 NECESSARY TO PUNISH THIS CRIME AND TO FULFILL THE OBJECT OF THE
20 SENTENCING STATUTES.

21 IT WAS A SERIOUS CRIME, BUT THE BUSINESS LOGIC OF
22 ASSISTING A FLEDGLING INDUSTRY IN ANOTHER COUNTRY AND IN
23 ANOTHER CULTURE AND ACTING IN AND FOR THE BENEFIT OF HIS
24 COMPANY AND OTHERS IN THE INDUSTRY ARE OFFSETTING FEATURES OF
25 THIS CRIME. THEY DON'T MAKE IT NOT A CRIME. THEY DON'T EXCUSE

1 IT, BUT THEY GO A LONG WAY TO EXPLAIN IT.

2 THE CAREFUL NOTES IN THE AGENDAS THAT WERE PREPARED
3 IN THIS CASE NOT ONLY MADE THE EVIDENCE IN THE CASE
4 OVERWHELMING, BUT THEY ALSO CONVINCED ME THAT FOR A
5 CONSIDERABLE PERIOD OF TIME THE DEFENDANTS THOUGHT THEY WERE
6 DOING THE RIGHT THING VIS-A-VIS THEIR INDUSTRY AND THEIR
7 COMPANIES. THEY WEREN'T, BUT THAT'S WHAT THEY THOUGHT AT THE
8 TIME.

9 I DON'T MEAN TO SUGGEST THEY DIDN'T KNOW IT WAS
10 ILLEGAL. I THINK THEY DID KNOW IT WAS ILLEGAL. BUT THERE WERE
11 A LOT OF BUSINESS PRESSURES THAT THEY WERE RESPONDING TO, AND
12 THAT'S WHAT THEY DID.

13 THESE WERE POOR CHOICES. IT WAS BAD JUDGMENT. BUT
14 THERE WAS NO -- THERE WAS RELATIVELY LITTLE PERSONAL
15 MOTIVATION.

16 I CONTRAST THE CASE BEFORE ME WITH, FOR EXAMPLE, SOME
17 OF THE MAIL FRAUD AND WIRE FRAUD AND OTHER KINDS OF FRAUD CASES
18 WHICH WE SEE THAT INVOLVE PERHAPS SMALLER DOLLAR AMOUNTS BUT
19 ACTORS WHO TOOK MONEY SO THEY COULD KEEP IT AND SPEND IT. THAT
20 WASN'T REALLY WHAT HAPPENED HERE. THERE CERTAINLY WERE
21 BENEFITS FLOWING TO THESE DEFENDANTS FROM WHAT THEY DID, BUT IT
22 WAS A DIFFERENT KIND OF CRIME FROM THOSE PERSONAL FRAUD CRIMES.

23 THE OTHER DEFENDANTS IN THIS CASE WERE SENTENCED TO
24 PRISON FOR PERIODS OF BETWEEN SIX MONTHS AND FOURTEEN MONTHS.
25 THOSE INDIVIDUALS WERE IN VERY DIFFERENT CIRCUMSTANCES,

1 HOWEVER, FROM MR. CHEN.

2 BASED ON ALL OF THESE CIRCUMSTANCE, I FIND IT IS
3 APPROPRIATE TO IMPOSE A SENTENCE OF 36 MONTHS IN PRISON ON
4 MR. CHEN.

5 AS TO A FINE, MY PRELIMINARY VIEW IS \$200,000 IS AN
6 APPROPRIATE FINE FOR MR. CHEN.

7 AS TO MR. KUMA, HE WAS THE EXECUTIVE VICE PRESIDENT
8 OF SALES OF AUO. HE'S 58 YEARS OLD. HE HAS NO CRIMINAL
9 RECORD. HE IS A WELL-RESPECTED CITIZEN OF TAIWAN. HE'S
10 INTELLIGENT, HAS A STRONG WORK ETHIC. HE'S AN INDUSTRY LEADER.
11 STRONG FAMILY RELATIONSHIPS. HIS PARENTS FLED CHINA FOR TAIWAN
12 DURING CIVIL UNREST IN CHINA. HIS FAMILY IS SUPPORTIVE,
13 ESPECIALLY HIS MOTHER, WHO HAS TAKEN THE LABORING OAR IN
14 BRINGING HIM UP. AGAIN, HIS SENTENCE MUST BE SUFFICIENT, BUT
15 NOT GREATER THAN NECESSARY.

16 THIS IS A SERIOUS CRIME, BUT THE THINGS I SUGGESTED
17 ABOUT MR. CHEN APPLY ALSO TO MR. KUMA, BUT THE CIRCUMSTANCES OF
18 THIS CASE WERE DIFFERENT FROM MANY OF THE CRIME -- THE FRAUD
19 TYPE CRIMES THAT WE SEE IN THIS COURT.

20 SO, AGAIN, I FIND THAT THERE WERE REASONS FOR
21 COMMITTING THESE ACTS. I THINK THE DEFENDANT KNEW THEY WERE
22 WRONG AND KNEW THEY WERE ILLEGAL, BUT THERE WERE REASONS THAT
23 THEY -- THAT THEY HAD THAT MAKES THIS A DIFFERENT CIRCUMSTANCE
24 FROM MANY OTHERS THAT I FACE.

25 SO, AGAIN, I FIND THAT A SENTENCE OF 36 MONTHS IS THE

1 APPROPRIATE SENTENCE HERE.

2 SO THOSE ARE MY PRELIMINARY VIEWS, AND I'LL BE HAPPY
3 TO HEAR FROM COUNSEL.

4 **MR. RIORDAN:** YOUR HONOR, COULD WE HAVE A MOMENT WITH
5 COUNSEL?

6 **THE COURT:** YES, YOU MAY.

7 (PAUSE IN PROCEEDINGS.)

8 **MR. RIORDAN:** YOUR HONOR, IN TERMS OF THE SENTENCE
9 THE COURT HAS ANNOUNCED, WE WILL STAND ON OUR BRIEFING. WE
10 WOULD RESERVE THE RIGHT TO MAKE A RESPONSE IF THE GOVERNMENT
11 ADDRESSES THE COURT. AND OTHER THAN THAT, WE'D WAIT UNTIL THE
12 ISSUE OF -- TO DISCUSS THE STAY ISSUE AND SO FORTH IN TERMS OF
13 PAYMENT.

14 THANK YOU, YOUR HONOR.

15 **MR. HUSTON:** BEFORE MS. TEWKSBURY SPEAKS, YOU DIDN'T,
16 I DON'T THINK, MENTION A FINE WITH RESPECT TO KUMA. I DON'T
17 KNOW IF IT WAS AN OVERSIGHT.

18 **THE COURT:** IT WAS AN OVERSIGHT. THANK YOU. IT WAS.
19 THAT WOULD BE \$200,000. THANK YOU, MR. HOUSTON.

20 **MS. TEWKSBURY:** YOUR HONOR, IF I MAY ADDRESS THE
21 COURT'S DETERMINATION THAT A BILLION DOLLARS IS SUBSTANTIALLY
22 EXCESSIVE TO THE NEEDS OF THIS MATTER?

23 THE UNITED STATES CONTINUES TO RECOMMEND THE COURT
24 IMPOSE THE MAXIMUM FINE AVAILABLE TO IT UNDER SECTION 3571(D)
25 AND THE SENTENCING GUIDELINES. MAXIMUM SENTENCES SHOULD BE

1 RESERVED FOR THE WORST OFFENDERS, AND THESE DEFENDANTS MEET
2 THAT DESCRIPTION BASED ON A COMBINATION OF FACTORS NEVER BEFORE
3 SEEN IN A SINGLE CASE IN FRONT OF THE ANTITRUST DIVISION.

4 FIRST, THESE DEFENDANTS PLAYED PIVOTAL ROLES IN A
5 GLOBAL CONSPIRACY THAT HAD AN UNPRECEDENTED IMPACT ON THE
6 POCKETBOOKS OF COUNTLESS AMERICAN CONSUMERS. NEVER BEFORE HAS
7 THE ANTITRUST DIVISION SEEN A CONSPIRACY SO PERVASIVE AND
8 AFFECTING A PRODUCT IN DEMAND WITHIN SO MANY U.S. HOMES AND
9 BUSINESSES.

10 SECOND, DEFENDANTS H.B. CHEN AND DR. HSUING WERE
11 AUO'S MOST SENIOR EXECUTIVES, AND AUO BEGAN PARTICIPATING IN
12 THIS CONSPIRACY FROM ITS VERY INCEPTION UNTIL THE DAY THE FBI
13 RAIDED ITS OFFICES.

14 RARELY DOES THE ANTITRUST DIVISION SEE A CONSPIRACY
15 REACH SO HIGH WITHIN AN ORGANIZATION, THAT EVEN THE COMPANY'S
16 PRESIDENT AND EXECUTIVE VICE PRESIDENT ARE LEADING ITS CHARGE.

17 WHILE IT'S TRUE THAT THESE TWO FACTORS, THE MASSIVE
18 HARM CAUSED TO U.S. CONSUMERS BY THIS CONSPIRACY AND THE
19 PARTICIPATION OF TOP EXECUTIVES DESCRIBE ALL THE COMPANIES
20 INVOLVED IN IT, THESE PARTICULAR DEFENDANTS AUO, AUO AMERICA,
21 H.B. CHEN AND DR. HSUING, ARE SET APART FOR SENTENCING PURPOSES
22 BY THEIR UTTER LACK OF ACCEPTANCE OF RESPONSIBILITY.

23 THEY REFUSED TO ACCEPT RESPONSIBILITY AND INSTEAD
24 TOOK A GAMBLE, WHICH WAS TOTALLY WITHIN THEIR RIGHTS TO DO, BUT
25 THEY LOST, REALLY LEAVING THIS COURT AND THE GOVERNMENT WITH NO

1 JUSTIFIABLE BASIS TO DEPART.

2 WHILE IT'S ALSO TRUE THAT COURTS AROUND THE COUNTRY
3 HAVE SENTENCED MEMBERS OF INTERNATIONAL CARTELS THAT CAUSE
4 MASSIVE HARM AND EVEN EXECUTIVES THAT ARE IN HIGH-LEVEL
5 POSITIONS, THERE IS NO PRECEDENT FOR THE COMBINATION OF THESE
6 FACTORS THAT MATCH THIS CARTEL OR THESE DEFENDANTS.

7 PERHAPS THE CLOSEST CASE THAT WE'VE SEEN IS ADM AND
8 ITS TOP EXECUTIVES IN THE MID '90'S. ADM, HOWEVER, PLED GUILTY
9 TO FIXING PRICES OF LYSINE AND CITRIC ACID. AT THE TIME THESE
10 CARTELS WERE CONSIDERED THE MOST SERIOUS THE DIVISION HAD EVER
11 PROSECUTED. AND THE SENTENCING COURT UNDER 3571(D) AND
12 PURSUANT TO A PLEA AGREEMENT SENTENCED ADM TO A HUNDRED
13 MILLION, TEN TIMES THE THEN STATUTORY MAX OF TEN MILLION. THIS
14 WAS WITHOUT THE BENEFIT OF A DETERMINATION OF OVERCHARGE BY A
15 JURY, AND THIS IS THE ONLY CASE WHERE SUCH A VERDICT HAS EVER
16 BEEN REQUESTED.

17 NOW, A HUNDRED MILLION AT THE TIME WAS RECORD
18 SETTING, AND IN THE YEARS THAT FOLLOWED, THE ANTITRUST DIVISION
19 SECURED FINES THAT WERE UP TO FIVE TIMES THE ADM FINE,
20 INCLUDING A FINE AGAINST VITAMINS PRODUCER HOFFMAN-LA ROCHE,
21 WHICH WAS FINED \$500 MILLION 13 YEARS AGO, AND THAT WAS AFTER
22 IT ACCEPTED RESPONSIBILITY, PLEAD GUILTY, AND AS SECOND IN
23 COOPERATOR SUBSTANTIALLY ASSISTED THE GOVERNMENT IN ITS
24 PROSECUTION OF NUMEROUS COMPANIES AND INDIVIDUALS.

25 THESE RECORD FINES DID RECEIVE WIDESPREAD PUBLICITY

1 THAT REACHED ALL THE WAY TO ASIA, YET IT DIDN'T DETER THIS
2 CARTEL. IN FACT, JUST TWO YEARS LATER, AUO AND ITS
3 COCONSPIRATORS WERE MEETING SECRETLY IN A HOTEL ROOM AND
4 HATCHING A PLAN TO FIX PRICES THAT EXTENDED FIVE YEARS.

5 \$500 MILLION IS NOT ENOUGH TO DETER CARTELS LIKE THIS
6 FROM FORMING.

7 ADM PLED GUILTY AND RECEIVED A RECORD-SETTING FINE,
8 BUT ITS EXECUTIVES, LIKE THE EXECUTIVES HERE, DECIDED TO
9 EXERCISE THEIR RIGHT AND TAKE THE GOVERNMENT TO TRIAL. THEY
10 TOOK A GAMBLE AND THEY LOST, AND THEIR GUIDELINE SENTENCE RANGE
11 REFLECTED THEIR LACK OF ACCEPTANCE OF RESPONSIBILITY, AND THEY
12 WERE AT THE STATUTORY MAX AS WELL.

13 THE ANTITRUST DIVISION ASKED THE COURT TO IMPOSE THE
14 STATUTORY MAX, WHICH AT THAT TIME WAS THREE YEARS, JUST WHAT
15 THE COURT IS RECOMMENDING FOR THESE DEFENDANTS.

16 THE COURT SENTENCED THE EXECUTIVE VICE PRESIDENT TO
17 THE STATUTORY MAX, AND HIS RIGHT-HAND MAN, SHE SENTENCED HIM TO
18 THREE MONTHS SHY OF IT.

19 THE COOPERATING WITNESSES WHO TESTIFIED AGAINST THOSE
20 EXECUTIVES BACK THEN IN THE ADM CASE WERE ALSO TESTIFYING
21 PURSUANT TO PLEA AGREEMENTS, BUT THEY RECEIVED NO JAIL TIME,
22 NONE AT ALL.

23 DESPITE HAVING KNOWN THIS FROM THE OUTSET, HAVING
24 KNOWN THEY FACED A BILLION DOLLAR FINE AND SIGNIFICANT JAIL
25 TERMS, THE DEFENDANTS NOW COMPLAIN THAT THEY WERE SOMEHOW BEING

1 PUNISHED FOR HAVING EXERCISED THEIR RIGHT TO GO TO TRIAL AND
2 PUT THE GOVERNMENT TO ITS PROOF.

3 THEY ROLLED THE DICE, AND HAD THEY BEEN RIGHT AND THE
4 GOVERNMENT COULD NOT PROVE OVERCHARGES SUFFICIENT TO YIELD A
5 BILLION DOLLAR FINE, THEN THEY WOULD HAVE THE BENEFIT OF THAT
6 GAMBLE. BUT HAVING LOST, THEY ARE STUCK WITH THE CONSEQUENCES,
7 YET THEY NOW COMPLAIN THAT THESE CONSEQUENCES, WHICH THEY HAVE
8 ALWAYS KNOWN, NOW SOMEHOW THESE KNOWN AND CALCULATED RISKS ARE
9 CONSIDERED DRACONIAN BY THEM.

10 IF THE DEFENDANTS DO CHOOSE TO ADDRESS A COUPLE OF
11 ISSUES, I WOULD LIKE TO FRONT THEM HERE, ALTHOUGH THE COURT
12 HAS, WE BELIEVE, MADE THE RIGHT DETERMINATION ON THEM.

13 IT'S NOT THE GOVERNMENT WHO IS ASKING THE COURT TO DO
14 ANYTHING UNPRECEDENTED HERE. THE GOVERNMENT ONLY ASKED COURT
15 TO APPLY 3571(D), JUST AS IT DID WITH LG AND CMO IN THIS CASE.
16 THE GOVERNMENT ASKED THE COURT TO ONLY APPLY THE GUIDELINES AS
17 IT'S DONE AND AS IT HAS DONE BEFORE BY USING THE 20 PERCENT
18 PROXY 2(R)(1.1).

19 AND AS THE GOVERNMENT HAS -- AS THE COURT HAS DONE IN
20 CONNECTION WITH SEVEN SENTENCINGS IN THIS CASE ALONE, IN NINE
21 SENTENCINGS IN PAST ANTITRUST CASES YOU'VE HANDLED, AND JUST
22 LIKE EVERY OTHER COURT ACROSS THE COUNTRY HAS DONE IN USING
23 ANTITRUST GUIDELINES, THE GOVERNMENT IS ASKING THE COURT TO
24 APPLY THE DEFINITION OF VOLUME OF COMMERCE AS IT ALWAYS HAS,
25 WHICH THE COURT CAN DO.

1 **THE COURT:** SO FAR YOU ARE WINNING THOSE POINTS, YOU
2 KNOW?

3 **MS. TEWKSBURY:** YES, THANK YOU.

4 BUT WHAT THE DEFENDANTS ARE ASKING YOU TO DO IS TREAT
5 THEM MORE FAVORABLY AT SENTENCING FOR HAVING GONE TO TRIAL AND
6 LOST THAN THOSE WHO ACCEPTED RESPONSIBILITY YEARS AGO, AND I'D
7 USE LG AS AN EXAMPLE. LG CAME IN SIX YEARS AGO. THEY STARTED
8 COOPERATING SIX MONTHS BEFORE THE GOVERNMENT EVER BROUGHT THIS
9 CASE, EVER ISSUED SUBPOENAS.

10 THEY PROVIDED SUBSTANTIAL ASSISTANCE TO THE
11 GOVERNMENT BY HELPING IT DEVELOP ITS CASE, OBTAIN GUILTY PLEAS
12 FROM NEARLY EVERYONE, AND PROSECUTE THESE DEFENDANTS. YET LG
13 WAS REQUIRED TO PAY \$400 MILLION FINE, AND ITS EXECUTIVES WENT
14 TO JAIL.

15 AFTER DOING ALL OF THIS, LG GOT A 50 PERCENT
16 DISCOUNT, EXACTLY WHAT THE FINE THAT THE COURT IS NOW STATING
17 AUO WOULD GET. BUT AUO IS GETTING A 50 PERCENT DISCOUNT
18 WITHOUT EVER PROVIDING A SHRED OF COOPERATION. THAT WOULD
19 TRULY BE AN INEQUITABLE RESULT HERE, YOUR HONOR.

20 THE THEN RECORD-SETTING SENTENCES IN THE ADM CASE
21 REFLECTING THE FACT THAT IT REPRESENTED THE MOST EGREGIOUS
22 ANTITRUST CASE OF ITS TIME, BUT THIS CASE IS WORSE.

23 THE LCD CONSPIRACY LASTED LONGER AND IT IMPACTED
24 AMERICAN CONSUMERS AT LEAST FIVE TIMES GREATER, BUT THE BIG
25 DIFFERENCE BETWEEN ADM AND AUO IS THAT ADM ACCEPTED

1 RESPONSIBILITY FOR ITS CRIME, SOMETHING THAT AUO TO THIS DAY
2 REFUSES TO DO.

3 YOUR HONOR, WE BELIEVE THE \$500 MILLION FINE IS JUST
4 COMPLETELY UNABLE TO DETER THE SORT OF CONDUCT WE ARE SEEING
5 HERE.

6 THANK YOU, YOUR HONOR.

7 **THE COURT:** THANK YOU.

8 **MR. RIORDAN:** YOUR HONOR, IN REJECTING BOTH OUR
9 POSITION ON SENTENCING AND THE GOVERNMENT'S, THE COURT
10 OBVIOUSLY DISPLAYED THAT IT HAD THOUGHT THROUGH THIS MATTER
11 VERY, VERY CAREFULLY. AND, AGAIN, WE SIT ON OUR -- STAND ON
12 OUR BRIEFING AND THE COURT'S EARLIER COMMENTS IN ANNOUNCING ITS
13 TENTATIVE DECISION.

14 **THE COURT:** THANK YOU.

15 **MR. OSTERHOUDT:** YOUR HONOR, I THINK THAT GOVERNMENT
16 HAS REALLY -- IN SPITE OF THEIR STATEMENT TO THE CONTRARY,
17 REALLY HAS RECOMMENDED PUNISHMENT OF THE DEFENDANTS FOR GOING
18 TO TRIAL IN THIS CASE.

19 I SAY THAT RESPECTFULLY BECAUSE I KNOW THAT
20 CIRCUMSTANCES WERE DIFFERENT TWO YEARS AGO WHEN OTHER PEOPLE
21 WERE SENTENCED, BUT WHAT'S CHANGED REALLY IS THAT THIS CASE WAS
22 TAKEN TO TRIAL -- I WANT TO RESPECTFULLY DISAGREE WITH THE
23 SUGGESTION THAT DR. HSUING HAS NOT COOPERATED IN ANY WAY. HE
24 CAME VOLUNTARILY TO THE COUNTRY -- HE HAD NO ASSURANCES HE
25 WOULD EVEN GET BAIL -- TO STAND TRIAL. HE KEPT FAITH WITH THE

1 COURT THROUGHOUT THE CASE.

2 BY THE WAY, HE WAS NOT EXECUTIVE VICE PRESIDENT UNTIL
3 FIVE MEETINGS HAD ALREADY OCCURRED. HE DIDN'T GO TO THE FIRST
4 THREE. HE ONLY WENT TO ONE AFTER SALES AND TWO.

5 I DON'T SAY THAT TO ARGUE WITH YOUR HONOR'S SENTENCE.
6 I KNOW YOU THOUGHT IT OUT VERY CAREFULLY.

7 MR. BERSON AND I AND MR. HANDMAN NEVER MET A CLIENT
8 THAT WE HAVE SO MUCH ADMIRATION AND RESPECT FOR AS DR. HSUING,
9 AND IT SHINES THROUGH THESE LETTERS.

10 I THINK I WOULD BE REMISS IN MY DUTY TO HIM IF I
11 DIDN'T SAY ON HIS BEHALF THAT I DO THINK HIS SENTENCE WOULD BE
12 FAIR AND WOULD ACHIEVE THE PURPOSES. IT WOULDN'T BE EXCESSIVE,
13 BUT IT WOULD BE SUFFICIENT TO SATISFY THE PURPOSE OF THE
14 SENTENCING IF IT WERE LESS THAN 36 MONTHS.

15 I KNOW YOU THOUGHT THIS CAREFULLY OUT, BUT, YOU KNOW,
16 WHEN WE LOOK AT C.C. LIU, BOCK KWON, AND FRANK LIN AND OTHERS
17 WHO ACTUALLY PARTICIPATED -- IN MR. LIN'S CASE IN DESTRUCTION
18 OF DOCUMENTS BEFORE COMING IN TO COOPERATE. AND SAMSUNG, WHO
19 IS CLIENT EASTWOOD'S EMPTY CHAIR IN THIS CASE, WHO COMPLETELY
20 GOT A PASS HERE FOR SELF REPORTING, HAVING COMMITTED CRIMES IN
21 THE PAST LIKE THIS.

22 I DO THINK THAT THE GOVERNMENT'S CONDEMNATION IS
23 EXCESSIVE, AND I DO URGE THAT YOU GIVE THOUGHT TO SOME OF THE
24 THINGS THAT HAVE BEEN SAID IN THE LETTERS THAT ARE ADDRESSED TO
25 YOU AND THAT YOU CONSIDER A LESSER SENTENCE IN HIS CASE THAN

1 THE ONE -- I'M NOT SAYING YOURS IS UNFAIR, GARGANTUAN, OR
2 WRONG, ONLY THAT I THINK HE MERITS THAT CONSIDERATION BECAUSE
3 OF THE WAY HE'S LIVED HIS LIFE AND WHAT HE'S MEANT TO THE
4 ECONOMY IN TAIWAN, WHAT HE'S MEANT TO THIS INDUSTRY THAT HE
5 HELPED TO PROMOTE. HE'S A BRILLIANT SCIENTIST, FIRST OF ALL.
6 HE WROTE HIS PH.D. THESIS ABOUT LCD AT BERKELEY. HE LOVES THE
7 TECHNOLOGY. HE WANTS TO SPREAD IT AS WIDE AS POSSIBLE.

8 WHEN THIS IS OVER, I KNOW I WANT HIM TO BE ABLE TO
9 CONTINUE TO DO THAT. THERE'S GREAT CONTRIBUTIONS HE STILL HAS
10 TO MAKE.

11 AND I JUST WANTED TO SAY THOSE THING TO YOUR HONOR SO
12 YOU WOULD HAVE THOSE IN MIND.

13 **THE COURT:** THANK YOU.

14 **MR. ATTANSIO:** LIKE MR. OSTERHOUDT, I'LL BE VERY
15 BRIEF, AND I VERY MUCH APPRECIATE HOW OBVIOUS IT IS THAT THE
16 COURT HAS PUT A LOT OF THOUGHT INTO THIS.

17 THIS IS THE TYPE OF SENTENCING WHERE ONE AS A LAWYER
18 SAYS, THANK GOODNESS FOR BOOKER, BECAUSE INSTEAD OF HAVING TO
19 APPLY THE GUIDELINES RIGIDLY, WE HAVE THE DISCRETION THAT YOUR
20 HONOR CAN APPLY TO A CASE LIKE THIS UNDER THE SENTENCING
21 FACTORS. AND ON BEHALF OF MR. CHEN, WE VERY MUCH APPRECIATE
22 IT.

23 LET ME SPEAK VERY BRIEFLY, THOUGH, AS THE LETTERS
24 SHOW, ON MR. CHEN'S BEHALF ABOUT THIS MAN, WHAT HE'S DONE AS
25 FAMILY MAN, AS A BUSINESS LEADER, AND AS A COMMUNITY LEADER. I

1 KNOW YOUR HONOR REFERENCED THAT AND HAS READ THE LETTERS.

2 I WANT TO POINT OUT JUST ONE THING, SIMPLY BECAUSE I
3 HEARD YOUR HONOR REFERENCE IT IN OTHER SENTENCINGS THAT I'VE
4 ATTENDED IN THIS COURT.

5 MR. CHEN DID THOSE THINGS THAT WE SEE IN THOSE
6 LETTERS ANONYMOUSLY, AND ONE OF THE LETTERS IS EXEMPLARY OF
7 THIS. IT'S THE BLUE SKY HOME, A CATHOLIC-CHURCH-SPONSORED
8 CHARITY FOR JUVENILE DELINQUENTS IN TAIWAIN. THE EXECUTIVE
9 DIRECTOR IN THE LETTER SAYS:

10 "FROM 2003 UNTIL NOW, MR. CHEN,
11 TOGETHER WITH HIS FAMILY, HAVE CONTINUALLY
12 DONATED TO HELP OUR YOUTHS FOR UP TO 15
13 TIMES. AS BELIEVERS OF THE TRADITIONAL VALUE
14 OF PEOPLE GO OUT OF THEIR WAY NOT TO BE
15 KNOWN, THEY NEVER ASK US FOR ANY CERTIFICATE
16 OF APPRECIATION. I AM CONVINCED THEY ARE
17 DOING IT OUT OF THEIR IDENTITY WITH OUR
18 MISSION, AND ITS FAR-REACHING INFLUENCE ON
19 TAIWANESE SOCIETY."

20 I WANTED TO FRAME THAT WITH ONE ADDITIONAL STEP.
21 IT'S BEEN DONE BECAUSE IT'S THE RIGHT THING TO DO, NEVER
22 KNOWING WE'D BE HERE TODAY.

23 MR. CHEN CAME HERE FROM A COUNTRY WITH NO EXTRADITION
24 TREATY. THERE WAS QUITE A BIT OF DISCUSSION ABOUT THAT WHEN HE
25 FIRST CAME HERE. HE'S HONORED THE CONDITIONS OF RELEASE. HE

1 HAS ASKED ME PERSONALLY FOR HIM TO CONVEY TO THE COURT AND TO
2 THE GOVERNMENT HIS GREAT THANKS AND GENUINE APPRECIATION FOR
3 BEING PERMITTED TO GO HOME FOR HIS MOTHER'S FUNERAL WHEN SHE
4 PASSED APPROXIMATELY TWO MONTHS AGO. HE KNOWS HOW
5 EXTRAORDINARY THAT WAS. HE THANKS MS. TEWKSBURY AND THE
6 GOVERNMENT COUNSEL FOR THAT AND YOUR HONOR FOR THAT.

7 IT SHOWS THE KIND OF MAN HE IS. HE CAME HERE, YOUR
8 HONOR, BECAUSE HE PUT HIS FAITH IN THIS JUSTICE SYSTEM. HE
9 TALKED TO ME. HE TALKED TO OTHERS. HE'S AN INTELLIGENT MAN.
10 HE CAME HERE BECAUSE HE BELIEVED IN THE FAIRNESS AND DIGNITY OF
11 THIS GREAT SYSTEM WE ARE BLESSED TO HAVE IN AMERICA. HE'S
12 STILL HERE DESPITE ALL THAT'S HAPPENED. AND HE PUTS HIS FAITH
13 IN THE SYSTEM, AND I THINK TODAY IN ITS OWN WAY ONLY REAFFIRMS
14 HIS FAITH IN THE SYSTEM.

15 I JUST WANT TO FINISH BY POINTING OUT WITH A PLEA
16 THAT ALTHOUGH WE APPRECIATE HOW CAREFULLY YOUR HONOR HAS
17 THOUGHT OUT THE SENTENCE YOU DESCRIBED, HOW FAR BELOW THE
18 DRACONIAN OUTCOME THAT THE GUIDELINES WOULD REQUEST AND THE
19 GOVERNMENT HAS REQUESTED YOUR HONOR'S SENTENCE IS, RECOGNIZING
20 ALL OF THOSE THINGS, I WOULD ASK YOUR HONOR TO CAREFULLY
21 CONSIDER WHETHER A SHORTER SENTENCE WOULD BE APPROPRIATE HERE
22 BASED ON THE THINGS I'VE TRIED TO EMPHASIZE AS BEST AS I CAN.
23 IT'S SO HARD TO DESCRIBE SOMEONE'S LIFE, A 60-YEAR-OLD MAN'S
24 LIFE, WHO'S DONE WHAT HE'S DONE.

25 THIS IS NEITHER HERE NOR THERE, BUT OBSERVING HIM

1 EVERY DAY DURING THIS TRIAL AND THE WAY HE CONDUCTED HIMSELF
2 RELATIVE TO OTHER CLIENTS UNDER SIMILAR CIRCUMSTANCES HAS BEEN
3 ONE OF THE MOST EXTRAORDINARY EXPERIENCES OF MY CAREER AS A
4 LAWYER, HIS DIGNITY, HIS DECENCY, FROM THE FIRST FLOOR OF THIS
5 BUILDING WITH THE GUARDS TO THIS COURTROOM AND YOUR HONOR.
6 HE'S AN EXTRAORDINARY MAN.

7 HE'S MADE ME A BETTER PERSON IN TERMS OF MY PARENTS
8 WHO ARE AGING AND HAVE ISSUES LIKE HIS. I FEEL HUMBLLED TO
9 WATCH WHAT HE'S DONE OVER THE LAST TWO YEARS UNDER THE STRESS
10 HE'S BEEN UNDER VIS-A-VIS HIS OWN PARENTS. IT'S JUST
11 REMARKABLE.

12 ALL OF THOSE FACTORS TOGETHER -- I WON'T BELABOR THE
13 DISPARITY POINT, EXCEPT TO POINT OUT THAT WITH A PERSON LIKE
14 C.C. LIU AND SOME OF THE OTHERS WHO HAVE BEEN MENTIONED IN A
15 SEVEN-MONTH SENTENCE, IT SEEMS TO ME THAT SOMETHING LESS THAN
16 36 MONTHS BRINGS US MORE IN LINE WITH A RESULT THAT RIGHTLY
17 CREDITS THE COOPERATORS FOR COOPERATION, THAT RIGHTLY CREDITS
18 THE FACT THAT THESE GENTLEMEN DECIDED TO GO TO TRIAL AND NOT
19 COOPERATE. THERE HAS TO BE SOME DIFFERENCE. WE ACCEPT THAT.

20 BUT IF YOU LOOK AT C.C. LIU'S ROLE IN THIS THING AND
21 HIS SEVEN-MONTH SENTENCE, IT JUST STRIKES ME, YOUR HONOR, TO GO
22 FROM SEVEN MONTHS TO C.C. LIU TO 36 MONTHS JUST AS THE PRICE OF
23 ADMISSION TO EXERCISING A TRIAL, WITH ALL ITS DIGNITY AND THE
24 FAIR WAY IT WAS CONDUCTED, TO EXERCISE THAT RIGHT AND HAVE THE
25 PRICE OF ADMISSION TO THIS GREAT COURTROOM AND A JURY BE 29

1 MORE MONTHS IS -- RESPECTFULLY, WE WOULD ASK THAT IT BE LESS
2 THAN THAT. I THINK IT'S FAIR.

3 THANK YOU, YOUR HONOR.

4 **THE COURT:** THANK YOU.

5 **MR. HUSTON:** THANK YOU, YOUR HONOR.

6 YOUR HONOR, I APPRECIATE, AS DEFENSE COUNSEL DOES,
7 THE THOUGHT THAT YOU PUT INTO THIS AND YOUR COMMENTS AT THE
8 OPENING OF TODAY'S HEARING, BUT I DID WANT TO RISE TO SAY THAT
9 I BELIEVE THE SENTENCES FOR THE INDIVIDUALS ARE NOT
10 APPROPRIATE. THE MAIN POINT I'D LIKE TO MAKE HAS TO DO WITH
11 GENERAL DETERRENCE, WHICH IS ONE OF THE FACTORS UNDER 3553.
12 AND GENERAL DETERRENCE IS, MOST PEOPLE AGREE, ESPECIALLY
13 IMPORTANT WITH RESPECT TO WHITE COLLAR CRIMES. THESE ARE
14 CRIMES THAT ARE NOT CRIMES OF PASSION. THEY'RE THOUGHT OUT.
15 AND THEY CAN BE STOPPED, AND THAT'S WHAT WE AT THE ANTITRUST
16 DIVISION ARE TRYING TO DO, STAMP THEM OUT.

17 AND CONGRESS HAS DETERMINED THAT FOR THE WORST
18 OFFENSES OF THIS TYPE WHERE THEY ARE EGREGIOUS, AND THERE ARE
19 NO POSSIBILITIES FOR DISCOUNT, NO REASON TO DISCOUNT WHAT'S
20 GONE ON, THAT THE APPROPRIATE SENTENCE IS 120 MONTHS, AND
21 THAT'S WHAT WE BELIEVE IS APPROPRIATE HERE, AND THAT'S WHAT
22 WE'VE ASKED FOR.

23 WITH RESPECT TO 36 MONTHS, I THINK THIS KEYS OFF OF
24 WHAT MR. ATTANASIO JUST SAID, THAT IT IS DISPROPORTIONATE ON
25 THE LOW SIDE. AND I'LL JUST GIVE ONE EXAMPLE OF THAT.

1 J.Y. HO, WHO TESTIFIED AT TRIAL, RECEIVED 14 MONTHS
2 IN JAIL. BUT AS THE COURT MENTIONED, HE WAS IN A FAR DIFFERENT
3 CIRCUMSTANCE THAN THESE DEFENDANTS. FOR ONE THING, HE PROVIDED
4 VERY VALUABLE COOPERATION TO THE GOVERNMENT IN HELPING TO BRING
5 THIS CRIME TO JUSTICE. SECONDLY, HE WAS OUT OF THE CONSPIRACY
6 BY THE END OF 2001. THIS CONSPIRACY ONLY GOT STARTED IN
7 SEPTEMBER, AND BY THE END OF 2001, HE WAS NO LONGER ATTENDING
8 MEETINGS, AND HE RECEIVED 14 MONTHS.

9 SO BASED ON THOSE TWO THINGS, I THINK THAT THE
10 SENTENCES OF 36 MONTHS ARE DISPROPORTIONATE ON THE LOW SIDE.

11 I DON'T HAVE ANY REASON TO DOUBT THE SINCERITY OR THE
12 TRUTH OF THE LETTERS THAT THE COURT HAS RECEIVED ON BEHALF OF
13 DR. HSUING AND H.B. CHEN, BUT THESE CHARACTERISTICS OF
14 SUPPORTIVE FAMILY MEMBERS, RESPECTIVE COLLEAGUES, GIVERS TO
15 CHARITY, THESE ARE TYPICAL OF THE SORTS OF CHARACTERISTICS YOU
16 WOULD SEE OF PEOPLE IN THEIR POSITIONS, AND THE SENTENCING
17 COMMISSION TOOK THAT INTO ACCOUNT WHEN THEY DETERMINED WHAT
18 SENTENCES WERE APPROPRIATE FOR THIS CRIME.

19 THANK YOU, YOUR HONOR.

20 **THE COURT:** THANK YOU.

21 MR. CHEN -- WELL, LET ME SAY THIS: MR. HA, DO YOU
22 WANT TO SAY ANYTHING ON BEHALF OF EITHER AUO OR AUOA BEFORE I
23 SENTENCE THE COMPANIES?

24 **MR. HA:** NO, YOUR HONOR.

25 **THE COURT:** MR. CHEN, DID YOU WISH TO SAY ANYTHING?

1 **DEFENDANT CHEN:** NO, YOUR HONOR.

2 **THE COURT:** THANK YOU.

3 MR. KUMA, DID YOU WISH TO SAY ANYTHING?

4 **DEFENDANT HSIUNG:** NO, YOUR HONOR.

5 **THE COURT:** ALL RIGHT. WELL, I DO FIND THAT THE
6 DETERMINATIONS THAT I ARTICULATED EARLIER BEFORE YOU ALL SPOKE
7 REMAIN MY DETERMINATIONS AND MY FINDINGS. SO, THOSE WILL BE
8 THE FINDINGS OF THE COURT. AND AT THIS TIME WHAT I WILL DO IS
9 IMPOSE THE SENTENCES, SO I WILL DO THAT IN THE ORDER THAT WE
10 HAVE BEEN DESCRIBING.

11 OH, LET ME -- LET ME SAY THIS: I DO NOT FIND THAT
12 SUPERVISED RELEASE IS APPROPRIATE FOR EITHER OF THE INDIVIDUAL
13 DEFENDANTS. SO IF ANYBODY WANTS TO BE HEARD ABOUT THAT, YOU
14 MAY, BUT I DO NOT PLAN TO DO THAT. WE'VE HAD ENOUGH OF THE
15 NO-EXTRADITION-TREATY DISCUSSION ALREADY. I JUST DON'T SEE ANY
16 POINT IN THAT.

17 THE SECOND THING IS, AS TO AUO, THE PROBATION OFFICER
18 RECOMMENDED THAT THE COURT ORDER AUO TO AT ITS OWN EXPENSE
19 ACKNOWLEDGE THE NATURE OF THE OFFENSE COMMITTED, THE FACT OF
20 CONVICTION, THE NATURE OF THE PUNISHMENT IMPOSED, AND THE STEPS
21 THAT WILL BE TAKEN TO PREVENT THE RECURRENCE OF SIMILAR
22 OFFENSES IN THREE MAJOR TRADE PUBLICATIONS IN BOTH THE U.S. AND
23 TAIWAN.

24 DID YOU WANT TO ADDRESS THAT? I'M NOT KEEN ON THAT.

25 **MS. TEWKSBURY:** WELL, YOUR HONOR. WE THINK IT'S

1 NECESSARY. THIS COMPANY HAS CONTINUALLY SAID THAT WHAT THEY'VE
2 DONE IS NOT WRONG. THEY ARE CONTINUING TO MAKE THOSE
3 STATEMENTS IN THE PRESS. THEY CLAIM THAT THEY JUST RECENTLY
4 STARTED DEVELOPING A COMPLIANCE PROGRAM, WHICH IS SOMETHING I
5 WAS GOING TO RESPECTFULLY ASK THE COURT IF IT WAS GOING TO
6 ADDRESS THE PROBATION COMPLIANCE PROGRAM AS WELL.

7 **THE COURT:** I THINK THAT'S APPROPRIATE. AND SOMEBODY
8 REQUESTED A MONITOR, AND I THINK THAT'S APPROPRIATE, TOO.

9 **MS. TEWKSBURY:** CORRECT. THANK YOU, YOUR HONOR.

10 **THE COURT:** BUT THE --

11 **MS. TEWKSBURY:** WE THINK THIS IS IMPORTANT FOR --
12 PARTICULARLY FOR THE TRADE PUBLICATIONS IN TAIWAN, THAT AUO
13 MAKE A PUBLIC STATEMENT ABOUT WHAT IT'S DOING TO CORRECT WHAT'S
14 HAPPENED IN THE PAST. THEY HAVE DONE NOTHING EVEN APPROACHING
15 ACCEPTING RESPONSIBILITY FOR THIS, AND THEY CONTINUE TO SAY
16 WHAT THEY'VE DONE AND THEY CONTINUE TO ARGUE IN THEIR PAPERS
17 WHAT THEY'VE DONE IS NOT EVEN ILLEGAL.

18 SO, WE DO THINK IT IS APPROPRIATE, ESPECIALLY IN
19 TAIWAN WHERE MR. J.Y. HO, ACTUALLY, AS A CONDITION OF HIS
20 SENTENCE, HE EVEN GAVE PUBLIC SPEECHES TO PEOPLE IN TAIWAN TO
21 TALK ABOUT THE ANTITRUST LAWS HERE AND WHAT HE DID TO RECTIFY
22 THE SITUATION IN TAIWAN. WE DO THINK IT'S APPROPRIATE FOR AUO
23 TO DO SOMETHING SIMILAR THROUGH THE TRADE PUBLICATIONS THERE.

24 **MR. OSTERHOUDT:** YOUR HONOR, RESPECTFULLY, THIS
25 JUDGMENT IS NOT FINAL. THE COURT IS AWARE IT'S GOING TO BE

1 APPEALED. THE GOVERNMENT --

2 **THE COURT:** ACTUALLY, I THINK -- ISN'T IT FINAL UNTIL
3 THEY DO SOMETHING TO IT? I'M PRETTY SURE THAT'S HOW IT WORKS.

4 **MR. OSTERHOUDT:** LET ME RECTIFY WHAT I SAID.

5 THIS IS NOT THE LAST STAGE IN THE PROCEEDINGS.
6 EVERYONE WOULD AGREE THAT ALL OF THE DEFENDANTS MAINTAIN THEIR
7 RIGHT AGAINST SELF-INCRIMINATION UNTIL THERE'S BEEN A FINAL
8 DISPOSITION OF THE CASE. AND THE GOVERNMENT IS ATTEMPTING TO
9 HAVE THE DEFENDANTS -- YOU CAN BE ASSURED THAT THEIR STATEMENTS
10 OF LIABILITY WOULD FIND ITS WAY INTO THE GOVERNMENT'S BRIEF ON
11 APPEAL AS A CONCESSION OF GUILT. SO IT'S CERTAINLY NOT
12 APPROPRIATE AT THIS TIME, YOUR HONOR.

13 **THE COURT:** I TELL YOU WHAT I'M GOING TO DO. I THINK
14 IT IS APPROPRIATE THAT THE CORPORATION AT ITS OWN EXPENSE
15 PUBLISH THE FACT THAT IT WAS CONVICTED, THE NATURE OF THE
16 PUNISHMENT IMPOSED, AND THE STEPS THAT WILL BE TAKEN TO PREVENT
17 THE RECURRENCE, WHICH WOULD BE THE COMPLIANCE PROGRAM.

18 **MS. TEWKSBURY:** CORRECT, YOUR HONOR.

19 **THE COURT:** I WILL ORDER THAT, BUT "ACKNOWLEDGE THE
20 NATURE OF THE OFFENSE COMMITTED," I'M GOING TO REMOVE FOR AT
21 ALL REASONS ARTICULATED BY MR. RIORDAN.

22 **MS. TEWKSBURY:** THANK YOU, YOUR HONOR.

23 **THE COURT:** ALL RIGHT.

24 PURSUANT TO THE SENTENCING REFORM ACT OF 1984, IT'S
25 THE JUDGMENT OF THE COURT THAT AU OPTRONICS CORPORATION IS

1 HEREBY PLACED ON PROBATION FOR THREE YEARS.

2 WHILE ON PROBATION, AU OPTRONICS CORPORATION SHALL
3 NOT COMMIT ANOTHER FEDERAL STATE OR LOCAL CRIME.

4 AU OPTRONICS CORPORATION SHALL DEVELOP, ADOPT AND
5 IMPLEMENT AN EFFECTIVE COMPLIANCE AND ETHICS PROGRAM. SUCH A
6 PROGRAM SHALL ESTABLISH STANDARDS AND PROCEDURES TO PREVENT AND
7 DETECT CRIMINAL CONDUCT.

8 AU OPTRONICS CORPORATION SHALL NOTIFY ITS EMPLOYEES
9 AND SHAREHOLDERS OF ITS CRIMINAL BEHAVIOR, WHAT DOES THAT MEAN?

10 **MS. TEWKSBURY:** IT'S JUST WHAT IT'S BEEN CONVICTED
11 OF, YOUR HONOR.

12 **THE COURT:** OKAY.

13 ...SHALL NOTIFY ITS EMPLOYEES AND SHAREHOLDERS OF ITS
14 CONVICTION IN THIS CASE AND ITS EFFECTIVE COMPLIANCE AND ETHICS
15 PROGRAM. ALL ASPECTS OF THE PROGRAM SHALL BE REPORTED TO THE
16 PROBATION OFFICER AS DIRECTED, AND QUARTERLY REPORTS DETAILING
17 THE ORGANIZATION'S PROGRESS SHALL BE SUBMITTED TO ENSURE
18 COMPLIANCE.

19 AU OPTRONICS CORPORATION SHALL, AT ITS OWN EXPENSE,
20 ACKNOWLEDGE THE FACT OF CONVICTION, THE NATURE OF THE
21 PUNISHMENT IMPOSED, AND THE STEPS THAT WILL BE TAKEN TO PREVENT
22 THE RECURRENCE OF SIMILAR OFFENSES IN THREE MAJOR TRADE
23 PUBLICATIONS IN BOTH THE UNITED STATES AND TAIWAN.

24 AU OPTRONICS CORPORATION SHALL PAY TO THE UNITED
25 STATES A FINE OF \$500 MILLION WHICH SHALL BE DUE IMMEDIATELY.

1 PAYMENT OF CRIMINAL MONETARY PENALTY SHALL BE MADE TO THE CLERK
2 OF THE U.S. DISTRICT COURT AT THIS ADDRESS.

3 **MR. RIORDAN:** YOUR HONOR?

4 **THE COURT:** LET ME JUST FINISH ONE THING, AND THEN WE
5 WILL GET BACK TO IT.

6 IT IS FURTHER ORDERED THAT AU OPTRONICS CORPORATION
7 SHALL PAY TO THE UNITED STATES A SPECIAL ASSESSMENT OF \$400
8 WHICH IS DUE IMMEDIATELY.

9 OKAY.

10 **MR. RIORDAN:** YOUR HONOR, WE HADN'T DISCUSSED THE
11 PAYMENT SCHEDULE, YOUR HONOR, SO LET ME ADDRESS THAT. IT
12 ACTUALLY REQUIRES A FEW MINUTES.

13 THE COURT HAS IMPOSED A FINE OF \$500 MILLION. THE
14 EFFECT OF THAT IS THAT AUO WILL NOW IMMEDIATELY, REGARDLESS
15 EVEN IF THERE'S A STAY, NEED TO BOOK THAT \$500 MILLION AS A
16 LIABILITY UNDER SECURITIES LAW. EVERY OTHER DEFENDANT IN THIS
17 CASE HAS BEEN ALLOWED TO PAY THEIR FINE IN SIX INSTALLMENTS
18 OVER FIVE YEARS, WHICH WOULD MEAN BASICALLY SIX INSTALLMENTS OF
19 ABOUT 83 MILLION DOLLARS.

20 IT IS SIMPLY TRUE THAT IF THIS COURT WERE TO ORDER
21 THE AUO TO PAY \$500 MILLION -- IT DOES NOT HAVE ANYTHING
22 APPROACHING \$500 MILLION, NOTHING APPROACHING IT, WHAT WILL
23 HAPPEN THEN IS THAT THE \$6.54 BILLION IN LOANS THAT AUO HAS
24 WILL AUTOMATICALLY BECOME PAYABLE IN FULL, BECAUSE ALL OF THOSE
25 LOANS, AS LOANS GENERALLY DO, HAVE A MATERIALLY-ADVERSE-CHANGE

1 CLAUSE IN THEM, MEANING THAT IF ANY FINANCIAL CONDITION CHANGES
2 WHICH THREATENS THE ABILITY OF THE LOAN TO BE REPAYED, THEN IT'S
3 FULLY REPAYABLE.

4 ALL OF AUO -- 80 PERCENT OF -- ALL OF THAT
5 \$6.54 BILLION IS SECURED TO THE BANKS WHO LENT THE MONEY. SO
6 THE EFFECT OF IT WILL BE THAT THOSE BANKS, NOT THE GOVERNMENT
7 WITH ITS \$500 MILLION FINE, NOT RESTITUTION, NOBODY ELSE, THOSE
8 BANKS WILL BE IMMEDIATELY ENTITLED TO SEIZE \$6.54 BILLION FROM
9 AUO.

10 **THE COURT:** DIDN'T THE CONVICTION -- I MEAN THE
11 VERDICT, DIDN'T THAT TRIGGER THAT SORT OF THING ON THE PART OF
12 THE BANKS?

13 **MR. RIORDAN:** THESE ISSUES HAD TO BE RAISED AND
14 DISCLOSED PUBLICALLY. THERE WAS NO FINE IMPOSED AT THE TIME.

15 EVERYONE -- THERE'S BEEN TREMENDOUS -- THERE'S BEEN
16 TREMENDOUS SPECULATION. ACTUALLY, AS A RESULT OF THE
17 COURT'S -- THE VERDICT, THERE WAS IMMEDIATE 10 PERCENT DROP IN
18 STOCK PRICE AT THAT TIME.

19 SO IT'S UNFULFILLABLE. AUO HAS AT BEST \$80 MILLION
20 IN CASH AT THE MOMENT.

21 LET ME SAY SOMETHING BECAUSE THE GOVERNMENT RAISED
22 IT. IT SAID, OH, AUO DIDN'T TELL YOU THAT IT'S GOT A RESERVE
23 FOR THIS FINE WITH MONEY IN IT. THAT'S ABSOLUTELY FALSE.

24 WHAT HAPPENS IS THAT AUO, BECAUSE IT WAS ANTICIPATING
25 A FINE, TOOK A NUMBER AND PUT IT ON ITS LIABILITY BOOKS. OKAY?

1 WE'VE GOT A HIT COMING UP. IT'S NOT MONEY. IT IS PUTTING ON
2 YOUR LIABILITY SECTION.

3 I'LL TELL YOU WHAT THE NUMBER WAS. IT WAS
4 \$277 MILLION. SO THEY ADDED -- AND THAT WILL BE DISCLOSED IN
5 AN SEC FILING TONIGHT OR TOMORROW.

6 SO IT PUT A \$277 MILLION LIABILITY ON ONE SIDE OF THE
7 BOOKS. IT DOESN'T HAVE THAT CASH. IT DOES NOT HAVE ANYWHERE
8 NEAR \$500 MILLION WORTH OF CASH.

9 AND, FINALLY, IF THEY ARE ORDERED TO PAY THAT
10 IMMEDIATELY, WHAT WILL HAPPEN IS WHAT I THINK THE GOVERNMENT
11 HAS BEEN AFTER EVER SINCE THEY DECIDED TO GO TO TRIAL, THEY
12 WILL KILL THIS COOPERATION.

13 SO ALL WE ARE ASKING FOR IS THE SAME PAYMENT SCHEDULE
14 THAT A LEVIATHAN LIKE LG GOT. THEY GOT TO PAY THEIR
15 \$400 MILLION IN SIX PAYMENTS. SAMSUNG GOT NOTHING, BUT...

16 **THE COURT:** CAN YOU DO IT WITHOUT THESE CATASTROPHIC
17 CONSEQUENCES IN THREE YEARS SO IT COULD BE PAID OUT OVER THE
18 PROBATIONARY PERIOD?

19 **MR. RIORDAN:** I DON'T KNOW THE ANSWER TO THAT, YOUR
20 HONOR.

21 **THE COURT:** WOULD YOU CHECK?

22 **MR. RIORDAN:** I DON'T KNOW THE ANSWER TO THAT.

23 CAN I MAKE A SUGGESTION, YOUR HONOR? CAN WE --
24 BECAUSE THIS IS NOT, YOU KNOW, A CURBSIDE DECISION. MY
25 SUGGESTION IS THAT WE SUBMIT -- THE COURT HAS SAID, I AM

1 CONSIDERING IMPOSING THE FINE OVER THREE YEARS RATHER THAN FIVE
2 YEARS, ADDRESS THAT QUESTION IN YOUR PAPERS, BECAUSE --

3 **THE COURT:** YOU KNOW, I'M SORRY TO TELL YOU THIS,
4 MR. RIORDAN --

5 **MR. RIORDAN:** I KNOW, YOU'RE TIRED --

6 **THE COURT:** -- YOU HAVE EXHAUSTED MY INTEREST IN YOUR
7 PAPERS. THERE HAVE BEEN SO MANY.

8 **MR. RIORDAN:** I CANNOT -- I CANNOT GIVE YOU AN ANSWER
9 TO THAT QUESTION, YOUR HONOR. I CANNOT GIVE YOU AN ANSWER
10 ABOUT WHAT THE EFFECT WOULD BE.

11 YOU KNOW, WE'RE WILLING TO PUT A FINANCIAL -- THE
12 YANG DECLARATION IS BEFORE YOU, YOU KNOW. THE \$6.54 BILLION
13 WORTH OF DEBTS IS INDISPUTABLE.

14 I JUST CAN'T GIVE YOU AN ANSWER AS TO -- WE HAVE
15 DISCUSSED THIS AT GREAT LENGTH. WE NEVER DISCUSSED THE
16 QUESTION OF WHETHER THREE YEARS, AS OPPOSED TO NOW, AS OPPOSED
17 TO FIVE YEARS WAS POSSIBLE. SO I LEAVE MYSELF OPEN TO THE
18 COURT'S SUGGESTION ON HOW WE SHOULD DEAL WITH IT. BUT I WOULD
19 IMPLORE THE COURT NOT TO ANNOUNCE TODAY THAT IT IS GOING
20 REQUIRE AUO TO PAY \$500 MILLION WITHIN THE NEXT 48 HOURS,
21 BECAUSE THE FINANCIAL CONSEQUENCES OF THAT ARE ONES THAT THE
22 COURT HASN'T YET HAD A CHANCE TO FAIRLY CONSIDER.

23 **MR. SNYDER:** BRENT SNYDER FOR THE UNITED STATES.

24 YOUR HONOR, MR. RIORDAN STOOD UP HERE AND GAVE YOU
25 EXTENSIVE FINANCIAL INFORMATION ABOUT THE COMPANY, NONE OF

1 WHICH IS CONTAINED IN THEIR OWN CFO'S DECLARATION, ALL THE
2 CATASTROPHIC THINGS THAT WILL RESULT FROM THE PAYMENT OF A
3 \$500 MILLION FINE. YOU WOULD HAVE TO MAKE THAT DECISION PURELY
4 ON HIS UNSUPPORTED TESTIMONY HERE THIS MORNING, AND THAT WOULD
5 BE UTTERLY INAPPROPRIATE.

6 THE ONLY EVIDENCE YOU HAVE IN FRONT OF YOU REGARDING
7 THE COMPANY'S RESERVES IS THE DEPOSITION TESTIMONY OF THE
8 COMPANY'S PRESIDENT WHO SAID WE HAVE FOLLOWED THE ACCOUNTANT'S
9 INSTRUCTIONS TO SET ASIDE RESERVES. THAT INDICATES, AS HE SAID
10 IN A SWORN DEPOSITION, THAT THEY HAVE SET ASIDE MONEY TO PAY AT
11 LEAST A SUBSTANTIAL AMOUNT OF THIS FINE.

12 HE ALSO SAID THE COMPANY HAS RUN FINANCIAL
13 SIMULATIONS TO ENSURE THEY WOULD BE ABLE TO CONDUCT THEIR
14 OPERATIONS IF THE FINES WERE IMPOSED AT THE HIGHEST LEVELS,
15 WHICH PRESUMABLY WOULD HAVE BEEN THE ONE BILLION DOLLARS WHICH
16 WAS A POSSIBILITY AFTER THE JURY'S VERDICT.

17 THE ANTITRUST DIVISION HAS CONDUCTED ABILITY-TO-PAY
18 ASSESSMENTS ON APPROXIMATELY 20 OCCASIONS. WE HAVE ALWAYS USED
19 THE SAME EXPERT TO DO IT.

20 HE TAKES MONTHS TO GO THROUGH A COMPANY'S FINANCIAL
21 INFORMATION AND TO ASSESS, FIRST, CAN THEY MAKE PAYMENTS OVER
22 AN INSTALLMENT PERIOD? AND, SECONDLY, CAN THEY -- WHAT IS THE
23 FINE THAT THEY CAN AFFORD TO PAY WITHIN THAT INSTALLMENT RANGE?

24 NONE OF THAT HAS BEEN DONE HERE. YOU HAVE REALLY THE
25 TESTIMONY OF COUNSEL, UNSUPPORTED EVEN BY THE CFO'S

1 DECLARATION. THEY'RE SAYING IF YOU DO THIS TO US, IT'S GOING
2 TO BE CATASTROPHIC.

3 **THE COURT:** WHAT DID YOU THINK WAS GOING TO HAPPEN IF
4 I AGREED WITH YOU AND IMPOSED A ONE BILLION DOLLAR FINE AND
5 SAID IT WAS DUE TODAY? WHAT DID YOU THINK WAS GOING TO HAPPEN?

6 **MR. SNYDER :** THAT THE COMPANY WOULD BE REQUIRED TO
7 PAY IT OR COME FORWARD AND PROVIDE ADEQUATE BASIS FOR SOME SORT
8 OF A DEFERRAL OR INSTALLMENT PAYMENT SCHEDULE, WHICH I WOULD
9 HAVE EXPECTED THEY WOULD HAVE BEEN IN A POSITION TO DO.

10 THE SUBMITTED THE CFO'S DECLARATION. HE DIDN'T
11 ADDRESS THIS ISSUE. HE DIDN'T INCLUDE ANY OF THESE THINGS.
12 AND NOW THEY'RE SAYING TO YOU, WE ARE NOT PREPARED TO DO IT, OR
13 YOU SHOULD JUST TAKE OUR WORD FOR IT.

14 I WOULD HAVE EXPECTED THEM TO BE PREPARED TO COME
15 HERE TODAY AND SUBSTANTIATE THEIR REQUEST, AND THEY HAVEN'T
16 DONE THAT. SO, THE UNITED STATES BELIEVES IT WOULD BE
17 INAPPROPRIATE AT THIS TIME TO MAKE A DECISION THAT THE COMPANY
18 CANNOT AFFORD TO PAY THE FINE THAT'S IMPOSED, OR THEY CAN'T
19 AFFORD TO PAY IT TODAY, OR SOME REASONABLE PERIOD OF TIME AFTER
20 THE IMPOSITION OF JUDGMENT.

21 **MR. RIORDAN:** YOUR HONOR, THE DECLARATION OF MR. YANG
22 LAYS OUT THESE DETAILS IN GREAT DETAIL. AND IF THE GOVERNMENT
23 IS SAYING IT WANTS AN EVIDENTIARY ORDER ON THIS ISSUE, WE ARE
24 PREPARED TO CALL A FINANCIAL OFFICER OF THE COMPANY TO DO THAT
25 RIGHT NOW.

1 **THE COURT:** I DO NOT FEEL IT NECESSARY TO HAVE A
2 FINANCIAL -- AN EVIDENTIARY HEARING ON THIS MATTER.

3 WHAT I WILL ORDER IS THAT THE \$500 MILLION FINE BE
4 PAYABLE OVER THE TERM OF PROBATION, WHICH IS THE THREE-YEAR
5 TERM.

6 NOW, MR. MABIE, IS THAT -- CAN THE SCHEDULE THEN BE
7 WORKED OUT AS BETWEEN THE DEFENDANT AND THE PROBATION OFFICER
8 IF I SAY THAT?

9 **MR. MABIE:** WELL, YOUR HONOR, I THINK THAT THE COURT
10 HAS TO SET THAT AND ACKNOWLEDGE IT. SO WE COULD SUBMIT
11 SOMETHING, OR I CAN ASK THE PARTIES TO SUBMIT SOMETHING TO THE
12 COURT SO IT GOES ON THE RECORD THAT YOU DIRECT THEM THAT THEY
13 PAY THE SET AMOUNT EACH MONTH, OR WHATEVER THE AMOUNT IS.
14 BUT -- I'M SORRY FOR NOT STANDING, YOUR HONOR -- BUT THE COURT
15 DOES HAVE TO SET THAT AMOUNT.

16 **MR. SNYDER :** THE GOVERNMENT WOULD RECOMMEND
17 IMMEDIATE PAYMENT OF \$275 MILLION AND THEN THE BALANCE PAYABLE
18 IN EQUAL INSTALLMENTS OVER THREE YEARS IN FOUR PAYMENTS.

19 **MR. RIORDAN:** AS I SAY, YOUR HONOR, THE GOVERNMENT'S
20 OBJECTIVE IS TO THE KILL THIS COOPERATION.

21 THREE YEARS IS FOUR PAYMENTS, AND THE FAIR THING FOR
22 THE COURT TO DO IS ORDER A FOURTH OF THAT PAYABLE IN THE PERIOD
23 AS IT DID WITH THE OTHER DEFENDANTS. WE WOULD ASK IT BE 120
24 DAYS, WITH THE SECOND PAYMENT A YEAR AFTER THAT, THE THIRD
25 PAYMENT A YEAR AFTER THAT, AND THE LAST PAYMENT, YOU KNOW, AT

1 THE END OF THE PROBATIONARY PERIOD. SO THAT'S \$125 MILLION.
2 AGAIN, \$275 MILLION IN CASH RIGHT NOW IS SIMPLY ABSOLUTELY
3 IMPOSSIBLE. THE YANG DECLARATION BEARS THAT OUT.

4 THERE IS NOTHING -- THERE IS, AT MOST, \$80 MILLION OF
5 CASH AVAILABLE TO THE CORPORATION AT THE MOMENT.

6 **MR. HUSTON:** YOUR HONOR, ONLY BECAUSE HE SAID IT A
7 SECOND TIME -- PETER HUSTON, BY THE WAY -- I FEEL COMPELLED TO
8 SAY THAT IT IS NOT THE GOVERNMENT'S DESIRE TO KILL THIS
9 CORPORATION. IT'S THE GOVERNMENT'S DESIRE TO BRING THOSE THAT
10 PERPETRATED THIS CRIME TO JUSTICE. I FIND IT SLIGHTLY
11 OFFENSIVE THAT HE SAID THAT, OR MORE THAN SLIGHTLY.

12 **THE COURT:** I DON'T BELIEVE THAT FOR A MINUTE,
13 MR. HUSTON. I DON'T BELIEVE WHAT HE SAID.

14 AND I ALSO THINK THAT ONE THING WE NEED TO
15 UNDERSTAND, AND THIS IS PROBABLY WHAT YOU HAVE BEEN STRUGGLING
16 WITH ALL THIS TIME, IS THAT THIS WAS A DOCUMENTED,
17 FAR-REACHING, CLEARLY ILLEGAL CONSPIRACY TO FIX PRICES. I
18 DON'T THINK THERE'S ANY QUESTION ABOUT THAT.

19 THE PRODUCT IS REALLY, REALLY GOOD AND HAS CHANGED
20 EVERYTHING. SO THERE WOULD BE NO SOCIAL UTILITY IN KILLING THE
21 MESSENGER ON THAT, AND I AGREE WITH THAT, AND I THINK YOU
22 PROBABLY AGREE WITH THAT AS WELL.

23 ON THE OTHER HAND, TO IMPOSE A -- IN A CONTEXT LIKE
24 THIS, TO IMPOSE A PUNISHMENT THAT IS SEVERE ENOUGH TO ACTUALLY
25 MAKE PEOPLE CHANGE THEIR POOR JUDGMENT AND BAD CHOICE CONDUCT

1 IS A STRUGGLE.

2 SO I'M GOING TO ORDER THAT THE CORPORATION PAY A FINE
3 OF \$500 MILLION, WHICH IS PAYABLE AS FOLLOWS: ONE QUARTER
4 WITHIN 120 DAYS OF TODAY, ONE QUARTER WITHIN ONE YEAR --
5 ANOTHER QUARTER WITHIN ONE YEAR OF TODAY, ANOTHER QUARTER
6 WITHIN TWO YEARS OF TODAY, AND THE FINAL QUARTER WITHIN THREE
7 YEARS OF TODAY.

8 WHAT ABOUT INTEREST, MR. MABIE, DO I HAVE TO SAY
9 SOMETHING ABOUT THAT?

10 **MR. MABIE:** EITHER INTEREST IS WAIVED OR NOT WAIVED.

11 **THE COURT:** WHAT WOULD YOU RECOMMEND?

12 **MR. MABIE:** I WOULD SAY, YOUR HONOR, GIVEN THE CIVIL
13 LIABILITIES, I THINK THAT INTEREST SHOULD BE WAIVED ON THIS.

14 **THE COURT:** ALL RIGHT. INTEREST IS WAIVED.

15 **MS. TEWKSBURY:** YOUR HONOR?

16 **THE COURT:** AND THE PAYMENTS ARE MADE TO THE COURT AT
17 THIS ADDRESS.

18 YES, MA'AM.

19 **MS. TEWKSBURY:** I WOULD INDICATE I DON'T BELIEVE THE
20 OTHER PLEADING COMPANIES HAVE THEIR INTEREST WAIVED.

21 **THE COURT:** I THOUGHT THEY DID, BUT I COULD BE WRONG
22 ABOUT THAT.

23 **MS. TEWKSBURY:** THEIR AGREEMENTS DON'T INCLUDE WAIVER
24 OF INTEREST. IT'S SET BY THE FEDERAL RESERVE, AND THEY PAY
25 ACCORDINGLY.

1 **MR. SNYDER:** TYPICALLY INTEREST IS WAIVED ONLY IF
2 THEY HAVE ESTABLISHED PROVEN INABILITY TO PAY. THAT WAS NOT
3 THE BASIS OF ANY OF THE OTHER FINES. WE WOULDN'T EXPECT
4 INTEREST WOULD HAVE BEEN WAIVED FOR THOSE.

5 **MR. RIORDAN:** I THOUGHT THE PSR RECOMMENDED -- WELL,
6 I'M NOT SURE, YOUR HONOR.

7 **THE COURT:** IS THERE ANY WAY TO FIND OUT? I WOULD
8 LIKE TO NOT WAIVE INTEREST IF WE DIDN'T WAIVE IT FOR THE OTHER
9 DEFENDANTS BUT WAIVE IT IF WE DID.

10 **THE CLERK:** IF I CAN GET A CASE NUMBER OF SOMETHING,
11 I COULD JUST LOOK, LIKE ANOTHER CORPORATION?

12 **MS. TEWKSBURY:** I DON'T HAVE ANOTHER CASE NUMBER, AND
13 I HATE TO DO THIS BECAUSE I KNOW THE COURT WOULD PREFER TO DO
14 THIS NOW. I'D LIKE TO BE ABLE TO PROVIDE YOU WITH THE
15 INFORMATION.

16 **THE CLERK:** IS THERE A NAME, LIKE A COMPANY?

17 **MS. TEWKSBURY:** YOU COULD LOOK UP "LG DISPLAY." THAT
18 WAS THE FIRST COMPANY TO PLEAD. IT WAS IN 2008, JANUARY.

19 **THE COURT:** FOR NOW I'M GOING TO SAY THAT INTEREST IS
20 NOT WAIVED AND GO ON AND DO THE REST OF THE SENTENCING, BUT IF
21 WE FIND OUT SOMETHING THAT WOULD CHANGE MY MIND, I'LL COME BACK
22 AND CHANGE THAT.

23 **MS. TEWKSBURY:** THANK YOU.

24 WITH RESPECT TO AUO AMERICA --

25 **MS. TEWKSBURY:** I'M SORRY, YOUR HONOR, TO INTERRUPT

1 YOU AGAIN, BUT YOU DID NOT MENTION THE COMPLIANCE MONITOR. YOU
2 MENTIONED THE PROGRAM AS INDICATED IN THE PSR, BUT THE
3 PROBATION OFFICE DID NOT MENTION THE MONITOR IN THEIR
4 RECOMMENDATION.

5 **THE COURT:** IN CONNECTION WITH THE ANTITRUST
6 COMPLIANCE AND ETHICS PROGRAM, THE COMPANY SHALL APPOINT AND
7 PAY FOR A MONITOR, IS THAT WHAT YOU'RE RECOMMENDING?

8 **MS. TEWKSBURY:** THAT'S CORRECT. THE PROCESS IS THE
9 COMPANY PUTS UP THREE NAMES OF INDEPENDENT COUNSEL WHO HAVE
10 SIGNIFICANT ANTITRUST BACKGROUND AND EXPERIENCE. THEY PRESENT
11 THOSE THREE NAMES TO PROBATION. PROBATION CHOOSES AN
12 INDEPENDENT MONITOR. THEY DO PASS THAT NAME BY US SO THAT WE
13 CAN CONFIRM WHETHER THAT PERSON IS INDEPENDENT AND HAS THE
14 REQUISITE ANTITRUST EXPERIENCE, BUT IT'S PROBATION'S
15 DETERMINATION ON THE MONITOR. AUO DOES PAY THE EXPENSES ON THE
16 MONITOR.

17 **MR. CLINE:** YOUR HONOR, MAY I MAKE A SUGGESTION?
18 JOHN CLINE FOR AUO AMERICA.

19 FIRST, I WANT TO BE CLEAR THAT WE HAVE NO OBJECTION
20 TO A COMPLIANCE PROGRAM AS A CONDITION OF PROBATION FOR EITHER
21 COMPANY. THERE IS ONE IN PLACE. IT'S INCOMPLETE. IT'S IN THE
22 PROCESS OF BEING DEVELOPED. WHAT IS PROBLEMATIC IS HAVING A
23 MONITOR, PARTICULARLY WITH ALL THE CONDITIONS THAT THE
24 GOVERNMENT PROPOSES IN ITS BRIEF. THERE'S NO PRIVILEGE. IT
25 REPORTS TO THE ANTITRUST DIVISION, SO ON, ESPECIALLY WHEN YOU

1 ARE IN THE MIDST OF CONTINUING LITIGATION.

2 WHAT I'M ASKING, YOUR HONOR -- WHETHER IT'S ASKING
3 FOR A STAY OR NO MONITOR AT ALL IS SORT OF UNCLEAR, BUT WHAT I
4 WOULD SUGGEST IS YOU GIVE US A CHANCE UNDER PROBATION'S
5 SUPERVISION, AND ULTIMATELY THE COURT'S SUPERVISION -- AND I
6 DON'T MIND REPORTING TO THE ANTITRUST DIVISION WHAT WE'RE
7 DOING -- GIVE US A CHANCE, WHICH WE ARE ALREADY IN THE PROCESS
8 OF DOING, TO PUT INTO PLACE A FULLY ADEQUATE EFFECTIVE
9 ANTITRUST COMPLIANCE PROGRAM. WE'RE WORKING ON IT.

10 NOW, THERE ARE OBVIOUSLY, WHEN YOU ARE DEALING WITH A
11 TAIWANESE COMPANY, THERE ARE LANGUAGE ISSUES, CULTURAL ISSUES.
12 THERE ARE ALL KINDS OF THINGS THAT NEED TO BE TAKEN INTO
13 ACCOUNT.

14 I THINK WHAT YOU'LL FIND IS BY THE TIME THE APPEAL IS
15 OVER, IF WE'RE TALKING IN TERMS OF A STAY OR, SAY, WITHIN A
16 YEAR, WE WILL HAVE A COMPLIANCE PROGRAM IN PLACE THAT IS
17 ACCEPTABLE TO THE GOVERNMENT, ACCEPTABLE TO PROBATION, AND
18 ACCEPTABLE TO THE COURT WITHOUT THE EXPENSE AND JUST THE SORT
19 OF LOGISTICAL DIFFICULTIES HIRING A MONITOR IS GOING TO CREATE,
20 PARTICULARLY WHEN WE'RE ALSO IN THE MIDST OF LITIGATION ON
21 APPEAL WITH THE GOVERNMENT AND THERE'S STILL THE CIVIL MATTERS
22 THAT ARE BEING WORKED OUT.

23 I JUST THINK THAT THE COURT WILL FIND THAT THAT IS AN
24 UNNECESSARY EXPENSE AND IN SOME WAYS EVEN AN ENCUMBRANCE TO
25 DEVELOPING WHAT I THINK WILL BE A STATE OF THE ART COMPLIANCE

1 PROGRAM WITHIN A PRETTY SHORT PERIOD OF TIME.

2 SO, WHAT I'M ASKING FOR, WHETHER YOU CALL IT A STAY
3 OR A CONDITION OF PROBATION, GIVE US A CHANCE TO DO IT WITHOUT
4 THE MONITOR.

5 **MS. TEWKSBURY:** YOUR HONOR, THIS IS A COMPANY THAT'S
6 IN NEED OF AN INDEPENDENT COMPLIANCE MONITOR. THEY DIDN'T EVEN
7 START SUPPOSEDLY DEVELOPING A COMPLIANCE PROGRAM UNTIL WELL
8 AFTER THEY WERE INDICTED. THERE IS NO INDICATION WHAT THIS
9 COMPLIANCE PROGRAM IS.

10 QUITE FRANKLY, WE CAN'T HAVE ANY FAITH THAT IT'S
11 GOING TO PASS ANY SORT OF MUSTER. THE ANTITRUST DIVISION IS
12 NOT IN BUSINESS OF COUNSELING COMPANIES ON COMPLIANCE.
13 MR. CLINE IS INCORRECT WE WOULD HAVE ANYTHING TO DO WITH THIS
14 COMPLIANCE PROGRAM.

15 IT IS FOR THE COMPLIANCE MONITOR WHO MONITORS THE
16 PROGRAM TO MAKE SURE IT IS BEING EFFECTED PROPERLY, AND THE
17 COMPLIANCE MONITOR REPORTS TO PROBATION ON A QUARTERLY BASIS.

18 YOU NEED AN INDEPENDENT PERSON TO DO THIS. THE
19 COMPANY HAS INDICATED ITS CONDUCT IS NOT ILLEGAL. IS THIS
20 GOING TO BE A COMPLIANCE PROGRAM BASED ON THE RULE OF REASON?
21 I AM CONCERNED ABOUT THE COMPANY DOING ITS OWN COMPLIANCE
22 PROGRAM, AND REPRESENTATIONS THAT IT'S GOING TO BE STATE OF THE
23 ART IS GOING TO BE HOLLOW IN THIS CASE, AND WE STRONGLY
24 RECOMMEND A COMPLIANCE MONITOR; OTHERWISE, THIS PROGRAM WILL BE
25 HOLLOW.

1 **MR. CLINE:** ACTUALLY, YOUR HONOR, THE EXISTING
2 PROGRAM IS NOT A RULE-OF-REASON THING AT ALL. IT'S DESIGNED TO
3 PREVENT AND DISCOVER ANY SORT OF DISCUSSIONS WITH COMPETITORS
4 ABOUT AGREEMENTS ON PRICES AND SO ON. AND THE ONE THAT WILL
5 ULTIMATELY BE PRODUCED, I THINK, WILL -- I THINK IT WILL BE
6 STATE OF THE ART.

7 **THE COURT:** THAT MAY BE, BUT I DON'T THINK IT WILL
8 HURT TO HAVE A MONITOR IN PLACE. I WILL ORDER THAT THE MONITOR
9 BE SELECTED IN ACCORDANCE WITH THE DIRECTIONS OF THE PROBATION
10 OFFICER AND REPORT TO THE PROBATION OFFICER.

11 CAN I JUST LEAVE THAT UP TO THE PROBATION OFFICER TO
12 FIGURE OUT HOW TO SELECT THE MONITOR AND PROCEED FROM THERE?

13 **MR. MABIE:** WE WOULD HAVE TO TAKE THAT UNDER
14 ADVISEMENT, YOUR HONOR.

15 **THE COURT:** I'LL JUST DIRECT IT BE AT THE DIRECTION
16 OF THE PROBATION OFFICER. IN THE EVENT WE NEED MORE CLARITY
17 FROM THE COURT ON THAT, OR MORE STRUCTURE, IF THE PROBATION
18 OFFICER LETS ME KNOW THAT, THEN WE CAN FIGURE OUT WHAT WE NEED
19 DO. ALL RIGHT?

20 **MS. TEWKSBURY:** YOUR HONOR, IF I MAY? THE GOVERNMENT
21 DID RECOMMEND A COMPLIANCE PROGRAM THAT ACTUALLY SPELLS OUT A
22 PROCEDURE THAT WOULD ASSIST THE PROBATION OFFICE IN MAKING THAT
23 DETERMINATION.

24 **THE COURT:** ALL RIGHT. AT THIS TIME I'M LEAVING THAT
25 UP TO THE PROBATION OFFICER. IF WE NEED FURTHER CLARITY, OR

1 YOU HAVE ISSUES WITH ATTORNEY-CLIENT PRIVILEGE OR ANYTHING LIKE
2 THAT, WE CAN ADDRESS IT WHEN THE ISSUES ARISE.

3 **MS. TEWKSBURY:** THANK YOU, YOUR HONOR.

4 **THE COURT:** THE COURTROOM DEPUTY HAS INDICATED IN THE
5 LG DISPLAY CASE, 08 CRIMINAL 803, INTEREST WAS NOT WAIVED ON
6 THE FINE. SO YOU WERE RIGHT ABOUT THAT, SO I'M NOT GOING TO
7 WAIVE INTEREST ON THE PAYMENT OF THE FINE.

8 WITH RESPECT TO AUO AMERICA, PURSUANT TO THE
9 SENTENCING REFORM ACT OF 1984, IT'S THE JUDGMENT OF THE COURT
10 THAT AU OPTRONICS CORPORATION AMERICA IS HEREBY PLACED ON
11 PROBATION FOR THREE YEARS. WHILE ON PROBATION AUOA SHALL NOT
12 COMMIT ANOTHER FEDERAL, STATE, OR LOCAL CRIME.

13 THE PROVISION -- I'M INTENDING THAT THE PROVISION
14 CONCERNING COMPLIANCE AND THE MONITOR FOR AUOA BE THE SAME AS
15 COMPLIANCE AND THE MONITOR FOR AUO.

16 AU OPTRONICS CORPORATION AMERICA SHALL DEVELOP,
17 ADOPT, AND IMPLEMENT AN EFFECTIVE COMPLIANCE AND ETHICS
18 PROGRAM. SUCH A PROGRAM SHALL ESTABLISH STANDARDS AND
19 PROCEDURES TO PREVENT AND DETECT CRIMINAL CONDUCT.

20 AU OPTRONICS CORPORATION AMERICA SHALL NOTIFY ITS
21 EMPLOYEES AND SHAREHOLDERS OF ITS CRIMINAL CONVICTION AND ITS
22 EFFECTIVE COMPLIANCE AND ETHICS PROGRAM.

23 ALL ASPECTS OF THE PROGRAM SHALL BE REPORTED TO THE
24 PROBATION OFFICER AS DIRECTED, AND QUARTERLY REPORTS DETAILING
25 THE ORGANIZATION'S PROGRESS SHALL BE SUBMITTED TO ENSURE

1 COMPLIANCE, AND A MONITOR SHALL BE ESTABLISHED IN THE SAME WAY
2 A MONITOR IS ESTABLISHED VIS-A-VIS AUO.

3 THE IMPOSITION OF A CRIMINAL MONETARY FINE IS WAIVED.
4 HOWEVER, IT IS ORDERED THAT AUOA PAY TO THE UNITED STATES A
5 SPECIAL ASSESSMENT OF \$400, WHICH IS DUE IMMEDIATELY.

6 WITH RESPECT TO MR. CHEN, PURSUANT TO THE SENTENCING
7 REFORM ACT OF 1984, IT IS THE JUDGMENT OF THE COURT THAT HSUAN
8 BIN CHEN, ALSO SOMETIMES DESCRIBED HERE AS H.B. CHEN, IS HEREBY
9 COMMITTED TO THE CUSTODY OF THE BUREAU OF PRISONS TO BE IN
10 PRISON FOR A TERM OF 36 MONTHS. IT IS FURTHER ORDERED THAT THE
11 DEFENDANT SHALL PAY TO THE UNITED STATES A SPECIAL ASSESSMENT
12 OF \$100 WHICH IS DUE IMMEDIATELY.

13 WHILE INCARCERATED, PAYMENT OF CRIMINAL MONETARY
14 PENALTIES IS DUE AT THE RATE OF NOT LESS THAN \$25 PER QUARTER
15 THROUGH THE BOP INMATE FINANCIAL RESPONSIBILITY PROGRAM.

16 IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL PAY TO
17 THE UNITED STATES A FINE OF \$200,000 WHICH IS DUE IMMEDIATELY,
18 PAYABLE TO THE COURT AT THIS ADDRESS. AND NO SUPERVISED
19 RELEASE IS IMPOSED TO FOLLOW.

20 WITH RESPECT TO DEFENDANT HUI HSUING, PURSUANT TO THE
21 SENTENCING REFORM ACT OF 1984, IT IS THE JUDGMENT OF THE COURT
22 THAT HUI HSUING, SOMETIMES CALLED HERE KUMA, IS HEREBY
23 COMMITTED TO THE CUSTODY OF THE BUREAU OF PRISONS TO BE
24 IMPRISONED FOR A TERM OF 36 MONTHS. I'M NOT IMPOSING ANY
25 SUPERVISED RELEASE TO FOLLOW.

1 IT IS FURTHER ORDERED THAT THE DEFENDANT SHALL PAY TO
2 THE UNITED STATES A SPECIAL ASSESSMENT OF \$100, WHICH IS DUE
3 IMMEDIATELY. WHILE INCARCERATED PAYMENT OF CRIMINAL MONETARY
4 PENALTIES IS DUE AT NOT LESS THAN \$25 PER QUARTER THROUGH THE
5 BOP INMATE FINANCIAL RESPONSIBILITY PROGRAM. IT IS FURTHER
6 ORDERED THAT THE DEFENDANT SHALL PAY TO THE UNITED STATES A
7 FINE OF \$200,000, WHICH IS DUE IMMEDIATELY.

8 **MR. OSTERHOUDT:** YOUR HONOR, I BEG YOUR PARDON.

9 DR. HSUING INDICATED TO ME HE DOESN'T HAVE THAT MONEY
10 RIGHT NOW IN A LIQUID FORM TO PAY TO THE UNITED STATES. COULD
11 THAT BE STAYED FOR SOME PERIOD OF TIME?

12 **THE COURT:** HOW LONG? HOW ABOUT 60 DAYS?

13 **MR. OSTERHOUDT:** YOUR HONOR, DR. HSUING WAS
14 SUGGESTING THAT PERHAPS SIX MONTHS.

15 **THE COURT:** I KNOW. I'M SUGGESTING PERHAPS TWO. HOW
16 DOES THAT STRIKE YOU?

17 **MR. OSTERHOUDT:** I THINK IT WOULD BE DIFFICULT. I
18 WANT TO BE ACCURATE. I'M SORRY.

19 (PAUSE IN PROCEEDINGS.)

20 **MR. OSTERHOUDT:** YOUR HONOR, COULD YOU PLEASE
21 CONSIDER 120 DAYS TO PAY THIS?

22 **THE COURT:** OKAY. ONE HUNDRED TWENTY DAYS, PAYABLE
23 IN 120 DAYS. DOES MR. CHEN WANT THE SAME THING?

24 **MR. ATTANSIO:** YES, YOUR HONOR. THANK YOU.

25 **THE CLERK:** WHAT ABOUT THE SPECIAL ASSESSMENT?

1 **THE COURT:** SPECIAL ASSESSMENT OF \$100 IS DUE
2 IMMEDIATELY.

3 **MR. OSTERHOUDT:** WE'LL PAY THAT, YOUR HONOR.

4 **THE CLERK:** I'M GOING TO GIVE YOU A FORM. DON'T GO
5 UNTIL I GIVE YOU THE FORM.

6 **MR. OSTERHOUDT:** YOUR HONOR, IS THIS THE APPROPRIATE
7 TIME TO DISCUSS THE PLACE OF SERVICE FOR HIS CONFINEMENT?

8 **THE COURT:** OH, YES.

9 **MR. OSTERHOUDT:** I WOULD RESPECTFULLY ASK --
10 CONSULTING WITH HIS FAMILY, AND I'VE LOOKED INTO THIS, IF HE
11 WERE DESIGNATED BY THE BUREAU OF PRISON IN THE CAMP AT TAFT,
12 CALIFORNIA, IT WOULD BE GEOGRAPHICALLY LOCATED IN A WAY THAT
13 WOULD BE GOOD FOR HIS FAMILY VISITATION. I KNOW YOUR HONOR
14 CAN'T CONTROL WHAT THE BUREAU DOES, BUT IF YOU WOULD RECOMMEND
15 HIS CONFINEMENT TO CAMP AT TAFT -- HE'S CAMP ELIGIBLE -- THAT
16 WOULD BE APPRECIATE.

17 **THE COURT:** ANY OBJECTION TO THAT ON THE GOVERNMENT'S
18 PART?

19 **MS. TEWKSBURY:** NO, YOUR HONOR. IT'S UP TO THE
20 COURT'S DISCRETION, AND BOP, OF COURSE.

21 **THE COURT:** YES, IT IS UP TO THE BOP, BUT I RECOMMEND
22 MR. KUMA BE ASSIGNED TO CAMP TAFT IN CALIFORNIA SO TO BE AS
23 CLOSE AS POSSIBLE TO HIS FAMILY.

24 **MR. OSTERHOUDT:** OF COURSE, WE WOULD ALSO
25 RESPECTFULLY ASK -- I KNOW THERE WILL BE A MOTION FOR BAIL

1 PENDING APPEAL THAT MR. HANDMAN WOULD ARGUE, BUT WE ASK HE BE
2 PERMITTED TO VOLUNTARILY SURRENDER.

3 **MS. TEWKSBURY:** WE DO NOT HAVE A PROBLEM WITH
4 VOLUNTARY SURRENDER. WE WOULD LIKE TO ADDRESS, OBVIOUSLY, THE
5 PAPERS ON THE MOTION.

6 **THE COURT:** YES.

7 HOW ABOUT MR. CHEN, DOES HE HAVE A GEOGRAPHICAL
8 PREFERENCE?

9 **MR. ATTANSIO:** WE WOULD REQUEST THE SAME
10 RECOMMENDATION, ACTUALLY EITHER TO TAFT OR LOMPOC, TO THE CAMP
11 THERE.

12 **MS. TEWKSBURY:** YOUR HONOR, BECAUSE MR. CHEN IS NOT A
13 U.S. CITIZEN, HE IS IMMEDIATELY REMOVABLE AND, THEREFORE, NOT
14 ELIGIBLE TO DESIGNATE TO ANY OF THE WORK CAMPS. IT'S NOT A
15 POSITION I'M TAKING; IT'S JUST A KNOWN FACT.

16 **MR. ATTANSIO:** COUNSEL IS CORRECT IN TERMS OF THE
17 POLICY OF THE BOP. WE INTEND TO TRY TO ADDRESS THAT AND WORK
18 THROUGH BOP CHANNELS TO HAVE HIM PUT IN A CAMP, DESPITE THAT
19 REGULATION, TO SEEK A WAIVER OF IT. I WOULD NOTE THAT WITH THE
20 GOVERNMENT'S APPROVAL, OTHER DEFENDANTS IN THIS CASE, SIMILARLY
21 DEPORTABLE, HAVE BEEN PUT IN CAMPS.

22 SO AT LEAST IF WE HAVE YOUR HONOR'S RECOMMENDATION,
23 WHICH I THINK ON THE MERITS IS THE RIGHT THING FOR A MAN LIKE
24 MR. CHEN AND CRIME LIKE THIS, IT WILL DO WHAT IT DOES WITH BOP,
25 AND THEY'LL APPLY THEIR RULES AS THEY SEE FIT, BUT I WOULD ASK

1 AT LEAST FOR YOUR HONOR'S RECOMMENDATION IN THAT REGARD,
2 RECOGNIZING THAT THE COURT'S RECOMMENDATION IS JUST THAT.

3 **THE COURT:** WELL, I DO SO RECOMMEND EITHER CAMP TAFT
4 OR LOMPOC SO HE MAY BE AS CLOSE TO FAMILY AS POSSIBLE, AND THEN
5 THEY WILL MAKE THE CHOICES THAT THEY MAKE.

6 IS THAT EVERYTHING UNTIL WE GET TO THE BAIL PENDING A
7 APPEAL ISSUE?

8 **THE CLERK:** DO WE HAVE A SURRENDER DATE?

9 **THE COURT:** VOLUNTARY SURRENDER IS ORDERED FOR BOTH
10 DEFENDANTS. WHEN WOULD THAT BE?

11 **MR. OSTERHOUDT:** SUBJECT TO THE COURT'S RULING ON THE
12 BAIL PENDING APPEAL MOTION, WE WOULD ASK A DATE IN DECEMBER.

13 **THE COURT:** TRACY, WHAT WOULD IT NORMALLY BE?

14 **THE CLERK:** I BELIEVE IT'S --

15 **MR. OSTERHOUDT:** BEFORE THE 20TH IF POSSIBLE.

16 **THE CLERK:** I'M NOT SURE HOW LONG BOP IS TAKING TO
17 DESIGNATE.

18 **MR. MABIE:** IT WOULD TAKE UP TO SIX WEEKS.

19 **THE COURT:** DO YOU WANT TO SAY THE END OF NOVEMBER?

20 **MS. TEWKSBURY:** THAT'S FINE WITH US, YOUR HONOR,
21 SUBJECT TO BOP AND THEIR AVAILABILITY, OF COURSE.

22 **THE CLERK:** WE'LL SAY NOVEMBER 30.

23 **THE COURT:** IS THAT OKAY?

24 **MR. OSTERHOUDT:** YES, YOUR HONOR.

25 **MR. ATTANSIO:** THANK YOU, YOUR HONOR.

1 **THE COURT:** SO VOLUNTARILY SURRENDER BY
2 NOVEMBER 30TH, 2012.

3 IN THE EVENT THERE'S BEEN NO DESIGNATION, OR IF
4 THERE'S A HANGUP ON DESIGNATION, PLEASE LET THE COURT KNOW AND
5 WE CAN TALK ABOUT WHETHER WE NEED TO ADJUST THAT DATE.

6 **MR. OSTERHOUDT:** THANK YOU.

7 **THE COURT:** OKAY.

8 OKAY. THE LAST MATTER ON MY AGENDA IS THE DEFENDANTS
9 HAVE ALL REQUESTED A STAY AND/OR BAIL PENDING APPEAL, AND I'M
10 INCLINED TO DENY ALL OF THOSE REQUESTS.

11 WITH RESPECT TO AUO, TO STAY THE FINE ON APPEAL IT
12 MUST SHOW THE LIKELIHOOD OF SUCCESS ON APPEAL, IRREPARABLE
13 INJURY ABSENT A STAY; THAT THE STAY WOULD NOT INJURE OTHER
14 PARTIES IN THE PROCEEDING, AND THE PUBLIC INTEREST SUPPORTS THE
15 STAY. AND I DON'T FIND EITHER LIKELY SUCCESS ON THE MERITS OR
16 IRREPARABLE INJURY OR PUBLIC INTEREST. I THINK THE FACTOR
17 THREE IS NEUTRAL.

18 WITH RESPECT TO MR. CHEN AND KUMA, THEIR REQUESTS TO
19 STAY THE SENTENCE REQUIRE THAT THEY SHOW BY CLEAR AND
20 CONVINCING EVIDENCE THAT THE DEFENDANT IS NOT A FLIGHT RISK,
21 SHOW THAT THE APPEAL IS NOT FOR DELAY, SHOW THERE'S A
22 SUBSTANTIAL QUESTION OF LAW OR FACT, AND SHOW IF THE
23 SUBSTANTIAL QUESTION IS ANSWERED IN THEIR FAVOR, THEY WOULD BE
24 ACQUITTED OR ENTITLED TO A NEW TRIAL. I DON'T FIND ANY OF
25 THOSE THINGS TO BE TRUE EITHER.

1 WE'VE DISCUSSED, I THINK AT LENGTH, THE ISSUE OF
2 EXTRADITION FROM TAIWAN.

3 I WILL SAY I FIND BOTH DEFENDANTS HAVE BEEN
4 COOPERATIVE WITH THE COURT AND RESPONSIBLE WITH THE COURT AND
5 HAVE COME TO COURT WHEN THEY WERE ORDERED TO COME TO COURT AND
6 HAVE SHOWN RELATIVELY LITTLE INCLINATION TO BE A FLIGHT RISK.
7 SO IT'S NOT THAT THEY AS PERSONS ARE IRRESPONSIBLE.

8 THE FACT REMAINS, HOWEVER, GIVEN THE FACT THAT THERE
9 IS NO EXTRADITION TREATY TO TAIWAN, THAT THERE IS AN ISSUE OF
10 ATTENDANCE THAT IS MUCH MORE COMPLICATED HERE THAN IN SOME
11 OTHER CASES.

12 AND I DON'T FIND ANY OF THE OTHER FACTORS THAT WOULD
13 WARRANT IMPOSITION OF A STAY, SO THAT'S MY VIEW. I'LL BE HAPPY
14 TO HEAR FROM YOU.

15 **MR. ATTANSIO:** WITHOUT BELABORING THE POINT, YOUR
16 HONOR, BUT I HAVE TO COME BACK TO THE POST-CONVICTION TRIP THAT
17 MR. CHEN TOOK, AND I HATE TO BE IN A POSITION TO ARGUE FROM IT
18 AS THOUGH IT'S SOMETHING WE ARE TAKING ADVANTAGE OF, BUT IT'S A
19 FACT.

20 AFTER THE CONVICTION, AFTER WE ALL KNEW THAT THE
21 GOVERNMENT MIGHT ASK FOR AN EXTREMELY LONG SENTENCE AND THAT,
22 FRANKLY, THAT THE GUIDELINES MIGHT COME OUT WITH AN EXTREMELY
23 LONG SENTENCE, MR. CHEN WAS PERMITTED TO GO HOME, PERMITTED TO
24 HAVE HIS PASSPORT.

25 SO IF THE COURT'S RULING IS THAT THERE REMAINS A RISK

1 OF FLIGHT, I WOULD RESPECTFULLY POINT OUT THAT THE HISTORY OF
2 TRIPS WITH HIS PASSPORT, BOTH DOMESTICALLY AND INTERNATIONALLY,
3 DON'T ALLOW FOR THAT CONCLUSION.

4 I JUST THINK THAT THIS IS AN EXTRAORDINARY CASE.
5 IT'S BEEN AN EXTRAORDINARY CASE BECAUSE THEY CAME HERE IN THE
6 FIRST PLACE. IT'S BEEN AN EXTRAORDINARY CASE BECAUSE OF THE
7 DISCRETION THE COURT HAS EXERCISED TO ALLOW THEM TO TRAVEL,
8 FRANKLY -- I'M SPEAKING HERE FOR MR. CHEN -- HIS CONTINUAL
9 COMING BACK.

10 HE WAS THE FIRST ONE ALLOWED TO TRAVEL. I STOOD
11 RIGHT HERE, YOUR HONOR -- AND MR. CHEN WAS RIGHT HERE. AND
12 YOUR HONOR WAS VERY, VERY DIRECT, AS THE COURT SHOULD HAVE
13 BEEN, THAT HE SHOULD NOT LET DOWN HIS DAUGHTERS, WHO HAD POSTED
14 AN EXTRAORDINARY AMOUNT OF -- WHO HAD PLEDGED AN EXTRAORDINARY
15 AMOUNT OF SECURITY, HE SHOULDN'T LET DOWN HIS FAMILY, HE
16 SHOULDN'T LET DOWN THE COURT; THAT IF HE DID THAT, YOUR
17 HONOR AND THE GOVERNMENT WOULD TAKE THAT MONEY FROM HIS
18 DAUGHTERS.

19 WE ARE STILL THERE. NOT ONLY ARE WE THERE, WE ARE
20 BEYOND THERE BECAUSE HE'S TRAVELED SINCE AND HE'S LIVED UP TO
21 EVERY PROMISE HE'S GIVEN TO THIS COURT.

22 TO SAY -- I THINK YOUR HONOR IS RIGHT IN A SENSE, WE
23 ARE PAST WHETHER THERE'S AN EXTRADITION TREATY OR NOT -- JUST
24 BY THE WAY THEY'VE ACTED, THE WAY HE'S CONDUCTED HIMSELF, SO I
25 AGREE WITH YOUR HONOR, THAT SHOULD NOT BE A CONSIDERATION.

1 WE'RE WAY PAST THAT. HE WAS CONVICTED, AND HE WENT HOME, AND
2 THAT WAS EXTRAORDINARILY MONUMENTAL TO HIM AND HIS FAMILY.

3 THERE ARE REAL ISSUES HERE. YOUR HONOR HAS MADE
4 COMMENTS ALONG THE WAY BECAUSE, FRANKLY, SOME OF THE ISSUES
5 HAVE BEEN SO HOTLY DEBATED, AND YOUR HONOR HAS MADE AT LEAST
6 THREE COMMENTS, WHICH WE POINT OUT IN OUR PAPERS ABOUT THE
7 NOVEL ISSUES AND ABOUT HOW WE'RE IN UNCHARTED TERRITORY.

8 SO, COMBINED WE HAVE A MAN WHO CANNOT POSSIBLY BE
9 CONSIDERED A FLIGHT RISK GIVEN HIS CONDUCT. WE HAVE ISSUES OF
10 SUBSTANTIAL -- NOVEL ISSUES THAT ARE SUBSTANTIAL AND
11 SIGNIFICANT UNDER ANTITRUST LAW, GIVEN THE FOREIGN CONDUCT, AND
12 ALL THE OTHER ISSUES WHICH I WON'T GO INTO, ALL OF THOSE THINGS
13 MR. JENKINS AND MR. RIORDAN HAVE SO ABLY ARGUED FOR OVER A YEAR
14 NOW, I WILL NOT TRY TO REARGUE NOW, BUT THEY'RE THERE, WHICH I
15 SUGGEST THE NINTH CIRCUIT IS GOING TO BE KEENLY INTERESTED IN
16 THEM BECAUSE THEY'RE NEW.

17 SO WITH ALL OF THOSE THINGS, YOUR HONOR, WHILE THE
18 NINTH CIRCUIT DELIBERATES THOSE ISSUES THAT YOUR HONOR HAS
19 GRAPPLED WITH -- AND THE DISTRICT COURT ALWAYS HAS TO GRAPPLE
20 WITH THEM FIRST -- WHILE THE NINTH CIRCUIT WRESTLES WITH THEM
21 AND GRADES ALL OF OUR PAPERS, HE SHOULDN'T HAVE TO BE IN JAIL.
22 THAT'S ALL. HE DESERVES NOT TO BE IN JAIL WHILE THAT HAPPENS.
23 HE WILL NOT LET YOUR HONOR DOWN. WE WILL SEE WHAT THE NINTH
24 CIRCUIT HAS TO SAY TO ALL OF US BEFORE HE HAS TO GO INTO JAIL.
25 IT'S JUST THE RIGHT THING.

1 I SUBMIT.

2 **THE COURT:** ALL RIGHT. THANK YOU.

3 **MR. HANDMAN:** GOOD MORNING, YOUR HONOR. I WANT TO
4 ECHO WHAT MR. ATTANASIO SAID BECAUSE IT APPLIES AS WELL TO
5 KUMA.

6 HE'S OBVIOUSLY BEEN SOMEONE WHO'S FORFEITED HIS
7 PASSPORT. HE WAS, WITH THE COURT'S PERMISSION, GRANTED LEAVE
8 TO TRAVEL INTERNATIONALLY BACK TO TAIWAN ON THREE OCCASIONS,
9 THEN TO TRAVEL INTERNATIONALLY AGAIN. HE HAS ALWAYS BEEN
10 ENTIRELY CAREFUL IN COMPLYING WITH THOSE REQUIREMENTS.

11 AND I THINK AN IMPORTANT POINT IS THAT AFTER THIS
12 CONVICTION UNDER THE STATUTE, UNDER 3143(A), THE REQUIREMENT AT
13 THAT POINT WAS THAT HE BE REMANDED TO CUSTODY UNLESS HE COULD
14 SHOW BY THE SAME STANDARD WE HAVE HERE TODAY, CLEAR AND
15 CONVINCING EVIDENCE, THAT HE WOULD NOT BE A FLIGHT RISK.

16 THE GOVERNMENT AT THAT POINT DIDN'T ASK TO REMAND HIM
17 TO CUSTODY. YOUR HONOR DID NOT CONDUCT THAT INQUIRY AND
18 SUGGEST HE WOULD PRESENT A FLIGHT RISK AFTER CONVICTION. I
19 THINK THAT STILL REMAINS TODAY. THE STANDARD IS EXACTLY THE
20 SAME, AND THE CIRCUMSTANCES ARE VIRTUALLY THE SAME. THE ONLY
21 DIFFERENCE IS THAT NOW SENTENCE HAS BEEN IMPOSED. BUT, IF
22 ANYTHING, THE SENTENCE WAS A LOWER RANGE THAN WHAT THE
23 GOVERNMENT WAS SEEKING WHEN MR. HSUING HAD EVEN PERHAPS MORE OF
24 A PALPABLE CONCERN AND INSTINCT TO FLEE. I DON'T THINK YOU
25 HAVE A RECORD TO FIND HE DOES PRESENT A FLIGHT RISK.

1 I THINK IT'S TELLING THAT THE GOVERNMENT IN THEIR
2 OPPOSITION THAT WAS JUST FILED DOESN'T CONTEST THE POINT.
3 THERE'S A FOOTNOTE THAT SEEMS TO RESERVE ON THE QUESTION, BUT
4 THEY DO NOT AFFIRMATIVELY ARGUE. SO IT WOULD BE A FINDING ON
5 YOUR OWN THAT I DO THINK CONTRADICTS PREVIOUS FINDINGS YOUR
6 HONOR HAS MADE AND CERTAINLY THE TACIT FINDING THAT YOUR HONOR
7 MADE AT THE CONVICTION.

8 ON THE MERITS QUESTION, I THINK AS MR. ATTANASIO
9 SAID, THE STANDARD IS SIMPLY IS THERE A SUBSTANTIAL QUESTION.
10 AND THE NINTH CIRCUIT IN THE HANDY CASE SAYS WHAT THAT MEANS
11 IS: IS IT FAIRLY DEBATABLE?

12 I REMEMBER MY FIRST APPEARANCE BEFORE YOUR HONOR BACK
13 IN MAY DISCUSSING A FAIRLY DEBATABLE QUESTION. I SAID, IN
14 RESPONSE TO ONE OF YOUR QUESTIONS, THERE WAS, SADLY, NO
15 CONTROLLING AUTHORITY. YOUR RESPONSE WAS ESSENTIALLY, WELCOME
16 TO THE CLUB. THIS CASE HAS BEEN, IN YOUR WORDS, CHOCK FULL OF
17 QUESTIONS WHERE THERE HAVE BEEN NO CONTROLLING AUTHORITIES. I
18 THINK THAT'S RIGHT.

19 THESE ARE VERY NOVEL QUESTIONS. THE GOVERNMENT HAS
20 EMPHASIZED THE UNPRECEDENTED NATURE OF THIS PROSECUTION. THE
21 QUESTIONS SURROUNDING THE VERY ESSENCE OF WHETHER THIS IS
22 SOMETHING GOVERNED BY A PER SE THEORY OR WHETHER IT'S GOVERNED
23 BY RULE OF REASON IS CLEARLY A DEBATABLE QUESTION.

24 THE METRO INDUSTRIES CASE CERTAINLY SPEAKS TO THOSE
25 ISSUES SQUARELY, AND I KNOW YOUR HONOR HAS RULED AGAINST US ON

1 THAT POINT, BUT IT IS A CASE THAT SAYS THAT ON FOREIGN CONDUCT,
2 THESE SORTS OF ANTITRUST VIOLATIONS ARE GOVERNED BY A RULE OF
3 REASON WHEN THERE'S FOREIGN CONDUCT INVOLVED.

4 THAT'S SOMETHING, OF COURSE, FOR THE COURT OF APPEALS
5 TO RESOLVE. BUT IS THAT A FAIRLY DEBATABLE QUESTION? YES.
6 AND THE NINTH CIRCUIT HAS SAID WE DON'T HAVE TO SHOW THAT WE
7 ARE LIKELY TO PREVAIL. WE DON'T NEED YOUR HONOR TO PERFORM THE
8 SORT OF METAPHYSICAL INQUIRY OF GUESSING WHETHER YOU ARE
9 ACTUALLY INCORRECT. ALL YOU NEED TO RECOGNIZE IS THAT IT IS
10 CLOSE CALL, AND IT'S A CLOSE CALL AS YOUR HONOR HAS RECOGNIZED.

11 I THINK SOMETHING YOUR HONOR HAS SAID TODAY
12 UNDERSCORES THE IMPORTANCE OF THAT DISTINCTION HERE.

13 THESE DEFENDANTS, AS YOUR HONOR SAID, WERE CONVICTED
14 OF SOMETHING THAT YOU THAT SAID THE EVIDENCE SHOWS ON A PER SE
15 BASIS A CLEAR PRICE-FIXING CONSPIRACY. BUT YOUR HONOR ALSO
16 RECOGNIZED THAT THEY MADE SOME POOR JUDGMENTS BASED ON CONCERNS
17 FOR THEIR COMPANY, CONCERNS FOR A FLEDGLING INDUSTRY, THE SORTS
18 OF ISSUES THAT ACTUALLY GET TO WHAT A RULE OF REASONABLENESS
19 WOULD EVALUATE, AND THESE DEFENDANTS COULD VERY WELL HAVE,
20 READING THE METRO INDUSTRIES DECISION, THAT RULE OF
21 REASONABLENESS IS THE ANSWER HERE AND DOES CONTROL THAT
22 CONDUCT.

23 SO I THINK WHAT YOUR HONOR HAS RECOGNIZED CONFIRMS
24 THE IMPORTANCE OF RECOGNIZING HOW CLOSE THESE QUESTIONS ARE AND
25 HOW THESE DEFENDANTS COULD HAVE, IN GOOD FAITH, COME TO THE

1 UNITED STATES FROM A COUNTRY WITH NO EXTRADITION TREATY AND
2 VOLUNTARILY SURRENDER THEMSELVES TO THIS COURT'S JUSTICE
3 SYSTEM.

4 I THINK ON THOSE FACTORS, WE THINK THERE'S CLEAR AND
5 CONVINCING EVIDENCE -- THE GOVERNMENT HASN'T CONTESTED FLIGHT
6 RISK, AND WE DON'T THINK THEY'VE PROVIDED ANY MEANINGFUL
7 REBUTTAL ON THE SUBSTANTIAL QUESTIONS. THEIR ONLY POINTS ARE
8 TWO; THIS COURT HAS ALREADY RESOLVED THOSE QUESTIONS, BUT, OF
9 COURSE, WE'RE APPEALING. IF WE HAD WON, THEN THAT WOULD BE
10 TRUE. THAT CAN'T BE THE ANSWER BECAUSE NO ONE WOULD GET A BOND
11 IN THAT CASE.

12 AND THE SECOND ISSUE THEY SAY IS THESE ISSUES HAVE
13 BEEN VENTILATED OVER AND OVER AGAIN BY YOUR HONOR AND BY
14 COUNSEL. THEY'RE EXACTLY RIGHT. THE REASON THEY WERE
15 VENTILATED SO AGGRESSIVELY AND THOROUGHLY IS BECAUSE THERE ARE
16 NO EASY ANSWERS. THEY DON'T ADMIT OF THOSE QUESTIONS. THE
17 REASON THIS COURT HAD TO STRUGGLE AND COUNSEL HAD TO STRUGGLE
18 IS THESE ARE TOUGH ISSUES. THEY AREN'T THE USUAL THING WHERE
19 YOU SIMPLY LOOK AT THE RULE AND SEE WHAT THE ANSWER IS OR THE
20 BINDING PRECEDENT. THERE HAVE BEEN VERY FEW BINDING PRECEDENTS
21 FOR THE COURT TO APPLY.

22 SO I THINK THE GOVERNMENT'S RESPONSE ONLY CONFIRMS
23 WHY THIS IS A CASE THAT DOES MERIT A BAIL PENDING APPEAL.

24 THANK YOU, YOUR HONOR.

25 **THE COURT:** MR. SNYDER.

1 **MR. SNYDER:** YOUR HONOR, THIS CASE HAS UNDOUBTEDLY
2 PRODUCED NOVEL ISSUES OF FIRST IMPRESSION. CERTAINLY, THE
3 OVERCHARGE CASE AND ISSUES RELATED TO THAT ARE THE FIRST TIME
4 THIS HAS EVER BEEN LITIGATED IN A CRIMINAL ANTITRUST CASE.

5 THE PROBLEM WITH THE INDIVIDUAL DEFENDANTS' POSITION
6 IS THAT THE ISSUES THEY CAN RELY ON FOR THEIR MOTION TO STAY
7 ARE NOT NOVEL. THEY DO NOT RAISE ISSUES OF FIRST IMPRESSION.

8 THE FACT OF THE MATTER IS THAT THE EXTRATERRITORIAL
9 APPLICATION OF THE **SHERMAN ACT** TO FOREIGN CONDUCT HAS BEEN
10 UNDISPUTED FOR A VERY LONG TIME. AFTER HARTFORD FIRE, NIPPON
11 PAPER, COURTS HAVE REPEATEDLY APPLIED THE SHERMAN ACT TO
12 CONDUCT THAT IS WHOLLY FOREIGN.

13 THE THING THAT'S IMPORTANT TO REMEMBER HERE IS THIS
14 IS NOT A CASE THAT'S ABOUT WHOLLY FOREIGN CONDUCT. THIS CASE
15 DEALT VERY MUCH WITH CONDUCT -- CONSPIRATORIAL CONDUCT THAT
16 TOOK PLACE HERE IN THE UNITED STATES.

17 THREE WITNESSES SERVED NO PURPOSE OTHER THAN TO FILL
18 OUT THE U.S. ASPECT OF THIS CASE. MICHAEL WONG TALKED ALL
19 ABOUT AUOA'S CONDUCT HERE IN THE UNITED STATES THAT WAS
20 CONSPIRATORIAL IN NATURE.

21 TIM TIERNEY, PIYUSH BHARGAVA, OUR VICTIM WITNESSES,
22 TALKED ABOUT HOW THE AFFECTED PRICE NEGOTIATIONS FROM THIS
23 CONSPIRACY TOOK PLACE HERE IN THE UNITED STATES. PIYUSH
24 BHARGAVA ALSO TALKED ABOUT HOW THE DEFENDANTS WOULD VISIT THEM
25 IN AUSTIN. THOSE TRIPS BY THESE DEFENDANTS WERE ACTS IN

1 FURTHERANCE OF THE CONSPIRACY THAT OCCURRED HERE IN THE UNITED
2 STATES.

3 SO UNDER EITHER SCENARIO, EITHER THE NOVELTY OF THE
4 EXTRATERRITORIAL APPLICATION OF THE **SHERMAN ACT** OR THE ISSUE AS
5 TO WHETHER THIS IS A FULLY FOREIGN APPLICATION OF -- FULLY
6 FOREIGN APPLICATION OF THE **SHERMAN ACT**, NEITHER OF THOSE -- THE
7 FIRST ISSUE IS NOT NOVEL, AND THE SECOND ISSUE HAS BEEN
8 DISPROVEN BY THE EVIDENCE IN THIS CASE.

9 SECOND, WITH RESPECT TO METRO INDUSTRIES, THAT IS NOT
10 A FAIRLY DEBATABLE POINT. NO COURT -- AND IT'S NOT JUST YOUR
11 HONOR THAT'S CONSIDERED THAT CASE -- NO COURT THAT'S EVER BEEN
12 ASKED TO CONSIDER THAT CASE IN THIS CONTEXT HAS EVER APPLIED
13 IT. THAT IS NOT AN ISSUE I THINK THAT RAISES A SUBSTANTIAL
14 QUESTION THAT WOULD JUSTIFY A STAY OF THEIR SENTENCE.

15 FINALLY, THE LAST TWO ISSUES REALLY ARE SUFFICIENCY
16 OF EVIDENCE. YOUR HONOR HEARD THE TRIAL RECORD. THE JURY
17 CONVICTED THEM BEYOND A REASONABLE DOUBT.

18 WITH RESPECT TO VENUE, MS. TEWKSBURY STOOD UP HERE AT
19 THE RULE 29 HEARING AND RECITED, I BELIEVE, HER TOP 24 PIECES
20 OF EVIDENCE IN THE RECORD SUPPORTING VENUE. ONLY ONE OF THOSE
21 IS NECESSARY TO ESTABLISH VENUE. IT'S NOT A DEBATABLE POINT
22 THAT THERE WAS A SUFFICIENCY OF THE VENUE EVIDENCE.

23 FINALLY, WITH RESPECT TO FTAA COMMERCE, THERE IS ALSO
24 EVIDENCE IN THE RECORD THAT SUPPORTS THAT, AND THE DEFENDANTS
25 REQUESTED AND RECEIVED A JURY INSTRUCTION MAKING THAT AN

1 ELEMENT OF THE CASE. THE JURY, CONSIDERING THAT INSTRUCTION,
2 FOUND THEM GUILTY BEYOND A REASONABLE DOUBT. I THINK IT'S NOT
3 A DEBATABLE POINT THAT THERE IS A SUFFICIENCY OF EVIDENCE IN
4 THE RECORD ON THE BASIS OF DR. LEFFLER'S TESTIMONY AND OTHER
5 EVIDENCE THAT WAS SUBMITTED THAT WILL SHOW THAT THERE WAS A
6 SUFFICIENT EVIDENTIARY RECORD FOR THAT FINDING.

7 THANK YOU.

8 **THE COURT:** THANK YOU.

9 **MR. RIORDAN:** YOUR HONOR, I LEFT THE ISSUE OF BAIL ON
10 APPEAL TO THE INDIVIDUAL DEFENDANTS BECAUSE, NEEDLESS TO SAY,
11 THEIR INTERESTS ARE PARAMOUNT. I JUST WANTED TO -- THE COURT
12 IS GOING TO DENY OUR REQUEST FOR A STAY. WE'VE MADE IT. I
13 JUST WANTED TO ADD TWO THINGS TO THE RECORD.

14 ONE, OUR PROPOSAL WAS TO PAY, ESSENTIALLY COMMONLY IN
15 BAIL CASES, TEN PERCENT OF THE \$500 MILLION TO THE COURT AS
16 SECURITY AND HAVE THE REMAINDER OF THE FINE STAYED.

17 I DO WANT TO POINT OUT ONE THING. THE COURT IN
18 DISCUSSING AUO SAID WE WERE REQUIRED TO SHOW A LIKELIHOOD OF
19 SUCCESS ON THE MERITS, AND --

20 **THE COURT:** ON APPEAL. THAT'S WHAT I SAID. AM I
21 WRONG ABOUT THAT?

22 **MR. RIORDAN:** THAT IS THE PHRASE THAT THE GOVERNMENT
23 USES. AT PAGE 1 OF ITS BRIEF, IT CITES ONE CASE FOR IT.
24 LEIVA-PEREZ VERSUS HOLDER, 640 FED.3D. 962. WHAT IT DOESN'T DO
25 IS TELL YOU THAT THAT CASE STANDS FOR THE OPPOSITE OF THE

1 PROPOSITION THAT IT'S STATED.

2 IN THAT CASE, THE COURT SAID THERE HAVE BEEN WORDS
3 USED IN THE PRELIMINARY INJUNCTION CONTEXT OF LIKELIHOOD OF
4 SUCCESS, BUT LET US BE CLEAR, THAT DOES NOT APPLY IN THE
5 APPELLATE CONTEXT FOR A STAY. WE FIND -- I'M QUOTING.

6 "WE FIND ADDITIONAL EVIDENCE THAT
7 THIS STAY FACTOR DOES NOT REQUIRE THE MOVING
8 PARTY TO SHOW THAT THEIR ULTIMATE SUCCESS IS
9 PROBABLE."

10 OKAY? AND THEN IT GOES ON TO SAY WHY. IT SAYS, ALL
11 YOU HAVE TO DO IS SHOW, QUOTE: "SERIOUS QUESTIONS GOING TO THE
12 MERITS," NOT A LIKELIHOOD OF SUCCESS ON THE MERITS, BUT THE
13 NEXT TWO SENTENCES MERIT QUOTATION.

14 "SUCH A RULE MAKES GOOD SENSE. A
15 MORE STRINGENT REQUIREMENT WOULD EITHER, IN
16 ESSENCE, PUT EVERY CASE IN WHICH A STAY IS
17 REQUESTED ON AN EXPEDITED SCHEDULE WITH THE
18 PARTIES REQUIRED TO BRIEF THE MERITS OF THE
19 CASE IN DEPTH FOR STAY PURPOSES, OR WOULD
20 HAVE THE COURT ATTEMPTING TO PREDICT WITH
21 ACCURACY THE RESOLUTION OF OFTEN THORNY LEGAL
22 ISSUES WITHOUT ADEQUATE BRIEFING AND
23 ARGUMENT. SUCH PREADJUDICATION WOULD DEFEAT
24 THE PURPOSE OF THE STAY, WHICH IS TO GIVE THE
25 REVIEWING COURT THE TIME TO ACT

1 RESPONSIBILITY RATHER THAN DOLING OUT JUSTICE
2 ON THE FLY."

3 SO ALL THAT IS REQUIRED HERE IS A SERIOUS QUESTION --

4 **THE COURT:** YOU MIGHT BE RIGHT, AND I'LL GET TO THAT
5 IN A MINUTE. OF COURSE, WHAT THEY WERE JUST TALKING ABOUT IS
6 IF YOU ARE TALKING ABOUT A PRELIMINARY INJUNCTION AND YOU
7 HAVEN'T EVEN GOT THE REST OF IN EVIDENCE THE CASE AT THE TRIAL
8 LEVEL, RIGHT? IS THAT WHAT YOU'RE SAYING?

9 **MR. RIORDAN:** THIS IS A CASE IN WHICH THE GOVERNMENT,
10 AS IT DOES HERE, ATTEMPTED TO SAY THAT THE PRELIMINARY
11 INJUNCTION STANDARD APPLIES TO A CASE ON APPEAL, AND THIS IS
12 NINTH CIRCUIT SAYING, NO, THE PRELIMINARY INJUNCTION STANDARD
13 DOESN'T APPLY TO A REQUEST ON APPEAL; WHAT IT APPLIES IS THE
14 SERIOUS QUESTION TEST.

15 **THE COURT:** FINE. I FIND THERE ISN'T A SERIOUS
16 QUESTION. BUT I APPRECIATE CORRECTING ME ON THE STANDARD.

17 **MR. RIORDAN:** THE COURT DOESN'T BELIEVE THE METRO
18 ISSUE WAS A SERIOUS QUESTION, WHEN JUDGE ALDER SAID IT'S THE
19 PREVAILING RULE IN THE NINTH CIRCUIT? THE COURT MAY BE RIGHT,
20 BUT THE NINTH CIRCUIT HAS NEVER DEVIATED FROM THAT STANDARD. I
21 SUBMIT IT IS A VERY SERIOUS QUESTION.

22 **THE COURT:** THANK YOU, COUNSEL. WAS THAT WRONG? WAS
23 THAT THE WRONG STANDARD TO APPLY?

24 **MR. SNYDER:** I DON'T BELIEVE SO, YOUR HONOR, BUT WE
25 CAN MAKE IT EASY FOR YOU. THEY UNDOUBTEDLY HAVE THE BURDEN OF

1 PROVING IRREPARABLE HARM, WHICH YOU ALREADY FOUND THEY HAVEN'T
2 PROVEN, AND IT WOULD BE IN THE PUBLIC INTEREST TO ALLOW A STAY,
3 WHICH YOU ALSO FOUND WOULD NOT BE IN THE PUBLIC'S INTEREST --
4 YOU HAVE FOUND A STAY WOULD NOT BE IN THE PUBLIC'S INTEREST.

5 SO, ON THOSE TWO FACTORS ALONE, YOU CAN DENY THEIR
6 MOTION FOR STAY.

7 **THE COURT:** OKAY. THANK YOU. ALL FOUR MOTIONS ARE
8 DENIED.

9 ANYTHING ELSE FOR TODAY? ALL RIGHT. THANK YOU ALL
10 VERY MUCH.

11 (PROCEEDINGS ADJOURNED.)
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CERTIFICATE OF REPORTER

I, JOAN MARIE COLUMBINI, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CR 09-0110 SI, UNITED STATES VERSUS AU OPTRONICS, ET AL., WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

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/S/ JOAN MARIE COLUMBINI, CSR 5435, RPR

FRIDAY, SEPTEMBER 21, 2012

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