

# EXHIBIT A

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

v.

10CR417 (JSR)

SAMARTH AGRAWAL,

Defendant.

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New York, NY  
February 28, 2011  
3:30 p.m.

Before:

HON. JED S. RAKOFF

District Judge

APPEARANCES

PREET BHARARA  
United States Attorney for the  
Southern District of New York

DANIEL W. LEVY

THOMAS G.A. BROWN  
Assistant United States Attorneys

IVAN FISHER  
CAROLYN SILANE  
Attorneys for Defendant

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1 certainly a point we need to address. But my recollection, and  
2 this we will get into more detail when we talk about acceptance  
3 of responsibility, is that your client testified as well as  
4 stating to the probation office that he recognized he was doing  
5 wrong when he conveyed whatever aspects of this he did convey  
6 to his now employer, yes.

7 MR. FISHER: No doubt about it.

8 THE COURT: So what is it that I am missing --

9 MR. FISHER: You are missing --

10 THE COURT: -- from that simple admission, that bears  
11 on the issue of intent.

12 MR. FISHER: Quite a bit, with all due respect, quite  
13 a bit. There is this very important distinction between that  
14 portion of the law that you accurately shared with the jury and  
15 the guidelines interpretation of that law which you did not.  
16 And that leaves us and you, I hope, with an openness to perhaps  
17 some helpful guidance from me, but that leaves you with the  
18 task of asking yourself what was he intending to do  
19 subjectively, not objectively, what was he attempting to do,  
20 and I want you to know what he was attempting to do was, one,  
21 absolutely nothing within shouting range.

22 THE COURT: Let's take the embezzlement analogy.  
23 Supposing someone who is given possession of a car by the owner  
24 of the car then decides that he could really benefit in his  
25 attempt to get a new job with a used car salesman by giving the

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1 used car salesman the car that he has embezzled now from his  
2 employer. So are you saying under my hypothetical he intended  
3 to take what he knew was the employer's car and give it to  
4 someone else who had no entitlement to it and he did so for the  
5 purpose of helping him himself to get a job with his potential  
6 new employer and are you saying that the loss in that situation  
7 would be zero --

8 MR. FISHER: No.

9 THE COURT: -- or would it be the value of the car.

10 MR. FISHER: It would be the value of the car, but you  
11 are leaving out something.

12 THE COURT: What am I leaving out.

13 MR. FISHER: You are leaving out the key part which is  
14 when he took that car and gave it to the new employer, was he  
15 subjectively intending to harm the person from whom he was  
16 taking it. Now, it may well be that's what he was up to, maybe  
17 not. The point is --

18 THE COURT: You think that if I take my employer's car  
19 and without permission I give it to my prospective new employer  
20 and the jury has found under my hypothetical that I did so  
21 intentionally and with knowledge or intent to harm my employer  
22 as well as benefit myself that nonetheless there is something  
23 more that has to be shown before the value of that car can be  
24 calculated as the loss under the guidelines.

25 MR. FISHER: No.

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1 THE COURT: What's the difference here.

2 MR. FISHER: The difference is that my client didn't  
3 steal a car.

4 THE COURT: No, he stole something infinitely more  
5 valuable.

6 MR. FISHER: And considerably different in terms of  
7 what one could do with a car. In your hypothetical there is  
8 very little one can do with that car; you've just got to sell  
9 the car. Now with regard to these programs, there is a lot of  
10 different things you can do with them. One of the things you  
11 can't do with them is compete with Soc Gen. That's the point.  
12 There is no way he --

13 THE COURT: I go back to my very simpleminded analogy  
14 because I am a simple fellow.

15 MR. FISHER: No, your Honor.

16 THE COURT: He takes this car and he gives it to his  
17 prospective new employer. His employer is a used car salesman  
18 and this prospective new employer is a used car salesman and  
19 they are in competition and the new used car salesman says  
20 thank you very much but, you know, I specialize in Hondas and  
21 Toyotas and this is a Ford and it won't be of much use to me.  
22 You are saying under that scenario you think the guidelines  
23 would place the value of the intended loss at zero.

24 MR. FISHER: No, I am not saying that. I am saying  
25 something that's very importantly different. The difference

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1 has to do with the essence of very sophisticated complex  
2 trading programs and a car. Now the difference here is that  
3 program which was plopped into his hands and which he later  
4 improperly and beyond authority, as he very openly admitted to  
5 you, abused the authority he had, went beyond it, and misused  
6 it and committed a crime. However, the crime he committed had  
7 nothing whatsoever to do with any intention on his part to  
8 compete with Soc Gen for the very easiest of reasons; it was  
9 impossible.

10 THE COURT: You are saying that I should infer a lack  
11 of intent on his part, this goes to the arbitrage issue that  
12 you so kindly provided me with some materials on, because not  
13 only was it in your view impossible for Tower to compete, but  
14 he understood or more importantly he believed and understood  
15 that they could not compete.

16 MR. FISHER: Yes.

17 THE COURT: Do I have the entirety of the distinction  
18 now you want to make.

19 MR. FISHER: Not yet.

20 THE COURT: The suspense is killing me.

21 MR. FISHER: We made some considerable progress.

22 THE COURT: You know, progress is a wonderful thing.  
23 So go ahead.

24 MR. FISHER: So here he is at Tower with this program  
25 and the program with which he was familiar in terms of its

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1 operation ate about \$3 billion of free capital just about every  
2 single day it operates which was its secret to success in terms  
3 of index arbitrage because it didn't have to pay much if  
4 anything for that 3 billion and it could get 3 billion from the  
5 Fed any time it wanted because it was a bank.

6 Now, let's just step aside from poor little Tower.  
7 Tower doesn't have 3 billion. Tower doesn't have 300 million.  
8 It has 25 million. With \$25 million as that quotation from  
9 that book whose name I constantly forget, forgive me, but we  
10 have correctly cited it, your Honor.

11 THE COURT: It is The Complete Arbitrage Deskbook.

12 MR. FISHER: Thank you, written by, this is neat,  
13 written by the person who was in charge of Soc Gen's index  
14 arbitrage trading in Tokyo and New York. This person knew what  
15 they were doing at Soc Gen. And reading what he says, I am  
16 sure you have, you know that that kind of trading operation  
17 simply can't work without that money.

18 THE COURT: The government says (A) that all those  
19 figures are out of date and that at the time of this crime,  
20 much less money was required and (B) that it does not follow  
21 from the fact, even if it were true, that Tower couldn't do  
22 exactly what Soc Gen was doing, that your client didn't intend  
23 and believe that they could still have economic benefit from  
24 receiving this information.

25 MR. FISHER: With regard, your Honor, to the staleness

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1 of the numbers, aside from that little bit of fun I had in  
2 drafting this by referring to a case with the printed version  
3 of a book next to a Kindle. Do you remember that. It occurred  
4 to me highly unlikely that that book would be converted into a  
5 Kindle if it was simply outdated and didn't matter. But even  
6 better was the footnote that we present on page 6 where  
7 professors of apparent renown are writing articles citing this  
8 antediluvian information in a book which no one but someone who  
9 wants to take a long nap should be reading. That's absurd.

10 The evidence the government claims it's positing,  
11 where, what. They have some testimony that there may be ways,  
12 depending on your relationship with your broker, you can take  
13 25 million and on a clear day with the sun shining, you might  
14 get it up to 800 million. I very much, I will confess, would  
15 like to have the difference between 800 million and 3 billion;  
16 that would be fun.

17 So my point is he had a different intention. This is  
18 what I have been I think taking too long to get to. His  
19 intention was to develop the infrastructure that was a main,  
20 main element of these programs and design trading programs of  
21 his own on top of, superimposed upon the very important, there  
22 is no denying, very important, thanks to Android phones of  
23 which I recently heard, I don't know if you ever heard, the  
24 word platform is now a big deal. These were going to be  
25 platforms to programs he would design that did and would make



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1 money with a mere \$25 million. And that was his intention.  
2 And he knew that that kind of trading could, would never  
3 compete with Soc Gen in any way at all to any degree at all and  
4 would cost Soc Gen nothing.

5 THE COURT: Your view of the guidelines in this regard  
6 is if I, forgive the term, steal, if I steal my employer's  
7 property, they are secret, so that I can design a better  
8 mousetrap, making use of their secret then adding on to it, and  
9 I know that my better mousetrap that's going to be used by my  
10 future employer won't be in competition with theirs, the  
11 intended loss is zero.

12 MR. FISHER: Yes.

13 THE COURT: How can that be. In other words, you take  
14 something that is to Soc Gen not only a valuable secret, but  
15 valuable because it is secret and because it is the fruit of  
16 their and their inventors' ingenuity.

17 MR. FISHER: Yes.

18 THE COURT: And you say, well, because I am just going  
19 to use it in a noncompetitive way, they were deprived of  
20 nothing of value. That runs totally contrary to common sense.  
21 Forgive me for putting it that way.

22 MR. FISHER: There are times when the guidelines run  
23 totally contrary to common sense with all due respect to these  
24 very wise promulgators of guidelines. But maybe this is one of  
25 them, but that's what it says here. That's what the courts

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1 that have construed that term have said, subjective intent, and  
2 if he in his head understood that he would be taking \$25  
3 million in coming up with a program that would be superimposed  
4 on the extremely valuable helpfully important DQS and ADP, the  
5 evidence is very clear, he was very hesitant about that, but it  
6 makes no difference for this argument, and knew absolutely knew  
7 from the three years he was at Soc Gen that this wouldn't be  
8 even a blip, a nothing, zero, zero damage, zero pecuniary harm,  
9 zero impact. So, that's why the appropriate intended loss  
10 guidelines here is zero.

11 THE COURT: On this issue before we go to acceptance  
12 of responsibility, let me hear from the government.

13 MR. LEVY: Your Honor, I did want to comment on a  
14 couple things that were raised by your Honor's colloquy with  
15 defense counsel. That is first the notion that the defendant  
16 was going to use the stolen computer code to do something else,  
17 to somehow evolve in his own way or improve upon DQS once he  
18 brought his knowledge from Soc Gen to Tower. It's just not  
19 there. What I am mostly interested in is what happened at the  
20 trial and the evidence that was offered.

21 Here is from page 677 of the transcript; this is the  
22 testimony of Rakesh Kumar. Based on these conversations and  
23 what he had been talking about are the meetings with the  
24 defendant.

25 "Q. What was your understanding of the system that he was

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1 going to build for you?

2 "A. It was going to be an index arbitrage system based on the  
3 index arbitrage system that he was working on at Soc Gen.

4 "Q. How similar or different from the index arbitrage system  
5 he worked on at Soc Gen?

6 "A. My understanding was that maps and the indicator, the  
7 logic part was going to be similar. There were going to be  
8 changes because of integrating it with Tower's infrastructure.

9 "Q. These changes, were they major changes or minor changes or  
10 where do they fall on that continuum?

11 "A. Individually I think I would classify them as minor  
12 changes."

13 There is more on this. The government played a tape  
14 of a meeting that occurred on September 22.

15 THE COURT: Maybe you misunderstood what I said. I  
16 don't think it matters, either in law or in fact, whether the  
17 system he was going to build for them was exactly the same or  
18 just substantially the same; why would that matter at all.

19 MR. LEVY: I don't think it matters very much, but I  
20 think the notion that defense counsel has suggested he was  
21 going to make meaningful changes to the system once he got to  
22 Tower is just not reflected in the evidence.

23 THE COURT: I think you are right and I think that  
24 some of the other things defense counsel said are not  
25 consistent with my own recollection of the evidence but I don't

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1 think it matters. Even if it were as defense counsel is  
2 suggesting, something that he was going to build upon, so what.  
3 That's like saying, oh, I am stealing the Rolls Royce engine  
4 from my employer but I am going to build a different car from  
5 this Rolls Royce engine. So what.

6 MR. LEVY: Fair enough.

7 THE COURT: Go ahead.

8 MR. LEVY: I am happy to --

9 THE COURT: I think if you can with reasonable brevity  
10 we should of course get the record straight.

11 MR. LEVY: The government played a portion of a  
12 meeting that was recorded that the defendant was on, Government  
13 Exhibit 505, page 6, where he was talking about the system that  
14 he wanted to build. He said, so the way SG works, he was  
15 interrupted, then he said, is the way we will start it. One of  
16 the Tower people said, perfect. Then the defendant said, I  
17 don't want to, he was interrupted, change a lot. But it is not  
18 the best system. So the notion that he was going to evolve the  
19 system in any meaningful way is just not reflected in the  
20 testimony.

21 THE COURT: Also, I suspect you are getting to this,  
22 implicit in this is if, as defense counsel argues, Tower  
23 couldn't use the system and the defendant knew that they  
24 couldn't use the system, why are they both agreeing to build  
25 substantially the same system as part of his new employment.

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1 That makes no sense at all. That contemporaneous view is  
2 infinitely more direct evidence of what was intended or what  
3 was not intended than any hypothetical about the financial  
4 requirements for such a system.

5 MR. LEVY: As we set out in our sentencing submission,  
6 there was quite a bit of testimony that the amount of money  
7 that Tower did have available both cash that it had combined  
8 with borrowing would have been able to obtain was sufficient to  
9 effectively run the system, that is, make some money from the  
10 system. I think, notwithstanding Mr. Fisher's suggestion that  
11 somehow Soc Gen had access to billions of dollars in capital,  
12 there actually was not any testimony in the record reflecting  
13 what amount of capital it deployed in running DQS.

14 As a firm, it may have had access to billions of  
15 dollars. It could have been a facility run through the Federal  
16 Reserve. I have no idea. The point is in this case, in this  
17 record, there was nothing saying the amount of money that Soc  
18 Gen used to run this particular system, which gets to the  
19 relevance of this book. I looked quite a bit at the book. It  
20 doesn't talk about high-frequency trading. It doesn't talk  
21 about exchange-traded funds which began to be sort of available  
22 before the publication of this book but they were rather  
23 crucial to the running of Soc Gen's index arbitrage system,  
24 because as you will recall, it was trading futures on the  
25 index, stocks individually underlying the index, and the

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1 exchange-traded fund that represented the index, and it was  
2 taking advantage of the arbitrage opportunities among those  
3 three sets of instruments.

4 That this book does not talk about exchange-traded  
5 funds suggests perhaps that it might not be relevant so much to  
6 determining what is the appropriate amount of capital that  
7 would be necessary to running an index arbitrage system. That  
8 it does not talk about high-frequency trading suggests that  
9 it's completely irrelevant. The fact is that the evidence that  
10 we set out that was adduced at trial made clear that there was  
11 plenty of money for Tower to use to run this system profitably.

12 More importantly, I am not sure why the amount of  
13 money that Soc Gen would have had to run this system versus the  
14 amount of money that Tower had to run the system makes any  
15 difference whatsoever. The point is two competing firms  
16 running largely identical strategies would be going after,  
17 seeking to identify and taking advantage of the same arbitrage  
18 opportunities. Whoever gets there first is going to win.

19 There was some evidence that came out at trial that  
20 Tower's infrastructure would allow them to execute the same  
21 strategy faster meaning they are going to win more often than  
22 they are going to lose or at least more often than Soc Gen  
23 might win.

24 THE COURT: That's the whole heart of the ultimate  
25 economic benefit of this high-speed trading; it only works

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1 because you gets in faster than anyone else.

2 MR. LEVY: You identify the opportunities faster; you  
3 are able to trade on the opportunities faster.

4 THE COURT: Would the loss not be the same if what was  
5 clearly not the case here but if Tower had said to the  
6 defendant or if the defendant had otherwise believed, well,  
7 they can't use it right now because they are not yet equipped  
8 economically to make use of this but in five years they will be  
9 good enough to do it. It might be more difficult, you might  
10 have to put into the equation some discount factors, but it  
11 would still not be a zero calculation. The intent would be to  
12 put them in a position to cause that loss.

13 MR. LEVY: I think that's right, although the  
14 difference between what happened here and what happened, what  
15 would happen under that scenario actually underscores why there  
16 is economic loss in this case, because the whole point of  
17 bringing the defendant from Soc Gen to Tower was that his was a  
18 proven system, it was a money-making system, and it radically  
19 reduced the amount of time that they would have to wait to  
20 realize those profits as opposed to the five-year time horizon  
21 that your Honor just hypothesized.

22 THE COURT: All the points you are making are exactly  
23 right. My hypothesis was a proven system but just one that  
24 they were not economically ready to take advantage of, but once  
25 they grew they would be able to take advantage of it. They

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1 with counsel. If he wants to whisper in your ear something he  
2 wants you to raise, I will give you a minute to do that.

3 MR. FISHER: Before bending down to whisper, I just  
4 want to note, your Honor, that on my own score card of these  
5 proceedings, of the two critical issues in this case, I am 0  
6 for 2.

7 THE COURT: Statistically, I suspect there were many,  
8 many times that Alex Rodriguez went 0 for 2 before the season  
9 was over yet he did all right. You have had many more trials,  
10 you have had many successful trials in the past. You will have  
11 many successful trials I am sure still to come. So I wouldn't  
12 be so bothered. Your client perhaps may be more bothered, but  
13 he shouldn't be; he has very good counsel in this case.

14 MR. FISHER: I will bend over, with the court's  
15 permission.

16 (Pause)

17 MR. FISHER: Thank you, your Honor.

18 THE COURT: Let's turn to acceptance of  
19 responsibility. Here, it's the government I need to hear from  
20 first, because the probation office concluded that 2-point  
21 credit should be given for acceptance of responsibility. The  
22 government makes much of the fact that the defendant went to  
23 trial and of course he therefore doesn't qualify for the third  
24 point which is given when you don't put the government to the  
25 expense and burden of preparing for trial, so forth.



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1           But the guidelines do recognize there are unusual  
2 cases where someone who goes to trial still may have accepted  
3 responsibility and they give an example of someone who is  
4 preserving a legal issue. I think that is something akin to  
5 what happened here. The defense had a view of the indictment  
6 that they believe allowed them to argue that if at the moment  
7 he took the codes home, he had not yet formed an intent to give  
8 them to Tower, things to that effect, that not under the law  
9 generally but under the terms of the indictment, that he would  
10 be entitled to a judgment of acquittal if the jury at least  
11 credited his testimony.

12           It was a view of the indictment that this court did  
13 not agree with. Counsel made a calculated decision, and these  
14 are always tough strategic calls, not to raise this pretrial.  
15 No pretrial request was made for a determination of this issue  
16 of law either before Judge Koeltl who originally had the case  
17 or before me. Defense counsel even went so far as to commit in  
18 his opening statement that his client would take the stand, not  
19 knowing yet whether the court would agree or disagree with his  
20 interpretation of the indictment.

21           The matter came to a head after the court issued the  
22 second version of its proposed charge but of course defense  
23 counsel could have brought it to a head at any previous time  
24 and chose not to. But I would note for the record that, first,  
25 at the time that the second version of the charge was delivered

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1 to defense counsel while the defendant had already begun his  
2 testimony, he had not reached any point of the testimony that  
3 bore on the issue that the charge was concerned with.

4 Second, more fundamentally, I assume that the  
5 defendant's testimony would have been the same under any set of  
6 circumstances. When defense counsel committed with his  
7 client's full knowledge and consent that his client would take  
8 the stand at the very outset of the trial, clearly, this wasn't  
9 with the implicit suggestion, well, I will give kind of  
10 testimony if the charge is one way and I will give a different  
11 factual testimony if the charge went the other way. I would  
12 never believe that either Mr. Fisher or his client would do  
13 that.

14 But the result of all this was that under the charge  
15 as the court gave it and the testimony that Mr. Agrawal gave,  
16 it seemed to the court that he was essentially admitting all  
17 elements of the charge as the court interpreted the indictment.  
18 I was impressed with that. It's a shame the guidelines are  
19 always so rigid. It's wonderful at least that they are not  
20 binding on the court. I would have thought that this kind of  
21 unusual situation might in theory have called for a 1-point  
22 credit rather than a 2-point credit. It sort of doesn't quite  
23 fit perfectly, the 2-point credit situation. But the  
24 guidelines doesn't give me a choice; it's either zero points or  
25 two points. I am leaning towards the 2-point credit.

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1 now you are grown up enough to learn this level of physics so  
2 sit in my classes. He gave me what he gave everyone else and  
3 that's what I learned, equality.

4 Then I come to the bank and I see how, today I don't  
5 realize why they hired me if they had to treat me so different.  
6 I had put, my mother had put, my father had put 25, 27 years  
7 hard work making me what I am. I achieve something they will  
8 feel happy and with their happiness I will be motivated to  
9 achieve more then I will achieve something and they will be  
10 happy. It was a very nice positive spiral, upward spiral. Now  
11 it has been, now I think in future it's going to be a bit of a  
12 negative spiral that I have to face. I will find so many  
13 hurdles which will make her sad. Her sadness will make me sad  
14 which will increase the hurdles.

15 This negative spiral which I am about to enter into is  
16 something that is a challenge I have to face to again make this  
17 negative spiral a positive spiral again. But that glow she has  
18 lost, the crystal she had which has been shattered, broken, is  
19 irreplaceable. That I know for a fact now. I will try to make  
20 up to it again. It's an impossible task which is why I think I  
21 will be busy for my entire life now.

22 THE COURT: Thank you very much.

23 Well, it was interesting hearing Mr. Agrawal's  
24 articulate remarks. I have to say I was more taken with the  
25 portion of his remarks that came from the heart than from the

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1 head. The portions from the head were in the court's view  
2 rationalizations offered in mitigation, I don't doubt the  
3 sincerity of them, but they did not come to grips, as his later  
4 remarks did, with the fact that the serious mistake he made has  
5 as its perhaps most intensely injured victims, his own mother,  
6 his own family.

7           When one reflects on how the devotion a loving parent  
8 can give such promise and carry with it such foundation on  
9 which to build, as Mr. Agrawal was in the process of building,  
10 a laudable and successful career, the shame that he is feeling  
11 must indeed, as his counsel has also noted, be intense. That  
12 is a factor relevant to the court's determination because it is  
13 in fact part of the punishment he has suffered and will  
14 continue to suffer.

15           It is regretfully not unique to this case. More often  
16 than not, the primary victims real victims, crime after crime,  
17 are the people who have devoted their lives, their love, their  
18 energies to the upbringing of a person who then by betraying  
19 society also betrays them. I do not minimize in any of those  
20 cases, including this one, the self-inflicted punishment that  
21 arises therefrom.

22           But on the other hand, it is incumbent on any  
23 sentencing judge to always keep many different focuses. You  
24 have to look at the human being before you first and foremost,  
25 but you have to look at the crime, you have to look at society,

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1 you have to look at the future, you have to look at the  
2 implications for the rule of law. In balancing those, as  
3 Section 3553(a) recognizes so much more completely and so much  
4 more astutely than the sentence guidelines, it's a complicated  
5 and nuanced difficulty.

6 The guidelines in white-collar cases, as I have had  
7 occasion to elaborate on in other cases at much greater length  
8 than I will here, place in the court's view an inordinate  
9 emphasis on the loss calculation. The calculation that this  
10 very case illustrates is not without its own problems. While I  
11 am convinced that the calculation in this particular case was  
12 if anything on the low side, to build so much of the guidelines  
13 range on that one factor seems to me to be inherently  
14 unbalanced in all but very few cases.

15 The injury to society is of course relevant and is  
16 reflected perhaps to some degree by the loss, though even then  
17 there are so many difficulties both in calculating the loss and  
18 in determining what it really means. Here, for example, the  
19 heart of the injury suffered by Soc Gen was the loss of the  
20 product of its ingenuity and its creating a method of trading  
21 that gave it a competitive advantage. That's a different kind  
22 of loss than, for example, the kind of loss you might have in a  
23 more conventional securities fraud case where it might be a  
24 function of how much people invested in an overstated account,  
25 overstated financial report or something like that, or invested

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1 because of an overstated financial report.

2           These are not things that can be quantified in a way  
3 that warrants the huge weight that the guidelines accord to the  
4 loss calculation. So I am not inclined to give a guidelines  
5 range here more than passing weight in my determination. I  
6 think I have already indicated the factors that I think do  
7 weigh heavily. One was the fact that any way you look at it,  
8 this was a theft of something big and valuable and important.  
9 I don't need to put a number on it to recognize that this was a  
10 significant misappropriation; second, that Mr. Agrawal was the  
11 prime mover; third, that this was, this conduct, that was  
12 inconsistent with the way he had otherwise conducted his life.

13           This was not conduct that represented the work of a  
14 professional thief or, short of that, someone who knew no  
15 difference between right or wrong or how to follow right or  
16 wrong. Mr. Agrawal knew the difference between right and wrong  
17 and conducted himself in most of his life on the right side of  
18 that line, but in this case, crossed that line. The rest of  
19 his life cannot be forgotten and is not forgotten by this  
20 court. It also bears, I must say, on one of the more  
21 particular factors set forth in 3553(a) which is specific  
22 deterrence. I tend to agree with defense counsel that there is  
23 no need for much punishment here in terms of specific  
24 deterrence because it's very unlikely Mr. Agrawal will engage  
25 in this conduct again.

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1           The last of the factors, and I don't mean to suggest  
2 that I have not considered all the factors under Section  
3 3553(a), I have with some length in my mind, but the last one I  
4 want to emphasize because it is quite an important factor is  
5 general deterrence. For reasons that I think I have already  
6 alluded to, the need for general deterrence is substantial  
7 here. This is a sophisticated crime. It is a crime that  
8 others will undoubtedly be tempted to do because of both the  
9 nature of the valuableness of the secrets that are stolen and  
10 also the ability by persons more corrupt than Mr. Agrawal to  
11 conceal and obscure their theft.

12           But I do not believe that the guidelines range of  
13 five, six, almost seven years is what is sufficient but no more  
14 than necessary to carry out all the functions of Section  
15 3553(a). It seems to me that a nonguidelines sentence  
16 considerably less than that can achieve full general deterrence  
17 as well as recognizing all the other factors I have alluded to.

18           So the sentence of the court is that the defendant is  
19 sentenced to three years imprisonment, 36 months, to run  
20 concurrently on each count, followed by two years supervised  
21 release, again concurrent on each of the two counts. No fine  
22 will be imposed because the court makes a finding that this  
23 defendant, despite his prior assets, is no longer in a position  
24 to pay any meaningful fine now or in the foreseeable future.  
25 There is, however, a special assessment of \$200 that is

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1 mandatory and must be paid.

2           The terms of supervised release are, first, the  
3 mandatory conditions that the defendant shall not commit any  
4 other federal, state, or local crime; the defendant shall not  
5 illegally possess a controlled substance; the defendant shall  
6 not possess a firearm or destructive device; and the defendant  
7 shall cooperate in the collection of DNA.

8           The fifth mandatory condition, the drug testing  
9 condition is suspended based on the court's determination that  
10 defendant poses a low risk of future substance abuse. There  
11 will also be imposed the standard conditions of supervision 1  
12 through 13. They appear on the face of the judgment and will  
13 be gone over with the defendant by the probation officer when  
14 the defendant reports to begin his period of supervised  
15 release, which may or may not happen, given the possibility of  
16 deportation.

17           Finally, there are the special conditions; first, the  
18 defendant shall obey the immigration laws and comply with the  
19 directives of the immigration authorities; second, that the  
20 defendant within 72 hours of release from custody will report  
21 to the nearest probation office to begin his period of  
22 supervised release. He will be supervised by the district of  
23 his residence.

24           Before I advise the defendant with respect to appeal,  
25 is there anything else, first, from the government.



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MR. BROWN: No, your Honor.

THE COURT: Anything further from defense counsel.

MR. FISHER: No, your Honor.

THE COURT: So Mr. Agrawal you have the right to appeal this sentence. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: If you can't afford counsel for any such appeal, the court will appoint one for you free of charge.

Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Very good.

That concludes this matter.

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