

PROCEEDINGS

(January 24, 2000, 1:30 p.m.)

THE COURT: Good afternoon.

I have been informed that Mr. Black wishes to change the plea he previously entered at certain counts of the indictment to a plea of guilty; is that correct?

MR. SCHEFF: Yes, Your Honor.

THE COURT: Mr. Black, before accepting your guilty plea, there are a number of questions that I will ask you to make certain that your plea is valid. If you don't understand any question I ask you, just let me know and I will explain it to you. If at any time you wish to speak with your attorney, let me know and I will give you as much time as you need to consult with him. I give you these instructions because it is essential to a valid plea that you understand every question before you answer it.

Would you please stand and raise your right hand.

(Oath to Mr. Black.)

BY THE COURT:

Q. Mr. Black, do you understand that now that you have been sworn your answers to my questions are subject to penalties for perjury or making false statements if you do not answer truthfully?

A. Yes.

Q. Would you please state your full name.

1 A. John Gardner Black, B-L-A-C-K.

2 Q. How old are you, sir?

3 A. 55.

4 Q. How far did you go in school?

5 A. I graduated from the University of Pennsylvania.

6 Q. Do you have any difficulty reading, writing or
7 understanding the English language?

8 A. No.

9 THE COURT: Mr. Scheff, have you had any
10 difficulty communicating with your client because of any
11 ability not to understand what you were saying?

12 MR. SCHEFF: No, Your Honor.

13 BY THE COURT:

14 Q. Mr. Black, have you taken any drugs or medicine or drunk
15 any alcohol in the past 24 hours?

16 A. Yes, I have.

17 Q. Would you tell me what the medicines are that you have
18 taken or the alcohol that you have drunk?

19 A. I have not consumed alcohol, but I don't remember the
20 names of the medicines. I have three prescriptions for my
21 blood pressure, and I have three prescriptions for anxiety
22 and tension.

23 Q. Are any of the medications you have taken either for
24 high blood pressure or anxiety, are any of them interfering
25 with your ability to understand what is going on here today?

1 A. I don't think so.

2 Q. Do you have any question about that at all?

3 A. No, I don't.

4 Q. If there is something that you do not understand, would
5 you please let me know?

6 A. Yes.

7 Q. Are you now or have you recently been under the care of
8 a physician or psychiatrist?

9 A. Yes.

10 Q. Okay. Would you tell me why and the treatment that you
11 have had.

12 A. The first doctor I went to was Dr. McDoff (Ph.). He is
13 my primary care physician supplied by the HMO I belong to.

14 I saw him -- you want to know when I saw him. I
15 saw him the beginning of January.

16 Q. You went to see him because of a condition you were
17 having; is that correct?

18 A. Yes.

19 Q. And what was that condition?

20 A. I had been diagnosed in 1994 with a condition called
21 obsessive compulsive disorder, and I was feeling myself
22 incapable of processing the information that my wife was
23 giving me, or that Mr. Scheff would give me, the condition
24 that I have been fighting for five and a half years.

25 Q. So you went to see the doctor for that. And what

1 treatment did he prescribe to you; what treatment did he
2 give you?

3 A. He put me on Prosac.

4 Q. Is that one of the medicines that you talked about for
5 anxiety that you are taking now?

6 A. Yes.

7 Q. Did you see any other physician or psychiatrist?

8 A. When I saw him again on this past Monday, one week ago
9 today, he immediately sent me to the local hospital because
10 I was having a severe panic attack. And I saw Dr. Anders
11 who prescribed three medications to help alleviate the
12 condition.

13 Q. Are those the anti-anxiety drugs that you mentioned
14 previously?

15 A. Yes.

16 Q. Have you seen any other doctors?

17 A. I saw a doctor yesterday, Wettstein. I saw
18 Dr. Wettstein yesterday here in Pittsburgh. They are the
19 only doctors that I have seen.

20 Q. Are you now or have you recently been hospitalized or
21 treated for narcotic addiction?

22 A. No.

23 Q. Now I think I have asked you, but just to be sure, you
24 indicated that you were taking some medication for high
25 blood pressure and medication for anxiety. Do you feel that

1 any of these medications that you are taking has any affect
2 on your ability to understand what we are doing here today?

3 A. Quite the opposite. They help me understand what is
4 happening today.

5 THE COURT: Mr. Scheff, do you have any doubt
6 about Mr. Black's competence to plead guilty at this time to
7 certain charges contained in the indictment?

8 MR. SCHEFF: I have none, Your Honor.

9 THE COURT: Mr. Rodriguez, do you?

10 MR. RODRIGUEZ: Neither do I, Your Honor.

11 THE COURT: I find then that John Gardner Black is
12 competent to enter a plea.

13 BY THE COURT:

14 Q. Mr. Black, would you state your attorney's name for the
15 record, please.

16 A. Richard Scheff, S-C-H-E-F-F.

17 Q. Have you had sufficient opportunity to discuss your case
18 with him?

19 A. Yes.

20 Q. Are you satisfied with the work that he has done for you
21 up to this point?

22 A. Absolutely.

23 Q. Mr. Black, do you understand that if you would continue
24 to plead not guilty and not change your plea, you would have
25 the right to be assisted by an attorney at every stage of

1 the proceedings against you?

2 A. Yes, ma'am.

3 Q. Do you further understand that if you continued to plead
4 not guilty, and if you qualified financially you would be
5 entitled to be assisted by an attorney at no cost to you at
6 every stage of the proceedings against you?

7 A. Yes, ma'am.

8 Q. Do you understand that if you continued to plead not
9 guilty, and if you went to trial, under the constitution and
10 laws of the United States of America you would be entitled
11 to a speedy trial by a judge and a jury on the charges
12 contained in the indictment?

13 A. Yes, Your Honor.

14 Q. Do you understand that if there were a trial, you would
15 be presumed to be innocent of the charges against you?

16 A. Yes, Your Honor.

17 Q. Do you understand that if there were a trial the
18 government would be required to prove your guilt by
19 competent evidence beyond a reasonable doubt before you
20 could be found guilty?

21 A. Yes, I understand that.

22 Q. Do you understand that if there were a trial you would
23 not have to prove that you were innocent?

24 A. Yes.

25 Q. Do you understand that if there were a trial a jury

1 would have to be unanimous in order to find you guilty of
2 any charge filed against you?

3 A. Yes.

4 Q. Do you understand that if there were a trial you would
5 have the right to participate in the selection of the jury,
6 and that means that you would have the right to eliminate
7 any prospective juror if it was demonstrated that that juror
8 would be unable to render a fair and impartial verdict, and
9 that, in addition, you would have the right to eliminate ten
10 prospective jurors from the jury panel and one prospective
11 alternate juror without giving any reason at all for doing
12 so in the exercise of what we call peremptory challenges?

13 A. Yes.

14 Q. Do you understand that if there were a trial the
15 witnesses for the government would have to come into court
16 and testify in your presence?

17 A. Yes.

18 Q. Do you understand that if there were a trial your
19 attorney could cross examine the government's witnesses,
20 object to evidence offered by the government, and offer
21 evidence on your behalf?

22 A. Yes.

23 Q. Do you understand that if there were a trial the
24 government would have to pay witness fees to witnesses you
25 wished to call on your behalf if you qualified as being

1 financially unable to pay such witness fees?

2 A. Yes.

3 Q. Do you understand that if there were a trial you would
4 have the right to testify if you chose to testify?

5 A. Yes.

6 Q. Do you understand that if there were a trial you would
7 have the right not to testify, and if you chose not to
8 testify no inference or suggestion of guilt could be drawn
9 from the fact that you did not testify?

10 A. Yes.

11 Q. If you plead guilty and I accept your plea, do you
12 understand that you will give up your right to a jury trial,
13 or any kind of a trial, and all the other rights that I have
14 just mentioned to you, that there will be no trial, and that
15 I will enter a judgment of guilt and sentence you on the
16 basis of your guilty plea after considering a presentence
17 report?

18 A. Yes.

19 Q. I'm sorry?

20 A. Yes, Your Honor.

21 Q. If you plead guilty, do you understand that you will
22 also have to give up your right not to incriminate yourself
23 because I will ask you questions about what you did in order
24 to satisfy myself that you are guilty as charged and you
25 will have to acknowledge your guilt to those counts that you

1 are pleading guilty to?

2 A. Yes, Your Honor.

3 Q. Now that I have mentioned all these rights to you, do
4 you still wish to plead guilty to certain charges in the
5 indictment?

6 A. Yes, Your Honor.

7 Q. Have you received a copy of the indictment naming you,
8 and have you discussed with your attorney the charges in the
9 indictment to which you intend to plead guilty?

10 A. Yes, Your Honor.

11 Q. Okay. I am going to be reading those charges to which
12 you intend to plead guilty. And it is a rather lengthy
13 indictment. I assume for the record the introduction should
14 be read. Does anyone have any different feelings? I want
15 to make sure I'm getting what has to be in the record. I
16 understand that not all the charges are part of the plea.

17 MR. RODRIGUEZ: Your Honor, I actually would
18 suggest to the court that the necessity of reading the
19 introduction portion of the indictment is avoided by the
20 stipulation of facts between the parties. I don't know
21 if --

22 MR. SCHEFF: I fully agree with Mr. Rodriguez. It
23 has been fully executed both by counsel and Mr. Black.

24 THE COURT: I have had a copy of that in advance
25 of this proceeding, and I have read it. So when we get to

1 the point of the factual basis of the plea, then I will
2 accept this, and having read it, put on the record that it
3 forms a factual basis for the plea.

4 MR. SCHEFF: Thank you, Your Honor.

5 MR. RODRIGUEZ: Yes.

6 THE COURT: What I'm going to do right now,
7 Mr. Black, is to go over with you the charges to which you
8 are pleading guilty. And according to the plea agreement
9 and exhibit attached thereto, initially you are pleading
10 guilty to the counts of the indictment involving fraud by an
11 investment adviser, and those counts are set forth, as I
12 said, in Exhibit A of the plea agreement.

13 The indictment alleges that at all times material
14 to the indictment the defendant John Gardner Black caused
15 Devon clients invested in the collateralized investment
16 agreement program to be sent monthly statements from the
17 Devon office located at 5 West 10th street, Tyrone,
18 Pennsylvania, which statements were sent to the clients to
19 their business addresses through the United States Mail, and
20 which falsely represented the market value of the
21 collateralized investment agreement as being equal to the
22 remaining liabilities of Devon to the client.

23 From on or about the dates listed below, which I
24 will set forth, which represent the dates on which
25 collateralized investment agreements were executed on behalf

1 of the clients who will be named and their respective
2 accounts which will be listed, to on or about September 26,
3 1997, the government charges that you, the chief executive
4 officer of Devon Capital Management, an investment adviser
5 subject to the provisions of the Investment Advisor's Act of
6 1940, Title 15, United States Code, Section 80b-1, et seq.,
7 did willfully violate Title 15, United States Code,
8 80b-6(2), in that you did by the use of the mails and by
9 means of an instrumentalities of interstate commerce,
10 directly and indirectly, willfully engage in a transaction,
11 practice and course of business which operated as a fraud
12 and deceit on the clients to be named, to wit, by concealing
13 trading losses sustained in investments held on behalf of
14 the clients to be named by concealing the risks of the
15 investments held on behalf of the clients to be named and by
16 providing false values for securities.

17 The clients are by CIA date, client and account
18 number.

19 Count 1. May 27, 1996. Bald Eagle. Account No.
20 766117105.

21 Count 4. CIA date March 23, 1995. Brentworth.
22 Account No. 766102107.

23 Count 8. CIA date June 30, 1997. Big Beaver
24 Falls. Account No. 765054101.

25 Count 9. CIA date July 5, 1994. Client,

1 Blacklick. Account No. 767017106.
2 Count 14. CIA date February 21, 1997. Client,
3 Canon-McMillan. Account No. 766119101.
4 Count 18. CIA date, November 10, 1995. Client,
5 Clarion Area. Account No. 766106108.
6 Count 21. CIA date May 27, 1994. Client,
7 Clearfield Area. Account No. 766081103.
8 Count 23. CIA date January 7th, 1997. Client,
9 Daniel Boone. Account No. 768076101.
10 Count 25. CIA date July 1st, 1997. Client, Elk
11 Lake. Account No. 768081101.
12 Count 30. CIA date June 17, 1997. Client,
13 Hampton. Account No. 766121107.
14 Count 34. CIA date August 26, 1997. Client,
15 Jeannette. Account No. 766122105.
16 Count 37. CIA date September 23, 1996. Client,
17 Laurel Highlands. Account No. 765060108.
18 Count 43. CIA date July 1st, 1997. Client,
19 Moshannon Valley. Account No. 768089104.
20 Count 48. CIA date June 9, 1994. Client,
21 Northern Lebanon. Account No. 766091102.
22 Count 50. CIA date July 1st, 1997. Client, Pen
23 Argyl. Account No. 768084105.
24 Count 57. CIA date July 1st, 1997. Client, Penns
25 Manor. Account No. 768080103.

1 Count 60. CIA date July 1st, 1997. Client,
2 Riverview. Account No. 768085102.

3 Count 62. CIA date July 1st, 1997. Client,
4 Sharon City. Account No. 768094104.

5 Count 64. CIA date June 10, 1996. Client, South
6 Butler. Account No. 766114102.

7 Count 67. CIA date August 22, 1994. Client,
8 Tyrone Area. Account No. 766095103.

9 And Count 73. CIA date July 1st, 1997. Client,
10 Warwick. Account No. 768083107.

11 Those are the counts of the fraud by an investment
12 adviser to which you are pleading guilty.

13 The indictment also charges you with mail fraud.
14 And my understanding from the plea agreement is that you
15 will be pleading guilty to three counts of mail fraud.

16 The government alleges that from on or about May
17 27, 1994 to on or about September 26, 1997 in the Western
18 District of Pennsylvania, that you did devise and intend to
19 devise a scheme or artifice to defraud, or for obtaining
20 money or property by means of false or fraudulent pretenses,
21 representations or promises, the means and purposes which
22 have been set forth in the indictment.

23 On or about the dates to be mentioned in the
24 Western District of Pennsylvania and elsewhere the
25 government charges that you, for the purpose of executing

1 the scheme and artifice to defraud set forth in the
2 indictment, and in attempting to do so, did knowingly place
3 or caused to be placed in an authorized depository for
4 United States Mail matter, the items described below, to be
5 sent and delivered by the United States Postal Service to
6 the locations described below according to the directions
7 thereon.

8 Count 84. On July 10th, 1997, to Hosack, Specht,
9 Muetzel & Wood, at 305 Mt. Lebanon Boulevard, Suite 301, in
10 Pittsburgh, Pennsylvania 15234, the mail matter being
11 Keystone Oaks collateral report with inflated valuations of
12 securities.

13 Count 86, dated August 4th, 1997. You sent to
14 Barbacane, Thornton & Co., CPA's, 3411 Silverside Road,
15 Wilmington, Delaware 19810 -- and the mail matter was Daniel
16 Boone Area School District collateral report with inflated
17 valuations for securities.

18 Count 87, dated August 12, 1997, addressed to
19 Young, Oakes & Brown & Company, at 1210 13th Street, Altoona
20 Pennsylvania 16601, the mail matter being Tyrone Area School
21 District collateral report with inflated valuations of
22 securities.

23 Finally, the government has charged you with false
24 documents. And I say finally in terms of what you are
25 pleading guilty to today. And the government charges that

1 on or about the dates to be listed in the Western District
2 of Pennsylvania you did, in a matter within the jurisdiction
3 of the United States Securities and Exchange Commission, an
4 agency of the executive branch of the government of the
5 United States, knowingly and willfully make and use a false
6 writing or document knowing the same to contain a materially
7 false, fictitious or fraudulent statement or entry, to wit:
8 a CIA or collateralized investment agreement for the clients
9 to be named which represented that the collateral securing
10 the defendant's investment was at a ratio of at least 100
11 percent, when in fact, as you well knew, the collateral
12 ratio was substantially less than 100 percent and which
13 CIA's constitute written agreements, or copies thereof,
14 entered into by the investment adviser with any client or
15 otherwise relating to the business of such investment
16 adviser as set forth in 17 CFR, Section 275.204-2(a)(10),
17 which agreements, pursuant to 15 U.S. Code, Section 80b-4
18 are subject to reasonable periodic, special, or other
19 examinations by representatives of the Securities and
20 Exchange Commission as the commission deems necessary or
21 appropriate in the public interest or for the protection of
22 investors.

23 Count 96. The CIA date being January 7, 1997.
24 The client being Daniel Boone. And the Account No. being
25 768076101.

1 Count 117. The CIA being August 22, 1994. The
2 client being Tyrone Area. And the Account No. being
3 766095103.

4 Mr. Black, do you understand the charges that have
5 been made against you by the government.

6 A. Yes, ma'am.

7 Q. Now, you have heard me indicate that you have for
8 purposes of today's hearing agreed to plead guilty to I'm
9 not sure how many counts of mail fraud it is.

10 MR. RODRIGUEZ: Three counts of mail fraud, Your
11 Honor.

12 THE COURT: And investment adviser fraud?

13 MR. CESSAR: 21.

14 THE COURT: 21.

15 BY THE COURT:

16 Q. You have agreed to plead guilty to 21 counts charging
17 you with fraud by an investment adviser.

18 I'm going to tell what it is that the government
19 must prove as to each count in order for a jury to be able
20 to find you guilty of these offenses.

21 In order for the crime of fraud by an investment
22 adviser to be established, the government must prove all of
23 the following essential elements beyond a reasonable doubt:

24 First, that you were an investment adviser.

25 Two, that you directly or indirectly engaged in a

1 transaction, practice or course of business which operated
2 as a fraud or deceit upon any client or prospective client.

3 Three, that the offense was committed by use of
4 the mails or any means or instrumentality of interstate
5 commerce.

6 And, four, that you acted willfully.

7 Do you understand what it is that the government
8 must prove beyond a reasonable doubt in order for you to be
9 found guilty of fraud by an investment adviser?

10 A. Yes, ma'am.

11 May I just talk to him?

12 THE COURT: Surely.

13 (Conference between Mr. Black and his attorney.)

14 THE DEFENDANT: Yes, Your Honor.

15 BY THE COURT:

16 Q. You have also indicated that you intend to plead guilty
17 to three counts of mail fraud.

18 In order for the crime of mail fraud to be
19 established, the government must prove all of the following
20 essential elements beyond a reasonable doubt.

21 First, that there was a scheme or artifice to
22 defraud or to obtain money, property or the intangible right
23 of honest services by means of false or fraudulent
24 pretenses, representations or promises.

25 Two, that you knowingly and willfully participated

1 in the scheme or artifice to defraud with knowledge of its
2 fraudulent nature and with a specific intent to defraud.

3 And, third, that the use of the United States
4 Mails occurred in the execution or in furtherance of the
5 scheme or artifice to defraud.

6 Do you understand what it is that the government
7 would have to prove beyond a reasonable doubt before you
8 could be found guilty of mail fraud?

9 A. Yes, Your Honor.

10 Q. Finally, you have agreed to plead guilty to two counts
11 of false documents. In order for the crime of making or
12 using false documents to be established, the government must
13 prove the following essential elements beyond a reasonable
14 doubt:

15 One, that you used a writing or document.

16 Two, that the writing or document contained a
17 false or fictitious statement or entry.

18 Three, that the statement or entry was material.

19 Four, that you knew that the writing or document
20 contained a false or fictitious or fraudulent statement or
21 entry, and unlawfully, knowingly and willfully used the
22 writing or document.

23 And, five, that the document or writing was used
24 in a matter within the jurisdiction of a department or
25 agency of the United States.

1 Do you understand what it is that the government
2 would have to prove beyond a reasonable doubt in order for
3 you to be found guilty of making or using false documents?

4 A. Yes, Your Honor.

5 Q. Now I am going to review with you the penalties that
6 could be imposed if you were convicted of these offenses.

7 As to the 21 counts of fraud by investment
8 adviser, the maximum penalties for each count for an
9 individual is the following: Imprisonment of not more than
10 five years; a fine of ten thousand dollars; a term of
11 supervised release of not more than three years; or any or
12 all of the above.

13 Do you understand the maximum penalties that could
14 be imposed for fraud by an investment adviser?

15 A. Yes, Your Honor.

16 Q. As to the counts of mail fraud, and there are three of
17 those, the maximum penalty is: Imprisonment for not more
18 than five years; a fine of not more than the greater of
19 250,000 dollars or an alternative fine in an amount not more
20 than the greater of twice the gross pecuniary gain to any
21 person, or twice the pecuniary loss to any person other than
22 you, unless the imposition of the alternative fine would
23 unduly complicate or prolong the sentencing process; a term
24 of supervised release of not more than three years; or any
25 or all of the above. Do you understand that is the maximum

1 penalties for each count of mail fraud?

2 A. Yes, Your Honor.

3 Q. As to the two counts of making or using false documents,
4 the maximum penalty for each count is: Imprisonment of not
5 more than five years; a fine of not more than the greater of
6 250,000 dollars or an alternative fine in an amount not more
7 than the greater of twice the gross pecuniary gain to any
8 person, or twice the pecuniary loss to any person other than
9 you, unless the imposition of the alternative fine would
10 unduly complicate or prolong the sentencing process; a term
11 of supervised release of not more than three years; or any
12 or all of the above.

13 Do you understand the maximum penalties that could
14 be imposed if you were found guilty of false documents?

15 A. Yes, Your Honor.

16 Q. In addition, a mandatory special assessment of \$50.00
17 must be imposed for each of the counts -- well, I don't
18 think it is each of the counts. It is only certain of the
19 counts of which you were convicted because some are 100
20 dollars, and some are 50. So I don't know if we can figure
21 that out right now or not. I would suppose -- well, there
22 are two mandatory special assessments involved here. Some
23 are 50 dollars, and some are 100 dollars. There would be a
24 mandatory assessment of \$50.00 on each of the counts that we
25 are going to figure out in the next few minutes.

1 MR. CESSAR: According to my calculations, six of
2 the counts would be \$50.00 because they occurred before
3 April 24 of 1996.

4 THE COURT: Do you know which those are by any
5 chance? If you don't, that is --

6 MR. CESSAR: I can tell you right now.

7 THE COURT: Okay.

8 MR. CESSAR: Counts 4, 9, 18, 21, 48, 67 and 117.
9 I'm sorry, Your Honor. There were seven.

10 THE COURT: Okay. The mandatory special
11 assessment of \$50.00 will be imposed on the following
12 counts, Mr. Black: 4, 9, 18, 21, 48, 67 and 117.

13 A mandatory special assessment of 100 dollars must
14 be imposed on all the remaining counts. And this is
15 pursuant to the Crime Victims Fund.

16 In addition, restitution must be ordered in this
17 case as to Counts 1 through 87. This is pursuant to 18 U.S.
18 Code, Sections 3663, 3663(a) and 3664.

19 Now, do you understand the maximum penalties that
20 could be imposed if you were convicted of these crimes at
21 trial?

22 A. Yes, I do.

23 MR. SCHEFF: Could we take a five-minute recess.

24 THE COURT: Yes.

25 MR. SCHEFF: Thank you, Your Honor.

1 THE COURT: Okay.

2 (Recess taken.)

3 THE COURT: Okay.

4 BY THE COURT:

5 Q. Mr. Black, has anyone made any threats to you or anyone
6 else that has in any way forced you to enter this plea of
7 guilty.

8 A. Not to this plea, Your Honor.

9 Q. Well, I don't understand what that means, not to this
10 plea. Is there some other plea that I don't know about?

11 A. The answer is no, Your Honor.

12 Q. I know that the government and the defendant have
13 reached an agreement because they have just recently sent me
14 a copy of a letter setting forth the agreement by which
15 Mr. Black has agreed to enter a plea of guilty in this case.
16 So while we will be putting the plea agreement into the
17 record, I would ask Mr. Rodriguez to put the substance of
18 the plea agreement on the record.

19 MR. RODRIGUEZ: Your Honor, prior to putting the
20 actual agreement on the record, I would like to note three
21 items.

22 First, there is an error in the plea agreement in
23 that the special assessment was stipulated as 2,600, as we
24 had inadvertently assumed that all of the counts carried a
25 100 dollar assessment. Some of them only have 50. So it is

1 actually only 2,250.

2 Your Honor, I would also note at this time the
3 United States' recommendation that at the time of sentencing
4 the defendant be permitted to self report to the facility
5 designated for his incarceration, and also the United
6 States' recommendation that he be designated to a minimum
7 security facility.

8 THE COURT: So the United States is going to
9 recommend self report and minimum security?

10 MR. RODRIGUEZ: That is correct, Your Honor.

11 Your Honor, the plea agreement can be summarized
12 as follows:

13 The defendant will plead guilty to those counts
14 which Your Honor listed and described earlier.

15 He further will accept responsibility for Counts 1
16 through 122 of the indictment, including those counts to be
17 dismissed, and further stipulates that the conduct in those
18 counts may be considered by the probation office or by Your
19 Honor in imposing sentence.

20 Your Honor, the agreement further states that the
21 United States will not seek an enhancement for abuse of
22 position of trust or special skill under 3B1.3 of the
23 sentencing guidelines, or for that matter any other
24 enhancements under chapter three of the sentencing
25 guidelines.

1 Your Honor, I would note for the fraud by
2 investment adviser, the current state of the law is
3 unsettled as to whether that enhancement can apply in any
4 case where that is the lead charge.

5 THE COURT: You mean position of trust?

6 MR. RODRIGUEZ: That is correct, Your Honor.

7 And the United States reserves its right of
8 allocution at sentencing.

9 The United States further will recommend that the
10 defendant be sentenced at the low end of the guideline range
11 that applies at the time of sentencing.

12 We further will recommend that his overall offense
13 level be reduced by three levels on the grounds of
14 acceptance of responsibility, in that the defendant timely
15 notified the authorities of his intention to enter a plea of
16 guilty and thereby permitted the government to avoid
17 preparation for trial.

18 The parties stipulate that the fraud loss for
19 purposes of calculating the defendant's base offense level
20 under 2F1.1 is 61,300,000 dollars, thus yielding a base
21 offense level of 23.

22 The parties further agree that the base offense
23 level should be increased by two levels pursuant to Section
24 2F1.1(b)(2)(A) and (B), and that beyond that no further
25 other enhancements should apply under section 2F1.1.

1 The parties further agree that there are no
2 grounds for either upward or downward departures under the
3 sentencing guidelines, and no such motions will be made
4 before this court.

5 The agreement notes that those stipulations I have
6 just described, Your Honor, are not binding on Your Honor
7 and do not preclude either party from bringing to the
8 attention of the probation office any information not known
9 to either party at the time of this agreement.

10 Further, the agreement does not preclude the
11 government from pursuing any civil or administrative
12 remedies against the defendant or his property.

13 That is in sum, Your Honor, the key points of the
14 agreement.

15 BY THE COURT:

16 Q. Mr. Black, you heard what Mr. Rodriguez said about the
17 agreement arrived at between you and your counsel and the
18 government, did you not?

19 A. Yes.

20 Q. Do you understand what he said?

21 A. Yes, I do.

22 Q. Do you agree what he said correctly describes the
23 agreement that you have arrived at in this case?

24 A. Yes, Your Honor.

25 THE COURT: Do we have a copy of the plea

1 agreement? Well, I have one. But do we have an original
2 signed to put into the record?

3 MR. RODRIGUEZ: Yes, we do, Your Honor. And I
4 offer it now as an exhibit, Exhibit 1.

5 BY THE COURT:

6 Q. Mr. Black, has anyone made any promises to you other
7 than those contained in the plea agreement which in any way
8 induced you to enter into this plea of guilty.

9 A. No, Your Honor.

10 Q. Do you understand that I am not required to accept a
11 plea agreement, and if I should reject it you would be
12 advised of that in open court and have the opportunity to
13 withdraw your plea. If I should reject the plea agreement
14 and you nevertheless decided to continue with the plea of
15 guilty, you should understand that the disposition of your
16 case may be less favorable to you than proposed in the plea
17 agreement; do you understand that?

18 A. Yes, Your Honor.

19 Q. Do you understand that the offense to which you are
20 pleading guilty is a felony, and if your plea is
21 accepted you will be adjudged guilty of several felonies,
22 and that adjudication may deprive you of valuable civil
23 rights, such as the right to vote, the right to hold public
24 office, the right to serve on a jury, and the right to
25 possess any kind of firearms; do you understand that?

1 A. Yes, Your Honor.

2 Q. Under the Sentencing Reform Act of 1984, the United
3 States Sentencing Commission has issued guidelines for
4 judges to follow in determining sentences in criminal cases
5 for offenses that occurred after November 1, 1987.

6 Have you and your attorney talked about how the
7 guidelines might apply to your case?

8 A. We have, Your Honor.

9 Q. Do you understand that I will not be able to determine
10 the guideline sentence for your case until after a
11 presentence report has been completed and you and the
12 government have had the opportunity to challenge the facts
13 reported by the United States Probation Officer in the
14 report?

15 A. Yes, Your Honor.

16 Q. Do you understand that after it has been determined what
17 guideline sentence applies to a case, I have the authority
18 in some circumstances to impose a sentence that is either
19 more severe or less severe than that called for by the
20 guidelines?

21 A. Yes, Your Honor.

22 Q. Do you understand that under certain circumstances you
23 or the government may have the right to appeal any sentence
24 that I impose?

25 A. Yes, Your Honor.

1 Q. And do you understand that parole has been abolished,
2 and if you are sentenced to a term of incarceration, you
3 will not be released on parole?

4 A. Yes, Your Honor.

5 Q. Except for your discussions with your attorney about the
6 guidelines, has anyone made any predictions or promises to
7 you about what your actual sentence will be?

8 A. Just conversations with my attorney.

9 Q. So you would not classify them as promises, or would
10 you?

11 A. No, I would not classify them as promises.

12 Q. Has anything I have said here today suggested to you
13 what your actual sentence will be?

14 A. No, Your Honor.

15 Q. Mr. Black, with respect to the counts involving fraud by
16 an investment adviser, did you at all times material to the
17 indictment cause Devon clients invested in the CIA program
18 to be sent monthly statements from the Devon office in
19 Tyrone, which statements were sent to the clients to their
20 business addresses through the United States Mail, and which
21 falsely represented the market value of the CIA as being
22 equal to the remaining liabilities of Devon to the client;

23 And did you from on or about certain dates
24 representing dates on which the CIA's were executed on
25 behalf of the clients on the counts to which you are

1 pleading guilty, and the respective accounts, to on or about
2 September 26, 1997, as the chief executive officer of Devon
3 Capital Management, an investment adviser subject to the
4 provisions of the Investment Advisor's Act of 1940, in that
5 you did by the use of the mails and by means and
6 instrumentalities of interstate commerce, directly and
7 indirectly, willfully engage in a transaction, practice and
8 course of business which operated as a fraud and deceit on
9 those clients named previously, by concealing trading losses
10 sustained in investments held on behalf of those clients by
11 concealing the risks of the investments held on behalf of
12 the clients named before and by providing false values for
13 securities held on behalf of those clients?

14 MR. RODRIGUEZ: Your Honor, I'm sorry, if I may.
15 Prior to the defendant answering, can I clarify one point.
16 To the extent that the first paragraph of the count speaks
17 to the use of market value in monthly statements, that is
18 actually at variance with the representations that the
19 defendant is making in the stipulated factual basis.
20 Rather, it is agreed that there was a mailing of monthly
21 statements. But as to the market value representation, that
22 is not a point agreed upon. However, the mailing itself is
23 sufficient to establish the counts as there are further
24 stipulations of fact contained within the stipulated factual
25 basis, Your Honor.

1 THE COURT: So you would be looking at the
2 allegations in paragraph 63?

3 MR. RODRIGUEZ: I simply move to strike that
4 portion of it.

5 MR. SCHEFF: Your Honor, we, the government and
6 myself and Mr. Black, spent a tremendous amount of time
7 working out a stipulated factual basis for the plea which is
8 sufficient based on the charges that Mr. Black has been
9 indicted on. But there are some differences in words which
10 were very significant for the factual basis, and that was
11 the bullet, if you will.

12 THE COURT: The market value.

13 MR. SCHEFF: It is really liquidation value
14 instead of market value.

15 MR. RODRIGUEZ: What I would suggest is simply
16 strike the language in paragraph 62, and I would simply move
17 to strike that portion of the indictment.

18 THE COURT: Okay.

19 (Mr. Rodriguez and Mr. Scheff conferring.)

20 Okay. Then we will start again with respect to
21 fraud by an investment adviser.

22 MR. SCHEFF: Your Honor, if we could have a moment
23 to get to the indictment so Mr. Black can follow it.

24 THE COURT: Absolutely.

25 BY THE COURT:

1 Q. Okay. So what I'm asking you, Mr. Black, if at all
2 times material to the indictment you caused Devon clients
3 invested in the CIA program to be sent monthly statements
4 from the Devon office in Tyrone, Pennsylvania, which
5 statements were sent to the clients to their business
6 addresses through the United States Mail; and from on or
7 about the dates which have previously been listed in the
8 respective counts, which represent the dates on which the
9 CIA agreements, the CIA's were executed on behalf of those
10 clients, and their respective accounts, to on or about
11 September 26, 1997, did you as chief executive officer of
12 Devon Capital Management, an investment adviser, subject to
13 the provisions of the Investment Advisor's Act of 1940,
14 willfully violate Title 15, United States Code, 80b-6(2), in
15 that you did by the use of the mails and by means and
16 instrumentalities of interstate commerce, directly and
17 indirectly, willfully engage in a transaction, practice and
18 course of business which operated as a fraud and deceit upon
19 those clients named previously by concealing trading losses
20 sustained in investments held on behalf of those clients by
21 concealing the risks of the investments held on behalf of
22 those clients and by providing false values for securities
23 held on behalf of those clients? Did you do that, sir?

24 A. Yes, ma'am. Yes, Your Honor.

25 MR. SCHEFF: Yes.

1 THE COURT: Okay. With respect to those counts of
2 mail fraud, the government has alleged, and I'm now asking
3 you, Mr. Black, if you, from on or about May 27, 1994 to on
4 or about September 26, 1997 in the Western District of
5 Pennsylvania, did devise and intend to devise a scheme or
6 artifice to defraud, or for obtaining money or property by
7 means of false and fraudulent pretenses, representations or
8 promises, the means and purposes of which have been set
9 forth in the indictment, and if on or about those dates
10 listed previously, in the Western District of Pennsylvania
11 and elsewhere, you for the purpose of executing the scheme
12 and artifice to defraud set forth in the indictment, and in
13 attempting to do so did knowingly place or cause to be
14 placed in an authorized depository for U.S. Mail matter
15 those items described previously, to be sent and delivered
16 by the United States Postal Service to the locations
17 described previously according to the directions thereon.

18 Did you do that, sir?

19 MR. SCHEFF: Your Honor, could we just have one
20 moment, please.

21 THE COURT: Surely.

22 (Conference between Mr. Scheff and Mr. Black.)

23 THE DEFENDANT: Yes, Your Honor.

24 BY THE COURT:

25 Q. In connection with the offenses charged in making or

1 using false documents:

2 Did you on or about the dates listed previously in
3 the Western District of Pennsylvania, in a matter within the
4 jurisdiction of the United States Securities and Exchange
5 Commission, an agency of the executive branch of the
6 government of the United States, knowingly and willfully
7 make and use a false writing or document knowing the same to
8 contain a materially false, factitious or fraudulent
9 statement or entry, to wit: A CIA for those clients named
10 previously which represented that the collateral securing
11 the investments was at a ratio of at least 100 percent, when
12 in fact, as you well knew, the collateral ratio was
13 substantially less than 100 percent, and which CIA's
14 constitute written agreements, or copies thereof, entered
15 into by the investment adviser with any client or otherwise
16 relating to the business of such investment adviser as such,
17 as set forth in 17 CFR, Section 275.204-2(a)(10), which
18 agreements, pursuant to 15 U.S. Code, Section 80b-4 are
19 subject to reasonable periodic, special or other
20 examinations by representatives of the Securities and
21 Exchange Commission as the commission deems necessary or
22 appropriate in the public interest or for the protection of
23 investors.

24 Did you do that, sir?

25 A. Yes, yes, Your Honor.

1 Q. Okay. Normally at this point I would ask the United
2 States Attorney to summarize the government's evidence about
3 the charges in the counts to which the defendant is pleading
4 guilty. Previously I have been submitted or I have been
5 given a Joint Stipulated Factual Basis Pursuant to Federal
6 Rule of Criminal Procedure 11(f). This has been executed by
7 the United States Attorney's office, by Mr. Scheff on behalf
8 of Mr. Black, and by Mr. Black as well.

9 I have reviewed the stipulation of a factual basis
10 and find in fact that there is a factual basis for the plea
11 to all the counts of fraud by investment adviser, mail fraud
12 and making or using false documents.

13 I'm going to ask that a copy of the Joint
14 Stipulated Factual Basis pursuant to Federal Rule of
15 Criminal Procedure 11(f) be admitted into evidence.

16 MR. RODRIGUEZ: I would like to offer the original
17 to the court.

18 THE COURT: It is admitted.

19 BY THE COURT:

20 Q. Mr. Black, you have read the Joint Stipulated Factual
21 Basis Pursuant to Federal Rule of Criminal Procedure 11(f),
22 have you not?

23 A. Yes.

24 Q. And you have executed it as well?

25 A. Yes.

1 Q. Did you agree with what has been stated in this
2 stipulation?

3 A. Yes, I have, Your Honor.

4 Q. Did you indicate that you did agree?

5 A. Yes, I did. I'm sorry.

6 Q. That is okay. Do you still wish to enter a plea of
7 guilty?

8 A. Yes.

9 And, Mr. Scheff, is it your advice that Mr. Black
10 plead guilty?

11 MR. SCHEFF: It is, Your Honor.

12 THE COURT: Mr. Black, because you acknowledge
13 that you are in fact guilty as charged in the counts to
14 which you are pleading guilty, because you know about your
15 right to a trial, because you know about the maximum
16 possible penalty that could be imposed if you were convicted
17 of these offenses, and because you are voluntarily pleading
18 guilty, I will accept your guilty plea and enter a judgment
19 of guilty on your plea to Counts 1, 4, 8, 9, 14, 18, 21, 23,
20 25, 30, 34, 37, 43, 48, 50, 57, 60, 62, 64, 67, 73, 84, 86,
21 87, 96 and 117 of indictment number 99-203.

22 It is the finding of the court in the case of the
23 United States of America versus John Gardner Black that the
24 defendant is fully competent and capable of entering an
25 informed plea; that his plea of guilty is knowing and

1 voluntary and supported by an independent basis in fact
2 containing each of the essential elements of the offenses
3 charged. Therefore, the pleas are accepted and the
4 defendant, John Gardner Black is adjudged guilty of the
5 charges to which he is pleading guilty contained in the
6 indictment.

7 We will now have Mr. Black and Mr. Scheff sign the
8 change of plea form.

9 (Forms signed by the defendant and his attorney.)

10 Okay. The plea has been entered.

11 Mr. Black, a presentence investigation report will
12 be prepared by the United States Probation Office. It is in
13 your best interests to cooperate with the probation officer
14 fully in providing information for the report because the
15 report is the most important document I will have to
16 determine what your actual sentence will be.

17 You and your attorney will have the right and the
18 opportunity to examine the report before sentencing. Our
19 local rules of court govern the procedures to be followed in
20 connection with the presentence investigation report.

21 Before anyone leaves today, I will be giving you a
22 copy of the sentencing order. But for the record I will say
23 that no later than March 17 of the year 2,000 the probation
24 officer will forward the report to counsel and to me.

25 No later than March 31 of the year 2,000 counsel

1 for the government and for the defendant will file with the
2 court a statement either outlining their objections to the
3 material contained in the report or indicating their
4 agreement to the calculations set forth in the report.

5 No later than April 7 of the year 2,000 the
6 probation officer will file an addendum setting forth any
7 objections to the guideline calculations which have been
8 made. If there are objections to the guideline
9 calculations, I will issue tentative findings and rulings.
10 However, if there are no objections to the guideline
11 calculations, I will not be issuing such tentative findings
12 and rulings.

13 You will have the opportunity to make any
14 arguments or statements prior to sentencing that you feel
15 necessary to make.

16 Sentencing will take place on Friday, April 14,
17 2,000 at 10 a.m.

18 MR. RODRIGUEZ: Your Honor, I'm sorry. I actually
19 have a sentencing in another matter before Judge Lancaster
20 that same morning. I don't know if I could ask that maybe
21 it be on the 21st, or if I can check with Judge Lancaster to
22 try to get it moved.

23 (Discussion off the record as to scheduling.)

24 THE COURT: Okay. Why don't we do it on April 14
25 in the afternoon.

1 MR. RODRIGUEZ: That is fine. That works.

2 THE COURT: We will make it at 2 p.m. How is
3 that?

4 MR. SCHEFF: That is okay.

5 THE COURT: Actually that might be better,
6 particularly if you are coming from Philadelphia, that might
7 be better.

8 As I indicated, if there are tentative findings
9 and rulings, both the government and the defendant will have
10 the opportunity to submit written or oral objections to
11 those rulings prior to the sentence being imposed.

12 I assume that Mr. Black is presently on some sort
13 of bond?

14 MR. RODRIGUEZ: Yes, he is, Your Honor, and the
15 United States recommends that it be continued.

16 THE COURT: Could you tell me what that is,
17 please.

18 MR. RODRIGUEZ: I believe he is on a ten-thousand
19 dollar signature bond.

20 THE COURT: That is fine.

21 Mr. Black, do you understand you must be in this
22 courtroom for sentencing on April 14, 2,000 at 2 p.m. or you
23 could be found guilty of a violation of the Bail Reform Act
24 for which there is a maximum penalty of five years
25 incarceration, a fine of --

1 THE DEFENDANT: I promise you I will be here.

2 THE COURT: -- a fine of 250 thousand dollars, or
3 both?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: I have to inform you of that anyway.

6 Then Mr. Black's present bond may continue.

7 Are counsel aware of any other matters?

8 MR. RODRIGUEZ: Nothing from the government.

9 MR. SCHEFF: No.

10 THE COURT: I'm going to give each of you a copy
11 of the sentencing order. And I thank you all very much.

12 (Hearing adjourned.)

13

14

15 I CERTIFY THE FOREGOING IS A CORRECT TRANSCRIPT

16 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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