UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA, New York, N.Y.

v. 18 Cr. 333(JGK)

AKSHAY AIYER,

Defendant.

----------x Trial

November 20, 2019
9:35 a.m.

Before:

HON. JOHN G. KOELTL,

District Judge
- and a jury -

APPEARANCES

U.S. DEPARTMENT OF JUSTICE
Antitrust Division
BY: KEVIN B. HART
DAVID CHU
KATHERINE J. CALLE

WILLKIE FARR & GALLAGHER LLP
Attorneys for Defendant
BY: MARTIN B. KLOTZ
JOCELYN M. SHER
JOSEPH T. BAIO

(Trial resumed; jury not present)

THE COURT: Please be seated.

Good morning, all.

COUNSEL: Good morning, your Honor.

THE COURT: I will save all of my comments.

The government proposed last night to include the substance of what it had previously objected to, which was the government's request for a multiple conspiracy charge. So the government now says, okay, put in a multiple conspiracy charge and request the addition of a sentence with respect to time, "Likewise, a single conspiracy is not transposed into a multiple one simply by lapse of time," and points to that language in *Aracri*.

The defense, as I understand it, says, okay, we don't have a problem -- after all, we proposed it, a multiple conspiracy charge -- but we do object to singling out time unless it is a balanced charge because you are undercutting possibly an argument which we actually didn't make. What we argued was not lapse of time, but break in the conspiracies. We were arguing the, the defendant argues, that there was a break while Mr. Katz was on garden leave. And no one was conspiring. That's not an argument with respect to the time but, rather, a break or, as the defendant would put it, ceased for a period of time. And so the defendant says if you are going to include that government sentence, you need a balanced

charge, and that's basic. And so the defense proposes that if I include the language that the government requested, I also say, "On the other hand, you may consider evidence that conspiratorial activity actually ceased for a period of time in deciding whether the government has proven a single conspiracy or multiple conspiracies."I would change that slightly to say "the single conspiracy charged in the indictment" and, as balanced, I would include the government request and the defense request.

By the way, the reason that I would change the defense request is there is a slight misconception that if multiple conspiracies are proved, the jury should acquit. The law is actually that if the single conspiracy charged in the indictment is one of the conspiracies that the jury finds to have been proved, then the jury can return a verdict of guilty. So that's the reason that the sentence is changed to the single conspiracy charged in the indictment.

So. . .

MS. CALLE: Just conferring with my colleagues for one moment.

(Counsel confer)

MS. CALLE: Your Honor, we think that it would be a little confusing for the jury to have to consider "lapse of time" versus "cease in time" and try to figure out what the difference is, so the government's position would be to just

strike both sections.

THE COURT: Okay.

MS. CALLE: So the proposed "lapse of time" and the defendant's proposed "ceased for a period of time."

THE COURT: Okay.

MR. KLOTZ: And that was the defense proposal from the get-go, your Honor, so we are happy with that.

THE COURT: I know that.

I should point out what I was going to pass over at the outset, which was, the commentary to the multiple conspiracy charge in Judge Sand's treatise says that a multiple conspiracy charge is generally not to be given in a single defendant case.

The reason for that is that the jury is only being asked whether the conspiracy charged in the indictment was in fact proved, and issues with respect to whether the evidence supported the single conspiracy charged in the indictment are really arguments over sufficiency of the evidence and whether there was a variance to what was charged in the indictment, and whether the defendant, if there was a variance, was prejudiced. And, moreover, there are certainly cases which stand for the proposition that telling the jury, as this charge did and as the government noted at the charge conference, it says that they have to find the one conspiracy charged in the indictment. So that is already clear.

And the issues with respect to whether there was the conspiracy charged in the indictment is a question of fact for the jury and one to be argued out in all of the summations.

So I sent you a proposal where the multiple conspiracy charge would be and what it would say, and I will include all of that with the exception of what appeared on the second page of the attachment. I will strike the single sentence, "Likewise, a single conspiracy is not transposed into a multiple one simply by lapse of time."

Okay. I understand it will not take us a lot of time to run off new copies of the charge with those pages, and that's what we will do.

MS. CALLE: Thank you, your Honor.

I want to explain a little bit why the government felt it was necessary. We understand that it is usually the case that there are multiple defendants and the concern is prejudice from spillover from one conspiracy with one defendant to the other, and up until the summations the government didn't see the need for this, but Mr. Klotz specifically used the terms "separate conspiracy" and then gave instructions that we thought were misleading. So to correct that specific invocation, especially because I think he was getting at the possibility of prejudice from a time barred conspiracy spilling over to a not time barred conspiracy, that's what the government sought to address with this instruction. So that's

a little more background as to why we thought it was necessary at this stage.

THE COURT: Okay. And as Judge Sand points out, this is usually viewed as a pro-defendant charge, and it is certainly appropriate for the government to make sure that I correctly instruct the jurors on the law. Even if there is an instruction that might be more favorable to the defendant if it's correct on the law, the government has every interest in making sure that that instruction is given. So I compliment the government on asking for the instruction.

We will make the change, and we will be back. Hopefully we won't take long.

(Recess)

THE COURT: Please be seated.

After I give the charge, as I mentioned, I will meet with the lawyers -- and the defendant should really be there also in the robing room -- briefly to make sure that I read the charge as it is given to you.

I also talk about logistics, which is to keep the alternates under oath, but let them go home and advise them that it is possible that they may be called back, so they should continue not to talk about the case.

All right. Let's bring in the jury. Is everyone ready? Yes?

MR. KLOTZ: Yes.

MR. HART: Yes.

(Continued on next page)

(Jury present)

THE COURT: All rise, please.

Please be seated, all.

Good morning, ladies and gentlemen.

JURORS: Good morning.

THE COURT: It's nice to see you all.

There were various matters that I take up in the morning, which is why I am calling you out a little later than usual, but I appreciate your promptness in being here. Thank you.

I am about to charge the jury on the law. It is a tradition of the court that the deputy makes an announcement before the judge charges the jury.

So, Mr. Fletcher.

THE DEPUTY CLERK: Ladies and gentlemen:

The court is about to instruct the jury on the law, as it is commonly known as "the charge." We ask that all persons who are seated in the courtroom please be quiet so that the court can have the attention of the jury.

Your Honor.

THE COURT: Ladies and gentlemen of the jury:

I am now about to instruct you on the law that you will apply to the facts in this case. You will then determine the facts in accordance with my instructions on the law.

As I told you during your selection, you are critical

to the administration of justice, and I hope you fully appreciate your importance. It is a tradition and a significant safeguard of our individual liberties that parties involved in criminal matters have a jury, chosen from their community, decide questions of fact and on that basis render a verdict.

I will now explain to you my role and your role. As to the charge presented in this case, it is your duty to decide whether or not the guilt of the defendant has been proved beyond a reasonable doubt. You are the sole judges of the facts. I, as the judge, do not find the facts. Rather, you, the members of the jury, find the facts. That is a very great responsibility that you must exercise with complete fairness and impartiality. Your decision is to be based solely on the evidence or the lack of evidence.

My job includes two basic functions. First, I make rulings on disputed issues of law. What rulings I have made and why should not concern you. My second function is very much your concern. It is to instruct you on the law -- that is, to explain to you the rules of law that govern your deliberations and to tell you what the questions are that you must answer in reaching your verdict. It is your duty to accept the law as I state it to you in these instructions and to apply it to the facts as you decide them.

You must not substitute your concept of what the law

should be for what I tell you that the law is. Just as you alone find the facts, I alone determine the law, and you are dutybound to accept the law as I state it. For this same reason, if any attorney has stated a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow. You should also not single out any instruction or any one word or phrase of an instruction as alone stating the law, but you should consider my instructions as a whole.

Accordingly, you will find the facts in this case, but you will accept the law as I state it to you and apply that law to the facts as you find them. The result of your work will be the verdict that you return.

In the course of these instructions, I will explain general principles that will apply, the burden of proof to be applied in this case, the charge in the indictment, the substantive law to be applied to the charge, and, finally, I will give some concluding comments on various evidentiary issues and on your deliberations.

I will provide a copy of these jury instructions to you so that they will be available to you in the course of your deliberations.

I remind you that, in reaching your verdict, you are to perform your duty of finding the facts without bias or prejudice as to any party. You must remember that all parties

stand as equals before a jury in the courts of the United States. You must disregard any feelings you may have about the defendant's race, ethnicity, religion, national origin, sex, age, or physical condition. It would also be improper for you to allow any feelings you might have about the nature of the crime charged to interfere with your decision-making process.

The fact that the government is a party and the prosecution is brought in the name of the United States does not entitle the government or its witnesses to any greater consideration than that accorded to the defendant. By the same token, you must give it no less consideration. The government and the defendant stand on equal footing before you. Your verdict must be based solely on the evidence or the lack of evidence.

For the same reasons, the personalities and the conduct of counsel are not in any way in issue. If you formed opinions of any kind as to any of the lawyers in the case, favorable or unfavorable, whether you approved or disapproved of their behavior, those opinions should not enter into your deliberations.

In determining the facts, you are reminded that before each of you was accepted and sworn to act as a juror you were asked questions concerning competency, qualifications, fairness, and freedom from prejudice and bias. On the faith of those answers, each of you was accepted by the parties.

Therefore, those answers are as binding on each of you now as they were then and should remain so until you are discharged from consideration of this case.

In determining the facts, you must rely on your own recollection of the evidence. What is evidence? Evidence consists of the testimony of witnesses, the exhibits that have been received into evidence, stipulations, and judicially noticed facts.

The statements and arguments made by the lawyers are not evidence. Their arguments are intended to convince you what conclusions you should draw from the evidence or lack of evidence. You should weigh and evaluate the lawyers' arguments carefully. But you must not confuse them with the evidence. As to what the evidence was, it is your recollection that governs, not the statements of the lawyers.

In this connection, you should bear in mind that a question put to a witness is never evidence. It is only the answer in combination with the question which is evidence. One exception to this is that you may not consider any answer that I directed you to disregard or that I ordered to be stricken from the record. You are not to consider such answers in any way.

I am now going to say a few words on the subject of direct and circumstantial evidence. There are two types of evidence that you may properly use in deciding whether or not

the defendant is guilty of the crime with which he is charged.

One type of evidence is called direct evidence. Direct evidence of a fact in issue is presented when a witness testifies to that fact based on what he or she personally saw, heard, or observed. In other words, when a witness testifies about a fact in issue which is known of the witness's own knowledge -- by virtue of what he or she sees, feels, touches, or hears -- that is called direct evidence of that fact.

The second type of evidence is circumstantial evidence. Circumstantial evidence is evidence that tends to prove a disputed fact indirectly by proof of other facts. There is a simple example of circumstantial evidence that is often used in this courthouse.

Assume that when you came into the courthouse this morning the sun was shining and it was a nice day outside. Assume that the courtroom blinds were drawn and you could not look outside. As you were sitting here, someone walked in with an umbrella that was dripping wet. Then somebody else walked in with a raincoat that also was dripping wet.

Now, you cannot look outside the courtroom and you cannot see whether or not it is raining, so you have no direct evidence of that fact. But, on the combination of facts that I have asked you to assume, it would be reasonable and logical for you to conclude that it had been raining.

That is all there is to circumstantial evidence. You

infer on the basis of reason and experience and common sense from an established fact the existence or the nonexistence of some other fact.

I have spoken to you of inferences to be drawn from the evidence. This is what the law means when it speaks of inferring one fact from the other. An inference is the deduction or conclusion that reason and common sense prompt a reasonable mind to draw from facts that have been proven by the evidence. The process of drawing inferences from facts is not a matter of guesswork or speculation. Not all possible conclusions are legitimate or fair inferences. Only those inferences to which the mind is reasonably led or directed are fair inferences from direct or circumstantial evidence in the case. Whether or not to draw a particular inference is, of course, a matter exclusively for you, as are all determinations of fact.

Many material facts, such as state of mind, are rarely susceptible to proof by direct evidence. Usually such facts are established by circumstantial evidence and the reasonable inferences you draw. Circumstantial evidence may be given as much weight as direct evidence. The law makes no distinction between direct and circumstantial evidence, but simply requires that, before convicting a defendant, the jury must be satisfied of the defendant's guilt beyond a reasonable doubt based on all of the evidence in the case.

You should draw no inference or conclusion for or against any party by reason of lawyers' objections or my rulings on such objections. Counsel have not only the right but the duty to make legal objections when they think that such objections are appropriate. You should not be swayed against the government or the defendant simply because counsel for either side has chosen to make an objection.

It is my function to cut off counsel from questioning, to strike remarks, and to reprimand counsel when I think it is necessary. But you should draw no inference from that. It is irrelevant whether you like a lawyer or whether you believe I like a lawyer. The issue before you is not which attorney is more likeable -- the issue is whether the government has sustained its burden of proof.

You should consider all the evidence in this case no matter what party may have introduced or adduced that evidence.

Nothing I say is evidence. If I comment on the evidence during my instructions, do not accept my statements in place of your recollection. It is your recollection that governs.

Also, do not draw any inference from any of my rulings. The rulings I have made during trial are not any indication of my views. Indeed, I have no opinion as to the facts of this case, and you should not seek to find such an opinion in my rulings.

If I admitted evidence for a limited purpose, you must following my limiting instruction.

Further, do not concern yourself with what was said at sidebar conferences or during my discussions with counsel. Those discussions related to rulings of law, not to matters of fact. Finally, at times I may have directed a witness to be responsive to questions or to keep his or her voice up. At times, I may have questioned a witness myself. Any questions that I asked, or instructions that I gave, were intended only to clarify the presentation of evidence and to bring out something that I thought was unclear. You should draw no inference or conclusion of any kind, favorable or unfavorable, with respect to any witness or the parties in the case, by reason of any comment, question, or instruction of mine. Nor should you infer that I have any views as to the credibility of any witness, as to the weight of the evidence, or as to how you should decide any issue that is before you. That is entirely your role.

In this case, you have heard evidence in the form of stipulations. A stipulation of testimony is an agreement among the parties that, if called as a witness, the person would have given certain testimony. You must accept as true the fact that the witness would have given that testimony. However, it is for you to determine the effect to be given that testimony.

You have also heard evidence in the form of

stipulations that contained facts that were agreed to be true. You should regard such agreed facts as true.

I have taken judicial notice of certain facts that I believe are not subject to reasonable dispute. I have accepted these facts to be true, even though no evidence has been introduced proving them to be true. You may, but are not required to, agree that these facts are true.

You have heard reference, in the arguments in this case, to the fact that certain investigative techniques were used by the government and that certain others were not used. You may consider these facts in deciding whether the government has met its burden of proof, because, as I told you, you should look to all of the evidence or lack of evidence in deciding whether the defendant is guilty. However, there is no legal requirement that the government use any specific investigative techniques to prove its case. Law enforcement techniques are not your concern. Your concern, as I have said, is to determine whether or not, on the evidence or lack of evidence, the government has proved the defendant's guilt beyond a reasonable doubt.

Although the defendant has been indicted, you must remember that the indictment is only an accusation. It is not evidence. The defendant has pleaded not guilty to the indictment. In so doing, the defendant has denied the allegations in the indictment against him.

As a result of the defendant's plea of not guilty, the burden is on the prosecution to prove the guilt of the defendant beyond a reasonable doubt. This burden never shifts to the defendant for the simple reason that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

The law presumes the defendant to be innocent of the charge against him. I therefore instruct you that you are to presume that the defendant is innocent throughout your deliberations until such time, if ever, you, as a jury, are satisfied that the government has proven the defendant guilty beyond a reasonable doubt.

The defendant begins the trial here with a clean slate. This presumption of innocence alone is sufficient to acquit the defendant unless you, as jurors, are unanimously convinced beyond a reasonable doubt of the defendant's guilt, after a careful and impartial consideration of all of the evidence in this case. If the government fails to sustain its burden, you must find the defendant not guilty.

This presumption was with the defendant when the trial began and remains with him even now as I speak to you and will continue with the defendant into your deliberations unless and until you are convinced that the government has proven the guilt of the defendant beyond a reasonable doubt.

I have said that the government must prove the

defendant guilty beyond a reasonable doubt. The question naturally is, "What is a reasonable doubt?" The words almost define themselves. It is a doubt based upon reason and common sense. It is a doubt that a reasonable person has after carefully weighing all of the evidence. It is a doubt that would cause a reasonable person to hesitate to act in a matter of importance in his or her personal life. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. A reasonable doubt is not a caprice or whim; it is not a speculation or suspicion. It is not an excuse to avoid the performance of an unpleasant duty.

In a criminal case, the burden is, at all times, upon the government to prove guilt beyond a reasonable doubt. The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to the defendant, which means that it is always the government's burden to prove each of the elements of the crime charged beyond a reasonable doubt. If, after fair and impartial consideration of all of the evidence, you have a reasonable doubt concerning the guilt of the defendant with respect to the charge against him, you must find the defendant not guilty of that charge. On the other hand, if, after fair and impartial consideration of all the

evidence, you are satisfied beyond a reasonable doubt of the defendant's guilt with respect to the charge against him, you should find the defendant guilty of that charge.

I remind you that the indictment in this case is not evidence. It merely describes the charge made against the defendant. It is an accusation. It may not be considered by you as any evidence of the guilt of the defendant.

In reaching your determination of whether the government has proved the defendant guilty beyond a reasonable doubt, you may consider only the evidence introduced or the lack of evidence.

The defendant is not charged with committing any crime other than the offense contained in the indictment, and the defendant has denied the charge contained in the indictment.

You are being asked to decide whether the government has proved the defendant guilty beyond a reasonable doubt of the charge against him in the indictment. You are not being asked whether any other person has been proved guilty. Your verdict should be based solely on the evidence or lack of evidence as to the defendant in accordance with my instructions and without regard to whether the guilt of other people has or has not been proven.

I will now turn to the indictment. The indictment contains one count. The indictment will be provided to you so that it will be available to you during your deliberations.

I will now read to you the relevant allegations in the indictment. I will not read the entire indictment, which provides background information. You will be provided with the entire indictment so that you will have it during your deliberations. I remind you again that the indictment is not evidence.

Count One

(Conspiracy to Restrain Trade-15 U.S.C. Section 1)

The grand jury charges that, . . .

The defendant and his coconspirators:

From in or about July 2006, through in or about March 2015, the exact dates being unknown to the grand jury, defendant Akshay Aiyer, a resident of New York, was employed as an FX analyst and then later, an FX trader by Bank A, which had an FX trading desk located in the Southern District of New York. Aiyer sat on that New York trading desk trading a variety of CEEMEA currencies on behalf of his employer. Aiyer held the title of analyst from in or about 2006 until 2009, when he became an associate. Aiyer was promoted to vice president in 2011, and became an executive director in 2014.

During the period of October 2010 to July 2013, Jason Katz ("Katz") was also employed as an FX trader of CEEMEA currencies, in New York, by Bank B and Bank C. He worked for Bank B between October 2010 and June 2011, and Bank C between September 2011 and July 2013.

During the period of October 2010 to July 2013, Christopher Cummins ("Cummins") was employed as an FX trader of CEEMEA currencies, in New York, at Bank D.

From July 2011 to July 2013, cooperating witness one ("CW1") was employed as an FX trader of CEEMEA currencies, in New York, at Bank B (where Katz had previously worked between October 2010 and June 2011).

Aiyer, Katz, Cummins, and CW1, acting on behalf of rival Banks A, B, C, and D, were competitors in the trading of CEEMEA currencies with customers and in the interdealer market. Each traded billions of dollars of CEEMEA currencies per year, in spot, forward, and fix-related trades, among other types of FX transactions, on behalf of their respective banks.

Various entities and individuals, not made defendants in this indictment, participated as coconspirators in the offense charged and performed acts, and made statements, in furtherance thereof.

Whenever in this indictment reference is made to any act, deed, or transaction of any corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

Description of the Offense

"From at least as early as October 2010 and continuing until at least July 2013 (the "relevant period"), the exact dates being unknown to the grand jury, in the Southern District of New York and elsewhere, Aiyer and his coconspirators, and others known and unknown, knowingly entered into and participated in a combination and conspiracy to suppress and eliminate competition by fixing prices of, and rigging bids and offers for, CEEMEA currencies traded in the United States and elsewhere. The combination and conspiracy engaged in by Aiyer and his coconspirators was in unreasonable restraint of interstate trade and commerce in violation of Section One of the Sherman Act (15 U.S.C. Section 1).

"The charged conspiracy consisted of a continuing agreement, understanding, and concert of action among Aiyer and his coconspirators, the substantial terms of which were to suppress and eliminate competition for the purchase and sale of CEEMEA currencies by fixing prices of, and rigging bids and offers for, CEEMEA currencies traded in the United States and elsewhere."

Means and Methods of the Conspiracy

"For the purpose of forming and carrying out the charged combination and conspiracy, Aiyer and his coconspirators did those things that they combined and conspired to do, including, among other things:

"a. engaging in near-daily conversations through

private electronics chat rooms, phone calls, text messages, and other means of communication, to reveal their currency positions, trading strategies, bids and offers on Reuters, customer identities, customer limit order price levels, upcoming customer orders, and planned pricing for customer orders, among other information;

"b. agreeing to suppress and eliminate competition among themselves for the purchase and sale of CEEMEA currencies by coordinating their bidding, offering, and trading, including, at times, by refraining from bidding, offering, and trading against each other;

"c. coordinating their bidding, offering, and trading of CEEMEA currencies on electronic trading platforms such as Reuters and elsewhere in the interdealer market including, at times, by refraining from bidding, offering, and trading against each other, in order to increase, decrease, and stabilize the prices of CEEMEA currencies;

"d. coordinating their bidding, offering, and trading of CEEMEA currencies in and around the times of certain fixes, in order to increase, decrease, and stabilize the fix prices of CEEMEA currencies;

"e. filling customers' orders at prices that the conspiracy sought to increase, decrease, and stabilize;

"f. agreeing on prices to quote to customers, including customers who had solicited competing prices in the

same CEEMEA currency pair from two or more of the coconspirators; and

"g. employing measures to conceal their actions by, among other steps, using code names when discussing customers, communicating with each other using text messages and other cell phone applications, calling one another on personal cell phones during work hours, and meeting in person in the Southern District of New York to discuss particular customers and trading strategies."

Trade and Commerce

"During the relevant period covered by this indictment, the business activities of Aiyer and his coconspirators that are the subject of this indictment involved, were within the flow of, and substantially affected, interstate trade and commerce. Among other activities, Aiyer and his coconspirators in a continuous and uninterrupted flow of interstate trade and commerce, entered into FX CEEMEA transactions subject to the conspiracy with counterparties located in different states, and caused the transfer of substantial sums of money across state lines in connection with those transactions.

"All in violation of Title 15, United States Code, Section 1."

Count One of the indictment charges Akshay Aiyer, the defendant, with the offense of conspiracy to restrain trade.

The relevant statute is Section 1 of Title 15, United States Code, the Sherman Act. The Sherman Act provides in relevant part that: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a crime."

The purpose of the Sherman Act is to preserve and encourage free and open business competition so that the public may receive better goods and services at a lower cost.

In order to prove the price fixing and bid rigging conspiracy against the defendant, the government must establish beyond a reasonable doubt each of the following three elements:

First, that the conspiracy the defendant is charged with participating in actually existed during the time alleged in the indictment;

Second, that the defendant knowingly joined the conspiracy;

Third, that the conspiracy concerned goods or services in interstate commerce.

(Continued next page)

If you find from your consideration of all the evidence that each of these elements that is been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that any of these elements has not been proved beyond a reasonable doubt then, you should find the defendant not guilty.

As I have just told you, the first element that the government must prove, beyond a reasonable doubt, is that the price fixing and bid rigging conspiracy charged in the indictment actually existed. The existence of a conspiracy is important because the part of the Sherman Act we are concerned with outlaws certain joint activities by competitors, but it does not allow actions taken by a single firm or a single person.

We begin with the concept of "conspiracy." A conspiracy is an agreement between two or more persons to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means. The agreement itself is a crime. Whether the agreement is ever carried out, or whether it succeeds or fails, does not matter. Indeed, the agreement need not be consistently followed. Conspirators may cheat on each other and still be conspirators. It is the agreement to do something that violates the law that is the essence of a conspiracy.

The government must prove, beyond a reasonable doubt, that the conspiracy to fix prices and rig bids actually existed and existed at or about the time alleged in the indictment. If you find that the conspiracy charged in the indictment did not exist, you cannot find the defendant guilty of Count One. This is so even if you find that some conspiracy other than the one charged in the indictment existed; and even though any other conspiracy you may find existed had a purpose and/or membership similar to the conspiracy charged in the indictment.

In this case, the alleged conspiracy was a conspiracy from about as early as October 2010 and continuing until at least July 2013 to suppress and eliminate competition by fixing prices of, and rigging bids and offers for, CEEMEA currencies traded in the United States and elsewhere, through trading on the foreign currency exchange market ("FX market"). As a reminder CEEMEA is a shorthand for Central and Eastern European, Middle Eastern, and African emerging markets. Therefore, if you find that this conspiracy did not exist, you cannot find the defendant guilty.

In this case, the defendant contends that the government's proof fails to show the existence of only one overall conspiracy.

Whether there existed a single unlawful agreement, or many such agreements, or indeed, no agreement at all, is a question of fact for you, the jury, to determine in accordance

with my instructions.

When two or more people join together to further one common unlawful design or purpose, a single conspiracy exists. By way of contrast, multiple conspiracies exist when there are separate unlawful agreements to achieve distinct purposes.

You may find that there was a single conspiracy despite the fact that there were changes in either personnel, or activities, or both, so long as you find that some of the conspirators continued to act for the entire duration of the conspiracy for the purpose charged in the indictment. The fact that the members of a conspiracy are not always identical does not necessarily imply that separate conspiracies exist.

On the other hand, if you find that the conspiracy charged in the indictment did not exist, you cannot find the defendant guilty of the single conspiracy charged in the indictment. This is so even if you find that some conspiracy other than the one charged in this indictment existed, even though the purposes of both conspiracies may have been the same, and even though there may have been some overlap in membership.

Similarly, if you find that the defendant was a member of another conspiracy, and not the one charged in the indictment, then you must acquit the defendant of the conspiracy charge.

Therefore, what you must do is determine whether the

conspiracy charged in the indictment existed. If it did, you must then determine the nature of the conspiracy and who were its members.

Next, I will instruct you on what sorts of proof the government may use to prove the existence of the conspiracy beyond a reasonable doubt. In order to prove the existence of the conspiracy beyond a reasonable doubt, it is not necessary for the government to present direct proof of verbal or written agreements. Very often in cases like this, such evidence is not available. You may find that the required agreement or conspiracy existed from the course of dealing between or among the defendant and the alleged coconspirators, through the words they exchanged, or from their acts alone. What the government must prove, beyond a reasonable doubt, is that the members of the conspiracy in some manner came to a mutual understanding to try to fix or attempt to fix prices or try to rig or attempt to rig bids or accomplish or try to accomplish a common and unlawful objective. Membership in the chat rooms does not alone constitute participation in the claimed conspiracy. The fact that the members of the Rand Chat Room met or spoke frequently does not, by itself, prove that every participant in the chat room formed an illegal agreement.

Evidence that shows that alleged conspirators pretended to agree, or jokingly agreed, or merely, at times, engaged in wishful thinking, is not evidence that there was an

agreement about the unlawful objective charged in the indictment.

The government does not have to show that all of the means or methods that were agreed upon to accomplish this goal were actually used. Nor does the government have to show that all of the persons alleged to have been members of the claimed conspiracy were in fact members. What the government must prove is that the claimed conspiracy was knowingly formed; that it was formed with the intention to accomplish, by joint action, price fixing and bid rigging; and that the membership of the conspiracy was essentially that claimed by the government, namely, that it essentially included the defendant, Nicholas Williams, Jason Katz, and Christopher Cummins.

The antitrust laws involved in this case are concerned only with joint action and agreements among competitors -- not with actions taken independently by a single competitor. The independent actions of a person can never constitute a restraint of trade in violation of the Sherman Act.

Thus, an individual may refrain from bidding on a contract, or charge prices identical to those charged by competitors and still not violate the Sherman Act. Indeed, a person may adopt policies and prices identical to those of his or her competitors as long as such actions are the result of an independent business decision, and not the result of an agreement or understanding among competitors.

The fact that various persons engaged in similar conduct does not, in and of itself, establish the existence of a conspiracy. This is true even if they did so knowing that others were following similar practices. Similarity of business practices or even the fact that the defendant and the alleged coconspirators may have charged identical prices for emerging markets currencies does not automatically establish a conspiracy because such practices may be consistent with ordinary competitive behavior in a free and open market.

On the other hand, when it is a fact that similar practices are followed by a number of persons, with each being aware that the other is doing so, that is an important piece of evidence which you should consider, along with the other evidence in the case, in determining whether an unlawful agreement or conspiracy existed.

In determining whether to find such an agreement, you should consider whether the different persons adopting similar practices did so because of their own independent judgment as to what was in their own best economic interest. In deciding this, you should consider whether the practices employed made sense in light of the industry conditions, and whether the benefits from those practices were dependent on other persons doing the same thing.

In order to find a conspiracy based on consciously similar actions, you must find additional circumstances that

make it unlikely that those similar courses of action resulted from the exercise of independent business judgment. In short, you must find that those engaged in similar actions were a group, acting together, rather than individual competitors who happen to have done the same thing.

The indictment charges the defendant with knowingly joining a conspiracy to fix prices and rig bids in the FX market for CEEMEA currencies. I will now instruct you on what a price fixing conspiracy is.

A price fixing conspiracy is an agreement or mutual understanding between two or more competitors to fix, control, raise, lower, maintain, or stabilize the prices charged for products or services. Although a price fixing conspiracy is usually thought of as an agreement among competitors to establish the same price, prices may be fixed in other ways. Prices are fixed if the range or level of prices is agreed upon or, if, by agreement, various formulas are used in computing them. Put simply, prices are "fixed" when they are agreed upon. Thus, any agreement to set specific prices for CEEMEA currencies in the FX markets, establish fixed spreads or offers and bids of currency pairs, or set ranges within which currencies would be traded, is a price fixing conspiracy.

The goal of every price fixing conspiracy is the elimination of one form of competition -- competition over price. Therefore, if you find that the charged price fixing

conspiracy existed, it does not matter whether the prices agreed upon were high, low, reasonable, or unreasonable. What matters is that the prices were fixed.

Moreover, it is not a defense that the conspirators actually competed with each other in some manner, or that they did not conspire to eliminate all competitors. Every conspiracy to fix prices unlawfully restrains trade regardless of the motives of the conspirators or any economic justification they may might offer.

Similarly, if you find that the defendant did voluntarily and knowingly enter into the charged agreement to fix prices, you may find that the defendant intended to unreasonably restrain trade even if you find that the defendant, or any of the other conspirators, did not observe the agreement. What is important is that the defendant entered into the agreement. The agreement is the crime, even if it is never carried out. Of course, if the defendant never acted in accordance with the agreement, that is evidence you should consider in determining whether defendant ever joined the conspiracy in the first place. That the defendant knowingly joined the conspiracy is the second element of the offense that you must find beyond a reasonable doubt. I will instruct you on that element shortly.

I caution you, however, that the fact that competitors may have charged identical prices, copied each other's prices,

conformed exactly to another's price policies or exchanged information about prices does not establish a violation of the Sherman Act unless they did any of these things because of an agreement or arrangement or understanding as alleged in the indictment. Therefore, similarity or identity of prices charged does not alone establish the existence of a price fixing conspiracy. You should consider all of the evidence, giving it the weight and credibility you think it deserves, when determining whether similarity of pricing resulted from independent acts of businesses competing freely in the open market or whether it resulted from a mutual agreement or understanding between two or more conspirators as alleged in the indictment.

Furthermore, evidence has been introduced in this case concerning the exchange of information among the defendant and his competitors at other firms about their prices. I caution you that the exchange of information about price is not, by itself, illegal. The fact that the defendant exchanged such information with others does not establish an agreement to fix prices. There may be other legitimate reasons that would lead competitors to exchange information about prices, and the law recognizes that exchanges of such information may enhance competition and benefit consumers. On the other hand, if you find that price information was exchanged, and that there is no reasonable explanation as to why that information was

exchanged, you may consider whether the information was being exchanged as part of an agreement to fix prices, along with all of the other evidence bearing on whether there was an agreement to fix prices.

The indictment charges that the defendant knowingly entered into a conspiracy to fix prices and rig bids. I will now instruct you on what a bid rigging conspiracy is.

Bid rigging is an agreement between two or more competitors to eliminate, reduce, or interfere with competition for a job or contract that is to be awarded to the basis of competitive bids. Bid rigging may take many forms. For example, it may involve an agreement about the price to be bid, who should be the successful bidder, who should bid high, who should bid low, or who should refrain from bidding. Whatever form it takes, any agreement that limits or avoids competition in competitive bidding is an unlawful bid rigging conspiracy.

As I have told you, the goal of every bid rigging conspiracy is the elimination of one form of competition -- competitive bidding. Therefore, if you find that the charged bid rigging conspiracy existed, it does not matter whether the prices agreed upon were high, low, reasonable, or unreasonable. What matters is that bids were rigged.

Moreover, it is no defense that the conspirators actually competed with each other in some manner, or that they did not conspire to eliminate all competitors. Every

conspiracy to rig bids unlawfully and unreasonably restrains trade regardless of the motives of the conspirators or any economic justification that they might offer.

You must bear in mind, however, that the mere fact that the defendant or an alleged coconspirator may have bid similar or identical prices, or that the defendant or an alleged coconspirator may have refused to bid on a contract or may have submitted an artificially high bid, does not mean that they were part ever a bid rigging conspiracy. As long as an individual is exercising that individual's own independent judgment -- and not acting under an agreement with a competitor -- that individual may bid any price the individual wishes, whether that price is the same as, higher, or lower than a competitor's, and may choose not to seek the award of a particular contract at all.

You have heard evidence in this case about "spoofing" conduct or canceled trades which do not, in and of themselves, constitute the charged criminal conspiracy and are not in themselves illegal. You may not return a verdict of guilty solely because you find that the defendant alone or in combination with others engaged in spoofing or trades that were subsequently canceled. However, such evidence may be considered to determine the relationship between the defendant and his coconspirators, and his knowledge of, and intent to advance, the purpose of the conspiracy charged in the

indictment, namely, to fix prices and rig bids.

You have heard testimony that the defendant engaged in conduct that witnesses believed was "wrong" or was likely to make customers "angry." Such conduct does not constitute the crime of conspiracy charged in this case unless that conduct was in furtherance of a conspiracy to fix prices and rig bids as I have defined those terms for you. I remind you that, regardless how witnesses describe certain conduct, you and you alone must determine whether the conspiracy to fix prices and rig bids did, in fact, exist, in accordance with my instructions on the elements of that crime. You may not return a verdict of guilty against the defendant unless you find that there was a conspiracy to fix prices and rig bids and that the defendant knowingly joined that conspiracy.

Ah, a break. OK. Ladies and gentlemen -- thank you. We'll take a ten-minute break. Please remember my continuing instruction. Do not talk about the case at all and continue to suspend any thoughts until I have finished my instructions.

All right. Mr. Fletcher should be here momentarily.

All rise and the jurors can follow the marshal to the jury room.

(Jury not present)

THE COURT: See you shortly.

(Recess)

THE COURT: All right. Please be seated. Let's bring

in the jury.

(Jury present)

THE COURT: Please be seated.

The second element the government must prove, beyond a reasonable doubt, is that the defendant joined the conspiracy charged in the indictment knowingly. That is, the government must prove that the defendant joined the conspiracy with the intent to aid or advance price fixing and bid rigging, and not because of a mistake, accident, or some other innocent reason.

A person may become a member of the conspiracy without full knowledge of all the details of the conspiracy. It is not necessary that a defendant be fully informed as to all the details of the conspiracy or its scope in order to be a member. Knowledge of the essential nature of the plan is enough.

On the other hand, a person who has no knowledge of a conspiracy, but who happens to act in a way that furthers some purpose of the conspiracy, does not thereby become a member of the conspiracy. Similarly, knowledge of a conspiracy without participation in the conspiracy is also insufficient to make a person a member of the conspiracy.

A person who knowingly and voluntarily joins an existing conspiracy, or participates only in part of a conspiracy with knowledge of the overall conspiracy, is just as responsible as if he had been one of the originators of the conspiracy or had participated in every part of it.

Your determination whether the defendant knowingly joined the conspiracy must be based solely on the actions of that defendant as established by the evidence. You should not consider what others may have said or done to join the conspiracy. The membership of the defendant in the conspiracy must be established by evidence of his own conduct, by what he did or said.

It is not necessary for the government to prove that the defendant knew that the conspiracy to fix prices and rig bids, as charged in the indictment, is a violation of the law. Thus, if you find beyond a reasonable doubt from the evidence in the case that the defendant knowingly joined the conspiracy as charged in the indictment, then the fact that the defendant believed in good faith that what was being done was not unlawful is not a defense.

The extent of the defendant's participation has no bearing on the issue of his guilt. A conspirator's liability is not measured by the extent or duration of his participation.

I want to caution you, however, that mere association with one or more members of the conspiracy does not automatically make the defendant a member. A person may know, or be friendly with, a criminal without being a criminal himself. Mere similarity of conduct or the fact that they may have assembled together and discussed common aims and interests does not necessarily establish proof of the existence of a

conspiracy.

I also want to caution you that mere knowledge of the unlawful plan, without agreement to it, is not sufficient. Moreover, the fact that the acts of the defendant merely happened to further the purposes or objectives of the conspiracy, does not make the defendant a member. More is required under the law. What is necessary is that the defendant must have agreed to at least some of the purposes or objectives of the conspiracy with the intention of aiding in the accomplishment of those unlawful ends.

In sum, the defendant, with an understanding of the purpose of the conspiracy, must have agreed with others to accomplish that purpose. The defendant thereby becomes a knowing member of the unlawful agreement -- that is to say, a conspirator.

If you find that the defendant joined the conspiracy, then the defendant is presumed to remain a member of the conspiracy -- and is responsible for all actions taken in furtherance of the conspiracy -- until the conspiracy has been completed or abandoned, or until the defendant has withdrawn from the conspiracy.

If you find that the conspiracy charged in the indictment existed, and that the defendant joined that conspiracy knowingly, then you must consider the final element the government must prove, again beyond a reasonable doubt.

That is that the conspiracy concerned interstate commerce.

The government may prove this element in either one of two ways. First, the government may prove that the conspiracy was imposed directly upon goods or services in the flow of interstate commerce -- that is, commerce moving from one state to another. Second, the government may prove that the conspiracy had a substantial effect on interstate commerce. Either method is sufficient, by itself, to establish that the conspiracy concerned interstate commerce. I will now explain the difference between these two ways of proving the interstate commerce element.

The government may meet its burden of proving that the conspiracy concerned interstate commerce by proving that the conspiracy was imposed directly upon goods or services in the flow of interstate commerce -- that is, commerce moving from one state on another. If you find, beyond a reasonable doubt, that the defendant's activities were directly imposed on goods or services directly in the flow of interstate commerce, then the amount, quantity, or value of interstate commerce involved or affected does not matter.

Alternatively, the government may prove that the conspiracy concerned interstate commerce by proving that the conspiracy had a substantial effect on interstate commerce. A conspiracy may have an effect on interstate commerce even though some or all of the conspirators do not themselves engage

in interstate commerce and have confined their activities to a single state.

So even though the defendant's activities may have been completely local in nature, you may find that the conspiracy involved interstate commerce if the defendant's activities affected more than an insignificant amount of trade between the states. If, however, you find that the defendant's illegal activities had either no impact or only a minimal impact on interstate trade, then you must find that the defendant's activities did not involve interstate commerce, and you must find the defendant not guilty.

Proof of motive is not a necessary element of the crime with which the defendant is charged. Proof of motive does not establish guilt, nor does a lack of proof of motive establish that a defendant is not guilty. If the guilt of the defendant is proved beyond a reasonable doubt, it is immaterial what the motive for the crime may be or whether any motive be shown, but the presence or absence of motive is a circumstance that you may consider in bearing on the intent of the defendant.

In addition to proving beyond a reasonable doubt all three elements of the offense, the government must also prove, beyond a reasonable doubt, that the conspiracy existed within the limitations period. The period of limitations for the conspiracy charged in the indictment is five years. The

indictment in this case was returned on May 10, 2018. This means that you cannot find the defendant guilty unless the government proves, beyond a reasonable doubt, that the charged conspiracy existed some time after May 10, 2013.

If you find that the conspiracy charged in the indictment began before May 10, 2013, then, in order to convict the defendant, you must also find that one or more members of the conspiracy performed some act in furtherance of the conspiracy after May 10, 2013. Evidence of acts committed before May 10, 2013, is not evidence that any acts in furtherance of the charged conspiracy were performed after that date.

The indictment refers to a conspiracy that existed from about October 2010 to about July 2013. I instruct you that it does not matter if the indictment provides that the conspiracy existed from around one date until around another date, but the evidence indicates that in fact the conspiracy existed during a slightly different time period. The law only requires a substantial similarity between the dates alleged in the indictment and the dates established by the testimony and exhibits. However, I remind you that the government must prove beyond a reasonable doubt that one or more members of the conspiracy performed some act in furtherance of the charged after May 10, 2013.

In addition to all of the elements I have described to

you in Count One, the government must also prove that venue is proper in this judicial district, that is, the Southern District of New York. I instruct you that the Southern District of New York includes Manhattan, the Bronx, Westchester, Dutchess, Putnam, Orange, Sullivan and Rockland Counties.

In this regard, the government need not prove that the crime itself was committed in this district, or that the defendant himself was present here. It is sufficient to satisfy this element if the government proves by a preponderance of the evidence that any act in furtherance of the crime was committed in the Southern District of New York. I discuss this issue separately from the elements of the crime because it requires a different standard of proof. On this issue of venue, and on this issue alone, the government must prove venue by a preponderance of the evidence -- that is, that it is more likely than not -- and not by proof beyond a reasonable doubt.

As I said, preponderance of the evidence simply means more likely than not. In all other respects, you must find each and every element of the offense proved beyond a reasonable doubt before you may find the defendant guilty of the charge.

If you find that the government has failed to prove this venue requirement, then you must acquit the defendant of

the charge.

Now, let me give you some additional instructions on certain evidentiary issues. The first issue is witness credibility.

You have had the opportunity to observe all of the witnesses. It is now your job to decide how believable each witness was in that witness's testimony. You are the sole judges of the credibility of each witness and of the importance of his or her testimony.

In assessing credibility, you should carefully scrutinize all of the testimony of each witness, the circumstances under which each witness testified, and any other matter in evidence which may help you to decide the truth and importance of each witness's testimony.

You must now consider whether the witnesses were both truthful and accurate. A witness could believe that he or she was being truthful, yet be mistaken and not be able to recall facts accurately. Also, a witness could take the oath and still intentionally testify falsely. How do you determine whether the witness told the truth and whether he or she knew what they were talking about? It is really just a matter of using your common sense, your good judgment, and your experience.

First of all, consider how good an opportunity the witness had to observe or hear what he or she testified about.

The witness may be honest, but mistaken. How did the witness's testimony impress you? Did the witness appear to be testifying honestly, candidly? Were the witness's answers direct or evasive? Consider the witness's demeanor, his or her manner of testifying. Consider the strength and accuracy of the witness's recollection. Consider whether any outside factors may have affected a witness's ability to perceive events. Consider the substance of the testimony. Decide whether or not a witness was straightforward, or whether he or she attempted to conceal anything. How does the witness's testimony compare with other proof in the case? Is it corroborated or is it contradicted by any other evidence?

If a witness made statements in the past that are inconsistent with his or her testimony during the trial concerning facts that are at issue here, you may consider that fact in deciding how much of his or her trial testimony, if any, to believe. In making this determination, you may consider whether the witness purposely made a false statement, or whether it was an innocent mistake. You may also consider whether the inconsistency concerns an important fact or whether it had do with a small detail, as well as whether the witness had an explanation for the inconsistency and if so, whether that explanation appealed to your common sense.

How much you choose to believe a witness may be influenced by the witness's bias. Does the witness have a

relationship with the government or defendant which may affect or he or she testified? Does the witness have some incentive, loyalty, or motive that might cause him or her to shade the truth, or does the witness have some bias prejudice or hostility that may have caused the witness -- consciously or not -- to give you something other than a completely accurate account of the facts he or she testified to?

Evidence that a witness is biased, prejudiced, or hostile towards the defendant requires you to view that witness's testimony with caution, to weigh it with care, and subject it to close and searching scrutiny.

In evaluating the credibility of the witnesses, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest in the outcome creates a motive to testify falsely, and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it with great care. This is not to suggest that every witness who has an interest in the outcome of a case will testify falsely. It is for you to decide to what extent, if at all, the witness's interest has affected or colored his or her testimony.

In other words, what you must try to do in deciding credibility is to size a person up in light of his or her demeanor, the explanations given, and in light all the other evidence in the case, just as you would in any other important matter where you are trying to decide if a person is truthful, straightforward, and accurate in his or her recollection. In deciding the question of credibility, remember that you should use your common sense, your good judgment, and your experience.

It is for you, the jury, and for you alone, not the lawyers, not any of the witnesses, and not me as the judge, to decide the credibility of witnesses who appeared here and the weight which their testimony deserves.

You have heard testimony from Jason Katz and Christopher Cummins, who pleaded guilty to criminal charges. The government argues, as it is permitted to do, that it must take the witnesses as it finds them. The government argues that it must sometimes rely on people who admit to participating in crimes and who agreed to cooperate with the government in the hope of receiving leniency at sentencing. There is nothing wrong with the government's use of cooperating witnesses. So you may consider the testimony of such a witness and, indeed, in federal courts, the testimony of a single cooperating witness may be enough to satisfy you of a defendant's guilt beyond a reasonable doubt.

However, the testimony of a cooperating witness should

be scrutinized by you with great care and viewed with particular caution as you decide how much of it to believe. I have given you some general considerations on credibility, and I will not repeat them all here. Nor will I repeat all the arguments made on both sides. However, let me say a few things that you may want to consider during your deliberations on the subject of accomplices.

You should ask yourselves whether these so-called accomplices would benefit more by lying or by telling the truth. Was their testimony made up in any way because they believed or hoped that they would somehow receive favorable treatment by testifying falsely? Or did they believe that their interests would be best served by testifying truthfully? If you believe that the witness was motivated by hopes of personal gain, was the motivation one that would cause him to lie, or was it one that would cause him to tell the truth? Did this motivation color his testimony?

In sum, you should look at all of the evidence in deciding what credence and what weight, if any, you will want to give to the accomplice witnesses.

You also heard testimony about agreements that have been reached between the government and the cooperating witnesses. The agreements are in evidence. Under the agreements, the witnesses agreed to plead guilty to a crime and to cooperate with the government. By the terms of the

agreements, if the government determines that the witness has complied with the terms of the cooperation agreements, the government agreed that the cooperating witness would not be prosecuted for other crimes relating to certain violations of the antitrust laws and that the government would bring the witness's cooperation to the attention of the sentencing court. You are welcome to review the cooperation agreements in the course of your deliberations. The government is permitted to make these kinds of promises and entitled to call as witnesses people to who many these promises are given.

However, the testimony of a witness who has been promised that he will not be prosecuted should be examined by you with greater care than the testimony of an ordinary witness. You should scrutinize it closely to determine whether or not it is colored in such a way as to place guilt upon the defendant in order to further the witness's own interests; for, such a witness, confronted with the realization that he can win his own freedom by helping to convict another, has a motive to falsify his testimony.

Such testimony should be received by you with suspicion and you may give it such weight, if any, as you believe it deserves.

You have had heard testimony from Jason Katz and Christopher Cummins who pleaded guilty to criminal charges. You are instructed that you are to draw no conclusions or

inferences of any kind about the guilt of the defendant on trial from the fact that a government witness pleaded guilty to criminal charges. Those witnesses' decisions to plead guilty were personal decisions about their own guilt. It may not be used by you in any way as evidence against or unfavorable to the defendant on trial here.

You may not draw any inference, favorable or unfavorable, towards the government or the defendant from the fact that certain persons were not named as defendants in the indictment. You also may not speculate as to the reasons why other persons are not on trial. The circumstances why any persons were not indicted must play no part in your deliberations. Whether a person should be indicted as a defendant is a matter within the sole discretion of the United States Attorney and the grand jury. Therefore, you may not consider it in any way in reaching your verdict as to the defendant on trial. As to all of these matters concerning persons not on trial before you, those matters are wholly outside your concern and have no bearing on your function.

You have heard testimony from experts in the course of this trial. An expert is allowed to express his or her opinion on those matters about which the witness has special knowledge and training. Expert testimony is presented to you on the theory that someone who is experienced in the field can assist you in understanding the evidence or in reaching an independent

decision on the facts.

In weighing expert testimony, you may consider the expert's qualifications, the witness's opinions, if any, reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness' testimony. You may give the testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You should not, however, accept this witness's testimony merely because the witness is an expert. Nor should you substitute it for your own reason, judgment, and common sense. The determination of the facts in this case in this case rests solely with you.

You have heard testimony in the form of audio recordings. These recordings were made by the employers of the defendant and his alleged coconspirators in the ordinary course of business. Use of recorded conversations is perfectly lawful, and parties are entitled to use the recordings in this case.

The recordings are in English. The parties were permitted to display documents that were prepared containing the parties' interpretation of what appears on the recordings that have been received as evidence. The documents were provided as an aid or guide to assist you in listening to the recordings which are in evidence. Therefore, when the recordings were played, I advised you to listen very carefully

to the recording itself. You alone should make your own determination of what appears on the recording based on what you heard. If you think you heard something differently from what appears on the transcript, then what you heard is controlling. Remember that the jury is the ultimate fact-finder, and, as with all evidence, you may give the transcripts such weight, if any, as you believe they deserve. Let me say again, you, the jury, are the sole judges of the facts.

You have heard evidence during the trial that witnesses have discussed the facts of the case and their testimony with the lawyers or that certain government witnesses have discussed the facts of the case with the government before the witness appeared in court. Although you may consider that fact when you are evaluating a witness's credibility, I instruct you that there is nothing either unusual or improper about such discussions so that the witness can be aware of the subject he or she will be questioned about, focus on those subjects, and have the opportunity to review relevant exhibits before being questioned about them. Such consultation helps conserve your time and the Court's time. In fact, it would be unusual for a lawyer to call a witness without such consultation.

Again, the weight you give to the fact or the nature of the witness's preparation for his or her testimony and what

inferences you draw from such preparation are matters completely within your discretion.

The number of witnesses testifying concerning any particular matter is not controlling. You may decide that the testimony of a smaller number of witnesses concerning any fact in issue is more believable than the testimony of a larger number of witnesses to the contrary. By the same token, you do not have to accept the testimony of any witness who has not been convicted or impeached, if you find the witness not to be credible. You also have to decide to which witnesses to believe and which facts are true. To do this, you must look at all the evidence, drawing upon your own common sense and personal experiences. I have already instructed you on the criteria for evaluating the credibility of witnesses. You should keep in mind that the burden of proof is always on the government and the defendant is not required to call any witnesses or offer any evidence, since he is presumed to be innocent.

You have heard evidence that witnesses made statements on earlier occasions that counsel argues is inconsistent with the witnesses' trial testimony. Evidence of a prior inconsistent statement is not to be considered by you as affirmative evidence bearing on the defendant's guilt. Evidence of the prior inconsistent statement was placed before you for the more limited purpose of helping you decide whether

to believe the trial testimony of the witness who contradicted himself. If you find that the witness made an earlier statement that conflicts with his trial testimony, you may consider that fact in determining how much of his trial testimony, if any, to believe.

In making that determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact, or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency, and whether that explanation appealed to your common sense.

It is exclusively your duty, based upon all the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and if so how much, if any, weight to be given to inconsistent statement in determining whether to believe all or part of the witness's testimony.

You have seen exhibits in the form of charts and summaries. These charts and summaries were admitted into evidence in order to save time and avoid unnecessary inconvenience. You may ask for these charts and summaries during your deliberations in the same way that you may ask for any other exhibit in evidence.

As I explained during the trial, other charts and summaries were shown to you in order to make the other evidence more meaningful and to aid you in considering the evidence.

They were admitted as demonstrative aids for the testimony of a witness. They are no better than the testimony and the documents upon which they are based, and therefore, you are to give them no greater consideration than you would give to the evidence upon which they are based.

It is for you to decide whether these exhibits correctly present the information contained in the testimony and in the exhibits on which they were based. You are entitled to consider these charts and summaries if you find that they are of assistance to you in analyzing and understanding the evidence.

Among the exhibits received in evidence, there are some documents that are redacted. "Redacted" means that part of the document or tape was taken out. You are to concern yourself only with the part of the item that has been admitted into evidence. The omitted portion of the material was appropriately redacted, and you should not worry about why that might have been done.

Under our Constitution, a defendant has no obligation to testify or to present any other evidence because it is the government's burden to prove that a defendant is guilty beyond a reasonable doubt. That burden remains with the government throughout the entire trial and never shifts to a defendant. A defendant is never required to prove that he is innocent.

The defendant did not testify in this case. You may

not attach any significance to the fact that the defendant did not testify. You may not draw any adverse inference against the defendant because the defendant did not take the witness stand. You may not consider this against the defendant in any way in your deliberations in the jury room.

Your verdict must be based solely on the evidence presented in this courtroom in accordance with my instructions. You must completely disregard any report that you have read in the press, seen on television or the internet, or heard on the radio. Indeed, it would be unfair to consider such reports, since they are not evidence and the parties have no opportunity of contradicting their accuracy or otherwise explaining them away. In short, it would be a violation of your oath as jurors to allow yourself to be influenced in any manner by such publicity.

During your deliberations, you should not discuss, or provide any information about, the case with anyone. This includes discussing the case in person, in writing, by phone, or by any electronic means, via text messaging, e-mail, Facebook, LinkedIn, Twitter, blogging, or any internet chat room, website or other feature. In other words, do not talk to anyone on the phone or in person, correspond with anyone, or communicate by electronic means about this case with anyone except your fellow jurors and then only while you are in the jury room.

If you are asked or approached in any way about your jury service or anything about this case, you should respond that you have been ordered by the judge not to discuss the matter, and you should report the contact to the Court as soon as possible.

Along the same lines, you should not try to access any information about the case or do research on any issue that arose during the trial from any outside source, including dictionaries, reference books, or anything on the internet. Information that you may find on the internet or in a printed reference might be incorrect or incomplete. In our court system, it is important that you not be influenced by anyone or anything outside this courtroom. Your sworn duty is to decide this case solely and wholly on the evidence that was presented to you in this courtroom.

That almost completes my instructions. I will close briefly with final directions as to how you are to arrive at your verdict.

The evidence presented has raised factual issues which you must decide as trier of facts, and you must resolve those issues solely on the basis of the evidence you have heard or the lack of evidence and my instructions on the law. Your sworn duty is to determine whether the defendant is guilty or not guilty solely on the basis of the evidence or lack of evidence and my instructions on the law.

Again I remind you, you must not be influenced by sympathy or by any assumption, conjecture, or inference stemming from personal feelings, the nature of the charge, or your view of the relative seriousness or lack of seriousness of the alleged crime.

I caution you that under your oath as jurors you are not to consider the punishment that may be imposed upon the defendant if he is convicted. The duty of imposing a sentence in the event of conviction rests exclusively upon me. Your function is to weigh the evidence in the case and to determine the guilt or nonguilt of the defendant solely upon the evidence and the law which I have given to you and which you must apply.

Each juror is entitled to his or her opinion, but you are required to exchange views with your fellow jurors. This is the very essence of jury deliberation. It is your duty to discuss the evidence. If you have a point of view and after reasoning with other jurors it appears that your own judgment is open to question, then of course you should not hesitate in yielding your original point of view if you are convinced that the opposite point of view is really one that satisfies your judgment and conscience. However, you are not to give up a point of view that you conscientiously believe in simply because you are outnumbered or outweighed. You should vote with the others only if you are convinced on the evidence and the facts and the law that is the correct way to decide the

case.

We have made a record of these proceedings. If you wish at any time to have any part of the testimony provided to you, then simply have the foreperson send me a note, dated and with the time, to that effect, and we will comply with your request as quickly as we can. I am not suggesting that you must or should do this. I am simply saying that it is a service we can make available to you. It would be helpful in the case of such a request if your note is as precise as possible so that we can know exactly what it that you need. It does take time for court reporter to find testimony in the transcript. Therefore, please be patient if you send a note and there seems to be a delay in our response to you. Finally, if you do send me any notes, however, please make sure you do not give any indication of your present state of thinking on any disputed issue; particularly, you must not inform me of your vote count on any issue. The foreperson should sign any notes that you send to me.

In the course of your deliberations, you have the right to review any of the exhibits that have been received in evidence. If you wish to see any of these exhibits, simply have your foreperson send me a note requesting the exhibits you wish to see. Again, however, I stress that no note should give me any indication of your thinking on any disputed issue or on your verdict.

Your verdict will and must be announced only in open court at the end of your deliberations. Your verdict must be by a unanimous vote of all of you.

The juror who sits in the number one chair, Ms. Christine Rossiter, will be the foreperson of the jury, unless for any reason she prefers not to act in that capacity, in which event your first order of business will be to send me a note, signed and dated, identifying the new foreperson.

Finally, when you reach a verdict, all of you should sign the verdict sheet and then send me a note stating that you have reached a verdict. Do not specify what the verdict is in the note. Instead, the foreperson should retain the verdict sheet and hand it us to in open court when you are all called in. I remind you that your verdict must be unanimous.

Members of the jury, I will ask you to remain seated where you are briefly while I confer with the attorneys to see if there are any additional instructions that they would like me to mention or anything I may not have covered in my previous instructions. Please do not discuss the case while seated in the jury box, because there is the possibility that I might find it proper to give you additional instructions which you may not presently have received. Please remain where you are for a few minutes.

Please just relax in the jury box.

(In the robing room)

THE COURT: Hello.

OK. I attempted to read the charge exactly as I gave it to you with one exception. On page 22, there was a typo at the bottom. It said "without regard to whether the guilt of other people has or has been proven." It should have said "has or has not been proven."

So in reading it I added "not." I would make that change in the charge that goes to the jury.

The next question is did the parties, before we get to any other, if anyone heard me say anything else that was different from the charge, we have had the charge conferences. To the extent there were objections you have those objections on the record. Does anyone want to say anything else about the charge other than if there are any other things that I didn't say or said incorrectly?

MR. KLOTZ: No, your Honor.

MR. HART: No.

THE COURT: Did the parties hear me say anything else that is not precisely the same as in the charge?

MS. CALLE: Not materially so.

MR. HART: Not materially.

MS. CALLE: A word here or there that wasn't included if you will.

THE COURT: If anyone thinks that there's anything that I said that differs from the charge that you think I

should change the charge to conform to what I said, I will do that before we give it to the jury.

MR. KLOTZ: I have two instances where I thought I heard you omit a word in the charge, but I didn't think it was material.

THE COURT: OK.

MR. KLOTZ: Then I have one instance where I think, and I think all of us at the defense table heard the same thing, that you said something different in the charge that is material.

THE COURT: OK.

MR. KLOTZ: That is on page 32, the final clause in the first paragraph, "but it does not outlaw actions taken by a single firm or a single person." We heard your Honor say but it does not "allow."

THE COURT: Oh. I will reread the first paragraph and tell them I may have misspoken. So page 32 I will read the "it does not outlaw actions."

Thank you. Anything else?

MR. HART: Nothing from the government, your Honor.

MR. KLOTZ: Nothing else, your Honor.

THE COURT: My clerks sometimes are more unforgiving with respect to what I say.

THE LAW CLERK: I think that's it.

THE COURT: OK.

Are you sure?

OK. I will reread the first paragraph on page 32 and I will change what you have on page 22 to add the not. I will ask the alternates to get their things from the jury room, to come back and sit in the first row.

We will then swear the marshal, send the jurors out, and then I will instruct the alternates that they remain under my instruction not to talk about the case. We are going to let them go home, but they may be called back. And I will tell the jurors that they can't talk to Mr. Fletcher. Everything will be through the marshal.

Anything else?

Any questions?

MR. KLOTZ: No, your Honor.

THE COURT: Great. Thank you.

(In open court)

THE COURT: Ladies and gentlemen, in reading the charge to you, I may have or probably did misspeak in reading one paragraph to you in describing the first element of the crime charged. So let me reread the paragraph correctly to you.

The correct paragraph will be in the charge, the written charge that is given to you.

As I have just told you, the first element that the government must prove beyond a reasonable doubt is that the

price fixing and bid rigging conspiracy charged in the indictment actually existed. The existence of a conspiracy is important because the part of the Sherman Act we are concerned with outlaws certain joint activities by competitors, but it does not outlaw actions taken by a single firm or a single person.

You will have the written charge, and that paragraph will be correct in the written charge that you have. Again, you should consider the entire charge that I have given to you in accordance with the instructions I have given you.

In a moment, the jurors will go to deliberate, but as you probably know only 12 of you will go to deliberate. So at this point, I would ask Juror Nos. 14, 15 and 16, Ms. Percy Ms. Friedl and Ms. Pantoja, if you would go to the jury room please and get your things. Come back and sit in the first row. All right.

You have moved up, but it was the jurors who are in the final three seats, who were originally 14, 15 and 16, but now are 13, 14, and 15.

Ms. Percy, Ms. Friedl and Ms. Pantoja, if you could get your things.

Thank you.

(Alternates not present)

THE COURT: I should mention to the jurors that in a moment we will swear the marshal to protect you in the course

of your deliberations. While you are deliberating, you will no longer have any contact with Mr. Fletcher. All communications will be by note, given to the marshal, who will then bring the note out to me. My responses will be by a note to all of you.

(Alternates present)

THE COURT: Thank you. All right.

At this point we will swear the marshal, who will protect the jurors during their deliberations.

(Marshal sworn)

THE COURT: Ladies and gentlemen, you may now retire to deliberate. All rise, please, and the jurors should follow the marshals to the jury room.

(The jury retired to deliberate upon a verdict at 12:17 p.m.)

THE COURT: All right. Ms. Percy, Ms. Friedl, Ms. Pantoja, could you come forward and sit in the first three seats in the jury box.

Please be seated.

Let me explain where we are. I did not send you to deliberate. It is always possible, however, that alternate jurors can be called back to participate in the jury deliberations if for some reason one of the jurors who begins deliberation for any reason can't continue deliberations.

So it happens from time to time that alternate jurors are substituted during jury deliberations. It's very important

that you continue to follow all of my instructions, you continue to be subject to my orders not to talk about the case at all, not to look at or listen to anything to do with the case. Don't consult the internet, don't look at any blog sites, don't use Facebook, Twitter, or anything like that to communicate with anyone to tell them anything about the case or to get any information about the case, because if you were called back to participate in the deliberations, your state of mind should be exactly as it is now.

You have heard the evidence. You have heard my instructions on the law. If you were called back to participate in the deliberations, the instruction that the Court would give to the jurors is they have to begin deliberations anew with one or more of you as members of the jury, and the deliberation process would proceed from there. So it's very important to continue to follow my orders.

If you wish to find out where the case stands, you're always welcome to call Mr. Fletcher. When there has been a verdict in the case, then you will no longer be subject to my orders, and you could discuss the case, although I always ask all jurors as a matter of prudence not to talk about jury deliberations in order to promote confidentiality of jury deliberations. But, as I say, when there has been a verdict, you will no longer be subject to my orders.

It is unlikely, though, that you will be called back.

It is possible, and that's why I give you these instructions to preserve your ability to be jurors, but it is likely that this is the last time that I'll have an opportunity to talk to you.

Many judges use this occasion as an opportunity to thank jurors for their service, but many years ago I clerked for a great judge of this court, who made it a practice never to thank jurors because he told jurors that what they had done was to perform one of the highest and noblest obligations of citizenship, they had acted as jurors in a criminal case, and for that service the jurors are entitled to know that they have performed a public service equal to that of the court or any other public official, and the jurors should take away from that experience the deep personal satisfaction of knowing that they have performed a public service. That deep personal satisfaction is far more important than the ephemeral thanks of the court or the parties.

So, having sat with you over these several weeks and having seen your promptness and diligence, I believe that you take away from this process that deep personal satisfaction of knowing that you have performed a public service, and that gives me satisfaction.

So there are just a couple of other things for me to do. You don't have to go downstairs. Everything will be taken care of in the mail. I can't assure you that the check is in the mail, but I am hopeful that it will soon be in the mail.

I am going to excuse you for the day. Remember to stay under my orders. Enjoy the rest of the day very much and I will ask everyone in the courtroom to stand as a sign of respect to all of you.

All rise, please.

The jurors may now leave.

(Alternates excused)

THE COURT: Please be seated.

OK. We have a package for the jury, which consists of the indictment, which we got off ECF without the ECF header, the verdict form, and the jury charge with the correction made to page 22.

The parties are welcome to inspect the documents, together with the legal pads, envelopes, and pens that Mr. Fletcher would give to the marshal.

Someone from the government and the defense should come up and inspect those items.

THE DEPUTY CLERK: Should I give them markers as well, because they have a blackboard?

THE COURT: Yes. Markers would be good.

Counsel, just check, make sure all of the pages of the indictment are there. I physically checked the jury charge earlier, and I looked at page 22 also. I just want to make sure you are all in agreement.

Is everyone satisfied?

MR. HART: Yes, your Honor.

MR. KLOTZ: Yes, your Honor.

THE COURT: OK. Mr. Fletcher will give all of that to the marshal.

Make sure that you stay either in or close to the courtroom so that if we get any notes we can promptly respond to them. At some point we will hold notes for a period of time to let you go to lunch.

But I want to wait for a period of time, because sometimes there are initial questions.

OK. See you later.

(Recess)

(In open court; 12:31 p.m.)

THE COURT: We are all here, yes? The defendant is here, both sides?

THE DEFENDANT: Yes.

THE COURT: The jurors haven't ordered lunch yet. So I was going to send them a note which said, Members of the jury, please complete the luncheon menus as soon as possible so that we can get lunch for you as soon as possible.

Is that satisfactory?

MR. KLOTZ: Yes, your Honor.

MR. HART: Yes, your Honor.

THE COURT: OK. This will be Court Exhibit 1.

The note reads:

"Members of the jury,

"We are providing lunch menus for you. Please complete them as soon as possible so that we can order lunch for you."

I understand that we got them extra coffee and Danish to hold them over in any event.

THE DEPUTY CLERK: I will have the lawyers look at the menus as well.

MR. KLOTZ: That is fine.

THE COURT: Satisfactory with both sides?

MR. HART: Yes, your Honor.

MR. KLOTZ: Yes, your Honor.

THE COURT: OK. Mr. Fletcher will take the note and the menus to the jurors.

See you shortly.

(Recess pending verdict)

(In open court; 12:35 p.m.)

THE COURT: I just wanted to confirm with the parties when the jurors have completed their luncheon menus, and presumably given them to the marshal, the marshal will give them to Mr. Fletcher. Mr. Fletcher is welcome to have you all examine the luncheon menus. I just didn't want to have to re-call the reporter and put it on the record that the luncheon menus have come out, and I wanted to make sure that Mr. Fletcher takes them to the cafeteria as soon as possible so

that we expedite the jurors' lunch. If it's satisfactory with everyone, the marshal will bring out the menus. You're welcome to inspect them. Mr. Fletcher will then take them down to the cafeteria to make sure that they get expedited.

MR. KLOTZ: I think we would be happy to waive the right to inspect them, your Honor.

MR. HART: We would also agree to that.

THE COURT: All right. So Mr. Fletcher will take the menus to the cafeteria as soon as possible.

OK. Thank you, all.

Again, we'll notify you when we're holding notes so that you can have lunch.

(Recess pending verdict)

(In open court; 1:15 p.m.)

THE COURT: I have a note. It's marked as Court Exhibit 2. It reads, 11/20/19, 1:06 p.m.

"The jury requests:

"Government Exhibit S100.

"Government Exhibit 128, 5/20/13.

"Text, 5/31/13.

Government Exhibit 172, 1/18/12.

"Government Exhibit 193, 2/28/12."

The parties are welcome to inspect.

When I send documents back to the jury, I will remind them that the foreperson should sign any notes.

MR. HART: Your Honor, may I check the note?

THE COURT: Oh, yes. Both sides should inspect the note. If it would be helpful to you, at a break we can make copies of the note for you or any other note.

MR. HART: That would be helpful, your Honor.

Thank you.

THE COURT: Whenever the parties have reached an agreement or, if there is a disagreement, if you want to bring it to my attention, just let me know.

(Recess pending verdict)

(In open court; 1:28 p.m.)

THE COURT: OK. Yes? Have the parties gathered together the documents?

MR. CHU: We have, your Honor.

MR. KLOTZ: Your Honor, the only issue -- there is an agreement between the parties on this, but I am not sure if your Honor wants to say anything to the jury -- one of the requests was GX-128, next to which was written 5/20/2013. GX-128 is in fact a chat related to a different date, and the chat relating to 5/20/13 is Exhibit 300. Our proposal was to send the jury both.

I don't know whether your Honor wants to advise them we weren't quite certain which you were looking for, but we sent you both.

THE COURT: Yes. Sure.

OK. I have drafted a note, which would be Court Exhibit 3. Of course the parties are welcome to inspect it.

It says, "Members of the jury, we are sending you the following exhibits:

"GX-S100.

"Text 5/31/13, which is GX-421.

"GX-172, 1/18/12.

"GX-193, 2/28/12.

"You also asked for GX-128, 5/20/13. GX-129 is for 9/23/11 and GX-300 is for 5/20/13. We are sending you both GX-128 and GX-300, to assure that we are responsive to your request.

"I remind you that the foreperson should sign any notes."

MR. HART: That is acceptable to the government.

MR. KLOTZ: To the defense as well, your Honor.

THE COURT: I want to make sure you review the note and the exhibits before Mr. Fletcher then gives them to the marshal.

Is that acceptable to both sides?

MR. KLOTZ: Acceptable, your Honor, yes.

THE COURT: Thank you, all.

See you later.

(Recess pending verdict)

(In open court; 1:59 p.m)

THE COURT: Another note. I have marked it as Court Exhibit 4.

"The jury requests, 1:50 p.m., GX-528" -- no. Must be S28, I think. You can check.

"GX-S29, GX-216, Dr. Lyons' chart/graph, 'ZAR Mafia.'

"Christine Rossiter."

The parties are welcome to inspect.

Let me know after you have gathered together the documents and whether there's any disagreement.

OK.

(Recess pending verdict)

(In open court; 2:03 p.m.)

THE COURT: OK.

MR. CHU: Judge, we have S28, S29, as well as for ZAR mafia, that's going to be GX-108. One issue is for 216. My understanding is Government Exhibit 216 was not admitted. They could be mentioning 260, which was admitted, and which was talked about directly after the ZAR mafia chat. We might need clarification on 216 versus 260.

THE COURT: All right.

MR. CHU: We probably need clarification with respect to the Lyons chart. We are not sure what that means.

THE COURT: I'm sorry?

MR. CHU: For the chart for Professor Lyons, we are

uncertain which chart they're referring to.

MS. CALLE: The request would be to describe by date or other descriptor what they would like.

MR. KLOTZ: Agreed.

THE COURT: OK.

MR. CHU: The other three we will just pass up right now, the three that we actually have in our possession and are clear.

THE COURT: OK. I have a proposed note, which would be Court Exhibit 5.

It reads:

"As you requested, we are sending to you GX-S28, GXS29, GX-108 (referring to 'ZAR mafia').

"You also asked for GX-216, but there is no exhibit in evidence that is marked GX-216. Could you be more specific about what exhibit in evidence you are requesting. You also asked for 'Dr. Lyons' chart/graph.' Again, could you describe more specifically what it is that you are seeking."

MR. HART: That is acceptable to the government.

MR. KLOTZ: Likewise, your Honor.

THE COURT: OK. So here are the exhibits, here is the note. Both sides should examine it.

MR. KLOTZ: Acceptable to both sides, your Honor.

THE COURT: The government is nodding.

MR. HART: Yes. Thank you.

THE COURT: OK. Mr. Fletcher --

MR. BAIO: Your Honor, we haven't had lunch. We'll do it however you wish. I certainly don't need it, but maybe the others.

THE COURT: The jury hasn't had lunch either. I was waiting until the cafeteria delivered the lunch to the jurors, and then I would hold notes.

MR. BAIO: I see.

THE COURT: I would prefer to do it that way. But you're welcome to go in tandem, or seriatim or however you want to describe it to get something. But I don't want to discharge everyone while I am still getting notes from the jurors, and I don't want to hold notes until they have actually gotten the lunch.

Do you have any update?

THE DEPUTY CLERK: No.

THE COURT: Mr. Fletcher, would you urge the cafeteria to please hurry up on the order.

Do you all have any room close to the courtroom where you could get snacks and Danish from the cafeteria and get them that way while we're waiting for the lunch? I wouldn't want anyone to seriously become ill over the lack of a lunch.

MR. BAIO: I promise I won't, your Honor. And I understand. I think we can see how this plays out.

THE COURT: OK.

I was being very serious.

MR. BAIO: I know that.

THE COURT: Because, you know, some people need food on a regular basis.

So, OK.

(Recess pending verdict)

(In open court; 2:23 p.m.)

THE COURT: Both Mr. Fletcher and I went down independently to the cafeteria. We were promised that that the food would be up in five minutes, at least that's what I was told. I think I passed one of you, yes, I passed one of you in the cafeteria. The food should be here soon.

MR. BAIO: Thank you, your Honor.

(Recess pending verdict)

(In open court; 3:47 p.m.)

THE COURT: I have a note from the jury. Please be seated. It will be marked as Court Exhibit 6.

The parties are welcome to examine.

The note says: "The jury has reached a verdict.

"Christine Rossiter.

"Will the jury be getting attendance letters today?

"Christine Rossiter."

In response to the question, yes. And we'll give the attendance letters to the marshal at the end of the proceeding to give to the jurors.

Are the parties ready for the jury?

MR. KLOTZ: Yes, your Honor.

MS. CALLE: Yes, your Honor.

THE COURT: OK. Please ask the marshal to bring in the jury. Again, the parties are welcome to inspect the note.

(The jury entered the courtroom at 3:50 p.m.)

THE COURT: Please be seated. Madam foreperson, I've received your note indicating that the jury has reached a verdict.

THE FOREPERSON: That's correct.

THE COURT: Has the jury reached a verdict?

THE FOREPERSON: Yes, we have.

THE COURT: Could you pass it up to Mr. Fletcher, please.

THE DEPUTY CLERK: Madam foreperson, would you please rise.

Answer the verdict as I put to you.

In the matter of United States v. Akshay Aiyer.

With respect to Count One of the indictment, how do you find the defendant, Akshay Aiyer?

THE FOREPERSON: Guilty.

THE COURT: All right.

THE DEPUTY CLERK: Shall I poll the jury?

THE COURT: Please poll the jury.

THE DEPUTY CLERK: You may be seated.

Ladies and gentlemen, please listen to your verdict as it stands recorded.

In the matter of the United States of America v. Akshay Aiyer, with respect to Count One of the indictment, how do you find the defendant?

Your verdict: Guilty.

This verdict is signed by the foreperson, Christina Rossiter, and by the remaining members of the jury, Lakeita Barrett, Satpal Singh, Jake Letizia, Selemny Flores, Ramjit Hemraj, Suzanne Papcsy, Zola Hill, Thouhida Choudhury, Seth Dorman, Brianna Parker, Melissa Leung.

Ms. Rossiter, is that your verdict?

JUROR: Yes.

THE DEPUTY CLERK: Ms. Barrett, is that your verdict?

JUROR: Yes.

THE DEPUTY CLERK: Mr. Singh, is that your verdict?

JUROR: Yes.

THE DEPUTY CLERK: Mr. Letizia, is that your verdict?

JUROR: Yes.

THE DEPUTY CLERK: Mr. Flores, is that your verdict?

JUROR: Yes.

THE DEPUTY CLERK: Mr. Hemraj, is that your verdict?

JUROR: Yes.

THE DEPUTY CLERK: Ms. Papcsy, is that your verdict?

JUROR: Yes.

THE DEPUTY CLERK: Ms. Hill, is that your verdict?

JUROR: Yes.

THE DEPUTY CLERK: Ms. Choudhury, is that your verdict?

JUROR: Yes.

THE DEPUTY CLERK: Mr. Dorman, is that your verdict?

JUROR: Yes.

THE DEPUTY CLERK: Ms. Parker, is that your verdict?

JUROR: Yes.

THE DEPUTY CLERK: Ms. Leung, is that your verdict?

JUROR: Yes.

THE DEPUTY CLERK: Let the record reflect that the jury has been polled and the verdict is unanimous.

THE COURT: All right, Mr. Fletcher.

May I speak to the lawyers.

(At sidebar)

THE COURT: I always show the verdict to the lawyers.

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MR. HART: Yes.

MR. CHU: Yes.

THE COURT: Anything further before I discharge the jury?

MR. KLOTZ: No, your Honor.

MR. HART: Nothing from the government, your Honor.

THE COURT: OK. Thank you.

(In open court)

THE COURT: Ladies and gentlemen, many judges use this occasion, when a jury has brought in a verdict, to thank them for their deliberations and for their service. But many years ago, I clerked for a great judge of this Court, not one who's portrait actually is in this courtroom, but whose picture is downstairs. He made it a practice never to thank jurors, because he told jurors that what they had done was to perform one of the highest and noblest obligations of citizenship. They had acted as finders of fact. Without their service, our system of justice simply couldn't exist, and for doing that, jurors should take away from this experience a deep personal satisfaction of knowing that they had performed a public service, a public service just like that of the judge or any other public official. And for doing that, that deep personal satisfaction of knowing that they had performed a public service is far more important than the ephemeral thanks of the Court or the parties. It is deep and it's lasting and it's important.

So, having sat with you over the last three weeks and having observed your conscientiousness, your promptness, your attention, I believe that all of you take away from this process that deep personal satisfaction of knowing that you have performed a public service, and that gives me satisfaction.

So there are just a few more technical details for me to take care of. I will discharge you as jurors in this case. You are no longer subject to my instructions about not talking about the case, not looking at or listening to anything to do with the case or anything related to the case, but I always ask jurors as a matter of prudence and courtesy to your fellow jurors not to talk about the jury deliberations because I consider those to be confidential. By not talking about those deliberations, you preserve confidentiality not only for yourselves but for other jurors who come after you. But I hasten to add this is not an order to you. It is simply a request out of prudence. But you are no longer subject to any of my orders.

I know that you don't have to go downstairs. Your paperwork will be taken care of by mail. I can't assure you that your checks are in the mail, but they soon will be I hope.

The marshal will give you your letters which you can give to your employers indicating your days of service.

So, with that, there remains only one last thing for me to do, which is to ask everyone in the courtroom to stand as a sign of respect to all of you.

All rise, please.

The jurors can now go to the jury room and then go home.

(Jury excused)

THE COURT: All right.

Please be seated.

THE DEPUTY CLERK: Friday, April 3, 10:30.

THE COURT: All right. Sentence, April 3 at 10:30.

Defense submissions should be given to me at least 14 days before sentence and government submissions at least eight days before sentence.

There is an outstanding Rule 29 motion, which the parties agreed I should reserve on. There is a memo in support of that motion that's already been filed.

There are time limits to make posttrial motions to Rule 29 motions or motions for new trial. I never suggest what timing the parties want. There is the Rule 29 motion. There may be other motions that are available. You may want to supplement the current Rule 29 motion. I leave that of course to you and remind you to be careful about the timing of the posttrial motions, because some of them could be jurisdictional.

I always tell parties that I'm prepared to give whatever time they want, providing that under the rules I can. So you should check it out, send me a letter, do whatever you want to assure that you're meeting the deadlines for whatever motions you may wish to make.

OK?

MR. KLOTZ: Yes, your Honor.

THE COURT: All right.

The defendant is released.

What are the terms of the release?

MR. HART: One minute, your Honor.

THE COURT: There are no applications to change the terms, right?

MR. HART: No, your Honor.

THE COURT: The defendant is released on all of the same terms. Mr. Aiyer, I've set the date for sentencing for April 3.

Do you understand that if you fail to return to my court on April 3 or any adjourned date you will be guilty of a criminal offense, for which you could be sentenced wholly separate and apart from the crime to which there was just a jury verdict?

Do you understand?

THE DEFENDANT: I do.

THE COURT: You are subject to all of the same conditions of release, and a violation of any of those conditions can have serious consequences for you.

Do you understand?

THE DEFENDANT: I do.

THE COURT: OK.

Anything further for me today?

MR. HART: Nothing from the government, your Honor.

MR. KLOTZ: No, your Honor.

THE COURT: OK. Good afternoon, all.

(Trial concluded)