

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

18-CR-681 (WFK)

4 Plaintiff,

United States Courthouse
Brooklyn, New York

5 -against-

November 22, 2019
9:30 a.m.

6 JEAN BOUSTANI,

7 Defendant.

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9 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
BEFORE THE HONORABLE WILLIAM F. KUNTZ, II
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES

12 For the Government:

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14 Also Present:

LILLIAN DiNARDO, PARALEGAL
ANGELA TISSONE, SPECIAL AGENT
FATIMA HAQUE, SPECIAL AGENT
RAY McLEOD, TECHNICAL ASSISTANT

15 Court Reporter:

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16 Proceedings recorded by mechanical stenography. Transcript
17 produced by computer-aided transcription.

1 (In open court.)

2 (In open court; jury not present.)

3 THE COURTROOM DEPUTY: All rise. The Honorable
4 William F. Kuntz, II is now presiding.

5 Criminal case on trial, Docket No. 18-CR-681, USA
6 vs. Boustani.

7 Counsel, please state your appearances for the
8 record.

9 MR. BINI: Mark Bini, Hiral Mehta, Margaret Moeser,
10 Lillian DiNardo, Katherine Nielsen, Special Agent Fatima
11 Haque, and Angela Tassone for the United States.

12 Good morning, Your Honor.

13 THE COURT: Good morning.

14 We have the spellings. You may be seated.

15 Ladies and gentlemen of the public, you may be
16 seated as well.

17 MR. JACKSON: Randall Jackson on behalf of
18 Mr. Boustani.

19 Good morning, Your Honor.

20 THE COURT: Good morning. You may be seated.

21 MR. SCHACHTER: Good morning, Your Honor.

22 Michael Schachter on behalf of Mr. Boustani.

23 THE COURT: Good morning.

24 Please be seated.

25 Good morning, Mr. Boustani. Nice to see you, sir.

1 THE DEFENDANT: Thank you, Your Honor.

2 THE COURT: Please be seated.

3 MS. DONNELLY: Good morning, Your Honor.

4 Casey Donnelly on behalf of Mr. Boustani.

5 THE COURT: Good morning, Ms. Donnelly.

6 Please be seated.

7 MR. DiSANTO: Good morning, Your Honor.

8 Phil DiSanto on behalf of Mr. Boustani.

9 THE COURT: Mr. DiSanto.

10 MR. DiSANTO: Good morning, sir.

11 MR. MCLEOD: Good morning, Your Honor.

12 Ray McLeod on behalf of Mr. Boustani.

13 THE COURT: Good morning, Mr. McLeod. Thank you.

14 Please be seated.

15 All right. Do we have any procedural issues to

16 address before I bring the jury in for the jury charge?

17 MR. BINI: Not for the Government.

18 MR. JACKSON: No, Your Honor.

19 THE COURT: All right.

20 Please bring them in, sir.

21 (Pause.)

22 (Jury enters.)

23 THE COURT: Good morning, ladies and gentlemen of

24 the jury. Big smiles. Nice to see you. Thanks again for

25 your promptness.

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Please be seated.



1 Ladies and gentlemen, you may be seated as well.

2 Ladies and gentlemen of the jury, you are now about
3 to enter into your final duty as jurors in this case, which is
4 to decide the factual issues in this case. You must pay close
5 attention to me now. I will go as deliberately and
6 methodically as I can and be as clear as I can.

7 As I told you at the very start of this trial, your
8 principle function during the taking of testimony would be to
9 listen carefully and to observe each witness who testified.
10 It has been obvious to me, to the parties, to counsel that you
11 have faithfully discharged this duty, and we thank you for
12 that. Your interested never lagged, and it is evident that
13 you followed the testimony with close attention. I now ask
14 you to give me that same careful attention, the attention you
15 gave during the trial, as I instruct you on the law you are to
16 apply in this case.

17 Now that the evidence in this case has been
18 presented to you and the attorneys for the United States of
19 America and for the defendant, Mr. Jean Boustani, have
20 concluded their closing arguments to you, it is my
21 responsibility to instruct you with respect to the law that
22 governs this case.

23 My instructions will be in three parts:

24 First, I will instruct you regarding the general
25 rules that define and govern the duties of a jury in a

1 criminal case and the way in which you are to review the
2 evidence;

3 Secondly, I will instruct you with respect to the
4 legal elements of the claims in this case, that is to say,
5 what the Government must prove beyond a reasonable doubt; and

6 Third, I will give you some final rules regarding
7 your deliberations.

8 We begin with the general rules.

9 The role of the Court.

10 You have now heard all the evidence in this case, as
11 well as the final arguments of the lawyers and the parties.
12 My duty at this point is to instruct you with respect to the
13 law. It is your duty to accept these instructions of law and
14 to apply them to the facts as you determine them just as it
15 has been my duty and my honor to preside over the trial and to
16 decide what testimony and evidence is relevant under the law
17 for your consideration.

18 On these legal matters, you must take the law as I
19 give it to you now. If any attorney has stated a legal
20 principle different from any that I state to you in my
21 instructions, it is my instructions you must follow. You
22 should not single out any instruction alone as stating the
23 law, but you should consider my instructions as a whole when
24 you retire to deliberate in the jury room.

25 You should not, any of you, be concerned about the

1 wisdom of any rule I state regardless of any opinion you may
2 have or any witness in the case may have as to what the law
3 may be or ought to be. It would violate your sworn duty to
4 base a verdict solely upon the views of the law that I give
5 you. It would be a violation of your sworn duty to base a
6 verdict upon any view of the law other than the one I give you
7 now.

8 Now let me address the role of the jury.

9 As members of the jury, you are the sole, exclusive
10 judges of the facts. You and you alone pass judgment upon the
11 evidence. You determine the credibility of the witnesses.
12 You resolve any conflicts in the testimony. You draw whatever
13 reasonable inferences you decide to draw from the facts as you
14 have determined them, and you determine the weight of the
15 evidence. In determining these issues, no one may invade your
16 province or function as jurors. For you to determine the
17 facts, you must rely upon your own recollection of the
18 evidence. What the lawyers have said in their opening
19 statements, in their closing arguments, in their objections,
20 or in their questions is not evidence. Furthermore, what I
21 may have said -- or what I may say in these instructions --
22 about a fact is not evidence. In this context, you should
23 bear in mind that a question put to a witness is never
24 evidence; it is only the answer which is evidence. However,
25 you may not consider any answer I directed you to disregard or

1 that I directed to be stricken from the record. Do not
2 consider such answers. It only happened a couple times, but
3 it did happen.

4 Now, because you are the sole and exclusive judges
5 of the facts, I do not mean to indicate any opinion as to the
6 facts, nor do I mean to indicate what your verdict should be.
7 The rulings I have made during the trial are not any
8 indication of my views of what your decision should be as to
9 whether or not the Government has proven its case beyond a
10 reasonable doubt.

11 I also ask you to draw no inference from the fact
12 that, upon occasion, I asked questions of certain witnesses.
13 These questions were only intended for clarification or to
14 expedite matters and certainly were not intended to suggest
15 any opinions on my part as to the verdict you should render or
16 whether any of the witnesses may have been more credible than
17 any other witnesses. You are expressly to understand that
18 this Court has no opinion as to the verdict you should render
19 in this case.

20 As to the facts, ladies and gentlemen, you are the
21 exclusive judges. You are to perform the duty of finding the
22 facts without bias or prejudice to any party. It would be
23 improper for you to consider any personal feelings you may
24 have about any of the party's race, religion, national origin,
25 gender, or age. It would also be improper for you to be

1 swayed by sympathy.

2 In determining the facts, you are reminded you took
3 a solemn oath to render judgment impartially and fairly
4 without prejudice or sympathy and without fear or favor,
5 solely upon the evidence in this case and the applicable law.
6 I know you will do this and reach a just and fair verdict.

7 You are to perform your duty of finding the facts
8 without bias or prejudice as to any party. You are to perform
9 your final duty in an attitude of complete fairness and
10 impartiality.

11 This case is important to the Government of the
12 United States, for the enforcement of criminal laws is a
13 matter of prime concern of the community. It is equally
14 important, however, to the defendant who is charged with
15 serious crimes.

16 The fact that the prosecution is brought in the name
17 of the United States of America entitles the Government no
18 greater consideration than that afforded any other party in
19 the litigation. By the same token, it is entitled to no less
20 consideration. All parties, whether Government or individual,
21 stand as equals at the bar of justice.

22 Now, let me address the conduct of counsel.

23 It is the duty of the attorneys on each side of the
24 case to object when the other side offers testimony or other
25 evidence which the attorney believes is not properly

1 admissible. Counsel also have the right and the duty to ask
2 the Court to make rulings of law and to request conferences at
3 the sidebar out of the hearing of the jury. All those
4 questions of law must be decided by me in court. You should
5 not show any prejudice against an attorney or his or her
6 client because the attorney objected to the admissibility of
7 evidence, asked for a conference out of the hearing of the
8 jury, or asked the Court for a ruling on the law.

9 As I already indicated, my ruling on the
10 admissibility of evidence do not, unless expressly stated by
11 me, indicate any opinion as to the weight or effect of such
12 evidence. You are the sole judges of the credibility of all
13 witnesses and of the weight and effect of all evidence.

14 Let me address the issue of improper considerations.

15 Your verdict must be based solely upon the evidence
16 or the lack of evidence developed throughout this trial. It
17 would be improper for you to consider in reaching your
18 decision as to whether the Government sustained its burden of
19 proof beyond a reasonable doubt any personal feelings you may
20 have about the defendant's race, religion, national origin,
21 sex, or age. All persons are entitled to the presumption of
22 innocence and the Government has the burden of proof beyond a
23 reasonable doubt, as I will discuss in more detail in just a
24 moment. It would be equally improper for you to allow any
25 feelings you might have about the nature of the crime charged

1 to interfere with your decision-making process. To repeat,
2 your verdict must be based exclusively upon the evidence or
3 the lack of evidence in this case.

4 Let me address the issue of sympathy.

5 Under your oath as jurors, you are not to be swayed
6 by sympathy. You are to be guided solely by the evidence in
7 this case, and the crucial central question you must ask
8 yourselves as you review the evidence is this: Has the
9 Government proven the guilt of the defendant beyond a
10 reasonable doubt? It is for you alone to decide whether the
11 Government has, in fact, proven the defendant guilty of the
12 crimes charged beyond a reasonable doubt solely on the basis
13 of the evidence and subject to the law as I charge you.

14 It must be clear to you, once you let fear or
15 prejudice, bias, or sympathy interfere with your thinking,
16 there is a risk that you will not arrive at a true and just
17 verdict. If you have a reasonable doubt as to the defendant's
18 guilt, you should not hesitate for any reason to find a
19 verdict of not guilty.

20 On the other hand, if you should find the Government
21 has met its burden of proving the defendant's guilt beyond a
22 reasonable doubt, you should not hesitate because of sympathy
23 or any other reason to render a verdict of guilty.

24 Let me address the burden of proof.

25 The defendant has pled not guilty to the charges of

1 the superseding indictment. To convict the defendant, the
2 burden of proof is solely and squarely on the prosecution to
3 prove the defendant's guilt of each element of the charges
4 beyond a reasonable doubt. This burden of proof never shifts
5 to the defendant for the simple reason that the law presumes
6 the defendant to be innocent and never imposes upon the
7 defendant in a criminal case the burden of proof or the duty
8 of calling any witnesses or producing any evidence.

9 In other words, the defendant starts with a clean
10 slate and is presumed innocent of each charge unless and until
11 such time, if ever, that you as a jury are satisfied the
12 Government has proven the defendant's guilt of each charge
13 beyond a reasonable doubt.

14 What is a reasonable doubt? The words almost define
15 themselves. It is a doubt based upon reason. It is a doubt a
16 reasonable person has after carefully weighing all of the
17 evidence. It is a doubt that would cause a reasonable person
18 to hesitate to act in a manner of importance in his or her
19 personal life.

20 Proof beyond a reasonable doubt must, therefore, be
21 proof of a convincing character a reasonable person would not
22 hesitate to rely upon in making an important decision.

23 A reasonable doubt is not a caprice or whim. It is
24 not speculation or suspicion. It is not an excuse to avoid
25 the performance of an unpleasant duty. The law does not

1 require the Government to prove guilt beyond all possible
2 doubt; proof beyond a reasonable doubt is sufficient to
3 convict the defendant.

4 If, after fair and impartial consideration of the
5 evidence, you have a reasonable doubt as to the defendant's
6 guilt with respect to the charge against him, you must find
7 the defendant not guilty of that charge.

8 On the other hand, if after fair and impartial
9 consideration of all the evidence you are satisfied beyond a
10 reasonable doubt of the defendant's guilt with respect to a
11 charge against him, you should find the defendant guilty of
12 that charge.

13 Let me address the defendant's right to testify or
14 not to testify.

15 In a criminal case, the defendant cannot be required
16 to testify. There is never a requirement and never an
17 expectation implicit or explicit that the defendant will take
18 the stand and testify. He never, ever has to do so. This is
19 because, as I've told you, the defendant is presumed innocent
20 and the burden to prove the defendant guilty beyond a
21 reasonable doubt remains solely on the Government at all
22 times. The defendant does not have to prove he is innocent;
23 he does not have to testify. In this case, as you know, the
24 defendant did testify and he was subject to cross-examination,
25 like any other witness.

1 Let me address the issue of punishment.

2 The question of possible punishment of the defendant
3 is of no concern to the jury and should not, in any sense,
4 enter into or influence your deliberations. The duty of
5 imposing sentence rests exclusively upon this Court. Your
6 function is to weigh the evidence in this case and to
7 determine whether or not the defendant is guilty beyond a
8 reasonable doubt solely upon the basis of such evidence.
9 Under your oath as jurors, you cannot allow consideration of
10 the punishment which may be imposed upon the defendant if he
11 is convicted to influence your verdict in any way or in any
12 sense to enter into your deliberations.

13 Let me address the question of evidence.

14 What is and what is not evidence?

15 The evidence in this case is the sworn testimony of
16 the witnesses, the exhibits received in evidence, the
17 stipulations of the parties and judicially noticed facts. You
18 will be given copies of the stipulations, many of which, as
19 you may recall, address the question of the certification of
20 bank records -- and we saved some time doing that. So when
21 you go into the jury room, one of the things we are going to
22 send in with you are those stipulations. You may recall them.
23 In any event, you will have them when you go into the jury
24 room.

25 By contrast, the questions of a lawyer is not to be

1 considered by you as evidence. It is a witness's answers that
2 are evidence, not the questions. At times, a lawyer on
3 cross-examination may have incorporated into a question a
4 statement which assumes certain facts to be true and ask the
5 witness if the statement was true. The example I gave you in
6 the trial was suppose a lawyer said, Do you know that big foot
7 lives in the White House? And if you answered that question,
8 No, I don't know that, that would be the evidence, not the
9 question about big foot living in the White House. Okay?

10 I thought I would take an absurd example so that no
11 one would say, Oh, that's too close to the facts.

12 If the witness denied the truth of the statement and
13 if there is no direct evidence in the record proving that
14 assumed fact to be true, then you may not consider it to be
15 true simply because it was contained in the lawyer's question.

16 Testimony that has been stricken or excluded is not
17 evidence and may not be considered by you in rendering your
18 verdict.

19 As I said, the rhinoceros factor. I tried to keep
20 that down, but every now and then, I had to give you that
21 instruction.

22 Also, if certain testimony was received for a
23 limited purpose, such as for the purpose of assessing a
24 witness's credibility, you must follow the limiting
25 instructions I have given.

1 An example was the demonstratives where I ruled, the
2 parties agreed, that a given demonstrative exhibit would be
3 used to help you in assessing the testimony, but would not be
4 evidence that would be sent back to the jury room. That's an
5 example of what I'm talking about there.

6 Arguments by lawyers are not evidence because the
7 lawyers are not witnesses. What they have said to you in
8 their opening statements and in their summations is intended
9 to help you understand the evidence to reach your verdict.
10 However, if your recollection of the facts differs from the
11 lawyers' statements, it is your recollection which controls.
12 You are the jury; you find the facts.

13 To constitute evidence, exhibits must be received in
14 evidence. However, exhibits marked for identification but not
15 admitted are not evidence, nor are materials brought forth
16 only to refresh a witness's recollection.

17 Finally, the statements I may have made concerning
18 the quality of the evidence do not constitute evidence. It is
19 for you alone to decide the weight, if any, to be given to the
20 testimony you have heard and the exhibits you have seen.

21 Now, let me address -- and I touched on this in the
22 preliminary instructions at the beginning of the trial -- the
23 issue of direct and circumstantial evidence.

24 There are two types of evidence which you may
25 properly consider in reaching your verdict, one type of

1 evidence is direct evidence. Direct evidence is when a
2 witness testifies about something he or she knows by virtue of
3 the witness's own senses -- something seen, felt, touched, or
4 heard. Direct evidence may also be in the form of an exhibit
5 where the fact can to be proven is its present existence or
6 condition.

7 Circumstantial evidence is evidence which tends to
8 prove a disputed fact by proof of other facts. There is a
9 straightforward, simple example of circumstantial evidence
10 which is often used in this courthouse. Assume when you came
11 into the courthouse this morning, the sun was shining and it
12 was a nice day. As you were sitting here, someone walked in
13 with an umbrella which was dripping wet. Then a few minutes
14 later, another person also entered with a wet umbrella. Now,
15 you cannot look outside of this courtroom and you cannot see
16 whether or not it was raining, so you have no direct evidence
17 of that fact, but on the combination of facts which I've asked
18 you to assume, it would be reasonable and logical for you to
19 conclude that it had, in fact, rained.

20 Similarly, if you see footprints in the snow, you
21 can infer that at some point it snowed. The witness may not
22 have been near the cabin or in a house where it was actually
23 snowing, but the witness can say, Well, there were footprints
24 in the snow. Now you can logically infer that it has snowed.
25 That is all there is to circumstantial evidence, to infer on

1 the basis of reason, experience, and common sense from one
2 established fact to the existence or the nonexistence of some
3 other fact.

4 The law makes no distinction between direct and
5 circumstantial evidence. Circumstantial evidence is of no
6 less value than direct evidence. You may consider either or
7 both and may give them such weight as you conclude is
8 warranted.

9 Now, the indictment is not evidence.

10 The defendant, Mr. Jean Boustani, was charged with
11 crimes in an indictment, specifically here, in a superseding
12 indictment. I will refer to the superseding indictment, the
13 charging document, but you will not be furnished with the
14 superseding indictment itself for one simple reason. The
15 superseding indictment itself is merely a statement of the
16 charges and is not itself evidence.

17 Let me address the question of uncharged persons.

18 You may not draw any inference favorable or
19 unfavorable towards the Government or the defendant on trial
20 from the fact that certain persons were not named as
21 defendants in the superseding indictment or that certain
22 persons were named as co-conspirators but not indicted. The
23 circumstances that these persons were not indicted must play
24 no part in your deliberations.

25 Whether a person should be named as a co-conspirator

1 or indicted as a defendant is a matter within the sole
2 discretion of the office of the United States Attorney and the
3 grand jury; therefore, you may not consider it in any way in
4 reaching your verdict with respect to the defendant on trial
5 before you.

6 There's a phrase that often is used called "dates
7 proximate." Let me address that.

8 The superseding indictment charges that each count
9 was committed on or about a certain date or between certain
10 dates. Although the Government must prove beyond a reasonable
11 doubt that the offense was committed on a date reasonably near
12 the date alleged in the superseding indictment, it is not
13 necessary for the Government to prove the offense was
14 committed precisely on the date charged.

15 Let me again address the issue of stipulated facts.

16 The attorneys for the Government and the attorneys
17 for the defendant have stipulated to certain facts. The
18 stipulation is an agreement among the parties that a certain
19 fact is true. You must regard such agreed facts as
20 established to be true beyond a reasonable doubt. And, again,
21 you are going to have some of those stipulated facts go back
22 to the jury room.

23 Now, all available evidence need not be produced.
24 Although the Government bears the burden of proof, and
25 although a reasonable doubt can arise from lack of evidence, I

1 instruct you the law does not require the Government to call
2 as witnesses all persons who may appear to have some knowledge
3 of the matter at issue in the trial. Nor does the law require
4 that all things mentioned during the course of the trial be
5 produced as exhibits. The law does not require law
6 enforcement authorities to use any particular investigative
7 techniques to uncover or prosecute the crime.

8 This is not the TV show CSI. Okay? This is real
9 life.

10 Law enforcement techniques are not your concern.
11 Your concern is to determine whether or not, based upon all
12 the evidence that was, in fact, presented in this case, the
13 Government has proven the defendant guilty beyond a reasonable
14 doubt.

15 Let me address summary evidence.

16 As you know, some exhibits were admitted into
17 evidence in the form of charts and summaries. Those charts
18 and summaries were admitted to save the time of reviewing
19 voluminous records and to avoid inconvenience. You should
20 consider these charts and summaries the same way you would any
21 other evidence, and you know that there were tons of bank
22 documents that were reduced to summaries and you would have
23 all killed me if I had made the witnesses go through each and
24 every one when they could be stipulated to and you had the
25 summaries, so that's all that that's about.

1 Witness credibility.

2 I am sure it must be clear to you by now that you
3 are being called upon to resolve various factual issues raised
4 by the parties in the face of very different pictures painted
5 by both sides. In making these judgments, you should
6 carefully scrutinize all the testimony of each witness. The
7 circumstances under which each witness testified and any other
8 matter in evidence which may help you decide the truth and the
9 importance of each witness's testimony.

10 How do you determine where the truth lies? Well,
11 you watched each witness testify. Everything a witness said
12 or did on the witness stand counts in your determination. How
13 did the witness impress you? Did he or she appear to be
14 frank, forthright, and candid, or evasive and edgy as if
15 hiding something? How did the witness appear to you? What
16 was his or her demeanor -- that is to say, his or her
17 carriage, behavior, bearing, manner, and appearance while
18 testifying? Often, as you well know, it is not what people
19 say, but how they say it that moves and informs us.

20 You should use all the tests for truthfulness which
21 you use in determining matters of importance in your everyday
22 lives. It's important. That's why we have juries.

23 You should consider any bias or hostility the
24 witness may have shown for or against any party as well as any
25 interest the witness has in the outcome of the case. You

1 should consider the opportunity the witness had to see, to
2 hear, and to know the things about which he or she testified,
3 the accuracy of his or her memory, candor or lack of candor,
4 intelligence, the reasonableness and the probability of his or
5 her testimony, its consistency or lack of consistency, and its
6 corroboration or lack of corroboration with other credible
7 testimony.

8 It is your duty to consider whether the witness has
9 permitted any such bias or interest to color his or her
10 testimony. In short, if you find a witnesses is biased, you
11 should view that witness's testimony with caution, weight it
12 with care, and subject it to close and searching scrutiny.

13 Let me address the number of witnesses.

14 The fact that one party may have called more
15 witnesses and/or introduced more evidence than the other does
16 not mean you should necessarily find the facts in favor of the
17 side offering more witnesses and/or more evidence. By the
18 same token, you do not have to accept the testimony of any
19 witness who has not been contradicted or impeached, if you
20 find the witness not to be credible. You also have to decide
21 which witnesses to believe and which facts are true. To do
22 this, you must look at all of the evidence, drawing upon your
23 own common sense and personal experience. After examining all
24 the evidence, you may decide the party calling the most
25 witnesses has not persuaded you because you do not believe

1 these witnesses, or because you believe the fewer witnesses
2 called upon by the other side. Because the entire burden of
3 proof beyond a reasonable doubt is solely and exclusively on
4 the Government, the defendant does not have any obligation to
5 call any witness or to offer any proof at all.

6 Let me address the question of uncalled witnesses,
7 uncalled witnesses equally available.

8 There are several persons whose names you have heard
9 during the course of the trial but who did not appear here to
10 testify. I instruct you as a matter of law that each party
11 had an equal opportunity or lack of opportunity to call any of
12 these witnesses; therefore, you should not draw any inference
13 or reach any conclusions one way or the other as to what those
14 witnesses would have testified to had they been called. Their
15 absence should not affect your judgment in any way.

16 However, you should remember my instructions that
17 the law does not impose on a defendant in a criminal case the
18 burden or the duty of calling any witnesses or producing any
19 evidence. That burden of proof to prove the charges beyond a
20 reasonable doubt always remains, as I've said before and will
21 say again, with the Government.

22 Let me address the question of co-defendants' plea
23 agreements.

24 You have heard from witnesses who testified they
25 were actually involved in planning and carrying out the crimes

1 charged in the superseding indictment. There has been a great
2 deal said about the so-called cooperating witnesses in the
3 summations of counsel and whether or not you should believe
4 them.

5 The Government argues, as it is permitted to do,
6 that it must take the witnesses as it finds them and that only
7 people who themselves take part in criminal activity have the
8 knowledge required to show criminal behavior by others.

9 For those reasons, the law allows the use of
10 cooperating witness testimony. Indeed, it is the law in
11 federal court that such testimony may be enough in itself for
12 convictions if the jury finds the testimony establishes guilt
13 beyond a reasonable doubt.

14 However, it is also the case the cooperating witness
15 testimony is of such a nature that it must be scrutinized with
16 great care and viewed with particular caution when you decide
17 how much of that testimony to believe.

18 I have given you some general considerations on
19 credibility, and I will not repeat them at all here. Nor will
20 I repeat all the arguments made on both sides. However, let
21 me say a few things to you that you may want to consider
22 during your deliberations on the subject of cooperating
23 witnesses.

24 You should ask yourselves whether these witnesses
25 would benefit more by lying or by telling the truth. Was

1 there testimony made up in any way because they believed or
2 hoped they would somehow receive favorable treatment by
3 testifying falsely? Or did they believe their interest would
4 best be served by testifying truthfully? If you believe the
5 witness was motivated by hopes of personal gain, was
6 motivation one that would cause him or her to lie, or was it
7 one that would cause him or her to tell the truth? Did this
8 motivation color his or her testimony.

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

12 The cooperating witnesses who testified in this case
13 pled guilty after entering into an agreement with the
14 Government to testify. There is evidence the Government
15 agreed to dismiss some charges against the witnesses and
16 agreed not to prosecute them on other charges in exchange for
17 the witnesses' agreement to plead guilty and to testify at
18 this trial against this defendant.

19 The Government also promised to bring the witnesses'
20 cooperation to the attention of the sentencing court, and I am
21 the sentencing court.

22 The Government is permitted to enter into this kind
23 of agreement. You, in turn, may accept the testimony of such
24 a witness and convict the defendant on the basis of this
25 testimony alone if it convinces you of the defendant's guilt

1 beyond a reasonable doubt.

2 However, you should bear in mind that a witness who
3 has entered into such an agreement has an interest in this
4 case different from any ordinary witness. Witnesses who
5 realize they may be able to obtain their own freedom or
6 receive a lighter sentence by giving testimony favorable to
7 the prosecution have a motive to testify falsely. Therefore,
8 you must examine their testimony with caution and weigh it
9 with great care. If, after scrutinizing their testimony, you
10 decide to accept it, you may give it whatever weight, if any,
11 you find it deserves.

12 You should note when someone cooperates with the
13 Government, the Government does not determine what sentence
14 they are going to get, nor does the Government typically make
15 a recommendation to the sentencing judge as to how much time
16 they're going to get. What the Government will do, if it is
17 satisfied with the level of cooperation, is to write the
18 sentencing judge what is known as a 5K letter, which you heard
19 some mention of during the course of the trial. The 5K letter
20 sets forth the cooperating witnesses' criminal acts, as well
21 as the substantial assistance the witness has provided. I
22 instruct you that the 5K letter does not guarantee the
23 cooperating witness a lower sentence. This is because the
24 sentencing court may, but is not required to, take the 5K
25 letter into account when imposing sentence on the cooperating

1 witness. This Court has discretion whether or not a 5K letter
2 is written to impose any reasonable sentence this Court deems
3 appropriate up to the statutory maximum. The final
4 determination as to the sentence to be imposed rests with this
5 Court, not with the Government. In sum, you should look at
6 all the evidence in deciding what credence and what weight, if
7 any, you want to give the cooperating witness and the 5K.

8 Expert testimony.

9 You've heard during the course of this trial the
10 testimony of one or more individuals referred to as an expert
11 in a particular field. If scientific, technical, or other
12 specialized knowledge will assist you as the jury to
13 understand the evidence or to decide a disputed fact, a
14 witness with particular knowledge, skill, experience,
15 training, or education may be called to testify about such
16 evidence or facts at issue in the case in the form of an
17 opinion.

18 The rules of evidence ordinarily do not permit
19 witnesses to testify to opinions or conclusions. An exception
20 to this rule, however, exists for those we call "expert"
21 witnesses who may state their opinions and who may also state
22 the reasons for their opinion.

23 You should consider the witnesses' opinions received
24 in this case and give them such weight as you may think those
25 opinions deserve. If you should decide the opinions of any

1 expert witness are not based upon sufficient education or
2 experience, or that the reasons given in support of those
3 opinions are not sound, or that those opinions are outweighed
4 by other evidence, you may disregard those opinions in whole
5 or in part.

6 (Continued on the following page.)



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1 (In open court.)

2 THE COURT: In sum, the expert witness is, in all
3 other respects, the same as any other witness. You should
4 consider his or her qualifications, his or her experience, his
5 or her interest in the outcome of the case, if any, his or her
6 demeanor, and all the other factors you have been instructed
7 to examine in assessing the credibility of other witnesses.

8 Let me address the question of law enforcement
9 witness. You have heard the testimony of law enforcement
10 officials. The fact that a witness may be employed by the
11 federal government as a law enforcement official does not mean
12 his or her testimony is necessarily deserving of more or less
13 consideration or greater or lesser weight than that of an
14 ordinary witness.

15 At the same time, it's quite legitimate for defense
16 counsel to try to attack the credibility of any law
17 enforcement witnesses, on the grounds that their testimony may
18 be colored by a personal or professional interest in the
19 outcome of the case. It is your decision, after reviewing all
20 the evidence, whether to accept the testimony of any law
21 enforcement witnesses and to give that testimony whatever
22 weight, if any, you find it deserves.

23 Let me address the charges. Members of the jury,
24 the government of the United States formally charges
25 Mr. Boustani in a superseding indictment. The superseding

1 indictment charges this defendant with three counts, on which
2 each of you will be called upon to render a verdict.

3 Specifically, the superseding indictment charges
4 Mr. Boustani with conspiracy to commit wire fraud, conspiracy
5 to commit securities fraud, and conspiracy to commit money
6 laundering. Each count charges the defendant with a different
7 crime. You must consider each count separately and return a
8 separate verdict of guilty or not guilty for each. Whether
9 you find defendant guilty or not guilty as to one offense
10 should not affect your verdict as to any other offense
11 charged.

12 Let me address the issue of what's referred to as
13 mens, M-E-N-S, rea, R-E-A. The charges in this case implicate
14 the concept of knowledge, intent, and willfulness.

15 A, knowingly. A person acts knowingly when he acts
16 intentionally and voluntarily and not because of ignorance,
17 mistake, accident, or carelessness. Whether a defendant acted
18 knowingly may be proven by his conduct and by all the facts
19 and circumstances surrounding the case.

20 Let me deal with the question of intentionally. A
21 person acts intentionally when he acts deliberately and
22 purposefully. That is, the defendant's acts must have been
23 the product of his conscious, objective decision rather than
24 the product of a mistake or accident.

25 Let me address willfully. To act willfully means to

1 act with knowledge that one's conduct is unlawful and with the
2 intent to do something the law forbids. That is to say, with
3 the bad purpose to disobey or to disregard the law. The
4 government is not required to prove that the defendant is
5 aware of the law that actually forbids his conduct. The
6 defendant's conduct was not willful if it was due to
7 negligence, inadvertence, or mistake.

8 You have heard a lot about conspiracy, so let me
9 address the law of conspiracy. I will now instruct you on the
10 law of conspiracy, which applies to counts one, two, and four.
11 There is no count three, not that we forgot how to count.
12 Okay. You have count one, count two, and count four.

13 A conspiracy is a kind of criminal partnership,
14 combination or agreement of two or more persons to join
15 together to accomplish some unlawful purpose. The crime of
16 conspiracy to violate a federal law is an independent offense.
17 It is separate and distinct from the actual violation of any
18 specific federal laws, which the law refers to as substantive
19 crimes. Indeed, you may find the defendant guilty of the
20 crime of conspiracy to commit an offense against the United
21 States even though the substantive crime that was the object
22 of the conspiracy was not actually committed.

23 Congress has deemed it appropriate to make
24 conspiracy, standing alone, a separate crime, even if the
25 conspiracy is not successful. This is because collective

1 criminal activity poses a greater threat to the public safety
2 and welfare than individual conduct and increases the
3 likelihood of success of a particular criminal venture.

4 To prove the crime of conspiracy, the government
5 must prove two elements beyond a reasonable doubt: First,
6 that a conspiracy existed, namely, two or more persons entered
7 into an unlawful agreement; and, secondly, the defendant
8 knowingly and willfully became a member of the conspiracy.

9 The first element is the existence of the agreement.
10 The first element the government must prove beyond a
11 reasonable doubt to establish the offense of conspiracy is
12 that two or more persons entered the unlawful agreement
13 charged in the superseding indictment. In order for the
14 government to satisfy this element, you need not find that the
15 alleged members of the conspiracy met together and entered
16 into any express or formal agreement. Similarly, you need not
17 find the alleged conspirator stated in words or writing what
18 the scheme was, its object or purpose, or every precise detail
19 of the scheme or the means by which its object or purpose was
20 to be accomplished.

21 What the government must prove beyond a reasonable
22 doubt is that there is a mutual understanding, either spoken
23 or unspoken, between two or more people to cooperate with each
24 other to accomplish an unlawful act.

25 You may, of course, find the existence of an

1 agreement to disobey or to disregard the law has been
2 established by direct proof; but, since by its very nature a
3 conspiracy is characterized by secrecy, you may infer its
4 existence from the circumstances of this case and the conduct
5 of the parties involved. In a very real sense then, in the
6 context of conspiracy cases, actions often speak louder than
7 words.

8 In this regard, you may, in determining whether an
9 agreement existed here, consider the actions and statements of
10 all those you find to be participants in the conspiracy as
11 proof that a common design existed on the part of the persons
12 charged to act together to accomplish an unlawful purpose.

13 Second element is membership in the conspiracy. The
14 second element the government must prove beyond a reasonable
15 doubt to establish the offense of conspiracy is the defendant
16 knowingly, willfully, and voluntarily became a member of the
17 conspiracy. If you are satisfied the conspiracy charged in
18 the superseding indictment existed, you must next ask
19 yourselves who the members of that conspiracy were.

20 In deciding whether this defendant whom you are
21 considering was in fact a member of the conspiracy, you should
22 consider whether the defendant knowingly and willfully joined
23 the conspiracy. Did he participate in it with knowledge of
24 its unlawful purpose and with the specific intention of
25 furthering its business or objectives?

1 In that regard, it has been said in order for a
2 defendant to be deemed a participant in a conspiracy, he must
3 have had a stake in the venture or its outcome. You are
4 instructed that although proof of a financial interest in the
5 outcome of a scheme is not essential, if you find the
6 defendant had such an interest, this is a factor that you may
7 properly consider in determining whether or not the defendant
8 was a member of the conspiracy charged in the superseding
9 indictment.

10 Before the defendant can be found to have been a
11 conspirator, you must first find that he knowingly joined the
12 unlawful agreement or plan. The key question, therefore, is
13 whether the defendant joined the conspiracy with an awareness
14 of at least some of the basic aims and purposes of the
15 unlawful agreement. It is important for you to note the
16 defendant's participation in the conspiracy must be
17 established by independent evidence of his own acts or
18 statements as well as those of other alleged co-conspirators
19 and the reasonable inferences that may be drawn from that.

20 The defendant's knowledge may be inferred from the
21 facts proved. In that connection, to become a member of the
22 conspiracy, a defendant need not have known the identities of
23 each and every other member, nor need he have been apprised of
24 all of their activities. Moreover, the defendant need not
25 have been fully informed as to all of the details or the scope

1 of the conspiracy in order justify an inference of knowledge
2 on his part.

3 Furthermore, the defendant need not have joined in
4 all of the unlawful objectives of the conspiracy. The extent
5 of a defendant's participation has no bearing on the issue of
6 a defendant's guilt.

7 A conspirator's liability is not measured by the
8 extent or duration of his participation. Each member of the
9 conspiracy may perform separate and distinct acts and may
10 perform them at different times. Such conspirators play major
11 roles -- some conspirators play major roles, while others play
12 minor roles in the scheme. An equal role is not what the law
13 requires. Even a single fact may be sufficient to draw a
14 defendant within the ambit of conspiracy.

15 I caution you, however, mere association with one or
16 more members of the conspiracy does not automatically make the
17 defendant a member. A person may know or be friendly with a
18 criminal without being a criminal himself. Mere similarity of
19 conduct or the fact they may have assembled together and
20 discussed common names and interests does not necessarily
21 establish membership in a conspiracy.

22 I also caution you mere knowledge or acquiescence
23 without participation in the unlawful plan is not sufficient.
24 Moreover, the fact the acts of a defendant, without knowledge,
25 merely happened to further the purposes or objectives of the

1 conspiracy does not make the defendant a member. More is
2 required under the law.

3 What is required is that a defendant must have
4 participated with knowledge or at least some of the purposes
5 or objectives of the conspiracy and with the intent of aiding
6 in the accomplishment of those unlawful ends.

7 In sum, the defendant, with an understanding of the
8 unlawful character of the conspiracy, must have intentionally
9 engaged, advised, or assisted in it for the purpose of
10 furthering the illegal undertaking. He thereby becomes a
11 knowing and willing participant in the unlawful agreement,
12 that is to say, a conspiracy.

13 Now, would you like to take a ten-minute comfort
14 break, or should we keep going?

15 JUROR: Keep going.

16 THE COURT: Keep going? Okay.

17 You will see, as I continue with these instructions,
18 that some kinds of conspiracy charges require proof of an
19 additional element as well; but all conspiracy charges have at
20 least these two elements in common: That is, the existence of
21 a conspiracy and the defendant's willing participation in it.

22 I will now turn to the specific counts in the
23 superseding indictment. Remember, again, you have to consider
24 each count separately.

25 Count one: Conspiracy to commit wire fraud. I will

1 first instruct you on the wire fraud conspiracy charges.

2 Count one of the superseding indictment charges the
3 defendant with conspiracy to commit wire fraud as follows: In
4 or about and between January 2011 and December 2018, both
5 dates being approximate and inclusive, within the Eastern
6 District of New York and elsewhere, the Defendant Jean
7 Boustani, together with others, did knowingly and
8 intentionally conspire to devise a scheme and artifice to
9 defraud one or more investors and potential investors in
10 Proindicus, MAM, and the EMATUM securities and to pay money
11 and property from them by means of one or more materially
12 false and fraudulent pretenses, representations, and programs;
13 and, for the purpose of executing such scheme and artifice, to
14 transmit and cause to be transmitted, by means of wire
15 communication in interstate and foreign commerce, writings,
16 signs, signals, pictures, and sounds, contrary to Title 18,
17 United States Code, Section 1343.

18 The relevant portion of the wire fraud conspiracy
19 statute, Title 18, United States Code, Section 1349, provides,
20 in relevant part, that it shall be unlawful for any person to
21 conspire to commit wire fraud.

22 The government need not prove the defendant actually
23 committed wire fraud, the unlawful acts charged in the objects
24 of the conspiracy in count one. However, you must find beyond
25 a reasonable doubt that this defendant conspired with one or

1 more individuals to commit wire fraud.

2 A conspiracy to commit wire fraud -- in order to
3 prove the defendant committed conspiracy to commit wire fraud,
4 the government must prove each of the following elements
5 beyond a reasonable doubt: First, the conspiracy to commit
6 wire fraud existed; and, second, the defendant knowingly and
7 willfully became a member of the conspiracy.

8 Again, these are the first and second elements I
9 already explained to you previously, and those same
10 instructions apply here.

11 Let me address wire fraud definition and elements.

12 I will now define for you wire fraud, which is
13 alleged to be the object of the conspiracy charged in count
14 one. The relevant statute regarding wire fraud is Section
15 1343 of Title 18 of the United States Code. That section
16 provides as follows: Whoever, having devised or intending to
17 devise any scheme or artifice to defraud or for obtaining
18 money or property by means of false or fraudulent pretenses,
19 representations, or promises, transmits or causes to be
20 transmitted by means of wire, radio, or television
21 communication, any interstate or foreign commerce, any
22 writings, signs, signals, pictures, or sounds for the purpose
23 of executing such scheme or artifice shall be guilty of a
24 crime.

25 The elements of wire fraud are: First, there was a

1 scheme or artifice to defraud in order to obtain money or
2 property by false and fraudulent pretenses, representations,
3 or promises, as alleged in the superseding indictment; second,
4 the defendant knowingly and willfully participated in the
5 scheme or artifice to defraud with knowledge of its fraudulent
6 nature and with specific intent to defraud; and, third, in the
7 execution of that scheme, the defendant used or caused the use
8 of interstate or international wires, as specified in the
9 superseding indictment.

10 The first element is the existence of a scheme or
11 artifice to defraud. The first element the government must
12 prove beyond a reasonable doubt is that there was a scheme or
13 artifice to defraud and to obtain money or property by means
14 of false or fraudulent pretenses, representations, or
15 promises.

16 The first element is almost self-explanatory. A
17 scheme or artifice is simply a plan for the accomplishment of
18 an object. A scheme to defraud is any plan, device, or course
19 of action to obtain money or property by means of false or
20 fraudulent pretenses, representations, or promises reasonably
21 calculated to deceive.

22 Fraud is a general term that embraces all of the
23 various means that human ingenuity can devise and that are
24 resorted to by an individual to gain an advantage over another
25 by false representations, suggestions, or suppression of the

1 truth, with deliberate disregard for the truth. Thus, a
2 scheme to defraud is merely a plan to deprive another of money
3 or property by trick, deceit, deception, or swindle.

4 The scheme to defraud is alleged to have been
5 carried out by making false representations and half-truth
6 statements. A representation or a statement is false if it is
7 untrue when made and was known at the time to be untrue by the
8 person making it and causing it to be made. A representation
9 or statement is fraudulent if it was falsely made with the
10 intention to deceive.

11 Deceitful statements or half-truths, or the
12 concealment of material facts and the expression of an opinion
13 not honestly entertained, may also constitute false or
14 fraudulent representations under the statute.

15 Now, the deception need not be premised upon spoken
16 or written words alone. The arrangement of the words or the
17 circumstances in which they are used may convey the full and
18 deceptive appearance. If there is deception, the manner in
19 which it is accomplished is immaterial.

20 The false or fraudulent representation must relate
21 to a material fact or matter. A material fact is one that
22 reasonably would be expected to be of concern to a reasonable
23 and prudent person, in relying upon the representation or
24 statement in making a decision. This means if you find a
25 particular statement of fact to have been false, you must

1 determine whether that statement was one that a reasonable
2 person or investor might have considered important in making
3 his or her decision.

4 The same principle applies to fraudulent half-truths
5 of material facts. In addition to proving a statement was
6 false or fraudulent and related to a material fact, in order
7 to establish the scheme to defraud, the government must prove
8 the alleged scheme contemplated depriving another of money or
9 property.

10 However, the government is not required to prove the
11 defendant personally originated the scheme to defraud, nor is
12 it necessary for the government to prove the defendant
13 actually realized any gain from the scheme or the intended
14 victim actually suffered any loss. A scheme to defraud need
15 not be shown by direct evidence but may be established by all
16 the circumstances and the facts of the case.

17 The second element addresses participation in the
18 scheme with intent. The second element the government must
19 prove beyond a reasonable doubt is that this defendant
20 participated in the scheme to defraud knowingly, willfully,
21 and with intent to defraud.

22 As I earlier instructed you as to the meaning of
23 knowingly and willfully, I refer you to those instructions, as
24 they apply here also. Intent to defraud means to act
25 knowingly and with the specific intent to deceive for the

1 purpose of causing some financial or property loss to another.

2 The question of whether a person acted knowingly,
3 willfully, and with intent to defraud is a question of fact
4 for you to determine, like any other fact question. This
5 question involves the defendant's state of mind.

6 Direct proof of knowledge and fraudulent intent is
7 almost never available. It would be the rare case indeed
8 where it could be shown that a person wrote or stated that at
9 a given time in the past he committed an act with fraudulent
10 intent. Such direct proof is not required.

11 The ultimate facts of knowledge and criminal intent,
12 though subjective, may be established by circumstance evidence
13 based upon a person's outward manifestations, his or her
14 words, his or her conduct, his or her acts, and all the
15 surrounding circumstances disclosed by the evidence, and the
16 rational or logical inferences that may be drawn from them.
17 Circumstantial evidence, if believed, is of no less value than
18 direct evidence, as I previously instructed you.

19 In either case, the essential elements of the crime
20 must be established beyond a reasonable doubt.

21 Under the wire fraud statute, even false
22 representations or statements do not amount to a fraud unless
23 done with fraudulent intent. However misleading or deceptive
24 a plan may be, it is not fraudulent if it was devised or
25 carried out in good faith.

1 An honest belief in the truth of the representations
2 made by defendant is a complete defense. However inaccurate
3 the statement may turn out to be, a defendant, however, has no
4 burden to establish a defense of good faith. The burden is on
5 the government to prove fraudulent intent and the consequent
6 lack of good faith beyond a reasonable doubt.

7 There is another consideration to bear in mind in
8 deciding whether or not the defendant acted in good faith.
9 You are instructed that if the defendant conspired to commit
10 wire fraud, that a belief by the defendant, if such belief
11 existed, that ultimately everything would work out so that no
12 one would lose any money does not require you to find the
13 defendant acted in good faith. No amount of honest belief on
14 the part of the defendant that the scheme would, for example,
15 ultimately make a profit for investors will excuse fraudulent
16 actions or false representations caused by him through paying
17 money or property.

18 I reiterate, however, that an intent to defraud for
19 purposes of the wire fraud statute means to act knowingly and
20 with specific intent to deceive for the purpose of causing
21 financial loss or property loss to another.

22 As a practical matter, then, you may find intent to
23 defraud if the defendant knew his conduct as a participant in
24 the scheme was calculated to deceive and, nonetheless, he
25 associated himself with the alleged fraudulent scheme for the

1 purpose of causing loss to another.

2 The third element addresses the use of the wires.
3 The third and final element the government must prove beyond a
4 reasonable doubt is the use of an interstate or international
5 wire communication in furtherance of a scheme to defraud. The
6 wire communication must pass between two or more states, as,
7 for example, a telephone call between New York and New Jersey,
8 or it must pass between the United States and a foreign
9 country. Such a telephone call between New York and London
10 would suffice.

11 A wire communication also includes a wire transfer
12 of funds between banks in different states or between banks in
13 the United States and banks in a foreign country, or telephone
14 calls, e-mails, and facsimiles between two different states or
15 between the United States and a foreign country.

16 The use of the wires need not itself be a fraudulent
17 representation. However, it must further or assist in the
18 carrying out of the scheme to defraud.

19 It is not necessary for the defendant to be directly
20 or personally involved in the wire communications, as long as
21 the communication was reasonably foreseeable in the execution
22 of the alleged scheme to defraud in which the defendant is
23 accused of participating. In this regard, it is sufficient to
24 establish this element of the crime if the evidence justifies
25 a finding that the defendant caused the wires to be used by

1 others. This does not mean the defendant must specifically
2 have authorized others to make the call, wire the money, or
3 send the e-mail.

4 When one does an act with knowledge that the use of
5 the wires will follow in the ordinary course of business, or
6 where such use of the wires reasonably can be foreseen, even
7 though not actually intended, then he causes the wires to be
8 used. It is not necessary that all or most of the wire
9 communications involved in the alleged scheme to defraud were
10 sent to, from, or within the United States. However, for the
11 wire-use element to be satisfied, the use of these wires must
12 be a core component of the scheme to defraud.

13 I remind you count one does not allege, and the
14 government need not prove, wire fraud was actually committed
15 for you to find the defendant guilty of this count. Rather,
16 count one charges the defendant with conspiracy to commit wire
17 fraud.

18 Let me address the question of venue, which has come
19 up. The government must also prove venue. However, unlike
20 the elements I just explained the government must prove beyond
21 a reasonable doubt, the government must prove venue by a
22 preponderance of the evidence.

23 To establish a fact by a preponderance of the
24 evidence -- here we are just talking about venue -- to
25 establish a fact by a preponderance of the evidence means to

1 prove the fact is more likely true than not true. A
2 preponderance of the evidence means the greater weight of the
3 evidence, both direct and circumstantial. It refers to the
4 quality and persuasiveness of the evidence and not exclusively
5 to the quantity of the evidence.

6 To establish venue for wire fraud conspiracy in
7 count one, the government must prove it is more likely than
8 not that an act in furtherance of the conspiracy occurred at
9 least in part in the Eastern District of New York, which, as
10 you heard, consists of the counties of Kings, also known as
11 Brooklyn, Queens, Richmond, also known as Staten Island,
12 Nassau, and Suffolk, the waters surrounding all of those
13 counties and the waters surrounding the counties of New York
14 and the Bronx.

15 In this regard, the government need not prove the
16 crime itself was committed in the Eastern District of New York
17 or the defendant himself was present here. It is sufficient
18 to satisfy the venue requirement if an act in furtherance of
19 the crime occurred within the Eastern District of New York.

20 If you find the government has failed to prove it is
21 more likely than not that an act in furtherance of the crime
22 occurred within the Eastern District of New York, then you
23 must acquit.

24 Again, I caution you, the preponderance of the
25 evidence standard applies only to venue. The government must

1 prove each of these elements of conspiracy to commit wire
2 fraud in count one beyond a reasonable doubt.

3 Count two, conspiracy to commit securities fraud.
4 Now, count two charges the defendant with conspiracy to commit
5 securities fraud. In or about and between January 2013 and
6 December 2018, both dates being approximate and inclusive,
7 within the Eastern District of New York and elsewhere, the
8 Defendant Jean Boustani, together with others, did knowingly
9 and willfully conspire to use and employ one or more
10 manipulative and deceptive devices and contrivances, contrary
11 to Rule 10B-5 of the Rules and Regulations of the United
12 States Securities and Exchange Commission, Title 17, Code of
13 the Federal Regulations, Section 240.10B-5, by, one, employing
14 one or more devices, schemes, and artifices to defraud; two,
15 making one or more untrue statements of material fact and
16 omitting to state material facts necessary in order to make
17 statements made, in light of the circumstances under which
18 they were made, not misleading; and, three, engaging in one
19 more acts, practices, and courses of business which would and
20 did operate as a fraud and deceit upon investors and potential
21 investors in the EMATUM securities, in connection with the
22 purchase and sale of investments in the EMATUM securities,
23 directly and indirectly, by use of means and instrumentalities
24 of interstate commerce and mails, contrary to Title 15, United
25 States Code, Section 78J(B) and 78FF.

1 Let me address conspiracy to commit securities
2 fraud. I have already instructed you on conspiracy generally.
3 There is an additional instructions I will provide that relate
4 to conspiracy to commit securities fraud allegations, as set
5 forth in count two.

6 To prove the crime of securities fraud conspiracy,
7 the government must prove four elements beyond a reasonable
8 doubt: First, two or more persons enter into an agreement to
9 commit securities fraud, a crime I will define for you
10 shortly; secondly, the defendant knowingly and willfully
11 became a member of the conspiracy; third, one of the members
12 of the conspiracy committed at least one of the overt acts
13 charged in the superseding indictment; and, fourth, at least
14 one overt act was in furtherance of some object or purpose of
15 the conspiracy, as charged in the superseding indictment.

16 You may recall that conspiracy to commit wire fraud
17 charged in count one does not require an overt act.
18 Conspiracy to commit securities fraud, by contrast, requires
19 an overt act. The overt act elements, of which I will
20 instruct you, only apply to count two, charging securities
21 fraud conspiracy.

22 The government need not prove the defendant
23 actually committed securities fraud, the unlawful acts charged
24 as the objects of the conspiracy in count two. However, you
25 must find beyond a reasonable doubt that the defendant

1 conspired with one more individuals to commit securities
2 fraud.

3 I will now discuss the four elements the government
4 must prove beyond a reasonable doubt to prove the charge of
5 conspiracy to commit securities fraud.

6 The first element is the existence of the agreement.
7 The first element the government must prove beyond a
8 reasonable doubt for count two is that two or more persons
9 entered into the charged agreement to commit securities fraud.
10 I previously explained to you what it means to enter into an
11 agreement for purposes of a conspiracy.

12 The second element is membership in the conspiracy.
13 The second element the government must prove beyond a
14 reasonable doubt for count two is that the defendant knowingly
15 and willfully became a member of the conspiracy charged. I
16 previously explained to you what it means to knowingly and
17 willfully become a member of a conspiracy.

18 The third element addresses overt acts. The third
19 element the government must prove beyond a reasonable doubt
20 for count two is that at least one of the overt acts charged
21 in the superseding indictment was knowingly committed by at
22 least one of the conspirators at or about the time or place
23 alleged in the superseding indictment alleges the following
24 overt acts.

25 Overt acts in furtherance of the conspiracy and to

1 effect its object, within the Eastern District of New York and
2 elsewhere, the Defendant Jean Boustani, together with others,
3 to commit or cause to be committed, among others, the
4 following:

5 A, on or about June 26 of 2013 Privinvest sent
6 approximately \$1 million from the Proindicus loan proceeds to
7 a bank account that Andrew Pearse held in Abu Dhabi Commercial
8 Bank, which paid him cash through a correspondent bank in the
9 United States and the Eastern District of New York.

10 B, on or about July 5 of 2013, Pearse sent Boustani
11 a PowerPoint presentation regarding the project that would
12 become EMATUM, which stated the project would be funded
13 through the international bond market.

14 C, on or about July 21 of 2013, Detelina Subeva
15 wrote an e-mail to Boustani, Pearse, and Antonio do Rosario
16 stating, quote, We should also keep a cushion for Proindicus
17 of \$17 million so we don't need to go back to the Minister of
18 Finance, and they are on our side.

19 D, on or about July 25 of 2013, Privinvest sent
20 approximately \$1 million from the Proindicus loan proceeds to
21 a bank account that Pearse held at Abu Dhabi Commercial Bank,
22 which payment passed through a correspondent bank account in
23 the United States and the Eastern District of New York.

24 E, on or about September 1, 2013, Privinvest sent
25 approximately \$1 million from the Proindicus loan proceeds to

1 a bank account that Pearse held in Abu Dhabi Commercial Bank,
2 which payment passed through a correspondent bank account in
3 the United States and the Eastern District of New York.

4 F, on or about October 11, 2013, VTB Bank sent
5 \$350 million dollars in EMATUM loan proceeds, less its fee of
6 more than \$37 million, to Credit Suisse's bank account at Bank
7 of New York Mellon, which payment passed through the Eastern
8 District of New York.

9 G, on or about October 11, 2013, Credit Suisse sent
10 approximately \$312 million in EMATUM loan proceeds from Bank
11 of New York Mellon to Privinvest, which payment passed through
12 the Eastern District of New York.

13 H, on or about October 23, 2013, a Privinvest entity
14 with a bank account in the UAE sent approximately \$800,000 to
15 Singh's bank account in Abu Dhabi Commercial Bank, which
16 passed through a correspondent bank account in the United
17 States of America and through the Eastern District of
18 New York.

19 I, on or about November 24, 2013, do Rosario sent
20 Boustani an invoice for \$400,000 for a, quote-unquote, real
21 estate project purchase in Mozambique project, to be paid to
22 the UAE -- bank to the UAE-based bank account of a third
23 party.

24 J, on or about November 26, 2013, Privinvest wired
25 \$400,000 from its UAE bank to a bank in New York City, to the

1 UAE-based bank account specified in the invoice referenced in
2 subparagraph I above, which payment passed through the Eastern
3 District of New York.

4 K, on or about March 31, 2014, do Rosario sent
5 Boustani an invoice for \$1 million from the UAE bank,
6 third-party entity, for construction work in the Mozambican
7 Exclusive Economic Zone, the EEZ.

8 L, on or about April 2nd, 2014, Privinvest wired
9 \$1 million from its UAE-based bank through a bank in New York
10 City and through the Eastern District of New York to the
11 UAE-based bank account specified in the invoice referenced in
12 subparagraph K above.

13 M, on or about April 8, 2014, do Rosario sent
14 Boustani an invoice for \$1.75 million for a real estate
15 project purchase in Mozambique.

16 N, on or about April 9, 2014, Privinvest wired
17 \$1 million from its UAE bank through a bank in New York City
18 and through the Eastern District of New York to the UAE-based
19 bank account specified in the invoice referenced in
20 subparagraph M above.

21 O, on or about May 28, 2014, Privinvest wired
22 \$976,000 to its UAE-based bank account through a bank in New
23 York City and through the Eastern District of New York to the
24 UAE-based bank account specified in the invoice referenced in
25 subparagraph M above.

1 P, on or about April 8, 2014, Boustani sent an
2 e-mail to Najib Allam detailing bribes and kickbacks
3 Privinvest paid or intended to be paid in connection with the
4 Proindicus and EMATUM projects.

5 Q, or on about February 19, 2016, an employee of
6 Credit Suisse e-mailed Surjan Singh two valuation reports
7 regarding the value of the 27 boats sold to EMATUM by
8 Privinvest. Those reports indicated the boats were valued at
9 approximately \$265 million to \$395 million less than the
10 EMATUM loan.

11 R, on or about March 4, 2016, Pearse forwarded to
12 Boustani an e-mail and PowerPoint presentation regarding the
13 exchange. The e-mail described briefing Mozambican officials
14 from the Ministry of Finance regarding potential default in
15 the EMATUM loan and related EMATUM securities in connection
16 with a March 11, 2016 loan interest payment. The e-mail also
17 described briefing Mozambique's Minister of Finance on the
18 road show scheduled to promote the exchange. The presentation
19 set out a proposed road show travel time table, including
20 investor meetings in London and New York.

21 S, on or about March 5, 2016, Boustani replied to
22 Pearse's March 24, 2016 e-mail, stating, Please let's keep
23 do Rosario updated because the option of a default is a
24 position that the president must be aware or take.

25 T, on or about March 14, 2016, Pearse sent an e-mail

1 to Subeva and Boustani regarding potential downgrading of
2 Mozambique's credit rating, stating it's a tactic to get the
3 terms improved for U.S. investors.

4 U, on or March 14, 2016 do Rosario and other
5 co-conspirators flew from London, England to JFK International
6 Airport, in Queens, New York, Eastern District of New York, to
7 attend meetings with investors regarding the exchange of the
8 EMATUM loan participation notes for Eurobonds.

9 V, on or about March 15, 2016, during a meeting in
10 New York City, do Rosario, together with others, provided
11 false and misleading information to investors regarding
12 Mozambique's economic prospects, debt level, and its ability
13 and intention to meet its EMATUM debt obligations to induce
14 them to exchange EMATUM loan participation notes for
15 Eurobonds.

16 To establish the third element, the government need
17 not prove all of the overt acts alleged in the superseding
18 indictment. Similarly, you do -- you need not find the
19 defendant himself committed the overt act. It is sufficient
20 for the government to show one of the conspirators knowingly
21 committed an overt act in furtherance of the conspiracy,
22 since, in the eyes of the law, such an act becomes the act of
23 all the members of the conspiracy.

24 You are further instructed that the overt act need
25 not have been committed at precisely the time alleged in the

1 superseding indictment. It is sufficient, if you are
2 convinced beyond a reasonable doubt, that it occurred at or
3 about the time and place stated. Finally, you must find
4 either the agreement was formed or an overt act was committed
5 in the Eastern District of New York.

6 The fourth element, in furtherance of some
7 objective. The fourth and final element the government must
8 prove beyond a reasonable doubt is that the overt act or acts
9 were committed for the purpose of carrying out the unlawful
10 agreement.

11 In order for the government to satisfy this element,
12 it must prove beyond a reasonable doubt that at least one
13 overt act was knowingly and willfully done by at least one
14 conspirator, in furtherance of some object or purpose of the
15 conspiracy, as charged in the superseding indictment.

16 In this regard, you should bear in mind the overt
17 act, standing alone, may be an innocent, lawful act.
18 Frequently, however, an apparently innocent act shields its
19 harmless character if it is a step in carrying out, promoting,
20 aiding, or assisting the conspiratorial scheme.

21 (Continued on the next page.)
22
23
24
25

1 THE COURT: (Cont'g.) Therefore, you are instructed
2 the overt act does not have to be an act which, in and of
3 itself, is criminal or constitutes an objectives conspiracy.

4 Securities Fraud: Definition and Elements.

5 How are you doing? Okay?

6 Keep rolling? Anybody want a break? No? Okay.

7 I will now define securities fraud, which is alleged
8 to be the object of the conspiracy charged in Count Two of the
9 superseding indictment. The relevant statute is Section 10(B)
10 of the Securities Exchange Act of 1934. That law provides in
11 relevant part:

12 It shall be unlawful for any person, directly or
13 indirectly, by the use of any means or instrumentality of
14 interstate commerce or of the mails, or any facility of any
15 national securities exchange.

16 B. To use or employ, in connection with the
17 purchase or sale of any security registered on a national
18 securities exchange or any security not so registered. Any
19 manipulative or deceptive device or contrivance in
20 contravention of such rules and regulations as the Securities
21 and Exchange Commission may prescribe as necessary or
22 appropriate in the public interest or for the protection of
23 investors.

24 Rule 10B-5, as promulgated by the Securities and
25 Exchange Commission reads as follows:

1 It shall be unlawful for any person, directly or
2 indirectly, by the use of any means or instrumentality of
3 interstate commerce, or of the mails or of any facility of any
4 national securities exchange

5 A. To employ any device, scheme, or artifice to
6 defraud

7 B. To make any untrue statement of a material fact
8 or to omit to state a material fact necessary in order to make
9 the statements made, in the light of the circumstances under
10 which they were made, not misleading, or

11 C. To engage in any act, practice, or course of
12 business which operates or would operate as a fraud or deceit
13 upon any person, in connection with the purchase or sale of
14 any security.

15 To prove the substantive crime of securities fraud,
16 the government must establish each of the following three
17 elements beyond a reasonable doubt.

18 First: Fraudulent act.

19 The first element the government must prove beyond a
20 reasonable doubt is that, in connection with the purchase or
21 sale of a security, the defendant did any one or more of the
22 following three unlawful acts:

23 1. Employed a device, scheme or artifice to
24 defraud;

25 2. Made an untrue statement of a material fact, or

1 omitted to state a material fact that made what was said,
2 under the circumstances, misleading; or

3 3. Engaged in an act, practice or course of
4 business that operated, or would operate, as a fraud or deceit
5 upon a purchaser or seller.

6 In this case, the charged conspiracy to commit
7 securities fraud is related to the domestic purchase or sale
8 of the EMATUM loan participation notes and eurobonds which
9 those notes were exchanged for, both of which are securities,
10 and of which I will refer to as the "EMATUM securities."

11 It is not necessary for the government to establish
12 all three types of unlawful conduct in connection with the
13 sale or purchase of the EMATUM securities. Any one will be
14 sufficient to satisfy this element, if you so find the
15 defendant committed it, you must be unanimous as to which type
16 of unlawful conduct you find to have been proven.

17 I will now explain some of these terms.

18 Device, scheme or artifice to defraud: A device,
19 scheme or artifice to defraud is a plan for the accomplishment
20 of a fraud. Fraud is a general term which embraces all
21 efforts and means that individuals devise to take advantage of
22 others. The law the defendant is alleged to have violated
23 prohibits all kinds of manipulative and deceptive acts.

24 The fraudulent or deceitful conduct alleged need not
25 relate to the investment value of the EMATUM securities.

1 In connection with: The phrase "in connection with"
2 aspect of this element is satisfied if you find there was some
3 nexus or relationship between the allegedly fraudulent conduct
4 and the sale or purchase of securities. Fraudulent conduct
5 may be in connection with the purchase or sale of securities
6 if you find the alleged fraudulent conduct touched upon a
7 securities transaction. You need not find the defendant
8 actually participated in any securities transactions if the
9 defendant was engaged in fraudulent conduct that was in
10 connection with a purchase or sale.

11 Next, a domestic purchase or sale of a security: A
12 securities transaction is domestic when a purchaser commits
13 himself or herself to purchase a security while physically
14 present within the United States, or when a seller commits
15 himself or herself to sell a security while physically present
16 in the United States.

17 It is no defense to an overall scheme to defraud
18 when the defendant was not involved in the scheme from its
19 inception or played only a minor role with no contact with the
20 investors and purchasers of the securities in question; nor is
21 it necessary for you to find the defendant was an actual
22 seller or offeror of the securities. It is sufficient if the
23 defendant participated in the scheme or fraudulent conduct
24 that involved the purchase or sale of securities. By the same
25 token, the government need not prove the defendant personally

1 made the misrepresentation or omitted the material fact that
2 made what was said here under the circumstances misleading.
3 It is sufficient if the government establishes the defendant
4 caused the statement to be made or the fact to be omitted.
5 With regard to the alleged misrepresentations, you must
6 determine whether the statement was true or false when it was
7 made.

8 If you find the government has established beyond a
9 reasonable doubt that a statement was false, you must next
10 determine whether the fact misstated was material under the
11 circumstances. A material fact is one that would have been
12 significant to a reasonable investor's investment decision.

13 In order for you to find a misrepresentation was
14 material, the government must prove beyond a reasonable doubt
15 there was a substantial likelihood the misstated fact would
16 have been viewed by the reasonable investor as having
17 significantly altered the total mix of information available.
18 To alter significantly the total mix of information available,
19 means to affect meaningfully a reasonable investor's
20 consideration about whether to buy or to sell and at what
21 price. However, to be material, a misstatement need not
22 determine any particular outcome.

23 This is not to say that the government must prove
24 the misrepresentation would have deceived a person of ordinary
25 intelligence. Once you find that there was a material

1 misrepresentation, it does not matter whether the intended
2 victims were gullible buyers or sophisticated investors,
3 because the securities laws protects the gullible and
4 unsophisticated as well as the experienced investor.

5 Nor does it matter whether the alleged unlawful
6 conduct was successful or not, nor whether the defendant
7 profited or received any benefits as a result of the alleged
8 scheme. Success is not an element of the crime charged.
9 However, if you find the defendant did profit from the alleged
10 scheme, you may consider that in relation to the third element
11 of intent, which I will discuss in a moment.

12 The second element - knowledge, intent, and
13 willfulness.

14 The second element the government must prove beyond
15 a reasonable doubt is that the defendant participated in the
16 scheme to defraud knowingly, willfully, and with intent to
17 defraud.

18 As I explained before, to act knowingly means to act
19 voluntarily and deliberately, rather than mistakenly or
20 inadvertently.

21 To act willfully means to act knowingly and
22 purposely, with an intent to do something the law forbids;
23 that is to say, with bad purpose either to disobey or to
24 disregard the law.

25 Intent to defraud in the context of the securities

1 laws means to act knowingly and with the intent to deceive.

2 The question of whether a person acted knowingly,
3 willfully and with intent to defraud is a question of fact for
4 you the jury to determine, like any other question of fact,
5 and this question involves one's state of mind.

6 Direct proof of knowledge and fraudulent intent is
7 almost never available. It would be a rare case where it
8 could be shown a person wrote or stated that as of a given
9 time in the past, he committed an act with fraudulent intent.
10 Such direct proof is not required.

11 The ultimate facts of knowledge and criminal intent,
12 though subjective, may be established by circumstantial
13 evidence, based upon a person's outward manifestations, his
14 words, his conduct, his acts and all the surrounding
15 circumstances disclosed by the evidence and the rational for
16 logical inferences that you may draw and may be drawn
17 therefrom.

18 Since an essential element of the crime charged is
19 intent to defraud, it follows that good faith on the part of a
20 defendant is a complete defense to a charge of securities
21 fraud. A defendant, however, has no burden to establish a
22 defense of good faith. The burden is on the government to
23 prove fraudulent intent and consequent lack of good faith
24 beyond a reasonable doubt.

25 Under the anti-fraud statutes, even false

1 representations or statements do not amount to a fraud, unless
2 done with fraudulent intent; however misleading or deceptive a
3 plan may be, it is not fraudulent if it was devised or carried
4 out in good faith. An honest belief in the truth of the
5 representations made by a defendant is a good defense, however
6 inaccurate the statements may have turned out to be.

7 In consideration and in considering whether or not a
8 defendant acted in good faith, you are instructed that a
9 belief by the defendant, if such belief existed, that
10 ultimately everything would work out so that no one would lose
11 any money does not require a finding by you that he acted in
12 good faith. No amount of honest belief on the part of a
13 defendant that the scheme will, for example, ultimately make a
14 profit for the investors, will excuse fraudulent actions or
15 false representations by the defendant to obtain money.

16 As a practical matter, then, in order to sustain the
17 charges against the defendant, the government must establish
18 beyond a reasonable doubt the defendant knew his conduct as a
19 participant in the scheme was intended, calculated, and
20 designed to deceive and nevertheless, he associated himself
21 with the alleged fraudulent scheme.

22 The government may prove the defendant acted
23 knowingly in either of two ways. First, it is sufficient, of
24 course, if the evidence satisfies you beyond a reasonable
25 doubt the defendant was actually aware that he was making or

1 causing a false statement to be made. Alternatively, the
2 defendant's knowledge may be established by proof the
3 defendant was aware of a high probability that the statement
4 was false, unless, despite this high probability, the facts
5 show the defendant actually believed the statement to be true.

6 Thus, you may find the defendant knew the statement
7 was false if you conclude beyond a reasonable doubt that he
8 made it with deliberate disregard of whether it was true or
9 false and with a conscious purpose to avoid learning the
10 truth. If you find beyond a reasonable doubt the defendant
11 acted with deliberate disregard for the truth, the knowledge
12 required would be satisfied unless the defendant actually
13 believed the statement to be true. This guilty knowledge,
14 however, cannot be established by demonstrating merely
15 negligence or foolishness on the part of the defendant.

16 The third element - instrumentality of interstate
17 commerce.

18 The third and final element the government must
19 prove beyond a reasonable doubt is that the defendant
20 knowingly used, or caused to be used, the mails or any means
21 or instrumentalities of transportation or communication in
22 interstate commerce in furtherance of the scheme to defraud.

23 It is not necessary that a defendant be directly or
24 personally involved in any mailing, wire, or use of an
25 instrumentality of interstate commerce. If the defendant was

1 an active participant in the scheme and took steps or engaged
2 in conduct which he knew or reasonably could foresee would
3 naturally and probably result in the use of interstate means
4 of communication, then you may find he caused the mails or
5 other instrumentalities of interstate commerce to be used.

6 When one does an act with the knowledge that the use
7 of interstate means of communication will follow in the
8 ordinary course of business, or where such use reasonably can
9 be foreseen, even though not actually intended, then he causes
10 such means to be used.

11 It is not necessary that the items sent through the
12 interstate commerce, interstate means of communication contain
13 the fraudulent material, or anything criminal or
14 objectionable. The interstate means of communication may be
15 entirely innocent.

16 The use of interstate communications need not be
17 central to the execution of the scheme, and may even be
18 incidental to it. All that is required is that the use of the
19 interstate communications bear some relation to the object of
20 the scheme or fraudulent conduct. In fact, the actual offer
21 or sale need not be accomplished by the use of interstate
22 communications, so long as a defendant is still engaged in
23 actions that are a part of the fraudulent scheme.

24 I remind you Count Two does not allege, and the
25 government need not prove, that a securities fraud was

1 committed for you to find the defendant guilty of this count.
2 Rather, Count Two charges the defendant with conspiring to
3 commit securities fraud.

4 Let me address the point of venue.

5 I have explained to you the elements the government
6 must prove beyond a reasonable doubt as to Count Two. The
7 government also must prove venue. As I explained to you
8 earlier, the government must prove venue by a preponderance of
9 the evidence.

10 To establish venue for securities fraud conspiracy
11 as charged in Count Two, the government must prove it is more
12 likely than not that an overt act in furtherance of the
13 conspiracy was committed in the Eastern District of New York.
14 The overt act does not have to be an overt act that is charged
15 in the superseding indictment in furtherance of the
16 conspiracy. In this regard, the government need not prove the
17 defendant, or any alleged coconspirator, was even physically
18 present here. It is sufficient to satisfy the venue
19 requirement if an overt act in furtherance of a conspiracy
20 occurred within the Eastern District of New York. This
21 includes not just acts by the defendant or his coconspirators,
22 but also acts that the coconspirators caused others to take
23 that materially furthered the ends of the conspiracy.

24 Therefore, if you find it is more likely than not
25 that an overt act in furtherance of the conspiracy took place

1 in the Eastern District of New York, the government has
2 satisfied its burden of proof as to venue as to Count Two.

3 Again, I caution you the preponderance of the
4 evidence standard applies only to venue. The government must
5 prove each of the elements of Count Two beyond a reasonable
6 doubt.

7 Count Four: Money laundering conspiracy

8 Count Four charges the defendant with conspiracy to
9 commit money laundering:

10 In or about and between January 2013 and December
11 2018, both dates being approximate and inclusive, within the
12 Eastern District of New York and elsewhere, the defendant Jean
13 Boustani, together with others, did knowingly and
14 intentionally conspire to transport, transmit and transfer
15 monetary instruments and funds to one or more places outside
16 the United States from one or more places inside the United
17 States, and to one or more places inside the United States
18 from one or more places outside the United States with the
19 intent to promote the carrying on of one or more specified
20 unlawful activities, to wit: a violation of the Foreign
21 Corrupt Practices Act, the FCPA, Title 15, United States Code,
22 Sections 78DD-1, 78M(B) (2) (B), 78M(B) (5) and 78FF(A);

23 (II) Offenses against a foreign nation involving
24 the bribery of a public official, in violation of Mozambican
25 law, as defined in Title 18, United States Code,

1 Section 1956(C) (7) (B) (IV);

2 (III) Wire fraud, in violation of Title 18, United
3 States Code, Section 1343; and

4 (IV) Fraud in the sale of securities, in violation
5 of Title 15, United States Code, Sections 78J(B) and 78FF
6 collectively the specified unlawful activities contrary to
7 Title 18, United States Code, Section 1956(A) (2) (A); and

8 B. Knowing that the monetary instruments and funds
9 involved in the transportation, transmission and transfer
10 represented the proceeds of some form of unlawful activity,
11 and knowing that such transportation, transmission and
12 transfer was designed in whole and in part to conceal and
13 disguise the nature, location, source, ownership and control
14 of the proceeds of one or more specified unlawful activities,
15 to wit: the specified unlawful activities, contrary to
16 Title 18, United States Code, Section 1956(A) (2) (B) (I).

17 A. Conspiracy to commit money laundering

18 I have already explained the law of conspiracy to
19 you. Those instructions apply equally to Count Four. Thus,
20 in order to prove the crime of money laundering conspiracy as
21 charged in Count Four, the government must establish the
22 following elements of the crime beyond a reasonable doubt:

23 First, two or more persons entered into an agreement
24 to launder money.

25 Second, the defendant knowingly and willfully became

1 a member of the conspiracy.

2 Like the conspiracy charged in Count One, no overt
3 act is required to prove the conspiracy charged in Count Four.

4 B. Object of the money laundering conspiracy

5 Count Four charges a conspiracy with two objects;

6 First, to transport, to transmit, or to transfer

7 monetary instruments or funds from a place in the United

8 States to or through a place outside the United States or to a

9 place in the United States from or through a place outside the

10 United States, with the intent to promote the carrying on of

11 one or more of the following specified unlawful activities:

12 1. A violation of the Foreign Corrupt Practices

13 Act;

14 2. Offenses against a foreign nation involving the

15 bribery of a public official, in violation of Mozambican law;

16 3. Wire fraud; and

17 4. Securities fraud.

18 Second, to transport, to transmit or to transfer

19 monetary instruments or funds from a place in the United

20 States to or through a place outside the United States or to a

21 place in the United States from or through a place outside the

22 United States, knowing the monetary instruments or funds

23 involved in the transportation, transmission, or transfer

24 represent proceeds of some form of unlawful activity and

25 knowing the transportation is designed, in whole or in part,

1 to conceal or disguise the nature location, source, ownership
2 or control of the proceeds of the specified unlawful
3 activities.

4 The government does not need to prove both objects
5 of the conspiracy in order for you to find the defendant
6 guilty of Count Four. The government need only prove one
7 object beyond a reasonable doubt, so long as you are unanimous
8 as to which object has been proved.

9 Object one, promotion.

10 The first object of the money laundering conspiracy
11 charged in Count Four is to promote the carrying on of one or
12 more of the specified unlawful activities. Some of the terms
13 I will use require some definition as follows:

14 Monetary instrument: A monetary instrument
15 includes, among other things, coins, currency of the United
16 States or any other country, personal checks, travelers
17 checks, cashier's checks, bank checks, money orders, or
18 investment securities or negotiable instruments in bearer form
19 or otherwise in such a form that title thereto passes on
20 delivery.

21 Funds: The term funds refers to money or negotiable
22 paper that can be converted into currency.

23 Specified unlawful activity: A specified unlawful
24 activity is any one of a variety of offenses defined by the
25 statute. In this case, the government has alleged the

1 specified unlawful activities are:

2 1. A violation of the FCPA;

3 2. Offenses against a foreign nation involving the
4 bribery of a public official, in violation of Mozambican law;

5 3. Wire fraud; and

6 4. Securities fraud.

7 I will explain each of these offenses, the specified
8 unlawful activities in a few moments. I instruct you now
9 that, as a matter of law, those offenses each falls within the
10 definitions of specified unlawful activity. However, it is
11 for you the jury to determine whether the funds were, in fact,
12 the proceeds of one or more of the specified unlawful
13 activities.

14 The relevant statute, Section 1956 of Title 18,
15 United States Code, deals with participation in international
16 money laundering. Specifically, Section 1956(A)(2)(A)
17 provides:

18 Whoever, transports, transmits, or transfers, or
19 attempts to transport, transmit, or transfer a monetary
20 instrument or funds from a place in the United States to or
21 through a place outside the United States or to a place in the
22 United States from or through a place outside the United
23 States with the intent to promote the carrying on of specified
24 unlawful activity shall be guilty of a crime.

25 In order to prove the crime of unlawful

1 transportation of funds or monetary instruments with the
2 intent to promote the carrying on of specified unlawful
3 activity in violation of Section 1956(A)(2)(A), the government
4 must establish beyond a reasonable doubt each of the following
5 elements:

6 First, the defendant transported, transmitted, or
7 transferred, or attempted to transport, transmit, or transfer
8 a monetary instrument or funds from a place in the United
9 States to or through a place outside the United States or to a
10 place in the United States from or through a place outside the
11 United States.

12 Second, the defendant did so with the intent to
13 promote the carrying on of one or more of the specified
14 unlawful activities, here a violation of the FCPA; offenses
15 against a foreign nation involving the bribery of a public
16 official, in violation of Mozambican law; wire fraud; and
17 securities fraud. To act intentionally means to act
18 deliberately and purposefully, not by mistake or accident,
19 with the purpose of promoting, facilitating, or assisting the
20 carrying on of the specified unlawful activities.

21 Next, object two: concealment.

22 The second object of the money laundering conspiracy
23 charged in Count Four is to transport, to transmit, or to
24 transfer a monetary instrument or funds from a place in the
25 United States to or through a place outside the United States

1 or to a place in the United States from or through a place
2 outside the United States knowing the monetary instrument or
3 funds involved represented the proceeds of some form of
4 unlawful activity and knowing such transportation was designed
5 in whole or in part to conceal or disguise the nature, the
6 location, the source, the ownership or the control of the
7 proceeds of the specified unlawful activity.

8 Section 1956(A)(2)(B)(I) states:

9 Whoever transports, transmits, or transfers, or
10 attempts to transport, transmit, or transfer a monetary
11 instrument or funds from a place in the United States to or
12 through a place outside the United States or to a place in the
13 United States from or through a place outside the United
14 States knowing that the monetary instrument or funds involved
15 in the transportation, transmission, or transfer represents
16 the proceeds of some form of unlawful activity and knowing
17 that such transportation is designed in whole or in part to
18 conceal or disguise the nature, the location, the source, the
19 ownership, or the control of the proceeds of the specified
20 unlawful activity shall be guilty of a crime.

21 In order to prove the crime of knowing
22 transportation of unlawful funds or monetary instruments in
23 violation of Section 1956(A)(2)(B), the government must
24 establish beyond a reasonable doubt each of the following
25 elements:

1 First, the defendant transported, transmitted, or
2 transferred, or attempted to transport, transmit, transfer a
3 monetary instrument or funds from a place in the U.S. to or
4 through a place outside the U.S. or to a place in the U.S.
5 from or through a place outside the U.S.

6 Second, the defendant did so with the knowledge the
7 monetary instrument or funds involved were the proceeds of
8 some form of unlawful activity. This element refers a
9 requirement that the defendant knew the property involved
10 represented the proceeds from some form, though not
11 necessarily which form, of activity that constitutes an
12 offense under United State's federal or foreign law. The term
13 proceeds means any property derived from or obtained or
14 retained, directly or indirectly, through some form of
15 unlawful activity, including the gross receipts of such
16 activity.

17 Third, the defendant did so with the knowledge the
18 transportation was designed to conceal or to disguise the
19 nature, location, source, ownership or control of the proceeds
20 of one or more of the specified unlawful activities; namely, a
21 violation of the FCPA; offenses against a foreign nation
22 involving the bribery of a public official, in violation of
23 Mozambican law; wire fraud; and securities fraud, and the
24 defendant knew this was the purpose of the transportation.

25 Specified unlawful activities:

1 As I explained before, Count Four charges a money
2 laundering conspiracy in connection with one or more of the
3 specified unlawful activities, namely:

4 1. Violations of the anti-bribery provisions and/or
5 the internal controls provisions of the FCPA;

6 2. Offenses against a foreign nation involving the
7 bribery of a public official, in violation of various
8 Mozambican laws;

9 3. Wire fraud; and

10 4. Securities fraud.

11 As I discussed earlier, you need not find that the
12 defendant acted to conceal or disguise the proceeds of or
13 promote all these specified unlawful activities; you need only
14 find that the defendant acted to conceal or disguise the
15 proceeds of or promote one of these specified unlawful
16 activities.

17 1. Violation of the FCPA.

18 The first specified unlawful activity charged in
19 Count Four is a violation of the FCPA. I will now explain two
20 separate sets of FCPA provisions, the anti-bribery provisions
21 and the internal controls provisions. A violation of either
22 provision is a violation of a specified unlawful activity.

23 Violation of the FCPA's anti-bribery provisions, 15
24 U.S.C. 78DD-1.

25 For an individual to be found guilty of a violation

1 of the anti-bribery provisions of the FCPA, the government
2 must prove the following seven elements beyond a reasonable
3 doubt:

4 First, the individual was an officer, director,
5 employee, or agent of an issuer, or a stockholder thereof
6 acting on behalf of such an issuer;

7 Second, the individual acted corruptly and
8 willfully;

9 Third, the individual made use of or caused another
10 to make use of the mails or any means or instrumentality of
11 interstate commerce, such as email, in furtherance of the
12 offense;

13 Fourth, the individual offered, paid, promised to
14 pay, or authorized the payment of money or gift or anything of
15 value;

16 Fifth, the offer, the promise to pay, or
17 authorization of the payment of money or a gift or anything of
18 value was either:

19 A. To a foreign official, or

20 B. To any person or entity while the individual
21 knew that all or a portion of the payment would be offered,
22 given, or promised, directly or indirectly, to a foreign
23 official;

24 Sixth, the payment was intended for any one of three
25 purposes relevant to this action:

1 A. To influence any act or decision of a foreign
2 public official in his official capacity;

3 B. To induce such a foreign official to do or omit
4 to do any act in violation of the lawful duty of such foreign
5 official; or

6 C. To secure any improper advantage; and

7 Seventh, the payment was to assist the issuer in
8 obtaining or retaining business for or with, or directing
9 business to, any person or company.

10 First element, the issuer

11 The first element the government must prove beyond a
12 reasonable doubt is that the individual was an officer,
13 director, employee, or agent of an issuer, or a stockholder of
14 an issuer who was acting on behalf of that issuer.

15 An issuer is defined to include any entity which has
16 a class of securities registered pursuant to Section 78L of
17 Title 15 of the United States Code or which is required to
18 file reports under section 780(D) of Title 15. An entity that
19 has common stock registered with the SEC pursuant to Section
20 12(B) of the Securities Exchange Act of 1934 or American
21 depository shares trade on the U.S. Stock Exchange, such as
22 the New York Stock Exchange, is an issuer under the FCPA.
23 Likewise, an entity that files periodic reports, including
24 form 20-F with the SEC pursuant to Section 13 or 15(D) of the
25 Exchange Act and related rules thereunder is an issuer under

1 the FCPA.

2 The words officer, director, and employee have their
3 ordinary meaning. An agent is a person who by express or
4 implicit agreement with another person or entity, called the
5 principal, undertakes to represent, or act on behalf of, the
6 principal in performing some service for the principal. Joint
7 participation in a partnership or joint venture, whether
8 formal or informal, suffices to make each partner or joint
9 venturer an agent of the others.

10 An agent is acting within the scope of the agent's
11 authority if the agent is engaged in the performance of duties
12 that were expressly or implicitly assigned to the agent by the
13 principal.

14 Proof of agency need not be in the form of a formal
15 agreement between agent and principal; rather, it may be
16 inferred circumstantially and from the words and actions of
17 the parties involved.

18 The second element: Corruptly and willfully

19 The second element the government must prove beyond
20 a reasonable doubt is that the individual acted corruptly and
21 willfully.

22 A person acts corruptly if he or she acts
23 voluntarily and intentionally, with a bad purpose or evil
24 motive of accomplishing either an unlawful end or result, or a
25 lawful end or result by some unlawful method or means. The

1 term corruptly in the Foreign Corrupt Practices Act means the
2 offer, payment, or promise was intended to induce or influence
3 the foreign official to misuse his or her official position.

4 As I have already instructed you regarding the term
5 willfully that instruction applies here.

6 The third element: Interstate commerce

7 The third element the government must prove beyond a
8 reasonable doubt is that the individual, or someone acting at
9 his or her direction or with his or her authorization, made
10 use of the mails or any means or instrumentality of interstate
11 commerce in furtherance of the offense.

12 The term interstate commerce means trade, commerce,
13 transportation, or communication among the several states, or
14 between any foreign country and any state or between any state
15 and any place outside thereof. This term includes the
16 interstate use of a telephone, email, service provider, or
17 other interstate means of commerce, or any other interstate
18 instrumentality, such as a fax machine, car, or plane. I
19 instruct you that sending wire transfers to a bank in the
20 United States constitutes the use of a means or
21 instrumentality of interstate commerce.

22 Fourth element: Promise or authorization to pay

23 The fourth element the government must prove beyond
24 a reasonable doubt is that the individual offered, paid,
25 promised to pay, or authorized the payment of money or gift or

1 anything of value. A thing of value can take any form,
2 whether cash, check, wire transfer, gift, donation,
3 contribution, or anything else.

4 It is not necessary that the bribe, or offer or
5 promise of a bribe, was intended to be made directly by the
6 individual to the foreign official. A person who engages in
7 bribery of a foreign official indirectly through any other
8 person or entity is liable under the FCPA, just as if the
9 person had engaged in bribery directly. Thus, if the person
10 authorizes another to pay or promise a bribe, that
11 authorization alone is sufficient for you to find this element
12 has been proven.

13 Further, it is not necessary that the payment
14 actually take place or that the gift actually be given.
15 Instead, it is the offer, promise, or authorization of the
16 bribe that completes the crime. Thus, this element is
17 satisfied if the person offered, promised, or authorized an
18 unlawful payment or gift, even if the payment was not actually
19 made or the gift was not actually given.

20 The fifth element: Payment to a foreign official

21 The fifth element the government must prove beyond a
22 reasonable doubt is that the offer, payment, promise to pay,
23 or authorization of the payment of money or anything of value
24 was either to a foreign official, or to any other person or
25 entity, while the individual knew that all or a portion of the

1 payment or gift would be offered, given, or promised, directly
2 or indirectly, to a foreign official.

3 The term foreign official means any officer or
4 employee of a foreign government or any department, agency, or
5 instrumentality thereof, or any person acting in an official
6 capacity for or on behalf of any such government or
7 department, agency, or instrumentality. As a matter of law,
8 the government of the Republic of Mozambique qualifies as a
9 foreign government.

10 With respect to the directors and employees of
11 Proindicus, EMATUM, or MAM, in order for you to find them to
12 be foreign officials, you must find Proindicus, EMATUM or MAM
13 was a government instrumentality. An instrumentality of a
14 foreign government is an entity controlled by the government
15 of a foreign country that performs a function the controlling
16 government treats as its own. State-owned or state-controlled
17 companies that provide services to the public may meet this
18 definition.

19 To decide if Proindicus, EMATUM, and/or MAM is an
20 instrumentality of the government of Mozambique, you may
21 consider the following factors as they existed during the
22 relevant time period:

23 A. Whether the government of Mozambique had a
24 majority interest in Proindicus, EMATUM, and/or MAM;

25 B. The circumstances surrounding Proindicus,

1 EMATUM, and/or MAM's creation;

2 C. Whether Proindicus, EMATUM, and/or MAM provided
3 services to the citizens and inhabitants of Mozambique;

4 D. The degree to which the government of Mozambique
5 effectuated certain national policies or priorities through
6 Proindicus, EMATUM, and/or MAM;

7 E. Whether Proindicus, EMATUM, and/or MAM's key
8 officers or directors were government officials or were
9 appointed by government officials;

10 F. Whether the government had the power to fire key
11 officers or directors for any of these entities;

12 G. Whether Proindicus, EMATUM, and/or MAM had a
13 monopoly over the functions it exists to carry out;

14 H. The degree to which Proindicus, EMATUM, and/or
15 MAM was subject to government controls and oversight,
16 including with regard to fiscal matters and conduct of public
17 officials;

18 I. Proindicus, EMATUM, and/or MAM's obligations and
19 privileges under the law of Mozambique;

20 J. The characterization of Proindicus, EMATUM,
21 and/or MAM and their directors and employees by the government
22 of Mozambique;

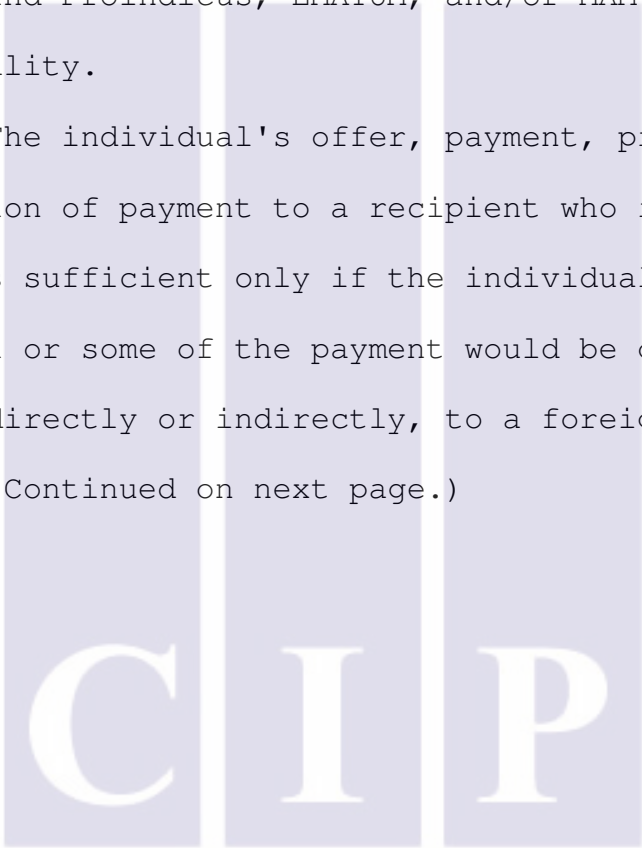
23 K. Whether Proindicus, EMATUM, and/or MAM were
24 widely perceived and understood to be performing official or
25 government functions; and

1 L. The length of time these indicia have existed.
2 These factors are not exclusive, and no single
3 factor will determine whether Proindicus, EMATUM, and/or MAM
4 was an instrumentality of Mozambique. In addition, you do not
5 need to find all the factors listed above weigh in favor of
6 Proindicus, EMATUM, and/or MAM being an instrumentality in
7 order to find Proindicus, EMATUM, and/or MAM was an
8 instrumentality.

9 The individual's offer, payment, promise to pay, or
10 authorization of payment to a recipient who is not a foreign
11 official is sufficient only if the individual acted while
12 knowing all or some of the payment would be offered, given, or
13 promised, directly or indirectly, to a foreign official.

14 (Continued on next page.)

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1 THE COURT: For purposes of the Federal Corrupt
2 Practices Act, a persons state of mind is knowing with respect
3 to conduct, a circumstance, or a result, A, if such person is
4 aware that such person is engaging in such conduct, that such
5 circumstance exists, or that such result is substantially
6 certain to occur; or such person has a firm belief that such
7 circumstance exists or that such result is substantially
8 certain to occur.

9 For purposes of the FCPA, a person is deemed to have
10 knowledge of a circumstance if the evidence shows he or she
11 was aware of a high probability of the existence of such
12 circumstance, unless he or she actually believes that such
13 circumstance does not exist.

14 Sixth element. Purpose of the payment or offer.
15 The sixth element the government has to prove beyond a
16 reasonable doubt is that the payment or offer was intended for
17 one of three purposes relevant to this action. To influence
18 any act or decision of a foreign official in his official
19 capacity. To induce such a foreign official to do or omit to
20 do any act in violation of the lawful duty of such foreign
21 official. Or, C, to secure any improper advantage.

22 The government need not prove the offer to pay,
23 payment, promise to pay, or authorization of payment was for
24 all of these purposes. If the government proves the offer to
25 pay, payment, promise to pay, or authorization of payment was

1 for any one, or more than one, of these purposes, this element
2 has been met. However, one of these purposes must have been
3 the reason for the offer, payment, gift, or promise.

4 Seventh element. Obtaining or retaining business.
5 The seventh element the government must prove beyond a
6 reasonable doubt is that the payment was made to assist the
7 issuer, referenced in connection with the first element, in
8 obtaining or retaining business for or with, or directing
9 business to, any person or company. It is not necessary for
10 the government to prove any person or company actually
11 obtained or retained any business whatsoever as a result of an
12 unlawful offer, payment, gift, promise, only that the
13 individual intended to assist in obtaining or retaining
14 business for or with any person or company. Moreover, this
15 element is not limited to obtaining or to renewing contracts
16 or other business. It also includes the execution or
17 performance of contracts, or the carrying out of existing
18 business.

19 Solicitation of bribe. Not a defense. It does not
20 matter who suggested a corrupt offer, payment, promise, or
21 gift be made. The FCPA prohibits any corrupt offer, payment,
22 promise, or gift, if made for one the purposes I described,
23 regardless of who first suggested it. It is not a defense if
24 the offer, promise, payment, or gift was first suggested or
25 requested by someone other than the individual, or demanded on

1 the part of a foreign official as a price for continuing to do
2 business or other benefit, or that the business may have been
3 harmed if the payment wasn't made. That the recipient may
4 have first suggested the offer to pay, payment, promise to
5 pay, or authorization of payment does not excuse an
6 individuals decision to make a corrupt payment, nor does it
7 alter the corrupt purpose for which the offer to pay, payment,
8 promise to pay, or authorization of payment was made.

9 Violations of the FCPA's internal controls
10 provisions, 15 USC 78m, in order to prove an individual guilty
11 of this offense, the government must prove the following two
12 elements beyond a reasonable doubt.

13 First, the individual circumvented a system of
14 internal accounting controls of an issuer. And, second, the
15 individual acted knowingly and willfully.

16 The first element. Internal controls, accounting
17 controls. The first element the government must prove beyond
18 a reasonable doubt is that the individual circumvented a
19 system of internal accounting controls of an issuer. Every
20 issuer, which I have defined already for you in relation to
21 the previous alleged violation of the FCPA, is required by the
22 law to devise and maintain a system of internal accounting
23 controls sufficient to provide a reasonable assurance that,
24 among other things, transactions of the issuer are executed in
25 accordance with managements general or specific authorization.

1 A person circumvents such a system by evading these controls.

2 Second element. Knowingly and willfully. The
3 second element the government must prove beyond a reasonable
4 doubt is that the individual acted knowingly and willfully. I
5 have previously instructed you regarding these terms and the
6 same instructions apply here.

7 Next, bribery of a foreign official in violation of
8 the laws of Mozambique.

9 MR. BINI: Your Honor?

10 THE COURT: Yes.

11 MR. BINI: May we briefly approach at sidebar.

12 THE COURT: You may.

13 (Sidebar conference.)

14 (Continued on the next page.)

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1 (WHEREUPON, the following proceedings were had at
2 sidebar, out of the presence of the open courtroom, to wit:)

3 THE COURT: I am listening.

4 MR. BINI: Your Honor, with respect to the
5 Mozambican law instruction, there was a letter of the parties
6 that went in regarding removing the prior Mozambican law
7 regime. And so while you removed the older piece of law, I
8 think on pages 123 and 124, there's a reference to the older
9 law. And so we wanted to ask to have that reference removed
10 from the jury instructions, just to make it easier.

11 I apologize for not raising it earlier. We were
12 just reading as it came along.

13 THE COURT: Can you fix it?

14 THE LAW CLERK: Yes. I will do that right now.

15 THE COURT: Any objection?

16 MR. JACKSON: Your Honor, we have no objection.
17 Given that change, and just given how much of the FCPA
18 instruction has been given, we would just also ask for the
19 Court to give a very brief instruction at the very end just to
20 remind the jury that the defendant is not charged with
21 violating the FCPA, but, rather, that it is an SUA.

22 THE COURT: Write it out.

23 MR. JACKSON: Thank you.

24 THE COURT: Do your thing.

25 MR. BINI: Thank you, Your Honor.

1 (Short pause.)

2 THE COURT: Do you have agreed upon language for
3 what you want, and what you want, or no?

4 MR. JACKSON: We agree with the government's change,
5 Your Honor.

6 THE COURT: Do they agree with your change?

7 MR. BINI: I would -- I think that it is clear from
8 the instructions, Your Honor, that the SUAs are related just
9 to the money laundering count. So I don't think it is
10 necessary for you to say Mr. Boustani's not charged with
11 violating the FCPA.

12 The government wouldn't object if you wanted to
13 repeat the SUAs just relate --

14 THE COURT: Why don't you two give me the language
15 you agree on, and if you are not going to agree, then I will
16 make a ruling. Try to agree on language that can go in so we
17 can get this done.

18 MR. BINI: Okay. Yes, Your Honor.

19 (Short pause.)

20 THE COURT: Do you have the language agreed upon, or
21 no?

22 MR. JACKSON: No, Your Honor.

23 THE COURT: All right. Then I am going to overrule
24 your objection, and I am going to go with the language you
25 have agreed on. Have you got the language they agreed on?

1 Give that to me.

2 And your record is reserved.

3 MR. BINI: Thank you, Judge.

4 MR. JACKSON: Thank you.

5 MR. SCHACHTER: Thank you, Judge.

6 (Sidebar conference ends.)

7 (Continued on the next page.)

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1 (Open court; jury present.)

2 THE COURT: Back on the record.

3 Madam Court Reporter, what's the last thing you have
4 before the break?

5 (WHEREUPON, the record was read by the reporter, as
6 requested.)

7 THE COURT: Okay. You now know what all those
8 breaks were about during the last six weeks that I spared you
9 from.

10 All right. As I was saying, we are almost done.

11 Bribery of foreign officials in violation of the
12 laws of Mozambique.

13 As noted above, the second specified unlawful
14 activity charged in count four is an offense against a foreign
15 nation involving the bribery of a public official, in
16 violation of the laws of the republic of Mozambique. The laws
17 of Mozambique prohibit bribery and corruption involving public
18 officials. A violation of any one of the laws detailed below
19 is a violation of a specified unlawful activity.

20 Article 7 of Law 6/2004. Article 7 of Law 6/2004
21 prohibited the solicitation of bribes or other advantages by
22 public officials. In order for an individual to be found to
23 be in violation of Article 7 of Law 6/2004, the following
24 three elements must be proven. First, at the time of the
25 offense, the violator was either a public official or

1 employee, or any person who brought about, contributed to, or
2 profited from the violation by a public official or employee.

3 Second, the violator himself or herself or through
4 an intermediary, with his or her consent and approval,
5 requested or received money, or the promise of money, or any
6 monetary benefit that is not due them.

7 Third, the purpose of the request for money, the
8 promise of money, or other benefit was for the public official
9 or employee to perform or fail to perform an act in violation
10 of the duties of his or her office.

11 Article 321 of the 1886 penal code. Article 321 of
12 the 1886 penal code prohibited someone from giving a bribe to
13 a public official in return for an act or omission that
14 violated his or her duties. For an individual to be found in
15 violation of Article 321 of the 1886 penal code, the following
16 two elements must be proven. First, an individual gave,
17 offered, or promised a kickback or gift to a public employee.
18 Second, the purpose of giving, offering or promising the
19 kickback or gift was for the public employee to perform or
20 fail to perform an act that violated the duties of his or her
21 office.

22 Public officials and employees. The terms public
23 official and public employee, as they are used in the
24 Mozambican laws about which I have just advised you, include
25 the president of the Republic of Mozambique, any officer or

1 employee of the government of Mozambique, and any director or
2 employee of a government agency or publicly owned company.
3 These terms also include any minister, including the minister
4 of finance, and any vice-minister, including the vice-minister
5 of finance, unless the public official or employee is the
6 violator, in which case Law 7/98 applies to all conduct during
7 the relevant time period indicated in the superseding
8 indictment.

9 I will explain Law 7/98 in a moment. However, if it
10 is another individual who is bribing a minister or
11 vice-minister, then the laws I have just explained apply.

12 Article 8 of Law 7/98. Article 8 of Law 7/98
13 prohibits individuals holding specifically identified
14 positions in the government of Mozambique, including ministers
15 and vice-ministers, from giving, soliciting, or receiving
16 bribes or other benefits. Where individuals holding these
17 specific positions, like the minister or vice-minister of
18 finance, are the violators, then Law 7/98 would apply instead
19 of those I have previously described.

20 To find a minister or vice-minister violated Law 8
21 of 7/98, the following three elements must be proven. First,
22 at the time of the offense, the violator was either a minister
23 or vice-minister. Second, the minister or vice-minister
24 either received a kickback or gift, personally or through an
25 intermediary, or gave, offered or promised a kickback or gift

1 to another public employee. Third, the kickback or gift, or
2 offer or promise of a kickback or gift was for one of the
3 following purposes. In the case of the minister or
4 vice-minister receiving the kickback or gift, it was in return
5 for the minister or vice-minister either performing an act
6 that violated the duties of his or her office or failing to
7 perform an act that was consistent with the duties of his or
8 her office. Or, two, in the case of the minister or
9 vice-minister giving, offering or promising a kickback or gift
10 to another public employee, it was in return for that public
11 employee either performing an act that violated the duties of
12 his or her office or failing to perform an act that was
13 consistent with the duties of his or her office.

14 Article 40 of Law 16/2012. Article 40 of Law
15 16/2012 states, public employees and officials have, among
16 other duties, a duty not to use their office or position for
17 their own unjust enrichment by receiving money or other
18 advantages from anyone who has an interest in an act or
19 omission attributable to the public employees job attributes.
20 This provision applies to all public employees or officials I
21 have described, including the president of the republic,
22 ministers, vice-ministers, any officer or employee of the
23 government of Mozambique, and any director or employee of a
24 government agency or publicly-owned company.

25 Wire fraud. The third specified unlawful activity

1 charged in Count 4 is wire fraud. The elements of which I
2 have previously explained.

3 Securities fraud. The fourth specified unlawful
4 activity charged in Count 4 is securities fraud. The elements
5 of which I also explained earlier.

6 Again, I remind you that Count4 does not allege, and
7 the government need not prove, money laundering was actually
8 committed in order for you to find the defendant guilty of
9 this count. Rather, Count 4 charges the defendant with
10 conspiring to commit money laundering.

11 Venue. I have explained to you the elements the
12 government must prove beyond a reasonable doubt as to Count 4.
13 For Count 4, the government must also prove venue, which I
14 have previously explained must be established by a
15 preponderance of the evidence. To establish venue for money
16 laundering conspiracy in Count 4, the government must prove it
17 is more likely than not that an act in furtherance of the
18 conspiracy occurred, at least in part, in the Eastern District
19 of New York.

20 Again, I instruct you the government need not prove
21 the crime itself was committed in the Eastern District of New
22 York or the defendant himself was present here. It is
23 sufficient to say the venue requirement if an act in
24 furtherance of the crime occurred within the Eastern District
25 of New York. If you find the government has failed to prove

1 it is more likely than not that an act in furtherance of the
2 crime occurred within the Eastern District of New York, then
3 you must acquit.

4 Again, I caution you, the preponderance of the
5 evidence standard applies only to venue. The government must
6 prove each of the elements of conspiracy to commit money
7 laundering in Count 4 beyond a reasonable doubt.

8 And now, finally, Amen, the general rules regarding
9 deliberations. This brings me to the final part of these
10 instructions, some general rules regarding your deliberations.

11 You are about to go into the jury room to begin your
12 deliberations. If you want any of the testimony provided to
13 you, you may request that. Please remember it is not always
14 easy to locate what you might want, so please be as specific
15 as you possibly can if you make that request, requesting
16 exhibits or portions of the testimony. I will send them back
17 to you in the jury room as quickly as possible. So make a
18 focused request, if you've got it, we will get it back to you
19 promptly. I will be here. I have no other life. I am here
20 for you, okay?

21 Your requests for exhibits or testimony, in fact,
22 any communication with the Court should be made and must be
23 made to me in writing, signed by your jury foreperson. Please
24 print, sign the name, but please print the request, and then
25 hand it to one of the court security officers who will be

1 stationed right outside of your jury room.

2 I will respond to any questions or requests you have
3 as promptly as possible. In any event, do not tell me, the
4 court security officer, or any of the staff, court staff or
5 anyone else, how the jury stands on any issue until you've
6 reached your unanimous verdict.

7 For the government to prevail, it must prove all the
8 essential elements beyond a reasonable doubt, as I have
9 explained throughout these instructions. If the government
10 succeeds, your verdict should be guilty. If the government
11 fails, your verdict should be not guilty. To report a
12 verdict, it must be unanimous.

13 Your function, as you know, is to weigh the evidence
14 in this case and to determine whether or not the defendant is
15 guilty beyond a reasonable doubt, solely upon the basis of
16 such evidence as so presented in this trial. Each juror is
17 entitled to his or her opinion. Each of you, as jurors,
18 should, however, exchange views with your fellow jurors. That
19 is the very purpose of jury deliberation, to discuss and to
20 consider the evidence, and to listen respectfully to the
21 arguments of your fellow jurors, to present your individual
22 views, to consult with one another, and to reach an agreement
23 based solely and wholly on the evidence, if you can do so
24 without doing violence to your own individual judgment.

25 Each of you must decide this case for yourself after

1 consideration and with consideration of the views of your
2 fellow jurors of the evidence in this case. You should not
3 hesitate to change your opinion, which, after discussion with
4 your fellow jurors, appears erroneous to you. However, if
5 after carefully considering all the evidence and the arguments
6 of your fellow jurors you entertain a conscientious view that
7 differs from that of the others, you are not to yield your
8 conviction simply because you are outnumbered.

9 Your final vote must reflect your conscientious
10 conviction as to how the issues should be decided. Your
11 verdict, whether guilty or not guilty, must be unanimous.
12 Again, each of you must make your own decision about the
13 proper outcome of this case based on your consideration of the
14 evidence and your discussions with your fellow jurors. You
15 should, and I am sure you will, treat each other with respect.

16 When you retire to the jury room, before you begin
17 your deliberations, you should select someone to be the
18 foreperson of the jury. The foreperson will be responsible
19 for signing all communications to the Court and for handing
20 them to the court security officer who will be seated directly
21 outside the door to your jury room as you begin your
22 deliberations and throughout your deliberations.

23 When you begin your deliberations, do not talk to me
24 or to anyone else except to one another about this case. You
25 may not use any electronic device or social media during your

1 deliberations. You may only use them after the Court has
2 publicly announced your verdict and after you, the members of
3 the jury, have been discharged with the thanks of the Court.

4 Remember in your deliberations that the dispute
5 between the United States of America and Mr. Boustani is for
6 them no passing matter, as it has been for you no passing
7 matter this six weeks. It is no passing matter for any of us.
8 They and the Court rely upon you to give full and
9 conscientious deliberation and consideration to the issues and
10 evidence before you. By so doing, you carry out to the
11 fullest and the best of your oath as jurors to try well and to
12 try truthfully and honestly the issues of this case and to
13 render a true verdict. I and the parties to this case and
14 their counsel are confident you will do so.

15 One final point. Before you begin your
16 deliberations, after you select your jury foreperson, if you
17 decide you need to review any particular evidence, whether
18 documents or testimony, I suggest you send me that note,
19 signed by the jury foreperson, as all your notes must be,
20 addressed to me, through the court security officer stationed
21 outside your door, listing the evidence you want me to send
22 into the jury room for your review. The sooner you give me
23 the list, the sooner I can review the request with counsel,
24 compile the evidence, and get it back to you. So if you want
25 to take ten minutes when you go back there and figure out what

1 it is you all want to see, and get it back to us, you can do
2 that.

3 Your lunch, which this time is being provided by the
4 federal government, is there in the jury room, okay. So your
5 lunch was scheduled to be delivered at 12:30, and, guess what,
6 it is just 12:30, okay.

7 If you'd like to send out a request to adjourn at
8 5:00 p.m., this is our adjourn date, and come back on
9 December 2, as I told you, you can do that. If you decide you
10 are close enough and you want to stay a little past 5:00, you
11 can do that, too. You are the jury. You decide. 5:00 is our
12 agreed upon end time, and so that's -- you decide, you haven't
13 resolved it by 5:00, we will return here, enjoy the
14 Thanksgiving week, return here Monday morning at 9:30 a.m. on
15 December 2.

16 In terms of request for information, I will review
17 each of those requests with all counsel of record, the
18 defendant present here as well. We'll gather the evidence for
19 you, we will get it back to you as soon as possible. I am not
20 suggesting that you will need any additional documents sent in
21 to you. That's up to you. Anything you request, we will send
22 back to you that's a matter of record, but I have to review
23 any record with the lawyers.

24 I am going to send you back with one copy of the
25 jury instructions. The little sidebar we had was, you know,

1 lawyers, a little joke, that camel is a horse drafted by a
2 committee of lawyers. Even though we have gone over this
3 considerably before, there's last minute suggested changes, so
4 I made those, and in another ten minutes or 15 minutes, we
5 will get you one copy of these instructions that I have just
6 read to you, and that will hopefully be happening.

7 I am also sending in to you, as I said, and they
8 will go in right now, the stipulations that were received in
9 evidence, most of which were related to those bank documents.

10 I am also sending in with you a sheet that says, "we
11 have reached a verdict." That's to be signed when you reach
12 the verdict, signed by the jury foreperson. And then the
13 actual verdict sheet, which the foreperson will bring in with
14 the jury to announce in open court. So we break it down,
15 because in the past sometimes what has happened is the verdict
16 sheet has come out ahead of the jury, and it is not supposed
17 to be the way it works.

18 So when you reach your decision, you will have a
19 sheet clearly labeled, it says, "we reached a verdict," signed
20 by the jury foreperson. You give that to the court security
21 officer. He'll bring that to me, I will inform the lawyers of
22 that, and then you will come out with the jury foreperson, and
23 the signed verdict sheet that reflects the verdict, once you
24 have reached a unanimous verdict, okay? So that's sort of how
25 the mechanics work.

1 Now, I am going to ask the court security officer to
2 escort jurors number 1 through 12 into the main jury room and
3 jurors 13 through 15 into the adjacent jury room, which is
4 right next door. You will all get your lunch, but I am going
5 to ask for the split, okay.

6 Will you do that now, Mr. Jackson, swear the court
7 security officer, and we will begin that. Okay.

8 (WHEREUPON, the court security officer was duly
9 sworn.)

10 THE COURT: Thank you.

11 All right. Ladies and gentlemen of the jury, the
12 case is now yours. Thank you for your patience.

13 We have the folder, both of the stipulations?

14 THE COURTROOM DEPUTY: Yes.

15 THE COURT: Those are the stipulations.

16 THE LAW CLERK: And the revised jury charge as well.

17 THE COURT: You sure?

18 THE LAW CLERK: Yes.

19 THE COURT: Okay. And you have the revised jury
20 charge as well.

21 So thank you. Jurors Nos. 1 to 12, you will go into
22 the main jury room. Jurors 13, 14, and 15, you will get your
23 lunch, and you will be guided to the adjacent jury room.
24 Thank you.

25 (WHEREUPON, at 12:37 p.m., the jury exited the

1 courtroom to begin deliberations.)

2 THE COURT: You may be seated, ladies and gentlemen.

3 The jury has left the courtroom, the defendant is
4 still present.

5 Do we have any procedural issues to discuss in the
6 absence of the jury and in the presence of the defendant and
7 all counsel of record?

8 MR. BINI: Not for the government.

9 MR. JACKSON: No, Your Honor. Thank you.

10 THE COURT: All right. We have your individual cell
11 phone numbers. So as notes come out, you will be called back
12 in, if you go away, because, obviously, I consult with counsel
13 before responding to any notes, no matter how on the surface
14 seemingly plain vanilla. Of course, with you guys nothing is
15 plain vanilla. So that's how we will proceed.

16 MR. JACKSON: Excuse me, Your Honor.

17 THE COURT: Yes.

18 MR. JACKSON: On --

19 THE COURT: See what I mean?

20 MR. JACKSON: I know, Judge. Right on cue.

21 THE COURT: It's okay.

22 MR. JACKSON: With regard to the cell phones, we
23 have been in a room that the court was gracious enough to give
24 us. There is very limited cell phone reception. It comes in
25 and out. So I would just request if the Court could, if

1 possible, send us an e-mail as well just to make sure we don't
2 miss it.

3 THE COURT: What's e-mail? I told you I was low
4 tech.

5 Yes. We will do that. We will contact you by
6 e-mail and/or text and/or whatever the things my youthful law
7 clerks, who are the masters and mistresses of the universe,
8 are on. As you know, I would still be doing this with flip
9 charts.

10 Is there a note already, Mr. Jackson?

11 THE COURTROOM DEPUTY: Oh, definitely not, no.

12 THE COURT: Is there anything else we need to
13 address before letting the lawyers disappear into the ether,
14 but close by for quick lunches or --

15 MR. JACKSON: No. We just wanted to thank the
16 Court, as well as our colleagues across the bar for all their
17 collegiality, and the Court's graciousness and patience
18 throughout the course of the trial.

19 THE COURT: Well, I am sure the government feels the
20 same way. It is always good to see professionals at the
21 highest level in important cases. And I commend you for your
22 professional and very focused and honorable representation of
23 your respective clients. And I think the fact that the jury
24 literally didn't even want to take a break during the sonorous
25 reading of the jury charge shows you how locked in and devoted

1 they are. And it also shows you the credible grace of the
2 jurors and the potential genius of the judge not letting you
3 guys continuing your summations over to today. You adjusted
4 so well yesterday with the shortened time frame that the Court
5 gave you, because otherwise we'd still be on round one of
6 summations. So there you go.

7 MR. BINI: Your Honor, thank you. The government
8 certainly does thank the Court and defense counsel, and
9 certainly we are certainly very appreciative of how
10 accommodating the Court has been in a case that has been
11 litigated certainly very fiercely.

12 THE COURT: And well, by both side. I want the
13 record to reflect that. I think the government of the United
14 States was very well represented, and that, Mr. Boustani, you
15 were very well represented and continue to be very well
16 represented by both sides, by distinguished counsel. And as
17 I've said repeatedly, I am very glad that I now have this
18 position on the bench and I don't have to compete for business
19 and other cases with lawyers as skilled as you guys are.

20 So, for the moment, at least, we are awaiting notes
21 to come out from the jury, but I would suggest you get your
22 lunch, and just -- we have your cell numbers and we know where
23 you live in cyberspace, and my law clerks now how to use it.
24 So there you go.

25 MR. BINI: Thank you, Judge.

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MR. SCHACHTER: Thank you.

MR. JACKSON: Thank you.

THE COURT: Thank you.

(WHEREUPON, a recess was had at 12:41 p.m.)

(Continued on the next page.)



1 THE COURT: Let's take the appearances of counsel
2 who are present.

3 I note the defendant is not present, but we'll start
4 with the government. Just give your name, sir, for the
5 record.

6 MR. BINI: Sure. Mark Bini and Hiral Mehta for the
7 United States.

8 THE COURT: Thank you. For the defendant.

9 MR. DiSANTO: Phil DiSanto on behalf of
10 Mr. Boustani.

11 (Court Exhibit 15, was received in evidence.)

12 THE COURT: Okay, I note that the defendant is not
13 present. But let me tell you we have a note that we have
14 marked as Court Exhibit 15. It's the first jury note. I've
15 provided copies to both sides. Thank you very much.

16 The jury requests the following items in what has
17 been marked as Court Exhibit Number 15.

18 I'll read them out loud as best I can read the
19 writing, which is pretty accessible.

20 1. Is procurement contracts for Proindicus, EMATUM
21 and MAM, including change orders addenda and upsizes.

22 2. Loan agreements for Proindicus, EMATUM and MAM,
23 including change orders addenda and upsizes.

24 3. Copies of subvention fee contract.

25 4. Minister of finance guarantees.

- 1 5. Offering circulars.
- 2 6. Boat valuations from Renaissance and White.
- 3 7. Transcripts regarding creation of Palomar from
- 4 Surjan Singh, S-I-N-G-H, Andrew Pearse and Jean Boustani.
- 5 8. Slide shows related to Palomar creation and
- 6 organizational structure.

7 9. Plea agreements for Andrew Pearse and Surjan

8 Singh.

9 10. Surjan Singh's FCA testimony.

10 11. Transcript of Surjan Singh's phone call.

11 12. Naji Allam's spreadsheet.

12 13. List of all witnesses and what company they

13 represent.

14 I've just read out loud -- counsel, I see you have

15 other counsel joining us -- the first jury request which has

16 been marked as Court Exhibit Number 15 requesting certain

17 documents.

18 Let's do this seriatim, now that you've got it in

19 front of you, and we'll take it one by one with respect to

20 Court Exhibit 15.

21 What is the government's view with respect to

22 whether or not we should provide what is requested in item 1

23 of Court 15, the procurement contracts for Proindicus, EMATUM

24 and MAM, including change orders, addenda, and upsizes?

25 Government?

1 MR. BINI: The government believes that's fine.

2 THE COURT: Defense counsel?

3 MR. JACKSON: Yes, Your Honor.

4 THE COURT: Any objection to that going into the
5 jury? They're all in evidence.

6 MR. BINI: No, Your Honor.

7 THE COURT: Number 2, loan agreements for
8 Proindicus, EMATUM and MAM, including change orders, addenda
9 and upsizes.

10 Government, any objections to 2?

11 MR. BINI: No objection.

12 THE COURT: Defense?

13 MR. JACKSON: No objection.

14 THE COURT: 3. Copies of subvention fee contract.
15 Government, any objection?

16 MR. BINI: No objection.

17 THE COURT: Defense?

18 MR. JACKSON: No objection, Your Honor.

19 THE COURT: 4. Minister of finance guarantees.
20 Government, any objection?

21 MR. BINI: No objection.

22 THE COURT: Defense?

23 MR. JACKSON: No objection.

24 THE COURT: 5. Officering circulars.

25 Government?

1 MR. BINI: No objection.

2 THE COURT: Defense?

3 MR. JACKSON: No objection.

4 THE COURT: 6. Boat valuations from Renaissance and
5 White.

6 Government?

7 MR. BINI: No objection.

8 THE COURT: Defense?

9 MR. JACKSON: No objection.

10 THE COURT: 7. Transcript regarding creation of
11 Palomar from Surjan Singh, Andrew Pearse and Jean Boustani.

12 Any objection from the government?

13 MR. BINI: No objection.

14 THE COURT: Defense?

15 MR. JACKSON: No objection.

16 THE COURT: All right, now, with respect to
17 transcripts, you folks are going to have to pull the
18 transcripts out.

19 I would suggest that we're not going to do this
20 electronically to the jury, you're going to have to have hard
21 copy of whatever those transcripts pages are. You'll have to
22 agree -- counsel will have to agree on the pages that are
23 going in.

24 Obviously, you exclude any sidebars or any testimony
25 that was ordered stricken by the Court with respect to the

1 transcript request.

2 Bottom line is, you'll put your heads together and
3 you'll either agree on what goes on, or if you have a
4 disagreement, you will let me know what the disagreement is,
5 and I will rule on competing positions.

6 8. Slide shows related to Palomar creation and
7 organizational structure.

8 Any objection from the government?

9 MR. BINI: No objection.

10 THE COURT: Defense?

11 MR. JACKSON: No objection.

12 THE COURT: All right. So they'll go in.

13 Again, you will pull together what those items are.

14 9. Plea agreements for Pearse and Singh.

15 Any objection from the government?

16 MR. BINI: No objection.

17 THE COURT: Defense?

18 MR. JACKSON: No objection, Your Honor.

19 THE COURT: 10. All right, Singh FCA testimony.

20 Any objection from the government?

21 MR. BINI: No objection, Your Honor.

22 THE COURT: Defense?

23 MR. JACKSON: No objection.

24 THE COURT: I take it that means Singh's FCA

25 testimony in this case, not his testimony in some foreign FCA

1 enterprise that we don't have copies of.

2 Is that what your understanding is that they're
3 seeking the testimony of Mr. Singh in this case about the FCA,
4 or do you think he's talking about something else?

5 MR. JACKSON: Your Honor, there was a portion of his
6 FCA testimony that was admitted in evidence, and we believe
7 that's what they're referring to, his testimony in England.

8 THE COURT: So that portion of it, but not
9 everything, not the portions that weren't before the Court?

10 MR. JACKSON: Exactly, Your Honor.

11 THE COURT: All right. So I take it you folks can
12 hopefully agree on what that refers to, and I will send that
13 in if there's agreement.

14 MR. BINI: Yes, Your Honor.

15 THE COURT: If there's any disagreement, you'll tell
16 me what it is and I'll rule.

17 Next, transcript of Surjan Singh's phone call.

18 MR. BINI: Your Honor, there's not an agreed
19 transcript of the phone call, as far as I'm aware.

20 THE COURT: Why is there not? Let me hear what the
21 defense's view of item 11, transcript of Surjan Singh's phone
22 call.

23 What is your position, Mr. Bini, and then I'll hear
24 the defense's position?

25 MR. BINI: Your Honor, the government has no problem

1 with sending back a version. The last version we saw still
2 had a lot of errors, so we wouldn't want to send something
3 back with any errors.

4 THE COURT: I don't know what you mean by "errors".

5 MR. BINI: In the transcript itself. It was not --
6 the transcript prepared by defense counsel was not an accurate
7 transcription of the call, it had the wrong speakers and some
8 words were missing.

9 THE COURT: Are we talking about -- well, let's back
10 up.

11 Whatever the quote/unquote errors were, that's what
12 this jury saw, correct?

13 MR. BINI: No, they -- they heard the phone call.
14 There was a portion of the transcript shown, and then I think
15 Your Honor instructed the parties to reach an agreed to
16 transcript, so...

17 THE COURT: Back up. Is there an agreed upon
18 portion of the phone calls in terms of testimony? Is there a
19 portion that's agreed to?

20 MR. BINI: There is a portion that's agreed to.

21 THE COURT: Okay, let deal with that.

22 Do you agree, Mr. Jackson, that there's a portion of
23 the phone calls that's agreed to?

24 MR. JACKSON: Yes, Your Honor.

25 THE COURT: All right. Let's send them that. And

1 then if we get a note back that says, Your Honor, you're
2 dumber than I thought, we want more than what you sent back,
3 then we can address the issue.

4 But what they've asked for is the transcript of the
5 phone call, so let's at least send them what is agreed upon.

6 That's my ruling. So you're stuck with that. And
7 then if we get another note, then we'll have to deal with it.

8 Next item, 12, is Mr. Allam's spreadsheet.

9 Any objection to that from the government?

10 MR. BINI: No objection. We have it in both hard
11 copy and electronically.

12 THE COURT: Everything's got to go back in hard
13 copy.

14 MR. BINI: Yes, Your Honor.

15 THE COURT: We're not linked up to do it
16 electronically, I don't believe, and even if we were, I won't
17 do it because it doesn't give you a solid enough record for my
18 friends on the 17th Floor when it comes backs in response to
19 jury notes.

20 So, Mr. Jackson, Mr. Schachter, any objection to 12?

21 MR. JACKSON: No, Your Honor.

22 THE COURT: All right.

23 13, the list of all witnesses and what company they
24 represent.

25 What do you understand that to be a request for,

1 Mr. Bini?

2 MR. BINI: I'm not sure, Your Honor. I don't know
3 if that means sort of a witness list, I'm not --

4 THE COURT: All right. Mr. Jackson, Mr. Schachter,
5 what is your take on what question 13 is?

6 MR. JACKSON: I think they're requesting, Your
7 Honor, that we list out on one column the name of every
8 witness that testified, and then the column next to it what
9 company they were associated with.

10 THE COURT: What's your response to that take on
11 what 13 is requesting, Mr. Bini?

12 MR. BINI: That may be it. But I guess we can't
13 generate work product to send them, unfortunately.

14 THE COURT: Well, do we have -- we wouldn't be
15 generating work product, what we would do, if you have the
16 shared understanding, we can go back to the transcripts and
17 give them the actual testimonial transcript where each witness
18 states his or her name and what company they represent. So we
19 can do it that way.

20 We're not going to create a document for the obvious
21 reasons, but if you agree that what they want effectively is
22 witnesses alpha through zeta in the case, what we'll do is
23 we'll just give them, you know, Joe Apple works for Apple; Joe
24 Baker works for Baker; Joe Charlie works for Charlie, and
25 we'll just have the initial statement of the person's name and

1 their entity from the transcript as they give their pedigree
2 when they're sworn in.

3 Is that acceptable to the government?

4 MR. BINI: Yes, Your Honor.

5 THE COURT: Is that acceptable to you?

6 MR. JACKSON: Yes, Your Honor.

7 THE COURT: Okay, guys, you got to pull all this
8 stuff together. Let me know when it's done. I'm going back
9 it my chambers. Thanks.

10 MR. BINI: Yes, Your Honor. I would just note -- I
11 think actually most of this we can pull very quickly.

12 THE COURT: I'm right down the hall, however,
13 quickly it is when you get it all together, pull together
14 everything you can. I don't like sending in piecemeal if we
15 can avoid sending in piecemeal.

16 They were kind enough to give us a mondo list, but
17 if you can only get back 80 percent of it quickly, you know,
18 the perfect is the enemy of the good, so, we'll give them back
19 the 80 percent, and we'll have a cover note, 15A, an order
20 that says: Here's everything we found right away, and the
21 rest is coming as soon as it's available. And I'm prepared to
22 draft that order as a cover note.

23 I don't want to, however, send them back 80 percent
24 without telling them it's 80 percent.

25 MR. BINI: The government agrees with that approach.

1 THE COURT: Is that acceptable to you, Mr. Jackson,
2 just saying we attached everything that we can pull in short
3 order, everything else we're working on and we will get it to
4 you ASAP.

5 MR. JACKSON: We think we can work with the
6 government to try to get all of these things. The Court's
7 first suggestion it makes sense to get it back to them all in
8 one group, so we will work to try to get it back.

9 THE COURT: I'll tell you what, it's about 20
10 minutes to 2. I'll come back at 2:00, unless you call into
11 chambers before then, and at 2:00 we'll send back what we have
12 with the appropriate cover order.

13 Is that acceptable to both sides?

14 MR. BINI: Yes, Your Honor.

15 MR. JACKSON: Yes, Your Honor.

16 THE COURT: Okay, we'll do it that way.
17 See you in 20.

18 (A recess was taken at 1:40 p.m.)

19 (Pause.)

20 THE LAW CLERK: All rise.

21 THE COURT: Thank you. Can we have the appearances.
22 Have you managed to pull together a set of the
23 documents, in whole or in part, that were requested, counsel?

24 You can be seated everyone.

25 MR. BINI: Yes, Your Honor. We haven't had a chance

1 to confer, but I can read out, given both pulling documents, I
2 can read out -- the government is ready on 1 and 2 and we're
3 continuing to work on the -- I think we may have 3 as well, if
4 I can read out the exhibits that the government believes
5 should go back --

6 THE COURT: Well, tell me --

7 MR. BINI: Oh, should I show them to defense?

8 THE COURT: Show them to defense counsel and see if
9 there's agreement, and to the extent that we've got materials
10 that are ready to go in, my approach is to give them Court
11 Exhibit 15A, an order for me that says: In response to the
12 jury's note marked as Court Exhibit 15, the Court advises we
13 have attached documents that were requested. To the extent
14 any of the requested documents are not yet attached, the Court
15 advises it will attach them.

16 Is that an acceptable, if you will, stop gap measure
17 to send in what you've got now while you continue to work on
18 pulling materials?

19 MR. JACKSON: Yes, Your Honor, we just need to
20 confirm, just verify with the government, that note is
21 perfectly acceptable to us.

22 THE COURT: All right, so why don't you give to my
23 law clerk the documents that you've agreed should go back. We
24 will send back this, Court 15A, as a cover, and then to the
25 extent we have additional documents in the next short period

1 of time, we will give those to the jury through the court
2 security officer.

3 So just give my law clerk what's ready to go in now,
4 and he or she will give it to the court security officer who
5 will take it into the jury room.

6 (Court Exhibit 15A, was received in evidence.)

7 MR. SCHACHTER: The government and I need a moment
8 to confer.

9 THE COURT: Sure. You can have a moment.

10 MR. SCHACHTER: Thank you.

11 (Pause.)

12 MR. BINI: Your Honor, we have a number that we have
13 agreed on and would ask to send back that the parties have
14 agreed to thus far, just because it's already 2:30.

15 THE COURT: Yes, let's do that, and keep working.
16 Let's just send them back with a cover note. We don't have to
17 specify what you want to at this point what's going in.

18 MR. BINI: We just put -- we tried to put tabs with
19 the numbers corresponding to the requests on top of the
20 related documents.

21 THE COURT: All right.

22 If you've agreed to the submission, we'll just send
23 it in to the jury room with the CSO with the order cover that
24 you've seen, and you'll keep working on other documents and
25 we'll send them in as they are ready.

1 Fair enough?

2 MR. BINI: Yes, thank you, Your Honor.

3 THE COURT: Okay.

4 Give them to my law clerk and he'll give them to the
5 CSO.

6 MR. BINI: Okay.

7 THE COURT: Are we all set?

8 MR. JACKSON: Not yet, Your Honor.

9 THE COURT: Are we half there?

10 MR. JACKSON: We're close.

11 (Pause.)

12 THE COURT: I think it might be appropriate to send
13 in what you have agreed on with that cover note, so I'm going
14 to take command of the decision and say -- Michael, Take in
15 with the note what you've got in your hand, take it in now,
16 and keep working guys, okay?

17 MR. BINI: Thank you, Your Honor.

18 THE COURT: Just whatever you've got agreed.

19 Michael, take it to the CSO, and we'll take it in to
20 the jury.

21 THE LAW CLERK: Thank you, Judge.

22 (Pause.)

23 (A recess was taken at 2:36 p.m.)

24 THE COURT: Do you have more?

25 MR. JACKSON: We have a dispute.

1 THE COURT: Well, do you have any more that you
2 don't have a dispute about? If the answer is "no," fine, give
3 me what you don't have a dispute on, and then I'll hear the
4 dispute. And if you've done everything that you don't have a
5 dispute on, then I'll hear the dispute.

6 MR. BINI: We'd like to hand up --

7 THE COURT: Whoa. Whoa. Whoa.

8 What have you -- is there anything else that you
9 have? Is there anything else that is responsive to the
10 jurors' request in Exhibit 15 that you have agreed on that we
11 can send back to the jury now? Yes or no?

12 Government?

13 MR. BINI: 2808A, Najib's spreadsheet, which we
14 agreed to send back --

15 MR. JACKSON: No.

16 THE COURT: We do not have an agreement on that?

17 MR. JACKSON: No, Your Honor.

18 THE COURT: All right. Tell me why you think we
19 should send that back, Mr. Bini, and then I'll hear from
20 defense counsel.

21 MR. BINI: It is a hard copy printout of Najib
22 Allam's spreadsheet.

23 THE COURT: All right, let me see it. Hand it up to
24 Mr. Jackson, the other Mr. Jackson. Thank you.

25 Thank you.

1 And this is in evidence?

2 MR. BINI: Yes, Your Honor.

3 THE COURT: In its entirety?

4 MR. SCHACHTER: Your Honor, the electronic copy is
5 in evidence --

6 THE COURT: No, no, no, is this document that is
7 marked -- don't give me electronic versus hard copy. I told
8 you we're doing this all hard copy for my friends on the
9 17th Floor.

10 Is Government Exhibit 2808-A in its entirety in
11 evidence?

12 Yes or no, Mr. Bini?

13 MR. BINI: Yes, Your Honor.

14 THE COURT: Yes or no, Mr. Jackson? Yes or no?

15 MR. SCHACHTER: Not that version, Your Honor.

16 THE COURT: What do you mean "not that version"? Is
17 this document that has been marked as GX2808-A in evidence;
18 yes or no?

19 Don't tell me about electronic versus hard copy. Is
20 this document in evidence; yes or no?

21 MR. SCHACHTER: No.

22 THE COURT: Okay, what is in evidence,
23 Mr. Schachter?

24 MR. SCHACHTER: The government offered an electronic
25 version of Exhibit 2808A.

1 THE COURT: How does 2808A electronic differ in
2 substance from GX2808A in hard copy?

3 MR. SCHACHTER: That is what we're still trying to
4 just confirm. It may be fine.

5 THE COURT: You know what, I'm sending it in. The
6 jury is getting annoyed, according to the CSO because they're
7 waiting. So I'm overruling the objection.

8 If this document 2808A is in evidence in its
9 entirety, unless you tell me it's not, Mr. Schachter, it's
10 going in.

11 MR. SCHACHTER: We just don't know, Your Honor.

12 THE COURT: Okay. Well, I'm overruling your
13 objection. It goes in.

14 Give it to the CSO so he can give it to them. And
15 your exception is noted for appellate purposes.

16 Anything else? So we can send it in to the jury,
17 who has been patiently waiting now for a couple of hours to
18 get documents that I would have thought were plain vanilla.

19 MR. JACKSON: Your Honor, we believe we identified
20 all the slide slows in part 8 to Palomar organizational
21 structure. We think we have all of them ready. The
22 government objects to two of them.

23 THE COURT: All right, tell me about the two you
24 object to. What do you object to?

25 MR. BINI: Can I see that?

1 THE COURT: First of all, you have a bunch that are
2 not objected to?

3 MR. BINI: Yes, Your Honor.

4 THE COURT: All right, give those to my law clerk,
5 who will give them to the court security officer, who will
6 give them to the jury.

7 Give what's me agreed to to give to the law clerk to
8 give to the CSO. You've got a real jury back there who is
9 waiting.

10 Now, what is not agreed to? What is objected to? I
11 will look at it, I will rule on it.

12 Mr. Bini, what is it -- you have your objection?

13 Is that it, Mr. Bini?

14 MR. BINI: Yes, Your Honor.

15 THE COURT: Is this document in evidence, Mr. Bini?

16 MR. BINI: These two documents that I objected to
17 are in evidence.

18 THE COURT: All right, stop right there.

19 What's your objection?

20 MR. BINI: They don't go to the creation or the --
21 the creation of Palomar or its organizational chart.

22 THE COURT: What's your response, Mr. Jackson,
23 Mr. Schachter?

24 MR. SCHACHTER: They directly go to it, Your Honor.

25 THE COURT: Okay, good, they're in evidence.

1 Your objection, Mr. Bini, is overruled. Give them
2 to the jury.

3 Next. What else you got?

4 MR. SCHACHTER: Your Honor, Defense Exhibit 1949 in
5 evidence is responsive to the jury's request number 2 for all
6 of the loan agreements, including addenda. And this is the
7 loan commitment letter.

8 THE COURT: It's in evidence.

9 What's your objection, Mr. Bini, to a document
10 that's in evidence?

11 MR. BINI: It's a loan commitment letter, it's not a
12 loan agreement.

13 THE COURT: Okay, overruled. It goes in.

14 What else you got?

15 Let's give it to Michael. Thank you, Michael. Give
16 it to the CSO.

17 MR. BINI: Your Honor, we're working on 11 and 13,
18 we're trying to get the answers and confirm with defense
19 counsel on this.

20 THE COURT: Jury's waiting.

21 MR. JACKSON: Your Honor, we have the partial
22 transcript that the jury saw during the course of the trial
23 for 11.

24 We think that should be --

25 THE COURT: Is it in evidence?

1 MR. JACKSON: Yes, Your Honor.

2 THE COURT: Any objection to something in evidence
3 going in to the jury that the defense believes is responsive?

4 MR. BINI: Your Honor, at the time that it was
5 received, Your Honor put on the record that the parties would
6 confer and that there would be a complete transcript and
7 that's what will be in evidence.

8 THE COURT: Do we have a complete transcript?

9 MR. BINI: We don't.

10 THE COURT: Well, I'm going to give them what we
11 have. The objection is overruled. Give it to them.

12 Okay. What else we got going to the CSO, going in
13 to the jury?

14 They gave us six weeks, we can give them some
15 response in some respect.

16 What else do we have?

17 What else do we have? Again, we're talking about
18 documents that are in evidence that they've requested.

19 I'm hearing a lot of silence. What else do we have?

20 MR. BINI: We're working on 13, and 7.

21 That's it.

22 THE COURT: Agreed or not agreed?

23 MR. BINI: We're still working on it because --

24 THE COURT: I don't know what that means. What
25 document are we talking about, 13?

1 MR. BINI: 13 is the list of all witnesses. We're
2 just checking it.

3 THE COURT: Well, check it fast.

4 How about you, Mr. Jackson, Mr. Schachter?

5 MR. JACKSON: We haven't seen their's yet. We've
6 given them our list.

7 THE COURT: All right. Well, any objection to their
8 list?

9 MS. NIELSEN: We're reviewing it right now, Your
10 Honor.

11 THE COURT: Review it faster.

12 MS. NIELSEN: Yes, Your Honor.

13 MR. JACKSON: Your Honor, we have the transcripts
14 regarding the creation of Palomar of Surjan Singh and Andrew
15 Pearse. We're working on Jean Boustani.

16 THE COURT: Does the government agree?

17 MS. NIELSEN: We haven't seen it yet, Your Honor.

18 THE COURT: You've seen it now. It's in evidence.
19 Come on.

20 It's quarter of 3. You heard the jury's ticktock.

21 MR. BINI: Your Honor, we now have a full transcript
22 of the Surjan Singh phone calls and we'd ask to send that back
23 as well.

24 THE COURT: Any objection to the full transcript of
25 the Surjan Singh phone call? Counsel? Hello? Defense

1 counsel, any objection to the full transcript of the Surjan
2 Singh phone call, which is in evidence? Any objection?

3 MR. JACKSON: Your Honor, the only -- I have no
4 objection to the copy as printed. There are handwritten
5 notations that the government has just handed me, I've have an
6 objection to handwritten notations.

7 THE COURT: Do you have handwritten notations?
8 We're not going to add handwritten notations what goes to the
9 jury.

10 Do you have a clean version to go to the jury,
11 and/or we can do a little cut and paste to take out the
12 handwritten notations. Do we have a clean copy? If not, I'll
13 ask my law clerk to make copies without the handwritten
14 notations, which are not in evidence, and we'll give it to the
15 CSO to send it to the jury, if you don't have clean copies.

16 Going once, going twice. No clean copies. All
17 right, give it to my law clerk, and they will take out any
18 handwritten notes.

19 MR. BINI: Thank you, Your Honor.

20 THE COURT: You're welcome.

21 What else you've got?

22 MR. JACKSON: Your Honor, we would suggest, with
23 regards to the transcript, we should send in what we have and
24 the government can add whatever else --

25 MR. MEHTA: I think we're close on that, if I can

1 just give you the numbers.

2 THE COURT: All right, I'll give you five minutes.
3 Let's go. The jury's waiting.

4 (Pause.)

5 THE COURT: Is that ready? Yes?

6 MS. NIELSEN: Your Honor, do you want us to put it
7 on the record?

8 THE COURT: No, no, do your thing. It's more
9 important to get the documents to them then putting something
10 on the record.

11 MS. NIELSEN: Understood, Your Honor.

12 THE COURT: All right.

13 (Pause.)

14 THE COURT: Yes.

15 MR. JACKSON: I respectfully submit the Court gave
16 the government five more minutes. I think we should send in
17 the portions of the transcript that we've identified. The
18 government can add whatever they deem appropriate after that.

19 THE COURT: Okay, give me what, you've identified.

20 MR. MEHTA: Your Honor, I haven't reviewed it, Your
21 Honor. Mr. Schachter and I are very close.

22 THE COURT: Is this all testimony that the jury has
23 heard?

24 MR. JACKSON: Yes, Your Honor.

25 MR. MEHTA: Yes, Your Honor.

1 THE COURT: In it goes. And you can do whatever
2 they want that they've heard. They're entitled to all the
3 evidence that they've seen and heard that's been admitted. So
4 let's get it to them.

5 MR. MEHTA: All right.

6 THE COURT: They're the ones who said they wanted to
7 leave at 5. It's not the Court, okay? It's two hours, ladies
8 and gentlemen. If they want to extend that time, they can do
9 it, but they made it pretty clear.

10 Okay, give it to my law clerks so they can give it
11 to the CSO.

12 Is everything there, Mr. Jackson? Your handwritten
13 notes and if there's testimony, if it doesn't have sidebars,
14 it's everything you've got in your hand that to want us to
15 send in to the jury that you believe is responsive, something
16 that the jury heard in the course of this trial?

17 MR. JACKSON: Yes, Your Honor.

18 THE COURT: Give it to my law clerk who will give to
19 the CSO. Add to it whatever you want. Now.

20 (Pause.)

21 THE COURT: Counsel, what are we waiting on now to
22 go in to be responsive to the jury's request?

23 MR. MEHTA: We have additional transcript pages to
24 send back from the government.

25 THE COURT: Is there anything other than the

1 additional transcript pages?

2 MR. MEHTA: No, Your Honor.

3 THE COURT: All right, well keep working on it
4 because the jury -- the jury's waiting.

5 MR. BINI: Yes, Your Honor.

6 THE COURT: How we doing?

7 MR. MEHTA: Just --

8 THE COURT: How much longer before we can give it to
9 the jury?

10 MR. MEHTA: Five minutes, Your Honor.

11 (Pause.)

12 THE COURT: How we doing?

13 MR. MEHTA: We've got it.

14 THE COURT: Okay, give it to my lawyer clerks and
15 we'll take it to the CSO. All set?

16 MR. BINI: Yes, Your Honor.

17 THE COURT: Okay, give it to my law clerk, he'll
18 take it in to the CSO, and the CSO will take it in to the
19 jury.

20 Does that everything that the jury's asked for?

21 MR. MEHTA: Just two things, Your Honor, and then
22 we're done.

23 THE COURT: Are we good?

24 MR. MEHTA: So this is 5 and --

25 THE COURT: Is the one he objected to? Is this

1 something that's in evidence and the jury heard?

2 MR. MEHTA: Yes, Your Honor.

3 THE COURT: Overruled. In it goes.

4 So now we completed, as far as we know, all the
5 requests, right?

6 MS. NIELSEN: Yes, Your Honor.

7 MR. SCHACHTER: Yes, Your Honor.

8 THE COURT: We need to mark an exhibit.

9 THE COURTROOM DEPUTY: Number 16. Got it.

10 (Court Exhibit 16, was received in evidence.)

11 THE COURT: Back on the record, please.

12 We have received what I've marked as Court Exhibit
13 Number 16, give copies to you momentarily, signed by the jury
14 foreperson and reads as follows:

15 Can you offer the jury a definition of acquit in
16 relation to venue? Is that different than not guilty. Signed
17 by the jury foreperson.

18 Here are your copies. I'll hear first from the
19 government and then from defense counsel what is your
20 recommendation?

21 MR. JACKSON: You said first defense counsel, Your
22 Honor?

23 THE COURT: From the government.

24 MR. BINI: Acquit in relation to venue, not guilty,
25 I think, Your Honor, should instruct them that it is the same

1 thing as not guilty, however, the standard for venue is
2 preponderance of the evidence.

3 MR. JACKSON: Your Honor, we disagree. We think
4 that the answer should be a simple "no" to the jury from the
5 Court that says acquit means the same thing as not guilty in
6 relation to venue.

7 THE COURT: What's the government's response to
8 that?

9 MR. BINI: Your Honor, the government thinks that
10 you should also advise them that it is a preponderance
11 standard.

12 THE COURT: What is the defense response to that?

13 MR. JACKSON: The jury hasn't asked for that, Your
14 Honor. You already instructed them all the standards that
15 apply to all of the charges. You gave them detailed
16 instructions. They asked a very specific question and we
17 believe that the Court should provide them with that specific
18 answer.

19 THE COURT: What is the government's response to
20 that?

21 MR. BINI: Your Honor, the government thinks that
22 Your Honor should give an instruction consistent with the jury
23 instructions on venue, which appear on pages 61 and 92 and
24 129.

25 THE COURT: And in your response to that?

1 MR. JACKSON: Your Honor, we believe that it would
2 be unfairly coercive of the jury to provide them information
3 beyond a very limited simple question that they've asked an
4 answer to. We think the Court is well equipped to just write
5 a note that responds to this specific question.

6 THE COURT: All right, I think what the Court will
7 do is in response to the question: Can you offer the jury a
8 definition of acquit in relation to venue, is that different
9 than not guilty?

10 The Court will respectfully refer the jury to the
11 venue discussion at pages 61 through 62, 81 -- what's the
12 second set which you suggested, Mr. Bini?

13 I can't quite hear you.

14 MR. BINI: 92 to 93.

15 THE COURT: Hang on a minute. 92 through 93, and
16 what was the third?

17 MR. BINI: 129 through 130.

18 THE COURT: 129 through 130.

19 All right, so I'm going to create a document that is
20 going to be an order of the Court, 16A, that says, and I'll
21 have my law clerk type this up, and it will essentially say:
22 The Court respectfully refers the jury to pages 61 through 62.
23 The second one, again, was what?

24 MR. BINI: 92 to 93, Your Honor.

25 THE COURT: 92 through 93. And?

1 MR. BINI: 129.

2 THE COURT: 129 through 130 of the previously
3 submitted to you jury instructions.

4 It's been my experience that, yes, the jury has the
5 jury instructions before them; yes, they read them word by
6 word and line by line, but as they sit there with one copy of
7 the document, very often they are -- they're in need of some
8 guidance to the particular portions of the jury instructions.

9 So would you please type that up right away and
10 bring that to me?

11 And your exception is noted.

12 MR. JACKSON: No, Your Honor, it's not an exception,
13 I just have one question.

14 THE COURT: Go ahead, do it.

15 MR. JACKSON: Your Honor, the word "acquit" is just
16 not defined on those pages. We have no exception to these
17 pages being provided, we just ask the Court just define the
18 word for the jurors.

19 THE COURT: I'm not interested in assuring that I'm
20 going to have a problem with the Circuit. I may have a
21 problem with the Circuit, but if I start defining terms that
22 are not in the jury instructions at this point, I'm definitely
23 going to have a problem, unless you folks tell me that you are
24 amenable to a new definition of the word acquit being
25 submitted to the jury.

1 Does the government agree to that?

2 MR. BINI: We think just the instructions as they
3 are should go back, Your Honor.

4 THE COURT: All right, my practice in the past has
5 been, when I've gotten a jury note along these lines, is to
6 respectfully refer them to the jury charge that has been so
7 carefully and thoughtfully litigated line by line and gone
8 over line by line with the parties. And unless someone can
9 convince me to deviate from that in this case, I'm not going
10 to do it.

11 But your exception is noted. We'll be likely
12 invited to recite the statute.

13 MR. JACKSON: Thank you, Judge.

14 THE COURT: All right. We'll have that language
15 added in a minute.

16 All right, this is the Exhibit 16A that I'm prepared
17 to order:

18 William F. Kuntz, II, United States District Court
19 Judge, Exhibit 16A. In response to the jury's note marked as
20 Court Exhibit 16, which states, quote, can you offer the jury
21 a definition of acquit in relation to venue, is that different
22 than not guilty.

23 The Court will respectfully refer the jury to
24 pages 61 through 62, 92 through 93, and 129 through 130 of the
25 previously submitted jury instructions, and I will take that

1 out the will, I'm going to modify this a little bit to make it
2 read: The Court respectfully refers -- okay, so would you
3 make that change, please?

4 THE LAW CLERK: Yes, Judge.

5 THE COURT: -- refers the jury to pages 62 -- 61
6 through 62, 92 through 93 and 129 through 130 of the
7 previously submitted jury instructions.

8 So your exceptions to that on all sides, if have
9 any, are noted and preserved for the record.

10 THE COURT: Just again, to read it, I'll sign it
11 Court Exhibit 16A reads: In response to the jury's note
12 marked as Court Exhibit 16, which states, quote, can you offer
13 the jury a definition of acquit in relation to venue, is that
14 different than not guilty, the Court respectfully refers the
15 jury to pages 61-62, 92-93, and 129-130 of the previously
16 submitted jury instructions. So ordered.

17 I'm signing this and providing old school backslash
18 copies to the parties, and the original will go into the jury
19 room. Okay? Take that to the court security office and make
20 copies for the parties.

21 (Court Exhibit 16A, was received in evidence.)

22 (Pause.)

23 (Court Exhibit 17, was received in evidence.)

24 THE COURT: I've received the following note. It's
25 been marked as Court 17, we'll make copies. I'll read it to

1 you and ask for guidance from counsel.

2 We the jury would like to request another day for
3 deliberations, unfortunately, we are unable to come to a
4 conclusion at this moment. We propose to end today at 5 p.m.
5 and resume Monday morning at 9:30 a.m., paren, the week
6 following thanksgiving, close paren, period. Thank you in
7 advance for your consideration. Signed by the foreperson.
8 David Howard.

9 Suggested response?

10 MR. BINI: No objection, Your Honor.

11 THE COURT: Response?

12 MR. JACKSON: Your Honor, we agree with the
13 government that we would suggest the Court can tell the CSO
14 that they could be released without being brought back to the
15 courtroom.

16 THE COURT: Yes, that's how I intend do it, assuming
17 there's no objection to that.

18 MR. BINI: No objection, Your Honor.

19 THE COURT: All right. Tell the CSO that the jury
20 is free to go and we'll see them 9:30 a.m. -- on December 2nd,
21 9:30 a.m., as we previously said.

22 I'll make copies of this, and do an order that says
23 what we just ordered. Okay? Thank you.

24 (Court Exhibit 17A, was received in evidence.)

25 THE COURT: I'm now going to read out loud a copy of

1 court order 17A, which I just signed and I will provide copies
2 to you counsel.

3 William F. Kuntz, II, United States District Court
4 Judge, in response to the jury's note marked as Court 17, the
5 Court advises the jurors may leave for the day, and all jurors
6 shall return on Monday, December 2, 2019, at 9:30 a.m. to
7 continue their deliberations. So ordered.

8 And just to be clear, we're talking about the
9 original 12 returning to the jury room, and the three who are
10 jurors denominated 13, 14, 15 will return also to await
11 service in the alternate jury room. So all 15 jurors are
12 called to come back.

13 I'm going to ask you, ladies and gentlemen, just to
14 wait a bit because I understand the CSOs are having their
15 colleagues come up to escort the jurors downstairs and out of
16 the building.

17 So if you would just be good enough to wait rather
18 than rush to the exits, I would appreciate it, until the CSO
19 give me that notice.

20 So, Mr. Jackson, here's the original and copies for
21 counsel.

22 All right, is there anything else while we're
23 waiting for the all clear from the CSOs that we need to talk
24 about today before adjourning for a relaxing Thanksgiving
25 week, everyone?

1 MR. BINI: No, Your Honor.

2 MR. JACKSON: No, Judge.

3 THE COURT: Everyone, don't forget when you do
4 leave, have a relaxing Thanksgiving week everyone. One of the
5 few truly national holidays.

6 MR. BINI: Thank you, Judge.

7 MR. JACKSON: Thank you.

8 THE COURT: Give it about ten minutes hopefully
9 less, and then I will let you folks go.

10 MR. BINI: Thank you, Your Honor.

11 THE COURT: All right, ladies and gentlemen, thank
12 you for your patience. Have a good Thanksgiving. See you on
13 Monday, December 2nd.

14 The jury will report directly to the jury room to
15 continue with their deliberations.

16 * * * * *

17 (Proceedings adjourned at 5:15 a.m. to resume on
18 December 2, 2019 at 9:30 a.m.)

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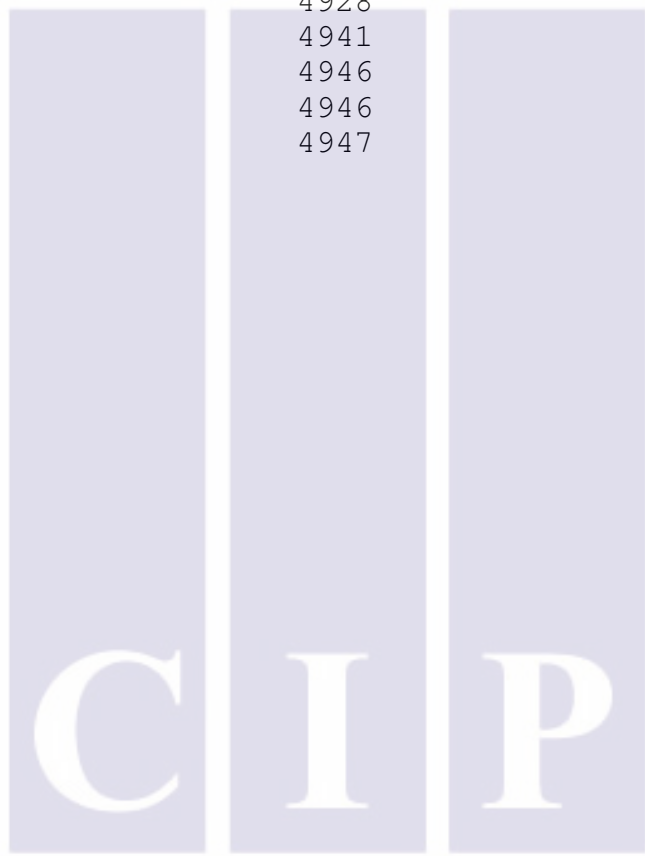
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| JUROR: [1] 4845/15 MR. BINI: [79] MR. DiSANTO: [3] 4812/7 4812/10 4916/9 MR. JACKSON: [58] 4811/17 4812/18 4897/16 4897/23 4898/4 4898/22 4899/4 4912/9 4912/16 4912/18 4912/20 4912/22 4913/15 4915/2 4918/3 4918/13 4918/18 4918/23 4919/3 4919/9 4919/15 4920/11 4920/18 4920/23 4921/5 4921/10 4922/24 4923/21 4924/6 4925/6 4926/5 4926/15 4927/19 4929/8 4929/10 4929/25 4930/15 4930/17 4932/19 4934/21 4935/1 4936/5 4936/13 4937/3 4937/22 4938/15 4938/24 4939/17 4941/21 4942/3 4942/13 4943/1 4944/12 4944/15 4945/13 4947/12 4949/2 4949/7 MR. MCLEOD: [1] 4812/11 MR. MEHTA: [12] 4937/25 4938/20 4938/25 4939/5 4939/23 4940/2 4940/7 4940/10 4940/13 4940/21 4940/24 4941/2 MR. SCHACHTER: [14] 4811/21 4899/5 4915/1 4928/7 4928/10 4931/4 4931/15 4931/21 4931/24 4932/3 4932/11 4933/24 4934/4 4941/7 MS. DONNELLY: [1] 4812/3 MS. NIELSEN: [6] 4936/9 4936/12 4936/17 4938/6 4938/11 4941/6 THE COURT: [183] THE COURTROOM DEPUTY: [4] 4811/3 4911/14 4913/11 4941/9 THE DEFENDANT: [1] 4812/1 THE LAW CLERK: [6] 4897/14 4911/16 4911/18 4926/20 4929/21 4946/4 | \$37 million [1] 4860/6 \$395 [1] 4862/9 \$395 million [1] 4862/9 \$400,000 [2] 4860/20 4860/25 \$800,000 [1] 4860/14 \$976,000 [1] 4861/22 ----- -x [2] 4810/2 4810/7 -against [1] 4810/5 1 10 [3] 4865/9 4917/9 4920/19 10019-6099 [1] 4810/17 10B-5 [2] 4856/11 4865/24 11 [7] 4860/4 4860/9 4862/16 4917/10 4921/21 4934/17 4934/23 11201 [1] 4810/13 12 [7] 4886/20 4911/2 4911/21 4917/11 4923/8 4923/20 4948/9 123 [1] 4897/8 124 [1] 4897/8 129 [7] 4942/24 4943/17 4943/18 4944/1 4944/2 4945/24 4946/6 129-130 [1] 4946/15 12:30 [2] 4909/5 4909/6 12:37 [1] 4911/25 12:41 [1] 4915/4 13 [12] 4886/24 4911/3 4911/22 4917/12 4923/23 4924/5 4924/11 4934/17 4935/20 4935/25 4936/1 4948/10 130 [6] 4943/17 4943/18 4944/2 4945/24 4946/6 4946/15 1343 [3] 4846/17 4847/15 4877/3 1349 [1] 4846/19 14 [4] 4862/25 4863/4 4911/22 4948/10 15 [22] 4856/24 4863/9 4876/21 4877/5 4884/23 4886/17 4886/18 4886/24 4895/10 4910/4 4911/3 4911/22 4916/11 4916/14 4916/17 4917/16 4917/20 4917/23 4927/12 4930/10 4948/10 4948/11 15A [4] 4925/19 4927/11 4927/24 4928/6 16 [5] 4941/9 4941/10 4941/13 4945/20 4946/12 16/2012 [2] 4903/14 4903/15 16A [5] 4943/20 4945/16 4945/19 4946/11 4946/21 17 [4] 4856/12 4946/23 4946/25 4948/4 17A [2] 4947/24 4948/1 17th Floor [2] 4923/18 4931/9 18 [8] 4846/16 4846/19 4847/15 4876/25 4877/2 4877/7 4877/16 4880/14 | 18-CR-681 [2] 4810/2 4811/5 1886 [3] 4901/11 4901/12 4901/15 19 [1] 4862/5 1934 [2] 4865/10 4886/20 1949 [1] 4934/4 1956 [8] 4877/1 4877/7 4877/16 4880/14 4880/16 4881/3 4882/8 4882/23 1:40 [1] 4926/18 2 20 [2] 4926/9 4926/17 20-F [1] 4886/24 2004 [3] 4900/20 4900/20 4900/23 2011 [1] 4846/4 2012 [2] 4903/14 4903/15 2013 [12] 4856/5 4859/5 4859/10 4859/14 4859/19 4859/24 4860/4 4860/9 4860/13 4860/19 4860/24 4876/10 2014 [6] 4861/4 4861/8 4861/13 4861/16 4861/21 4862/1 2016 [8] 4862/5 4862/11 4862/16 4862/21 4862/22 4862/25 4863/4 4863/9 2018 [3] 4846/4 4856/6 4876/11 2019 [3] 4810/5 4948/6 4949/18 21 [1] 4859/14 22 [1] 4810/5 23 [1] 4860/13 2330 [1] 4810/23 24 [2] 4860/19 4862/22 240.10B-5 [1] 4856/13 25 [1] 4859/19 26 [2] 4859/5 4860/24 27 [1] 4862/7 271 [1] 4810/12 28 [1] 4861/21 2808A [4] 4930/13 4931/25 4932/1 4932/8 2:00 [2] 4926/10 4926/11 2:30 [1] 4928/14 2:36 [1] 4929/23 2nd [3] 4861/8 4947/20 4949/13 3 31 [1] 4861/4 321 [3] 4901/11 4901/11 4901/15 4 40 [2] 4903/14 4903/14 5 5 p.m [1] 4947/4 5:00 [4] 4909/8 4909/10 4909/11 4909/13 5:15 [1] 4949/17 5K [6] 4835/18 4835/19 4835/22 4835/24 4836/1 4836/7 |
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