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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 18-CR-00204(NGG)

Plaintiff , :

-against- : United States Courthouse  
Brooklyn, New York

KEITH RANIERE, et al., :

Defendant. : June 15, 2019, Saturday  
11:00 a.m.

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TRANSCRIPT OF CHARGE CONFERENCE  
BEFORE THE HONORABLE NICHOLAS G. GARAUFI  
UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

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Proceedings recorded by computerized stenography. Transcript produced by Computer-aided Transcription.

Charge Conference

5247

1 (In open court - jury not present.)

2 (Defendant entered the courtroom.)

3 (Judge NICHOLAS G. GARAUFIS entered the courtroom.)

4 THE COURTROOM DEPUTY: Criminal cause for a charge  
5 conference.

6 Counsel, just state your appearances, please.

7 MS. HAJJAR: Good morning, Your Honor.

8 Tanya Hajjar, Kevin Trowel and Mark Lesko for the  
9 Government. 5246 - 5

10 THE COURT: Good morning.

11 MR. AGNIFILO: Good morning, Your Honor.

12 Mark Agnifilo, Teny Geragos, Paul der Ohannesian and  
13 Danielle Smith for Keith Raniere, who is with us in court.

14 Good morning, Your Honor.

15 THE COURT: Good morning. Please be seated.

16 I have a letter from the Government about the good  
17 faith exception in response to your letter.

18 MR. AGNIFILO: Yes, Judge.

19 THE COURT: Mr. Agnifilo, have you seen the letter?

20 MR. AGNIFILO: I have.

21 THE COURT: And what is your position?

22 MR. AGNIFILO: I think -- I think the good faith  
23 charge would apply to wire fraud and it would apply to the tax  
24 offense, the intended tax offense that's part of, I believe,  
25 it's Act 11; and so I would request the charge because I think

Charge Conference

5248

1 it applies to -- certainly to those two charges.

2 MS. HAJJAR: Your Honor, we're offering a proposed  
3 language with respect to those two charges. We don't agree to  
4 a generalized good faith charge, but if the language we  
5 proposed is acceptable to the defendant, we propose that.

6 MR. AGNIFILO: We want the wire fraud language that  
7 we had in the Shkreli case, which I think we provided to the  
8 Court.

9 THE COURT: I'll look at it.

10 MR. AGNIFILO: That's fine, Judge.

11 THE COURT: I'll look at it. As to those two  
12 counts, or those two issues, we will have a good faith -- we  
13 will have good faith language.

14 MR. AGNIFILO: Very good.

15 THE COURT: Whether it's language in Shkreli or the  
16 language that's proposed by the Government, let me work that  
17 through.

18 MR. AGNIFILO: That's good.

19 THE COURT: So that's pretty much resolved.

20 Okay, shall we just go through the document?

21 MR. AGNIFILO: Yes, sir.

22 THE COURT: And see where we have areas of  
23 disagreement and then talk about them briefly.

24 I want to thank everyone for being here at  
25 11:00 a.m. for this charge conference.

Charge Conference

5249

1 All right, Page 1.

2 Page 2.

3 MR. AGNIFILO: What we can do, Judge, because we  
4 actually sat down for two hours this morning, so we have  
5 pretty targeted it.

6 THE COURT: Well, can we do them in page order?

7 MR. AGNIFILO: Yes, Judge, absolutely.

8 THE COURT: Well, where would you like to start?

9 MR. AGNIFILO: So I think --

10 MS. HAJJAR: The first small thing is on page 10,  
11 Your Honor, just --

12 THE COURT: That's fine, I appreciate that you have  
13 done that.

14 MR. AGNIFILO: That's fine, Judge.

15 THE COURT: All right, on page 10.

16 MS. HAJJAR: Just the third paragraph starting: "It  
17 would also be improper for you to draw any conclusions about  
18 the defendant's guilt or innocence," rather than  
19 Mr. Ranieri's, in order to be consistent with the remainder of  
20 the charge.

21 And I think -- I think the defense agrees with that.

22 THE COURT: I'm sorry, say that again.

23 MS. HAJJAR: The Court's proposed charge on page 10,  
24 there is one reference to Mr. Ranieri, it's like right in the  
25 middle of the page.

1 THE COURT: Yes.

2 MS. HAJJAR: We would just ask that it be changed to  
3 the defendant to be consistent with the remainder of the  
4 charge.

5 THE COURT: All right.

6 Now, I am reading from the version of 6/14/19, which  
7 was the second draft in effect, which added that one  
8 provision. I just want to make sure everyone is reading from  
9 the same script.

10 MS. HAJJAR: We have that as well.

11 MR. AGNIFILO: We have that too, Judge.

12 THE COURT: All right, that's page 10.

13 Next.

14 MR. AGNIFILO: The next one we have -- I'm not sure  
15 if the Government has one before this -- is on page 13.

16 MS. HAJJAR: We don't have one before that.

17 THE COURT: 13.

18 MR. AGNIFILO: Yeah, on page 13 under Deciding What  
19 to Believe, we would propose something along the lines of --  
20 in addition to the list that Your Honor has there of A through  
21 H: "Did the witness have a bias, hostility or some other  
22 attitude that you conclude shows that the witness is not  
23 objective or favored one side or the other."

24 I would go with -- I don't know if Your Honor --

25 THE COURT: I don't have any problem with that,

1 frankly, especially in a case like this, but do you have  
2 specific language?

3 MR. AGNIFILO: I do, I can give specific language or  
4 I am also happy to use whatever Your Honor has, but I can use  
5 specific language.

6 THE COURT: All right, I just want it to be agreed  
7 to, whatever it is.

8 MS. HAJJAR: We think it's subsumed in A and B:  
9 "Did the witness seem to be honest? Did the witness have any  
10 particular reason not to tell the truth?"

11 And Mr. Agnifilo proposed to the Government earlier  
12 today: "Did the witness have a bias, hostility or some other  
13 attitude that affected the truthfulness of the witness?" But  
14 I just think that's confusing; I don't even know what that  
15 means. To the extent what Mr. Agnifilo is getting at is  
16 demeanor, I think the question "did the witness seem to be  
17 honest" is covering that.

18 THE COURT: Well, if you have something specific,  
19 just provide it to me.

20 MR. AGNIFILO: All right, Judge, I will.

21 THE COURT: This is an unusual case, so there may be  
22 something -- something like what you suggested might be  
23 appropriate. Let me look at it.

24 MR. AGNIFILO: Okay, I'll submit something.

25 THE COURT: So I am going to put that down for...

Charge Conference

5252

1 Go ahead. That is 13.

2 MR. AGNIFILO: Yes, Judge.

3 THE COURT: Next.

4 MS. HAJJAR: We have a proposed change on Page 16  
5 that we've discussed with the defense.

6 THE COURT: And what is that?

7 MS. HAJJAR: In "Interest in Outcome."

8 THE COURT: Right.

9 MS. HAJJAR: The second paragraph: "This is not to  
10 suggest that a witness who has an interest in the outcome of a  
11 case will testify falsely. It is for you to decide to what  
12 extent, if at all, a witness's interest is."

13 So just to change those articles.

14 MR. AGNIFILO: That's agreeable to us.

15 THE COURT: That's fine. Next.

16 MS. HAJJAR: We have a proposed change on Page 19,  
17 as well.

18 THE COURT: Go ahead.

19 MS. HAJJAR: Just the second from the bottom, second  
20 line from the bottom. Her decision -- this is under Guilty  
21 Pleas of Other Individuals.

22 THE COURT: I'm sorry.

23 We are on 19 under expert witnesses?

24 MS. HAJJAR: No, under the prior section, Your  
25 Honor, Guilty Pleas of Other Individuals.

Charge Conference

5253

1 THE COURT: Okay. So what is the suggestion?

2 MS. HAJJAR: "Her decision to plead guilty was a  
3 personal decision about her own guilt." It's just on --

4 THE COURT: Oh, yeah, it is personal.

5 MS. HAJJAR: Yep.

6 MR. AGNIFILO: Agreed.

7 THE COURT: All right, so that is 19. Next.

8 MS. HAJJAR: On page 23, Your Honor.

9 THE COURT: Yes.

10 MS. HAJJAR: It's just where: "that the Defendant  
11 had a criminal propensity, that is, that he likely committed  
12 the crimes charged in the indictment because he was  
13 predisposed."

14 THE COURT: Yes. Because he...

15 MS. HAJJAR: Was predisposed.

16 THE COURT: Was predisposed.

17 MR. AGNIFILO: Also, Judge, I think in the previous  
18 sentence, it just says "fendant" and it should be "Defendant."

19 MS. HAJJAR: Yes.

20 THE COURT: Oh, yeah. Okay, that's 23.

21 MS. HAJJAR: On Page 26 and -- 26, Your Honor.

22 THE COURT: Yes.

23 MS. HAJJAR: Under Venue, the second sentence: "The  
24 Indictment alleges that the crime charged;" it should be  
25 "crimes charged." Just plural.



Charge Conference

5254

1 THE COURT: Yes. That's it, it's crimes charged.

2 MS. HAJJAR: And then on page 28, "Interviews of  
3 Witnesses."

4 THE COURT: Yes.

5 MS. HAJJAR: We would just ask that "Not Required"  
6 be removed from the header.

7 MR. AGNIFILO: We agree.

8 THE COURT: All right.

9 MS. HAJJAR: And then the instruction that follows,  
10 at paragraph 32, we believe Your Honor incorporated that  
11 transcript instruction in a different part of the  
12 instructions.

13 THE COURT: I'm sorry, which part are you?

14 MS. HAJJAR: This is --

15 THE COURT: The transcript instruction?

16 MS. HAJJAR: Yes, you have it twice, Your Honor, I  
17 believe.

18 THE COURT: Well, you know, sometimes there is  
19 redundancies. I don't want to read a redundancy, so we will  
20 just take that 32 out?

21 MS. HAJJAR: I think that would be right, Your  
22 Honor. We've agreed to that.

23 THE COURT: Ms. Geragos just --

24 MR. AGNIFILO: If she agrees, I agree.

25 THE COURT: -- gave a thumbs up about that one.

Charge Conference

5255

1 MR. AGNIFILO: You captured on that on page 9 of the  
2 instructions.

3 THE COURT: Okay. I mean, any time there is  
4 something like that, because these instructions are an amalgam  
5 of different instructions, it does happen. And there are  
6 times when I'm reading through the instructions to the jury  
7 saying I know I just said this, but I say it again anyway just  
8 in case.

9 All right, so 32, paragraph 32 is out.

10 We are now on to the indictment.

11 MS. HAJJAR: The next change we have is on page 32,  
12 Your Honor.

13 THE COURT: Yes.

14 MS. HAJJAR: This was the subject of the letter we  
15 filed yesterday, but I think we're -- I understand the defense  
16 may be in agreement about this, we would ask that in the last  
17 paragraph on page 32: "To act willfully means to act  
18 knowingly and purposely with an intent to do something the law  
19 forbids," we would just ask that the sentence ends there with  
20 a period, rather than the remainder of the sentence, which we  
21 don't think is necessary.

22 THE COURT: Is that agreeable?

23 MR. AGNIFILO: It is, Judge.

24 When we get deeper into the instructions, I am going  
25 to want a Cheek's instruction on the tax part of the charge,

Charge Conference

5256

1 so we don't need this here because this seems to be kind of a  
2 reference to a Cheek's tax-type instruction.

3 So we are going to capture it later, so we can take  
4 it out here.

5 THE COURT: Okay. All right, that is agreed to  
6 then, 32.

7 Next.

8 MS. HAJJAR: So, Your Honor, the next one we have is  
9 on page 41. Just for clarity's sake, and I know this was in  
10 the Government's proposed charge, but as we were going through  
11 it again, we would ask that for the fifth element on that --

12 THE COURT: Just let me, are you talking about on  
13 Racketeering Elements of the Enterprise?

14 MS. HAJJAR: For the RICO statute, so it's page 41.

15 THE COURT: Yes, I see it.

16 MS. HAJJAR: Right before the first element there is  
17 just a summary of the fifth element.

18 THE COURT: Yeah, what about it?

19 MS. HAJJAR: So the second -- the second part of  
20 that sentence reads: "the last of which must have occurred  
21 within ten years after commission of a prior racketeering  
22 act."

23 We would just ask, and I think it's with the  
24 defense's consent, that we just say: "which must have  
25 occurred within ten years of each other." Because that

## Charge Conference

5257

1 language is confusing because what the last -- I know it's in  
2 the statute, but "the last of which must have occurred within  
3 ten years" is not clear which one is the last one; whether  
4 it's the most recent or the furthest in time. So just to  
5 simplify things, we are going to ask that it just read "which  
6 must have occurred within ten years of each other."

7 MR. AGNIFILO: We agree. We discussed this at  
8 length this morning.

9 THE COURT: Period, and take out "after the  
10 commission of a prior racketeering act;" is that what you're  
11 saying?

12 MS. HAJJAR: Yes. Yes, so just that clause.

13 THE COURT: "Or through causing or aiding and  
14 abetting in the commission of two such racketeering acts,"  
15 stays in.

16 MS. HAJJAR: We are fine with that.

17 MR. AGNIFILO: Well, that's one thing we didn't  
18 agree on and I was going to ask that you take that part out  
19 because you capture the concept of aiding and abetting as a  
20 part of a liability already. So I don't know that there is  
21 the need to say again that someone can be -- because you  
22 explain already you can be guilty as aider and abetter, you  
23 know, before we get to this point. So I don't know that we  
24 need to repeat it because I think you've already established  
25 that as a grounds for liability.

Charge Conference

5258

1 MS. HAJJAR: We'd like the language in. Aiding and  
2 abetting is a confusing concept, but we want the jury to be  
3 clear that that is a way in which the racketeering acts can be  
4 committed.

5 THE COURT: I am going to leave it in.

6 You have your exception. In fact, any time I don't  
7 give you what you want you have your exception.

8 MR. AGNIFILO: Very good, Judge. Thank you.

9 THE COURT: All right, that's 41.

10 Shall we move on?

11 MS. HAJJAR: I think so, Your Honor.

12 THE COURT: Next.

13 MR. AGNIFILO: The next thing -- and actually, we  
14 didn't bring this up this morning and it's probably my fault,  
15 on page 43, under Purposes, Methods and Means of the  
16 Enterprise, 7A, one of the things that's listed is "money  
17 laundering" and I don't think money laundering is charged  
18 anywhere in the balance of the indictment and I don't think  
19 that there is going to be a jury instruction on money  
20 laundering, so we ask to take money laundering out.

21 MS. HAJJAR: We're fine removing it.

22 THE COURT: "Money laundering" is out on page 43,  
23 7A.

24 Okay, next?

25 MR. AGNIFILO: The next one we have is page 45,

1 Judge. Now we're into the Definition of Enterprise.

2 THE COURT: Yes.

3 MR. AGNIFILO: And on, Page 45, that second-to-last  
4 paragraph, the Government -- it says, the second sentence:  
5 "The enterprise must have the three following structural  
6 features," and the Government lists three, and we have  
7 objections to each of the three.

8 And I'll go in order when the Court is ready.

9 THE COURT: Go ahead.

10 MR. AGNIFILO: Okay.

11 The first is, instead of being "a purpose," we want  
12 it to be "a common purpose." So we are asking that common be  
13 inserted before purpose.

14 THE COURT: Is there a problem with that?

15 MS. HAJJAR: No, we've taken this -- I'll just note  
16 that we've taken this language from *Boyle* and it makes sense  
17 following the prior sentence. I think what Mr. Agnifilo was  
18 about to say is to change 2 and 3 to, essentially, contain the  
19 same information as the preceding sentence.

20 We like the language the way it is, we think it  
21 makes sense, and so I don't know if we are going to agree to  
22 all of the changes that Mr. Agnifilo --

23 THE COURT: Well, let me hear about all the of the  
24 changes then.

25 MR. AGNIFILO: All right, so that's the first one.

## Charge Conference

5260

1           The second is we propose the language "an ongoing  
2 formal or informal organization," and I am taking this  
3 directly from the Sand instruction with no changes whatsoever.

4           And then, third, we're requesting "personnel who  
5 function as a continuing unit." And I believe the  
6 Government's charge is derived from the Supreme Court's *Boyle*  
7 decision, which is obviously the Supreme Court of the United  
8 States, but my reading of the *Boyle* decision is not that this  
9 is the mandated racketeering instruction. I think *Boyle* is  
10 very clear that there can be flexibility and the Sand  
11 instruction is what the Sand instruction is regardless of the  
12 *Boyle* decision.

13           So we essentially want the Sand instruction, which  
14 is what I'm conveying to the Court, and I don't think the  
15 Supreme Court in *Boyle* said this is the definitive instruction  
16 on enterprise. I think what the Supreme Court said is that  
17 the instruction that was given is not error. But we'd like  
18 the Sand instruction.

19           THE COURT: All right, thank you.

20           Yes?

21           MS. HAJJAR: We are fine with "the common purpose,"  
22 Your Honor, but the preceding sentence is exactly what  
23 Mr. Agnifilo just read: "existed by evidence of an ongoing  
24 organization, formal or informal, and by evidence that the  
25 various associates functioned as a continuing unit." That's

Charge Conference

5261

1 precisely the same thing; I don't think there's any need for a  
2 change here.

3 THE COURT: Could you just submit to me the Sand  
4 instruction?

5 MR. AGNIFILO: Yes, Judge.

6 THE COURT: And let me look at it?

7 MR. AGNIFILO: Sure.

8 THE COURT: I think this is okay, but if I think the  
9 Sand instruction is better, I'll use it.

10 MR. AGNIFILO: Okay, very good, Judge.

11 THE COURT: All right. That's 45.

12 Next.

13 MS. HAJJAR: So on page 51, Your Honor, it's the  
14 same -- it's the same issue as the one we previously  
15 identified for Your Honor, which we are in agreement with:  
16 "The defendant intentionally committed or caused --

17 THE COURT: You have to tell me what paragraph.

18 MS. HAJJAR: So, page 51, the second full paragraph.

19 THE COURT: Yes, and?

20 MS. HAJJAR: The last part of the first sentence:  
21 "the last of which must have occurred within ten years after  
22 the commission of a prior racketeering act." The same change,  
23 we just ask that it be "at least two of which must have  
24 occurred within ten years of each other."

25 THE COURT: Do you have that, Andrew?



Charge Conference

5262

1 THE LAW CLERK: Yes.

2 THE COURT: All right.

3 MR. AGNIFILO: And then we had one in the next  
4 paragraph, Judge. The paragraph that starts: "Second, the  
5 racketeering acts must have a 'nexus' to the enterprise and  
6 the racketeering acts must be 'related'." And then we add "to  
7 each other."

8 MS. HAJJAR: We don't want that, Your Honor. This  
9 is a standard charge. We've seen it charged this way in prior  
10 charges of Your Honor and elsewhere.

11 THE COURT: I am just going to leave it.

12 Next.

13 MR. AGNIFILO: Further in that same paragraph,  
14 Judge, it's the last full sentence on the page and it says:  
15 "Two racketeering acts may be 'related' even though they are  
16 dissimilar or not directly related to each other, provided  
17 that the racketeering acts are related to the same  
18 enterprise."

19 And we believe, Judge, that in this case that's not  
20 an accurate statement of the law and I am citing the case  
21 Reich versus Lopez, a Second Circuit case from 2017 at 858,  
22 F.3d 55, and I think the *Reich* case makes a distinction  
23 between enterprises on the one hand that are wholly criminal,  
24 like organized crime families, gangs, things like that, and  
25 then, enterprises that are something other than wholly

1 criminal. And my interpretation of the *Reich* decision is it  
2 makes a distinction about how racketeering acts can be related  
3 to each other in the following way:

4           The pattern that the Supreme Court developed, you  
5 know, years ago when going over the racketeering statutes, is  
6 that the racketeering acts have to be related to each other.  
7 During the course of the jurisprudence in RICO, that  
8 relationship has been able to be established, in some cases,  
9 by each of the racketeering acts being related to the  
10 underlying enterprise.

11           What I understand the *Reich* decision to be saying is  
12 that that's an appropriate way of making the connection; the  
13 distinction between horizontal relatedness on the one hand  
14 with the racketeering acts being related to each other, and  
15 vertical relatedness with the racketeering acts being related  
16 to the enterprise, but it's only appropriate in certain types  
17 of cases where the enterprise at issue is wholly criminal,  
18 like a mafia family, La Cosa Nostra, whatever the case may be.

19           And I think *Reich* says that it's not an appropriate  
20 way to make a connection between the racketeering acts in a  
21 case other than those.

22           So that all boils down to us wanting that one  
23 sentence taken out.

24           MS. HAJJAR: This issue arose before Your Honor for  
25 the motions to dismiss and all that associated litigation.

Charge Conference

5264

1 This is -- the enterprise we've alleged is a wholly criminal  
2 enterprise, and so the charge is appropriate and an LCN or  
3 other gang-type charge is the one we are asking for.

4           What *Reich* deals with, and what it is talking about  
5 is -- I'm looking at the case -- "when dealing with an  
6 enterprise that is primarily a legitimate business, and  
7 elsewhere a large ramified corporation." And it's a civil  
8 RICO case, in a motion to dismiss, where the enterprise is  
9 nothing like the enterprise as the Government has alleged. We  
10 would like the standard charge on this and we don't think  
11 any -- any modification is appropriate.

12           THE COURT: I will take a look at it.

13           Next.

14           MS. HAJJAR: On page 58.

15           THE COURT: Yes.

16           MS. HAJJAR: The Government neglected to add a  
17 foreign commerce instruction. If it's -- I don't think the  
18 defense objects, we just ask to propose some language to the  
19 Court on that. We've only -- we've only proposed instructions  
20 on interstate commerce, but not foreign commerce with respect  
21 to this count, which is --

22           THE COURT: You want "interstate or foreign  
23 commerce"?

24           MS. HAJJAR: Yes.

25           MR. AGNIFILO: That's fine.

SAM

OCR

RMR

CRR

RPR

Charge Conference

5265

1 THE COURT: All right. That's 58.

2 Next.

3 THE LAW CLERK: I'm sorry, what would the  
4 instruction say, how would that change?

5 THE COURT: "To satisfy this element the Government  
6 must prove that the defendant's conduct affected interstate or  
7 foreign commerce in any way."

8 THE LAW CLERK: Okay.

9 THE COURT: At the bottom of the last full  
10 paragraph.

11 THE LAW CLERK: Right.

12 THE COURT: On page 58.

13 THE LAW CLERK: And then also we would have to  
14 change the preceding sentence, right, to add "or foreign."

15 MS. HAJJAR: Between a state, not just between two  
16 or more states.

17 THE LAW CLERK: Between any two other more states or  
18 a state and a foreign country?

19 MS. HAJJAR: Yes.

20 THE COURT: Okay.

21 MS. HAJJAR: The next request we have is on page 74,  
22 near the bottom of the page, the paragraph addressing the  
23 fourth element. At the -- near the bottom, the instruction  
24 says: "Provided and obtaining wire and electronic  
25 communications."

Charge Conference

5266

1 THE COURT: I'm sorry, where?

2 MS. HAJJAR: It's the second-to-last.

3 THE COURT: Yes, I see, "in relevant part"?

4 MS. HAJJAR: Yes, right before that, Your Honor. We

5 would just ask that -- we would ask that you add the sentence:

6 "I instruct you that an e-mail is a wire or electronic

7 communication."

8 And I don't believe the defense objects to that.

9 THE COURT: That an e-mail is a...

10 MS. HAJJAR: A wire or electronic communication.

11 MR. AGNIFILO: Can I have one second, Judge?

12 THE COURT: Yes.

13 (Pause.)

14 MR. AGNIFILO: What we're debating, Judge, is

15 whether -- we're not quarreling with that as a statement of

16 law. What I'm wondering is whether we're taking an element

17 away from the jury, in a sense, and whether it's better to say

18 you can consider or you may consider, you know, rather than

19 for the Court to say that, in a sense, a certain element has

20 been satisfied. But we are just trying to think through it; I

21 mean, I don't think it's that tricky, but --

22

23 (Continued on the following page.)

24

25

Charge Conference

5267

1 MS. HAJJAR: (Continuing.) Our view, Your Honor, it  
2 is a definition of what that word is. It's not an element of  
3 the crime. It doesn't take away an element. It explains to  
4 the jury, one, wire or electronic communication is an e-mail  
5 and that's throughout Your Honor's instructions.

6 THE COURT: What else would an e-mail be than a wire  
7 or electronic communication? It couldn't be anything else.

8 MR. AGNIFILO: I agree with that.

9 THE COURT: I don't think that eliminates an  
10 element. It just defines what an e-mail is.

11 MR. AGNIFILO: Right. I know. I'm not trying to be  
12 too theoretical. I want to make sure that the jury decides  
13 all the elements on its own.

14 I think the Government's has convinced me. It's not  
15 an element of the crime.

16 THE COURT: I just don't see that as depriving the  
17 jury of the responsibility to find the elements is what I'm  
18 saying.

19 MR. AGNIFILO: Got it. I think I agree.

20 THE COURT: The Government.

21 MS. HAJJAR: Your Honor, with respect to the  
22 interstate or foreign commerce element, there are a number of  
23 places where we neglected to have that, including on page 75.  
24 If it's easier for Your Honor, we can send a Word document  
25 with that proposed language throughout.

Charge Conference

5268

1 THE COURT: Identify where you think it ought to go  
2 in.

3 MS. HAJJAR: Yes.

4 THE COURT: With certain materials we went back and  
5 looked. But on that subject, we I didn't.

6 MS. HAJJAR: We neglected to include it. We will  
7 add it for each of the identity theft racketeering acts, for  
8 which there are a few.

9 THE COURT: Next.

10 MR. AGNIFILO: Your Honor, on page 79, Racketeering  
11 Act Six.

12 THE COURT: Yes.

13 MR. AGNIFILO: The name of the statute really is  
14 conspiracy to obstruct an official proceeding rather than  
15 obstruct justice.

16 MS. HAJJAR: Your Honor, Mr. Agnifilo raised this  
17 issue to us this morning. We don't -- the name of the statute  
18 isn't conspiracy to obstruct an official proceeding, but Mr.  
19 Agnifilo did point that the indictment says conspiracy to  
20 alter records for use in official proceeding. We are fine --  
21 if it's significant, we are fine with reverting to the  
22 language from the indictment in terms of the title of that  
23 section.

24 MR. AGNIFILO: That's fine with us.

25 THE COURT: I'm sorry, just tell me where I'm

Charge Conference

5269

1 putting this in.

2 MS. HAJJAR: It is page 79 in the title of  
3 Racketeering Act Six, rather than conspiracy to obstruct  
4 justice, read the language from the indictment, conspiracy to  
5 alter records for use in official proceeding.

6 MR. AGNIFILO: That's agreeable to us.

7 MS. HAJJAR: There are two additional areas.

8 THE LAW CLERK: So would the following sentence stay  
9 the same, the first sentence after title?

10 MS. HAJJAR: In the following paragraph, the two  
11 references to obstruct justice should be changed then to  
12 agreed to alter records for use in official proceeding and the  
13 first sentence. You're right.

14 THE COURT: We are on F, right?

15 MS. HAJJAR: Yes.

16 THE COURT: Which starts on 78?

17 MS. HAJJAR: 79 by my count.

18 THE COURT: I don't know why I have a different  
19 pagination. Don't worry about it. Let's fix it.

20 Go through that with me now. That's why I was  
21 confused. The title is going to be "Conspiracy --

22 MS. HAJJAR: It would be --

23 MS. GERAGOS: "Conspiracy to alter records for use  
24 in an official proceeding."

25 THE COURT: Okay.



1 MS. HAJJAR: Throughout that paragraph where the  
2 charge refers to obstructing justice or obstruction of  
3 justice, we would just swap out that phrase.

4 THE COURT: Okay.

5 MR. AGNIFILO: It appears a few different times.

6 THE COURT: We will change it every time.

7 MR. AGNIFILO: Very good.

8 THE COURT: We will take care of that.

9 Next.

10 MS. HAJJAR: We don't have one until 90.

11 MR. AGNIFILO: That's right. That's the next one we  
12 have too.

13 MS. HAJJAR: On page 90, at the top of the page,  
14 Your Honor, there are three subparts to section -- to the  
15 second element. We would just ask to strike the third as we  
16 are not proceeding on it and the defense consents.

17 MR. AGNIFILO: We do consent.

18 THE COURT: My pagination is a little different.  
19 Why don't you give me a more specific understanding. This is  
20 on Racketeering 8B?

21 MS. HAJJAR: 8B yes, Your Honor.

22 THE COURT: And then "Whoever knowingly destroys,  
23 conceals," et cetera language, and then "In order to prove  
24 this racketeering act, the Government must prove."

25 MS. HAJJAR: And then the second bullet point, which

Charge Conference

5271

1 begins "Second, that the defendant did so."

2 THE COURT: Yes.

3 MS. HAJJAR: There are three subparts. We would ask  
4 to strike the third, which begins "Or three, to unlawfully  
5 prevent or restrict" and to the end of that semicolon.

6 THE COURT: How would second read?

7 MS. HAJJAR: "Second, that the defendant did so,  
8 one, in the course of violating the force labor statute or  
9 trafficking statute; or, two, with intent to violate the force  
10 labor statute or trafficking statute," semicolon and third.

11 THE COURT: Agreed?

12 MR. AGNIFILO: We do agree.

13 THE COURT: Next.

14 MR. AGNIFILO: Our next one is on page 101, Judge.  
15 I know that we have different pagination.

16 THE COURT: I will find it. If you just --

17 MR. AGNIFILO: The paragraph starts "The third  
18 element that the Government must prove."

19 THE COURT: I got it.

20 MR. AGNIFILO: It is the last two sentences of that  
21 paragraph. It starts with --

22 THE COURT: "A thing of value"?

23 MR. AGNIFILO: "A thing of value," going to the end  
24 of the paragraph, that is not part of the Sand charge. So we  
25 oppose it. We want the Sand charge as it is in the original

Charge Conference

5272

1 jury instruction.

2 MS. HAJJAR: Your Honor, we adapted those languages  
3 from Your Honor's memorandum and order denying the motion to  
4 dismiss. We think it is important to define a thing of value  
5 and the phrase any sex act. That was from the Court's  
6 memorandum and opinion. It is an accurate explanation of the  
7 law and there is none in Sand. So we do think it's  
8 appropriate. We think it's important.

9 MR. AGNIFILO: Judge, I mean, obviously Your Honor  
10 was deciding motions in front of us, so I don't quarrel with  
11 the legal propriety of the language, but I don't know that it  
12 should be part of the jury instruction. I think the Sand jury  
13 instruction is a little more time tested. I would want to  
14 stick with the original Sand instruction. This instruction,  
15 as the Government adapted it, hasn't been approved. It is  
16 something that the Government has cobbled together. I  
17 understand why they did. But we want to stick with the Sand  
18 instruction as a sound instruction.

19 MS. HAJJAR: Your Honor, every trafficking case we  
20 found in this district, for which there have been not many,  
21 have put something in there. *Marcus* is another case in which  
22 there was some discussion of what a thing of value is. Here,  
23 we think it is important for the jury to understand that a  
24 thing of value need not be financial in nature, need not be a  
25 cash exchange. That is what the law says. That's what Your

MDL

RPR

CRR

CSR

1 Honor ruled and we think it's appropriate for the jury to know  
2 what that is.

3 THE COURT: I am going to leave it in. If you have  
4 other language that could be used, I'd like to see it.

5 MR. AGNIFILO: I think part of the problem, Judge,  
6 is earlier in the Sand instruction, the Sand instruction  
7 specifically says, and I am looking about seven lines up, a  
8 commercial sexual act is any act of which anything of value is  
9 given to or received by any person because of such sex act. I  
10 think the reason that the Sand instruction -- the Sand  
11 instruction captures that concept. And I think what's  
12 happening is the Government is trying to sort of double-back  
13 and do it again and I think it's giving undue emphasis to  
14 something that the Government frankly wants to emphasize, but  
15 I think the Sand instruction, as it is written in Sand, is  
16 balanced and appropriate and is the instruction that we're  
17 requesting.

18 MS. HAJJAR: The Court includes the Sand  
19 instruction. It's at the top of that page. It's just very  
20 bare-bones. There is no added explanation of what any of  
21 those things are. So we think it is important and we do want  
22 the Court to keep those two lines in.

23 THE COURT: Well, judge Sand isn't around to consult  
24 with at this point and I don't know it was ever contemplated  
25 that there would be an instruction in a case quite like this.

Charge Conference

5274

1 I am going to leave it. If necessary, later on, there will be  
2 clarification by somebody else.

3 You have your exception.

4 Next.

5 MR. AGNIFILO: The next one we have -- I'm not sure  
6 if there is one before -- is on page 109 and that relates to  
7 the tax charge.

8 THE COURT: 109?

9 MR. AGNIFILO: Yes, Judge.

10 THE COURT: Hold on.

11 MR. AGNIFILO: Where I'm looking, Judge, the  
12 paragraph starts "As to the fourth element under racketeering  
13 Act 11." I am going about seven lines down.

14 THE COURT: Fourth, "that the defendant or a  
15 co-conspirator"?

16 MR. AGNIFILO: No, Judge.

17 THE COURT: I'm sorry.

18 MR. AGNIFILO: That's all right. Below that. I'm  
19 not in the bullet point anymore.

20 THE COURT: As to the fourth element, I see it. Go  
21 ahead.

22 MR. AGNIFILO: So about five lines down, after the  
23 reference to the Internal Revenue code, it says, "In relevant  
24 part, the crime of tax evasion prohibits the willful attempt  
25 to evade or defeat any tax imposed by the Internal Revenue

## Charge Conference

5275

1 code. What we're requesting is the standard *Cheek* instruction  
2 from the Supreme Court's decision in *Cheek versus United*  
3 *States*, which defines willfulness specifically for a tax crime  
4 or intended tax crime. And what the Supreme Court says, and I  
5 will read it verbatim, "Willfulness requires the Government to  
6 prove that the law imposed a duty on the defendant, that the  
7 defendant knew of this duty and that he voluntarily and  
8 intentionally violated that duty." That's the Supreme Court's  
9 instruction in *Cheek* that's unique to tax offenses. AND even  
10 though this is only an intended tax offense, it applies in  
11 completed tax offenses and intended tax offenses.

12 MS. HAJJAR: We are fine with that, Your Honor.

13 THE COURT: How do you want me to revise this  
14 section as a result?

15 MR. AGNIFILO: I would say since you talk in the  
16 previous sentence with willful attempt to evade, just say  
17 something along the lines of in this context.

18 MS. HAJJAR: To act willfully?

19 MR. AGNIFILO: Yes, to act willfully and then go  
20 right into the Sand -- I'm sorry, into the *Cheek's*  
21 instruction. I will read it again just so it's clear.

22 THE COURT: So after the sentence "in relevant  
23 part"?

24 MR. AGNIFILO: That's right.

25 THE COURT: You want me to put in --

Charge Conference

5276

1 MR. AGNIFILO: "To act willfully here," and this is  
2 the quote, "requires the Government to prove that the law  
3 imposed a duty on the defendant, that the defendant knew of  
4 this duty, and that he voluntarily and intentionally violated  
5 that duty."

6 THE COURT: And then we go on to establish this  
7 fourth element?

8 MR. AGNIFILO: Yes. That's fine.

9 THE COURT: We are basically adding that sentence.

10 MR. AGNIFILO: That's right.

11 THE LAW CLERK: And the sentence would start "In  
12 this context, to act willfully requires"?

13 MS. HAJJAR: We would like that, yes.

14 MR. AGNIFILO: That's fine.

15 THE COURT: What's next?

16 MS. HAJJAR: We don't have anything further, Your  
17 Honor.

18 MR. AGNIFILO: I'm not sure we do either. Let me  
19 just double check.

20 One issue on page 12, Judge.

21 THE COURT: I'm sorry, racketeering conspiracy?

22 MR. AGNIFILO: Yes. The listing of crimes for  
23 racketeering conspiracy, in the middle of that page, there is  
24 a reference to Title 18, United States Code, Section 1590,  
25 trafficking in persons. I don't know that that's something

Charge Conference

5277

1 that Your Honor is giving a jury instruction on.

2 MS. HAJJAR: Could I have a moment to confer with  
3 Mr. Agnifilo?

4 THE COURT: Sure.

5 MR. AGNIFILO: I stand corrected. I didn't see that  
6 1590 was charged in conjunction with one of the other  
7 racketeering acts. As long as Your Honor is giving a charge,  
8 I'm fine.

9 THE COURT: We only have that one item we have under  
10 advisement and the other item where you are going to give us  
11 some language.

12 MR. AGNIFILO: Right. Let me just make sure.

13 So, yes. So what we owe Your Honor is we owe Your  
14 Honor some proposed language in regards to the bias issues and  
15 credibility of witnesses. That's on page 13. We owe Your  
16 Honor a Sand instruction on page 45 as part of the definition  
17 of enterprise under the racketeering statute.

18 THE COURT: Right. How fast can you get that to me?

19 MR. AGNIFILO: We can do it within an hour of when  
20 we leave here.

21 THE COURT: Because what I would like to do is take  
22 a look at everything. Some of the changes we have already put  
23 in while we have been here. What I would like to do is by the  
24 end of the afternoon is provide you with a new draft to look  
25 at to see if we have the changes that were agreed to correct



Charge Conference

5278

1 and we can see what other changes I decided to make, if any.

2 MR. AGNIFILO: One other thing that I would like to  
3 have an opportunity to take a look at within the hour is that  
4 some of the other Eastern District cases in sex trafficking  
5 that talks about commercial sex act and things of value, only  
6 because I think that's an important issue. I know the  
7 Government's has added to the Sand instruction.

8 THE COURT: Well, go ahead.

9 MR. AGNIFILO: Thank you, Judge.

10 THE COURT: Have you looked at the verdict sheet?

11 MS. HAJJAR: Your Honor, I'm not sure we received --

12 THE LAW CLERK: He is talking about the one you  
13 submitted to the Court.

14 MS. HAJJAR: The one we submitted, yes.

15 THE COURT: The one you submitted and the one we  
16 received.

17 MS. HAJJAR: Yes.

18 MS. GERAGOS: The only proposed change we would  
19 make, Your Honor, is to change the language of the conspiracy  
20 to alter records for use in an official proceeding instead of  
21 conspiracy to obstruct justice. I don't have it in front of  
22 me. I just remember that that's -- give me one moment. That  
23 is our only issue for Racketeering Act Six.

24 THE COURT: The racketeering act?

25 MS. GERAGOS: Yes.

Charge Conference

5279

1 THE COURT: Is that the one conspiracy to obstruct  
2 justice?

3 MS. HAJJAR: I think that's what Ms. Geragos.

4 THE COURT: That's Racketeering Act Six.

5 MS. GERAGOS: Racketeering Act Six.

6 THE COURT: We will change that to reflect the  
7 changes in the charge.

8 MR. AGNIFILO: One other thing, I'm not proposing a  
9 change, I just want to put an issue on the Court's radar. We  
10 discussed it this morning. Racketeering Act 5A is conspiracy  
11 to commit identity theft and Racketeering Act 7 is conspiracy  
12 to commit identity theft. It seems those two racketeering  
13 acts, at least the sub-predicated 5A and the 7, seem to  
14 capture the same conduct. This would only be a problem if  
15 those were the only two racketeering acts that Mr. Ranieri was  
16 convicted of. So, we don't have that problem yet, but it's a  
17 problem that we have kind of recognized and discussed. There  
18 is nothing I am asking Your Honor to do with it at this point  
19 other than to say we have discussed it and we will see what  
20 happens.

21 MS. HAJJAR: We have discussed it, Your Honor. If  
22 the defendant is convicted of subsection A and acquitted of B  
23 and C and convicted of the other conspiracy to commit identity  
24 theft, there may be an argument on appeal, but there is  
25 nothing at this point to be done about that.

Charge Conference

5280

1 MR. AGNIFILO: And the issue would be whether it is  
2 a pattern.

3 THE COURT: Whether it is what?

4 MR. AGNIFILO: A pattern, because it would  
5 essentially be -- because 5-A and 7 are essentially the same  
6 conduct, so it wouldn't be two acts.

7 THE COURT: I see.

8 MR. AGNIFILO: We don't have a verdict yet. We are  
9 just raising it as an issue.

10 THE COURT: It is good to know.

11 MS. HAJJAR: We're not conceding that issue, Your  
12 Honor. We just want to be clear.

13 THE COURT: I understand that. It is nothing for  
14 the Court to do at this point about it, just to hear about it.  
15 It's on the record.

16 MR. AGNIFILO: There it is.

17 THE COURT: That's fine.

18 Ms. Penza is not here. I can't ask her how long her  
19 closing argument is going to be. Any change?

20 MS. HAJJAR: I don't think so. She is working hard  
21 on it right now, Your Honor.

22 THE COURT: Mr. Trowel, do you have anything to say  
23 today? This is an appearance, so I thought you might have  
24 something to say.

25 MR. TROWEL: Thank you, Your Honor, no.

Charge Conference

5281

1 THE COURT: Mr. Lesko?

2 MR. LESKO: I'm just observing today.

3 MS. GERAGOS: If you can give us one moment, I want  
4 to talk to Mr. Agnifilo about something before we break.

5 THE COURT: That's fine.

6 MR. AGNIFILO: There might be a very minor -- we are  
7 looking for something in regard to an instruction that Your  
8 Honor gave the jury during the testimony of the expert witness  
9 Hughes. I don't know that we are going to have a request. If  
10 it is, it will be a minor thing and we will include it in the  
11 letter we will give to the Court within the hour of us  
12 leaving.

13 THE COURT: Anything else from the Government?

14 MS. HAJJAR: Not from the Government.

15 MR. AGNIFILO: Not from us.

16 THE COURT: Thank you very much for your  
17 cooperation. We will see you Monday morning at 9:00 a.m. for  
18 closing. Thank you.

19 And whatever you can do to carefully structure them  
20 so we can get through all of this and the jury can get the  
21 case by Wednesday morning, I would appreciate it.

22 MR. AGNIFILO: Very good, Judge.

23 MR. LESKO: Your Honor, a quick schedule question.  
24 It is probably a silly question. Are we starting summations  
25 at 9:00 or should we be here at 9:00 and expect to start

1   sometime afterwards?

2                   THE COURT: I would like to start soon after 9  
3 o'clock if the jury is here. Are you planning to use the ELMO  
4 or any other form of electronic equipment?

5                   People should show up before 9:00 to put that  
6 together and test it. I have asked the IT department to  
7 provide someone to sit here for the entire closings, the  
8 period of closings just in case there is a problem and we  
9 don't have to stop and start again. I am anticipating that  
10 the equipment has its eccentricities and I just want to make  
11 sure that anything we can do to be prepared at the beginning  
12 of the day, so we can get a smooth start, you can be ready for  
13 it.

14                   MS. HAJJAR: Thank you, Your Honor. There will be a  
15 PowerPoint, so we will be here then.

16                   THE COURT: Thank you.

17                   MR. AGNIFILO: Thank you, Your Honor.

18                   THE COURT: Thank you, deputies. Appreciate it.

19                   (Matter adjourned to June 17, 2019 at 9:00 a.m.)

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