

DCHAKURlps

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 UNITED STATES OF AMERICA,

4 v.

S1 12 Cr. 376 (RMB)

5 RUDY KURNIAWAN, a/k/a "Dr. Conti,"
5 a/k/a "Mr. 47,"

6 Defendant.

7 -----x

8 December 17, 2013
8 9:15 a.m.

9 Before:

10 HON. RICHARD M. BERMAN,
11 District Judge

12 APPEARANCES

13 PREET BHARARA,
14 United States Attorney for the
15 Southern District of New York
16 JASON HERNANDEZ,
16 JOSEPH FACCIPONTI,
16 Assistant United States Attorneys

17 WESTON, GARROU & MOONEY
18 Attorneys for defendant
18 BY: JEROME MOONEY

19 VERDIRAMO & VERDIRAMO, P.A.
20 Attorneys for defendant
20 BY: VINCENT S. VERDIRAMO

21 - also present -

22 Ariel Platt, Government paralegal
23 Bibi Hayakawa, Government paralegal

24 SA James Wynne, FBI
24 SA Adam Roeser, FBI

25

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1 (Trial resumed; jury present)

2 THE COURT: Good morning, everyone. I believe, and
3 I'll hear from the lawyers in a minute, that the government has
4 no further testimony at this time. Is that correct,
5 Mr. Hernandez?

6 MR. HERNANDEZ: That's correct, your Honor. The
7 government rests.

8 THE COURT: The government rests. OK. And so we'll
9 turn to the defense and ask if the defense has witnesses to
10 call.

11 MR. MOONEY: Yes, your Honor. The defense calls C.
12 Robert Collins.

13 CORNELIUS ROBERT COLLINS,
14 called as a witness by the defendant,
15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MOONEY:

18 Q. Mr. Collins, how are you employed?

19 A. I am involved in the wine business. I have an importing
20 company. And I have private clients worldwide that I obtain
21 wine for.

22 THE COURT: That what? I didn't hear the last part.

23 THE WITNESS: Oh, that I obtain wine for.

24 THE COURT: That you obtain wine for. OK.

25 Q. Let's pull up to the mike. The acoustics are not as good

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1 as we would otherwise like here.

2 How long have you been involved in the wine business?

3 A. Since 1976, 35 years.

4 Q. How did you first get involved in the wine business?

5 A. I went to work for a large retail company in San Francisco.

6 Q. What company was that?

7 A. The Ernie's Wine Warehouse.

8 Q. And then what did you --

9 THE COURT: That was -- could you spell that for the
10 court reporter.

11 THE WITNESS: Oh, sure. E-r-n-i-e-s Wine Warehouse.

12 Q. What did you do for Ernie's Wine Warehouse?

13 A. I became their imported and domestic wine buyer for a chain
14 of 78 liquor stores.

15 Q. And did that involve buying imported wines?

16 A. Yes.

17 Q. Did it involve buying wines from Europe?

18 A. Yes.

19 Q. Did it involve buying Bordeaux and Burgundies?

20 A. Yes.

21 Q. And this was back in the '70s?

22 A. Yes.

23 Q. How long did you work for Ernie's in that capacity?

24 A. I worked there for a little over a year.

25 Q. And then where did you go from there?

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- 1 A. I went to work for a company called Draper & Esquin.
2 THE COURT: If you could spell that for --
3 THE WITNESS: Yeah. D-r-a-p-e-r & E-s-q-u-i-n.
4 Q. What is Draper & Esquin?
5 A. Draper & Esquin was a large retail store in San Francisco
6 that also had an importing and wholesale license.
7 Q. Did it have an import relationship with any Burgundy or
8 Bordeaux vineyards?
9 A. Yes.
10 Q. And what are some of the vineyards that it had import
11 relationships with?
12 A. It had import relationships with Comte De Vogue in Musigny,
13 Domaine Roumier. It had a relationship with Louis Latour in
14 Beaune.
15 Q. So you were buying wines directly from those vineyards.
16 A. Yes.
17 Q. And selling those in the United States?
18 A. Yes.
19 Q. And how long did you stay as an employee of Draper &
20 Esquin?
21 A. I was there for a little over two years. Then I set up a
22 wine consultation business in downtown San Francisco, where I
23 worked a broader clientele than just Draper & Esquin.
24 Q. Did you continue to do work with Draper & Esquin?
25 A. Yes.

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1 Q. Did you then start working with other clients?

2 A. Yes.

3 Q. What services did you start providing at that point?

4 A. Wine procurement for clients such as Tiffany's in San
5 Francisco, and we did -- continued investigating and supplying
6 imported wine from, from Burgundy for them.

7 Q. Did you become involved in wine auctions at that point?

8 A. Yes.

9 Q. And about when are we talking? What time frame now are we?

10 A. Extensively from 1976 on.

11 Q. And you've continued to be in this trade from 1976 to the
12 present?

13 A. Yes. Extensively until 2009. I'm -- and now I do a
14 minimal amount of auction work.

15 Q. What sort of things, what sort of activities were you
16 performing on behalf of the clients during this period of time?

17 A. Well, for example, with Draper & Esquin in the '70s, they
18 would -- they would pay me to go and attend auctions in London,
19 which is where most of the fine and rare wine auctions were.
20 They also paid me to go to the Heublin Auctions in the United
21 States. My capacity there was to select the wines that they
22 would purchase.

23 Q. And was authenticating the wines a part of the duty you
24 that performed?

25 A. That's correct.

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1 Q. Why was authenticating the wines important?

2 A. Well, we -- a good example is, a typical London auction,
3 there might be lots, there might be many lots of Bordeaux wines
4 and Burgundy wines that there was incomplete information
5 supplied by the auction house, and we were -- we were looking
6 both for provenance and we were looking for wines that would,
7 would resell very well in California.

8 Q. So we've heard a little bit about provenance. So why was
9 provenance important to you?

10 A. Well, it's the end link in buying and selling these wines,
11 because where it's been stored for most of its life is
12 tantamount to how good the wine will be.

13 Q. Does provenance play any role in determination of
14 authenticity?

15 A. Yes.

16 Q. And what role does it play in the determination of
17 authenticity?

18 A. Well, if you don't -- if you have, if you have what I call
19 a clean slate where you can identify where the wine has been
20 all its life, it considerably increases the value of it.

21 Q. And if provenance is missing, what do you do then?

22 A. Then you have to do a much more extensive investigation of
23 the individual bottles of the wine.

24 Q. And if there is not -- if there is no available provenance
25 on a wine, does that rule the wine out as being merchantable?

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1 A. No, it doesn't necessarily rule it out. But it does
2 require further investigation.

3 Q. Did you conduct those kinds of investigations?

4 A. Yes.

5 Q. How many years have you been doing that?

6 A. Since 1976.

7 Q. And since 1976, in the course of doing that, did you come
8 across wines that you've rejected?

9 A. Yes.

10 Q. What would cause you to reject a wine?

11 A. Well, a good example, in terms of wines that we're going to
12 speak about today, would be a Montrachet that was available for
13 sale in Beverly Hills in 1976 from Domaine Romanee-Conti, and
14 that wine we inspected and rejected because the label was --
15 had an improper appellation controlee name on it. It didn't
16 match the wine. So it obviously was not authentic.

17 Q. And that was clear back in 1976?

18 A. That was in 1976.

19 Q. So counterfeit wines have existed to -- have they existed
20 throughout the period of time that you've been involved in this
21 business?

22 A. Yes.

23 Q. And when you authenticate a bottle of wine, could you tell
24 us what you do.

25 A. Well, I have a procedure that I follow. I start out by,

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1 first off, I start out by setting the bottle of wine down and
2 looking at it. What I'm looking for initially is the label and
3 the placement. The label is the first thing. So this is the
4 identifier that I look at. And I look for, I look for any kind
5 of, um, discrepancies from labels that I've seen before from
6 the property involved. And I then roll up the bottle. I look
7 up the bottle to the neck. I ascertain the ullage, which is
8 the level of the wine in the bottle. And I examine the cork
9 and capsule. I identify any other marks on the bottle.

10 Then I look at the bottle from a standpoint of how it
11 was manufactured. And I look for things like glass codes if
12 they're applicable. And then when I look -- when I'm done with
13 that, I look at the bottom of the bottle, in the indentation
14 called the punt. I'm looking there for color, because that's
15 the best area that you can, you can see. I'm looking for
16 sediments level, which would indicate how long the wine has
17 been aging in the bottle. And I look for any other, um,
18 foreign objects that might be in the bottle of wine.

19 Q. And in the course of doing that, does that then help you
20 determine whether or not the wine appears to be authentic?

21 A. Yes.

22 MR. MOONEY: Your Honor, we would ask that Mr. Collins
23 be qualified.

24 THE COURT: I will grant that application.

25 MR. MOONEY: Thank you, your Honor.

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1 Q. Now, you've had an opportunity to look at some wines that
2 are at issue in this case; is that correct?

3 A. Yes.

4 Q. And you have not looked at all of the wines in this case;
5 isn't that right?

6 A. I don't believe so.

7 Q. And you were not hired by anybody to do examinations of
8 wines outside -- were you hired by anyone do any examination of
9 any wines outside the specific ones that are exhibits in this
10 case?

11 A. No.

12 Q. During the period of time from 1975 on up through current,
13 are you familiar with common brands, common vintages that have
14 been a subject of counterfeit?

15 A. Yes.

16 Q. And are there certain vineyards that are more prone to
17 counterfeiting than others?

18 A. Yes.

19 Q. What are some of the more -- let's focus perhaps on
20 Bordeaux and Burgundy. We look at the Bordeaux and Burgundy
21 areas. First of all Bordeaux. What are some of the vineyards
22 that are most commonly seen in counterfeits?

23 A. The one that I've seen the most example of counterfeit
24 bottles is Chateau Petrus in Pomerol. This is due to the
25 popularity that this wine achieved in the '70s, and it became

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1 very expensive.

2 Q. Are there any others?

3 A. Chateau Lafite, Chateau Mouton Rothschild, Chateau Latour,
4 Chateau Margaux, again because they're first-growth Bordeaux
5 and they commanded the highest prices.

6 Q. Now, you said that when you first came into the business,
7 the primary market was in London. Has that market shifted
8 around over the years?

9 A. Yes.

10 Q. And after London, where did the market go then?

11 A. Well, the major shift in the market for the United States
12 was when auction houses, London auction houses were approved to
13 make sales inside the United States. In the '70s this wasn't
14 the case. The only auction house that performed these kind of
15 services in the United States was run by a large liquor company
16 called Heublein.

17 Q. And then what happened?

18 A. The auction houses moved to -- here to New York, other
19 locations. They conducted sales in Los Angeles and --

20 Q. Which auction houses came into the United States?

21 A. Well, Christie's, Sotheby's came in too.

22 Q. Did that change the market in the United States?

23 A. It increased the amount of sales that were done to private
24 parties as opposed to commercial parties, because the wines no
25 longer had to be imported under federal regulations by the

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1 individual.

2 Q. So if you wanted to buy from auction back in the '70s, you
3 had to go to London?

4 A. Yeah, you had to purchase in London, and then you had to
5 arrange an importer that would bring the wine in. This
6 required somebody that had a federal label approval and had
7 permission by the federal government to import that specific
8 brand. The regulations that gave exclusivities to various
9 import houses was overturned in 1978.

10 Q. And then you could start buying in the United States.

11 A. Then, yeah, then it dramatically changed it, yes.

12 Q. Does this historic fact affect what you might see in
13 labeling on bottles?

14 A. Well, yes. All of these bottles of wine preceded this 1978
15 ruling. Under, under the old system, they would have had to
16 have been imported by a specific assigned importer. And after
17 that, any, any small liquor store or restaurant could actually
18 import the wines by using a new kind of retail -- I mean an
19 independent small importer.

20 Q. Was there an auction market to speak of in Asia back in the
21 '70s?

22 A. No.

23 Q. When -- is there an auction market in Asia that's --

24 A. Yes.

25 Q. -- prevalent now?

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- 1 A. Yes.
- 2 Q. How did that come about?
- 3 A. Well, two factors seem to have enlarged that quite a bit.
- 4 One is that Hong Kong changed the import duty on wine and
- 5 essentially eliminated it. And it authorized auction houses to
- 6 set up shop in Hong Kong, which is where most auctions on these
- 7 kind of wines happen today.
- 8 Q. When did that change take place?
- 9 A. That was in the late '90s, I believe.
- 10 Q. So the auction houses that were in London and then opened
- 11 up branches in the United States, did they then open up
- 12 branches in Hong Kong?
- 13 A. Yes. There also was auction houses that started in the
- 14 United States in New York or Chicago that did the same thing.
- 15 Q. And over this expansion of these auction markets, did the
- 16 volume of sales change?
- 17 A. Yeah. The volume of sales increased tremendously.
- 18 Q. Do you have a -- do you know the relative proportion of
- 19 sales between London, the United States, and Hong Kong?
- 20 A. I wouldn't know the exact, the exact numbers, no.
- 21 Q. As you were attending the auctions -- have you attended
- 22 auctions in Hong Kong as well?
- 23 A. No.
- 24 Q. Have you looked at catalogues from auctions in Hong Kong?
- 25 A. Yes.

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1 Q. When you look at catalogues, can you sometimes determine
2 whether wines are authentic from the catalogue?

3 A. Yes.

4 Q. What kind of information do you see in the catalogue that
5 would help you determine that the wine is authentic or not?

6 A. Um, well, in a recent auction, that happened this year, I
7 was, I was going to go over to assist, but the auction house
8 didn't allow anyone to examine bottles of wine prior to the
9 sale, so that negated my services. But in the auction
10 catalogue there was bottles of wine that I -- that I would have
11 serious reservations about because the serial numbers on the
12 bottles of wine weren't appropriate for the particular wine.
13 And in one case the vintage neck label was of -- appeared to be
14 of a completely different color and type than the regular --
15 than the central label.

16 Q. Should individuals who are purchasing wines at auction
17 employ people like you to investigate the wines they're buying?

18 A. Well, all of the major auction houses represent themselves
19 as fully vetting all of the bottles of wine that they sell.

20 Q. Is that reliable?

21 A. Um, it's --

22 Q. Or --

23 A. I wouldn't call it -- it's not reliable by the methods that
24 I would use. When we were first doing these auctions back in
25 the '70s, with Sotheby's and Christie's in London, there was no

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- 1 problem for me to go and examine a lot of wine prior to the
2 auction, to make my own individual determinations. There also
3 were tastings when there was large lots of the wine available
4 so that you could ascertain the quality and the provenance.
5 Q. Why is tasting so important?
6 A. Well, ultimately that's what we're supposed to be doing
7 with these bottles of wine. The clients that I have are, are
8 looking to obtain wines for the purposes of opening them and
9 drinking them. Then this gives me -- well, it's one way that I
10 can look at the provenance. But it's also a manner to look at
11 the wine for how good the wine is at this period of time. Many
12 of these wines might have been quite good when I was looking at
13 them in the 1970s, but now it's 30 years later and the same
14 wines might be tired.
15 Q. So is drinkability one of the things that you're looking
16 at?
17 A. It's one of the things I look at, yeah.
18 Q. For example, let me show you Government's Exhibit 3-4,
19 which purports to be a bottle of Montrachet.
20 A. Yes.
21 Q. Do you remember examining that bottle?
22 A. Yes.
23 Q. Would you recommend the purchase of that bottle to one of
24 your clients?
25 A. No.

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- 1 Q. Just from what you can see now, does that appear to be
2 drinkable?
- 3 A. Well, if there's --
- 4 Q. Even assuming there's -- even if what it says on the label
5 is in the bottle would you recommend it?
- 6 A. No. I would think that the wine is over the hill. The
7 color is -- the color is one of the big indicators on, on white
8 wine because when it turns to an amber brown, what you're
9 getting is a sherry-like color to it. The Montrachets are
10 excellent wines, but I don't -- I don't believe that they have
11 the capacity to age 60 years and still -- and still be
12 drinkable.
- 13 Q. What sort of things could happen to that bottle to make it
14 look like that?
- 15 A. Oh, just the natural aging process, oxidation.
- 16 Q. Over the years that you've been doing this and consulting
17 for clients, have you looked at many different counterfeit
18 wines?
- 19 A. Yes. I've looked at many different counterfeit wines.
- 20 Q. And is the sophistication of the counterfeiting different
21 from one to another?
- 22 A. Well, over a period of that many years, yes, there's quite
23 a few differences.
- 24 Q. For example -- would you come down here, please. Why don't
25 you stand become over here so the jury can see. One of the

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1 exhibits that you examined in this case is Exhibit 4-1,
2 correct?

3 A. Yes.

4 Q. Did you determine that to be authentic or inauthentic?

5 A. I determined it to be counterfeit. And --

6 Q. Why is that a counterfeit?

7 A. Well, this bottle actually somewhat amazed me that it's in
8 this, in this -- in the context of needing an expert wine
9 authenticator. If -- just a minimal knowledge of this
10 particular chateau would indicate that this label has been
11 faked. The texture of the label looks as if it's faded, but if
12 you run your finger down it, it's exactly the same texture,
13 which means that essentially the aged look of the label has
14 been copied onto the, onto the paper.

15 And there's, there's four other things that would
16 all --

17 Q. Stop a second there before you go on.

18 A. Sure.

19 Q. You're saying the label itself appears to be a copy; it's
20 not printed?

21 A. It's not an authentic Petrus label from that era. I have
22 a -- I have a bottle from 1945 that I use a reference with an
23 authentic label. The color isn't correct. The texture of the
24 paper isn't correct. It's missing -- it's missing important
25 things. It's a chateau bottle wine but it doesn't say "mis en

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1 bouteille au chateau," which would be on a genuine bottle. It
2 indicates that it's imported into the United States from this
3 label, but there's absolutely no volume and there's absolutely
4 no alcohol printed either on the label or on a strip label.
5 Which means that if it had been imported, it would have been
6 subject to a \$5,000 fines from the Bureau of Alcohol, Firearms,
7 and Tobacco.

8 The only other things that are particularly wrong with
9 it are the bottle, the capsule, and the cork are also not
10 authentic.

11 Q. So other than the bottle, the label, the capsule, and the
12 cork, it looks fine.

13 A. That's right.

14 Q. So is this a good thing?

15 A. I would call it an amateur, and amateur fake, and I would
16 wonder why anybody would pay money for a bottle of wine that
17 looked this way.

18 Q. OK. Let me show you. And you think you looked at three
19 bottles, Exhibits 7-2, 3, and 4, that appear to be similar.

20 A. Yes.

21 Q. Did you examine those?

22 A. Yes.

23 Q. And are those -- first of all, did you determine that those
24 are real or not real?

25 A. I ultimately determined it was not real.

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1 Q. Are these better counterfeits?

2 A. Yeah. I would call them a sophisticated counterfeit.

3 The -- I, I've had a long relationship with Domaine Roumier.

4 The issue involved was using this name, the ancient Domaine

5 Belorgey on this label, which would have indicated, if it had

6 been used on a bottle of wine this age, it would indicate that

7 that was -- would have been a metiage agreement, and the label,

8 the actual name down here would not be Domaine Georges Roumier.

9 It would be Georges Roumier or it would have a different

10 Roumier name on it. That would be the way it -- the wine would

11 be labeled after 1936. The labels carried the appellation

12 controlee name on them, which would indicate that the labels

13 were printed after 1936, because that's when the law started.

14 And prior to that it could have been labeled many different

15 ways authentically.

16 Q. Would this, would these bottles be able to fool somebody

17 that didn't have a depth of knowledge?

18 MR. HERNANDEZ: Objection.

19 Q. In your opinion?

20 THE COURT: I didn't understand the question.

21 Q. Do you believe that -- do you believe that a person without

22 the detailed knowledge that you have could be fooled by the

23 bottle you're holding in your hand?

24 A. Yes.

25 THE COURT: It could be.

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1 Q. Could be fooled.

2 A. Yes.

3 Q. In other words, just the look of the labels were not
4 sufficient for you to determine that it's fake. You have to
5 know the --

6 A. No, this -- there's actually -- I have record of about six
7 different labels that were used on Domaine Roumier. This is
8 very similar to one label they used. But it didn't have the --
9 it didn't have this appellation controlee on it saying Domaine
10 Belorgey. Belorgey and Roumier, I believe, worked very closely
11 together even at the founding of the estate. There were six
12 cases of Bonnes-Mares Belorgey that were sold in auction in
13 Atlanta, Georgia and Heublein in 1978 that carried a label
14 nearly identical to this. But that alone wouldn't -- would
15 require the label to read exactly like those that were before
16 it.

17 Q. So if I bought this bottle and put a picture of it on the
18 front of a catalogue for a -- or a menu for a tasting I'm going
19 to do, I could be forgiven that error.

20 A. Yes.

21 Q. And if I bought that bottle and resold that bottle later, I
22 could be forgiven that error.

23 MR. HERNANDEZ: Objection.

24 THE COURT: Overruled.

25 A. Yes.

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- 1 Q. And even if I bought that and copied the label, because I
2 wanted to have copies of the label, I could be forgiven that
3 error.
4 A. Yes.
5 Q. Let's see. Where's the -- another one to talk about. Oh.
6 Exhibit 4-3 and 4-4.
7 A. Yes.
8 Q. Did you examine those?
9 A. Yes.
10 Q. And what was your conclusion with regards to those bottles?
11 Are they authentic or not authentic?
12 A. I don't believe they're authentic.
13 Q. Why do you believe they're not authentic?
14 A. Well, I, continued to group any -- these were, these were
15 basically out of the same box, since they're supposed to be the
16 same wine, I also compare between the two bottles as, as -- one
17 of the, one of the immediate things that I noticed was that the
18 import strip labels, which are legally put on the bottle of
19 wine in order to import it, are supposed to conform with the
20 Bureau of Alcohol, Firearms, and Tobacco regulations. If you
21 look at the corner of this label and you look at the corner --
22 Q. Which exhibit, which one are you talking about? Use the
23 number.
24 A. Yeah. Exhibit 4-3, just if we look at this label, the
25 strip label indicates that the contents are 3 pints and 2 fluid

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1 ounces. If we look at Exhibit 4-4, the same bottle indicates
2 that the contents are 6 pints and 3 fluid ounces. Somebody is
3 lying.

4 Q. That would make one, the content of one twice the amount of
5 the other?

6 A. Um, yeah. But I think a visual inspection would, would
7 indicate that that's not true.

8 Q. OK. So is that what keyed you into the problems with those
9 bottles, or were there other difficulties?

10 A. Well, it was the start. This, the -- one of the things on
11 Domaine Romanee-Conti that can help you quite a bit is the
12 imprinted serial number that they have placed on the labels.
13 In this particular case, it's a five-digit serial number, which
14 corresponds with other bottles of wine that, that I've seen
15 that I know are genuine from the domaine and at the domaine.
16 The -- but if you observe both bottles from underneath, it
17 appears that we're dealing with two different kinds of glass.
18 And I -- the capsule was a little bit of a question because,
19 because these have been cut in order for identification by --
20 before I saw them. But that -- that wasn't the problem. But
21 when you look at, when you look at a cut capsule like this you
22 look for cork branding. This domaine extend -- was one of the
23 first domaines in Burgundy to cork-brand their wines
24 specifically. And we don't seem to have an indication here
25 that, number one, that -- there is no vintage down in the

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1 bottom part of the label, where it normally would be. This
2 other one hadn't been opened. But, again, it, it looked, it
3 looked to me that -- we have a -- we have a dramatic difference
4 in the ullage between the two bottles. The ullage of the
5 bottle, of this 4-3, is not consistent with an ullage of a
6 bottle that's -- was bottled in 1962, that you -- you, even,
7 even under the best of cellaring conditions, you see the ullage
8 will drop over a period of, of 30 or 40 years.

9 Q. Are those good reproductions or poor?

10 A. Um, they're, they're good, they're good reproductions. I,
11 I, I would, I would suspect, with the way this label is, these
12 are quite possibly genuine bottles that have been perhaps
13 tampered with later, that, that they might be refilled with
14 something else besides what's on the label.

15 Q. So could a person without your knowledge and sophistication
16 be fooled by these bottles?

17 A. Well, with the capsule sealed like this I think it would be
18 fairly easy to be fooled, yes.

19 Q. Did it help having the two bottles together so you could
20 see the inconsistencies?

21 A. Well, probably because I've been an importer, one of the
22 first things that I take close look at is on the -- is the
23 import strip label since it's a legal label. When you import
24 you actually get a document from the federal government where
25 that label exactly has been approved. And like I said, you're,

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DCHAKURlps

Collins - direct

1 you're in violation of that regulation if you, if you import
2 wines that don't carry that exact im -- literally to the size
3 of the contents, have to be 3 milliliters, not 4 millimeters in
4 height, things like this. We had to normally -- we, we
5 applied -- I've applied for hundreds and hundreds of label
6 approvals with the federal government, and I've had to reapply
7 on certain ones because of some detail that they wished to have
8 corrected. And if you -- you would do all of this before you
9 would bring a wine in. Both of these are Wildman, which is a
10 major importer with a superb reputation. So you wouldn't
11 expect that there would be -- that there would be errors in
12 that, in that area.

13 Q. Might the -- might a collector be fooled into buying this
14 bottle?

15 A. Yes.

16 Q. Might a person who bought the bottle put it back up for
17 sale without knowledge of problems?

18 A. Yes.

19 Q. And unless he has somebody like you to help him figure it
20 out, could a person never discover the problems?

21 A. Well, yeah, until, until opening the bottle, would probably
22 be the ultimate, the ultimate answer to the question.

23 Q. So if you bought more of these and you opened one and it
24 tasted wrong, would that be a time you that then might make a
25 decision?

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DCHAKURlps Collins - direct

1 A. Well, that's probably when you would do a much closer
2 inspection on the remaining bottles. That, that frequently
3 happens.

4 Q. And then you might find that maybe a magician owned them
5 because one bottle is supposed to hold twice as much as the
6 other?

7 A. Well, that, yes, that would be -- that would probably be
8 part of your discovery process.

9 Q. OK. Thank you, Mr. Collins.

10 You had an opportunity to look at more than just the
11 few bottles we talked about, didn't you?

12 A. Yes.

13 Q. And what was your conclusion with respect to the majority
14 of the bottles which you saw?

15 A. Well, my, my con-- my conclusion is nearly all of the
16 bottles have serious problems and would be considered fake, or
17 counterfeit.

18 Q. So you would not recommend these bottles for purchase.

19 A. No.

20 THE COURT: When you say "nearly all," you mean the
21 ones on the table or more than that?

22 THE WITNESS: No, more than that. Virtually
23 everything I -- I, I -- what -- right after I did the
24 inspection I indicated that I had some issues I wanted to clear
25 up. One was like this Domaine Belorgey issue. And so I

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DCHAKUR1ps Collins - direct

1 researched to make, make sure that I was going to draw the
2 proper conclusion based on labels, bottles that were available
3 to me, and things like this. So, so based, based on cleaning
4 up issues on different bottles that I inspected to my own
5 satisfaction, I would say that virtually none of these bottles
6 are authentic.

7 THE COURT: And when you say "these bottles," I'm just
8 trying to get the universe of --

9 THE WITNESS: Yeah. The entire, the entire, the
10 entire group of bottles that was available for me to examine.

11 THE COURT: And that was approximately how many
12 bottles? Do you remember?

13 THE WITNESS: Over an excess of 50.

14 Q. And we've only talked about a couple. Was the level of
15 sophistication that you saw in the bottles, in the
16 counterfeiting of the bottles, different?

17 A. Well, there were different, certainly different approaches.
18 There were, there were, there were some things, such as 1934
19 Romanee-Conti that to me obviously had duplicated labels
20 because the, the paper that was used appeared to be slightly
21 off colored to try to imitate a bottle of wine that had been
22 aging in a cellar for 50 years. There was the -- there was a
23 large number of the Domaine Ponsot wines which, when, when
24 looked at individually, all had individual bottle issues, but
25 looked at collectively, it appeared that all of the labels on

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DCHAKUR1ps Collins - direct

1 the Domaine Ponsot wines came out of one run of labels and that
2 the quality and condition of those labels I -- would indicate
3 to me that these labels were what I would call a modern
4 manufacture, let's say after 1985.

5 Q. Did it look like all the Domaine Ponsot bottles had been
6 done by perhaps the same individual or group of individuals?

7 A. Well, with that label I would say that it was a very good
8 indication that that would be true.

9 Q. And so those -- does it appear that the Domaine Ponsot
10 bottles come from, then, a single source?

11 A. I'm sorry?

12 Q. Does it appear, then, that the Domaine Ponsot bottles came
13 from a single source?

14 A. From a?

15 Q. Single source, that there was one source for all of those
16 bottles.

17 A. Well, it appears that they came from a single source that
18 labeled them. The, the individual bottles, one of the -- one
19 of the other reasons that they were all suspect was because the
20 individual bottles had completely different model codes,
21 completely different glass color, completely different -- and
22 this, this would not have been anything normal that would have
23 come from the, from the domaine at any time.

24 Q. As you looked at the different methods of counterfeiting
25 different bottles, did you see a mark of different potential

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DCHAKURlps Collins - direct

1 counterfeiter or sources for the bottles?

2 A. Well, there's bottles here that have, that look to me that
3 they use a genuine label. There's bottles here that look to me
4 like they use a reproduced label. There's bottles here that,
5 like the Ponsot, that look to me like they use labels that
6 could have come from any source that handles Domaine Ponsot.
7 And so there's, just on the labels alone, there's three --
8 there's three distinct, three distinct approaches to
9 counterfeiting.

10 Q. So three different fingerprints, if you will?

11 A. Sure. Yes.

12 Q. Consistent with your knowledge of what goes on and what's
13 out in the market, are you surprised by that?

14 A. Um, no, I'm not.

15 Q. And if a person is out buying in the market, what are their
16 chances of not buying some counterfeit wines?

17 MR. HERNANDEZ: Objection.

18 THE COURT: Sustained. There was sort of a double
19 negative.

20 MR. MOONEY: It was a double negative. Bad question.
21 Let me try to rephrase.

22 Q. If I'm buying at auction today without the assistance of
23 somebody like you or Mr. Egan to help me, am I likely to buy --

24 THE COURT: If you as a layperson or --

25 Q. You as an expert. Me as a layperson. Me as a layperson.

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DCHAKURlps Collins - direct

1 If I'm out buying in the market, without the assistance of an
2 expert, am I likely to end up buying some counterfeits?

3 A. Well, it would depend on what you're buying. The vast
4 majority of the counterfeit bottles that I've encountered are
5 on very expensive bottles of wine.

6 Q. We talked about -- we talked about the Bordeaux on that.
7 Are Burgundies also counterfeited?

8 A. Yes.

9 Q. And were Burgundies counterfeited early in the '70s, or is
10 that something that changed?

11 A. Well, they, the history of Burgundies started with a great
12 counterfeit. After Napoleon was defeated in Russia, there was
13 vast quantities of wine that were sold in France. As Napoleon
14 Chambertin recently returned from Russia, the volume of those
15 sales exceeded the capacity of Burgundy to manufacture those --
16 that amount of wine.

17 Q. And today are we still seeing perhaps sales of certain
18 wines that may exceed the capacity of individual vineyards?

19 A. Well, there's a, yeah, there's a -- Burgundy is a very --
20 Burgundy is a very complex -- it's a very complex area.

21 There's many different ways that the wine could be obtained,
22 either be negociants, there's metiages, there's domaines. So
23 tails had multiple approaches to, to a single vineyard.

24 Q. So does that mean that wine from an individual vineyard in
25 Burgundy could end up, and a vintage, could end up with many

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DCHAKUR1ps Collins - direct

1 different labels?

2 A. Yes.

3 Q. That's authentic wine.

4 A. Authentic wine can end up with many different labels, yes.

5 Q. And has that made it more difficult to identify the
6 authenticity of many Burgundies?

7 A. Absolutely.

8 Q. Are there certain Burgundies that are more subject to
9 counterfeiting than others?

10 A. Yes.

11 Q. Which, widow mains are those?

12 A. Well, anything Robert Parker gave a hundred points to is on
13 the hit parade usually, so Domaine Romanee-Conti comes
14 immediately to mind because of such a long and -- a long
15 high-quality history that they've had. They've obtained some
16 of the highest prices. But that isn't limited to just those
17 wines these days.

18 MR. MOONEY: No more questions.

19 THE COURT: Any redirect?

20 MR. HERNANDEZ: Sorry?

21 THE COURT: Any redirect?

22 MR. HERNANDEZ: Cross.

23 THE COURT: Cross, I mean.

24 CROSS EXAMINATION

25 BY MR. HERNANDEZ:

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DCHAKUR1ps Collins - cross

1 Q. Good morning, Mr. Collins.

2 A. Good morning.

3 Q. Mr. Collins, you've testified a little bit about some
4 changes in the auction market in the last 30 years, right?

5 A. Yes.

6 Q. Now, if I heard you correctly, you testified that
7 provenance, the chain of ownership of a wine, was important
8 even as far back as the 1970s for a wine. Is that correct?

9 A. Yeah. Mm-hmm.

10 Q. And is it right also that in the last ten or eleven years,
11 that having a good provenance or record of where a wine comes
12 from has become even more important?

13 A. Given the circumstances we're talking about, yes.

14 Q. And it's become even more important the last ten or eleven
15 years both for buyers and sellers to have good provenance,
16 right?

17 A. That's correct.

18 Q. And the reason, one of the reasons that good provenance is
19 important is that it helps you to get the best price if you're
20 a seller, correct?

21 A. That's correct.

22 Q. And it's important to buyers because you want to know that
23 you're getting something that's authentic.

24 A. That's correct.

25 Q. So provenance is an important way to ensure authenticity.

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DCHAKURlps

Collins - cross

1 A. Yes.

2 Q. Provenance is something that's openly discussed in the wine
3 business, isn't it?

4 A. Yes.

5 Q. It's discussed in the wine catalogues for auctions, right?

6 A. Yes.

7 Q. And it's common when you're buying or selling high-end wine
8 for the seller to either describe the provenance or the buyer
9 to ask for it.

10 A. Yeah. You can ask for it.

11 Q. Now, you have many different clients that you do -- you
12 work with for your consulting business, right?

13 A. Yes.

14 Q. Do some those clients have very high-end cellars?

15 A. Yes.

16 Q. The types of wines that are the top --

17 THE COURT: Now cellar with a C, right.

18 MR. HERNANDEZ: Right, cellar with a C.

19 A. Yeah.

20 Q. Do some of those wine cellars include top wines from
21 Burgundy or Bordeaux?

22 A. Yes.

23 Q. And you helped them go through those collections?

24 A. Yeah. Well, I, I constructed the collection for many of
25 these people, yes.

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DCHAKUR1ps Collins - cross

- 1 Q. When you do that, do you sometimes ask for the records of
2 their purchases or their provenance?
3 A. Yeah, records of purchases.
4 Q. Because that helps you authenticate the wine and to assess
5 it?
6 A. Yes.
7 Q. And do they provide those documents to you?
8 A. Um, frequently, yes.
9 Q. Now, I want to ask you about your examination of some of
10 the bottles --
11 A. Sure.
12 Q. -- in this case. You said that you examined about 50
13 bottles; is that correct?
14 A. Whatever was on -- whatever was placed before me at the, at
15 the -- for the inspection, yes.
16 Q. Are you comfortable saying it's approximately 50 bottles?
17 A. Approximately. I could count them exactly.
18 Q. I'm not going to hold you to a number. I'm not trying to
19 say that it was 51 and not 50. I'm just trying to get a sense
20 of what the total range was.
21 A. Sure.
22 Q. Is approximately 50 fair?
23 A. Yeah.
24 Q. And if I heard you correctly, your conclusion is that
25 nearly all are counterfeit or fake, right?

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DCHAKUR1ps Collins - cross

- 1 A. That's correct.
2 Q. You explained to Mr. Mooney that there is a range of fakes
3 here, some that are bad fakes and some that are what you call
4 sophisticated fakes?
5 A. Yes.
6 Q. So you held up that large bottle of Petrus from 1947, the
7 double magnum.
8 A. Yes.
9 Q. You think that's a bad fake, right?
10 A. Yes.
11 Q. You described it on direct as someone who had minimal
12 knowledge -- those were your words -- would describe that as
13 a -- be able to identify it as a fake, right?
14 A. Yes.
15 Q. And there are lot of tells for why that was a bad fake; is
16 that right?
17 A. Yes.
18 Q. The label is a bad photocopy, isn't it?
19 A. It appears that way to me, yes.
20 Q. That's a very common giveaway that a bottle is fake, is to
21 have a bad photocopied label, correct?
22 A. It's a start, yes.
23 Q. And there is also a big giveaway from this bottle, is the
24 sawed, right?
25 A. The size?

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DCHAKURlps

Collins - cross

1 Q. Yeah.

2 A. Yes. I, I -- the size is a -- the size is a double magnum.
3 I seriously question whether there was ever a double magnum
4 ever made at Chateau Petrus in 1947.5 Q. So what you're saying is that this is a really big bottle
6 and you don't even think, in 1947, Chateau Petrus made wine
7 bottles this size.

8 A. No. I mean, yes, that's correct, I don't think they did.

9 Q. That's what you believe, right?

10 A. Yeah, uh-huh.

11 Q. And a couple of the reasons are that this bottle was made
12 right after World War II and there was a shortage of money and
13 also supplies, right?

14 A. Um, yes, that's correct.

15 Q. There could be other reasons, but those are two common
16 reasons, right?17 A. Yeah. Also, Chateau Petrus, right after World War II,
18 didn't have any of the popularity or notoriety as it does
19 today. The lady who owned -- who was in the process of buying
20 the shares of the property, Madame Loubat, was not extremely
21 wealthy. She owned a hotel in Libourne, but she wasn't someone
22 like the people that owned first-growth chateaux in the
23 Haut-Medoc. You -- her hotel was occupied by German soldiers
24 who most likely didn't pay for their wine bill on the way out.
25 The, the 1946 vintage wasn't a very good vintage or very large

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DCHAKUR1ps

Collins - cross

1 vintage. And so I would assume, to use it in the vernacular
2 today, that 1947 Petrus when it came out would have been much
3 more of a cash-flow wine than it would have been something that
4 people would have been making for collectors.
5 Q. So, Mr. Collins, that long explanation you just gave now,
6 with all those details, where did you learn that from?
7 A. Well, I learned -- I've been -- I, I learned when I was in
8 Bordeaux. I learned it probably when I was at Petrus.
9 Q. Is there any other place that you could have learned that
10 from? For example, could you learn those facts that you just
11 recited from a wine book, for example?
12 A. Oh, sometimes it could be out of a wine book. They also
13 could be out of conversations I've had with, with various
14 people that I've imported from, various trips that I've made
15 there.
16 Q. But the history you have just recited of Chateau Petrus,
17 for example, you can find that from multiple different sources,
18 can't you?
19 A. Sure.
20 Q. You could find it from other collectors, right?
21 A. Well, other collectors might not be my primary source.
22 Q. I'm not talking about you specifically, Mr. Collins. I
23 just mean, in general out there, if you wanted to conduct some
24 research or learn about Chateau Petrus and its history, one
25 source you could go to are other knowledgeable collectors,

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DCHAKUR1ps

Collins - cross

1 right?

2 A. Exactly.

3 Q. Am I right that people who are really passionate about wine
4 like to get together and drink wine?

5 A. That's one group, yes.

6 Q. And isn't it common in those conversations, if you're
7 really into wine, to talk about the details of the wine and the
8 history of the estate and all of the nitty-gritty details?

9 A. Yes. If you know, I would imagine that it would come up in
10 that the conversation.

11 Q. Sometimes those people, they call themselves wine geeks,
12 right?

13 A. Yeah.

14 Q. You ever heard that phrase before?

15 A. I have.

16 Q. They like to talk about really arcane things, like
17 production level, how many bottles were made. Is that a common
18 topic?

19 A. It's a topic, yes.

20 Q. And have you ever been at a wine dinner or tasting among
21 other passionate collectors where other collectors are trying
22 to demonstrate their knowledge by explaining how much they know
23 about the estates and the domaines?

24 A. Sure.

25 Q. So those are all sources of information from which a

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DCHAKUR1ps Collins - cross

- 1 passionate collector could learn about the history of a domaine
2 or a chateau, right?
3 A. Yeah.
4 Q. But there are also more formal sources like many, many,
5 many books written about fine and rare wine, correct?
6 A. Sure.
7 Q. And there are magazines that you can read that have many of
8 the same stories, right?
9 A. Yeah.
10 Q. And the Internet, certainly in the last ten years, has
11 provided a great deal of information about the domaines and the
12 chateaux, correct?
13 A. Well, I, I don't know that I would believe everything I
14 read on the Internet.
15 Q. You would be wise not to. But that's not my question.
16 A. OK.
17 Q. My question simply is --
18 A. Yes, surely, they do.
19 Q. -- the types of information --
20 A. There's more information available, that's true.
21 Q. OK. And would you expect someone who is very passionate
22 and interested in wine to seek out some or all of those
23 resources to learn about wines?
24 A. I'd recommend it.
25 Q. I'm sorry, I didn't --

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DCHAKUR1ps Collins - cross

- 1 A. I'd recommend it.
2 Q. You recommend it. But would you expect someone to do that?
3 A. Um, that, that would be an expectation, sure.
4 Q. Do some of your clients in fact do that?
5 A. Some, yes.
6 Q. Now, you also testified that some wines are more commonly
7 counterfeited than others, and you cited Chateau Petrus as an
8 example?
9 A. Yes.
10 Q. And Domaine de la Romanee-Conti, you could add that to the
11 list, right?
12 A. Sure.
13 Q. Is that also a well-known fact among high-end collectors,
14 that --
15 A. Yeah.
16 Q. -- the very expensive wines tend to be counterfeited?
17 A. Absolutely. The, the place I've seen the most examples of
18 counterfeit Petrus is Las Vegas. And it, one sommelier, I can
19 think of in particular, Rajat Parr, wrote an article in Wine
20 Spectator on just that subject. And the other person down
21 there when I inspected a lot of bottles that were of this
22 nature was Paul Ellis with MGM Grand. These conversations are
23 common.
24 Q. Now, in your experience with your individual clients, are
25 they aware that high-end wines are counterfeited?

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DCHAKUR1ps

Collins - cross

- 1 A. Yes.
- 2 Q. And are they vigilant and concerned about buying
3 counterfeit wines?
- 4 A. Well, hopefully that's why they have retained my services.
- 5 Q. OK. Now, you also testified that there were some fakes in
6 here that you considered to be more sophisticated fakes, right?
- 7 A. Yes.
- 8 Q. And you testified about a bottle of Domaine Roumier,
9 correct?
- 10 A. Yeah.
- 11 Q. I'm going to take a look here to see which bottle it was.
- 12 A. 1923.
- 13 Q. OK, great. So it's 7-3, the 1923?
- 14 A. Yeah, uh-huh.
- 15 Q. Just so that you could see.
- 16 A. Yes.
- 17 Q. OK. We're going to use this one for the basis of a few
18 more questions.
- 19 A. OK.
- 20 Q. You consider that to be a sophisticated fake?
- 21 A. Yes.
- 22 Q. Now, Mr. Collins, isn't it true that the first year that
23 Domaine Roumier made wine is 1924?
- 24 A. It was when the domaine was founded.
- 25 Q. OK. Isn't it true, Mr. Collins, that the domaine was

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DCHAKURlps Collins - cross

1 founded in 1924?

2 A. Yes.

3 Q. Yet this bottle says it's from the year previous, 1923,
4 right?

5 A. That's correct.

6 Q. So even though this bottle is a year from before when the
7 domaine was founded, you consider it to be a sophisticated
8 fake?

9 A. Um, I think that there is a -- that the -- at that period
10 of time, right after World War I, that you did -- it was very
11 much different of an economic time than today. Today if you
12 started the domaine, then you would have the, the wines start
13 today. It wouldn't have been completely unheard of to have
14 transferred wines from other places. You know, this, going
15 back again to this Belorgey domaine. That was one reason --
16 although it's easy to superficially say, well, look, this means
17 it couldn't be, I just wanted to make sure there wasn't
18 something else that might indicate that it could be before I
19 made that conclusion. OK. That's why I looked up the Heublein
20 catalogue that I have from 1978 that indicated the sales,
21 things like that.

22 THE COURT: That indicated what?

23 THE WITNESS: You know, I would, I would also question
24 how many people might actually know whether a 1923 bottle came
25 from Domaine Roumier or not. So --

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DCHAKUR1ps Collins - cross

- 1 Q. Mr. Collins, my question simply is about whether the fact
2 that this bottle says it's from the vintage before the
3 establishment of the domaine makes it a sophisticated fake or
4 not. You think it's a sophisticated fake. Right?
5 A. I think the label is a sophisticated fake, yes.
6 Q. Now, if you looked up some information about Domaine
7 Roumier, say in any standard Burgundy wine reference book, what
8 year would those books say Domaine Roumier was established?
9 A. 1924.
10 Q. So, for example, are you familiar with a book called Cote
11 d'Or, by Clive Coates?
12 A. Yes.
13 Q. It's a standard reference or one of the standard references
14 for Burgundy?
15 A. Yes.
16 Q. Do you own a copy?
17 A. Pardon? Oh, I probably do.
18 Q. OK. Did you know, any of your clients own copies?
19 A. Sure.
20 Q. All right. It's a book that was published in the '90s,
21 wasn't it?
22 A. Yeah. It was -- there's that and a book by Anthony Hanson
23 called Burgundy that was printed 1967 and had reprints. Those
24 are the -- those true reference books that --
25 (Continued on next page)

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DCHBKURT2 Collins - cross

- 1 BY MR. HERNANDEZ:
2 Q. Let's stick with Mr. Koch's.
3 A. Okay.
4 Q. It's this huge book right here. Right?
5 A. Yes.
6 Q. And what year, according to this book, one of the standard
7 references from Burgundy, was Domaine Roumier established?
8 A. 1924.
9 Q. Not 1923?
10 A. That's correct.
11 Q. Now, this bottle also says that the wine inside from
12 Bonnes-Mares comes from Domaine Belorgey. Correct?
13 A. Yes.
14 Q. Now, that can't be correct--
15 A. It indicates that it's-- yes, that either the wine or the
16 grapes would come from Belorgey. That would be the farm of a
17 metiage.
18 Q. Fair enough.
19 7-3, you think this bottle is fake. Right?
20 A. Yes. I think it's fake for sure, yes.
21 Q. One of the reasons you think it's fake is that you don't
22 think that Belorgey can appear on the label because there
23 can't be grapes from that estate in this bottle from 1923.
24 Correct?
25 A. That's correct.

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DCHBKURT2

Collins - cross

1 Q. Because the Belorgey estate wasn't acquired until maybe
2 1952?

3 A. Yes. And I don't know that there is-- whether there was
4 a-- the metiage agreement relates --

5 Q. When you say "metiage," you mean sharecropping?

6 A. Yes.

7 Q. Can we use that phrase?

8 A. Yes. There's actually a perfect example of what I'm
9 referring to in the book that you're holding there with Domaine
10 Roumier. If you look in that book, you'll see a property,
11 Ruchottes-Chambertin, that's listed that Roumier sells. It
12 won't be listed as a proprietor because Roumier does not own
13 that vineyard. A fellow by Michel Bonnefond owns that
14 vineyard.

15 I got together with Michele Bonnefond in 1987 and he
16 agreed to sell me a large part of his older bottles of wine
17 from Domaine-- that were at Domaine Roumier that were his
18 portion of this meytage agreement, that the property owner is
19 paid in product.

20 So a fellow name Peter Vezan myself, Michel Bonnefond
21 got together with Christophe Roumier, we tasted through all of
22 these bottles of wine and we also tasted through all of the
23 other Roumier wines that were there.

24 But the important thing is now we're getting ready,
25 we've done the sale, I'm buying the wine from Michel Bonnefond.

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DCHBKURT2

Collins - cross

1 The bottles of wine, the label -- the bottles of wine are
2 labeled exactly-- the label that's used is exactly a Roumier
3 label. It was printed by the same printer. Roumier actually
4 supplies the label to finish this off. It has vintages from
5 1979 to 1994 or '95, whatever the first shipment was, that were
6 printed on the label. They're all new labels. Okay?

7 If at a later point in time and this is all-- the only
8 other thing that I had -- I printed on the label was I had
9 "Imported by Old Vine Imports" printed on the label so it would
10 distinguish this from something that someone would buy on the
11 gray market and import. But at a later date, if Michel
12 Bonnefond sells that property to Roumier, a future master of
13 wine will correctly state that Roumier's properties expanded on
14 that date. It will also be true that there will be decades of
15 wine out of that relationship in existence.

16 This is why-- this is why --

17 Q. Mr. Collins, can we get back just to the question? This
18 standard reference, it says that Domaine Roumier was
19 established in 1924, doesn't it?

20 A. Yes.

21 Q. It also says that Domaine Roumier didn't get the Belorgey
22 grapes until 1952. Right?

23 A. It says they purchased the property in 1952. It doesn't
24 make any reference to any prior arrangement there might have
25 been between Georges Roumier and Belorgey.

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DCHBKURT2

Collins - cross

- 1 Q. It doesn't say there was a private arrangement prior to
2 1952, does it?
- 3 A. It doesn't say that in the book, no.
- 4 Q. Okay. So you still think that this is a sophisticated fake
5 even though --
- 6 A. I think that --
- 7 Q. I haven't finished the question yet.
- 8 A. Okay.
- 9 Q. You still think that this is a sophisticated fake even
10 though according to standard reference the year is the year
11 before the Domaine was established and the grapes come from a
12 plot of land for which there was no relationship until about 29
13 years later?
- 14 A. I explained it. That's why I investigated it before making
15 that conclusion.
- 16 Q. Well, Mr. Collins --
- 17 A. If you're saying if it's -- if you're saying it's not
18 sophisticated enough, then I would say that the average
19 consumer would be completely lost in this conversation.
- 20 Q. Well, Mr. Collins, if you had --
- 21 A. If you would like me to change my evaluation and say it's a
22 fake, that's fine.
- 23 Q. Mr. Collins --
- 24 A. I'd be happy to.
- 25 Q. If you had the two facts from this reference book in

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DCHBKURT2

Collins - cross

- 1 Burgundy that 1924 was the first year of the establishment of
2 the domaine --
3 A. That's correct.
4 Q. -- and the Belorgey grapes didn't make it into Roumier
5 bottles until 1952 --
6 A. Well, I'm not-- again, the reason that I don't necessarily
7 believe that is true is because Esquin imported a wine label as
8 Belorgey. It was marked in the catalog as Roumier. Now, I
9 couldn't-- I don't-- again, this is not a label that
10 corresponds to this label.
11 Q. Okay. So if we --
12 A. Again, I would reject the labels here based on the fact
13 that there is no prior history.
14 The other reason that I stated that I would reject
15 these labels is because if it had been done as-- if this was a
16 meytage agreement and carried the name "Belorgey" because of
17 that, it wouldn't-- it wouldn't be stated on a label that it's
18 Domaine Georges Roumier. It would be stated either that it's
19 Georges Roumier or another relative of Roumier.
20 Q. Now, Mr. Collins, you looked at those 50 bottles of wine
21 and considered all, or nearly all, of them to be fake. And you
22 testified a little bit about someone buying wine in the auction
23 market is going to end up buying some fakes.
24 Is that a fair recitation of part of your testimony?
25 A. Yes.

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DCHBKURT2

Collins - cross

- 1 Q. So that's one way that a fake wine can get into someone's
2 collection. Right?
- 3 A. Yes.
- 4 Q. But isn't there another way that a fake wine could get into
5 someone's home or their collection? Couldn't they make them?
- 6 A. Absolutely.
- 7 Q. So there are at least two possibilities. Right?
- 8 A. There's at least-- yes.
- 9 Q. So there --
- 10 A. You can also purchase them from somebody else, exactly.
- 11 Q. There's 11 bottles that have been entered into evidence
12 here on the table.
- 13 Q. Could you tell us where each bottle-- where the
14 defendant bought each bottle from?
- 15 A. I'm sorry?
- 16 Q. Could you tell us where the defendant bought all of these
17 fake bottles from?
- 18 A. I have no idea.
- 19 Q. You can't tell us where, in what auction or in what market,
20 the defendant bought these fakes from?
- 21 A. No, I actually -- I can't.
- 22 Q. And one of the reasons you can't do that is you have only
23 examined the bottles. Correct?
- 24 A. That's right.
- 25 Q. You haven't looked at any of the defendant's purchase

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DCHBKURT2

Collins - cross

1 records?

2 A. No, I haven't.

3 Q. Okay. You haven't looked through the defendant's e-mails,
4 for example?

5 A. No.

6 Q. And from the 2002 to 2012 time period, a lot of wine was
7 bought and sold on the internet or over e-mail, wasn't it?

8 A. Sure, yeah.

9 Q. You do know, though, that the defendant used e-mail to
10 purchase wine, though. Right?

11 A. I'm sorry?

12 Q. You know that the defendant used e-mail to purchase wine.
13 Right?

14 A. I have no direct knowledge of it.

15 Q. Well, you don't have any direct knowledge the defendant
16 used e-mail to purchase wine or to buy and sell wine?

17 A. I'm not privy to that information from him.

18 Q. Okay. I'm going to give you a group of exhibits, if you
19 would.

20 A. Yeah.

21 Q. Mr. Collins, you either had or you have a company called
22 Old Vine Imports. Is that right?

23 A. That's right.

24 Q. Your e-mail address is Bob@OldVineImports.com. That's you.
25 Right?SOUTHERN DISTRICT REPORTERS, P.C.
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DCHBKURT2

Collins - cross

- 1 A. It is.
2 Q. Can you look at Government Exhibit 101?
3 A. I'm sorry?
4 Q. Tell me if you recognize that.
5 A. This one, the first part of this?
6 Q. Well --
7 A. Yes, yes.
8 Q. You see it's marked 101 there, the yellow sticker?
9 A. Yes.
10 Q. Look at that. It's an e-mail change. Tell me if you
11 recognize it.
12 A. Uh-huh.
13 Q. How do you recognize it?
14 A. Well, because it's my e-mail.
15 Q. All right. And it's to-- you're sending e-mails to and
16 from the defendant. Right?
17 A. Yes, this was.
18 Q. And in this e-mail the date is 2007. Correct?
19 A. Yes.
20 Q. And in this e-mail, Mr. Collins, you, over e-mail, are
21 selling the defendant wine, aren't you?
22 A. Well, I didn't directly sell these to him. They were sold
23 to the company in L.A. that Paul Wassermann ran for him.
24 Q. All right.
25 A. I didn't sell these privately with a sales tax. I sold

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DCHBKURT2 Collins - cross

1 them to-- you know, to a company, to The Wine Hotel.

2 Q. These e-mails are between you and the defendant about the
3 sale of wine. That's correct, isn't it?

4 A. Yeah.

5 Q. Okay. And you're talking about what wines are going to be
6 sold to The Wine Hotel, the defendant's company. Correct?

7 A. That's right.

8 Q. And there's a discussion of pricing in there. Right?

9 A. That's right.

10 Q. And this is from 2007. Correct?

11 A. That's correct.

12 Q. So you know based on your own personal business dealings
13 with the defendant that he uses e-mail to buy and sell wine?

14 A. Okay. I didn't recall that this was done directly with
15 him, but, yes.

16 Q. Well, now having looked at this e-mail, you remember in
17 2007 you had a business relationship with the defendant?

18 A. Through The Wine Hotel, yes.

19 Q. Right. And you sold him wine.

20 A. That's correct.

21 Q. And e-mail records are a way to check to see where you
22 bought wine from?

23 A. Yeah.

24 Q. And this jury has seen, for example, e-mails where the
25 defendant bought wine from a place in Burgundy called Caveau de

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DCHBKURT2

Collins - cross

1 la Tour.

2 Have you ever heard of that place?

3 A. Yes, I've heard of it.

4 Q. And they sell wine-- they sold the defendant wines from a
5 negociant called Patriarche. Have you ever hear of
6 Patriarche?

7 A. Yes.

8 Q. And --

9 A. Yes, I'm familiar with Patriarche.

10 Q. Okay. Those are not highly sought after wines by top
11 collectors, are they?

12 A. Well, what wines are you referring to?

13 Q. Any of the Patriarche wines.

14 A. Okay. Patriarche is an extremely large, extremely wealthy
15 negociant firm. There may be--16 Q. Mr. Collins, you may be getting to it, but my question
17 simply is: Are there wines highly sought after by top
18 collectors?

19 A. Well, I can give you one that I'm surely looking for.

20 THE COURT: That what? You can what?

21 THE WITNESS: I can give you examples, yes.

22 Q. Okay. So top collectors vie for purchasing Patriarche
23 wines?24 A. There's some bottles of wine in the Patriarche cellar that
25 are well worth owning. Whether top collectors vie for them,

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DCHBKURT2 Collins - cross

1 that I wouldn't -- no, they wouldn't necessarily vie for them.

2 Q. That's what I'm asking.

3 A. Yeah.

4 Q. You work with top collectors with their wine collections.
5 Right?

6 A. Well, they're collectors. I don't consider that I only
7 handle Romanee-Contis.

8 Q. Okay. Well, how about the auction market? Is there a lot
9 of Patriarches sold at Christies or Sotheby's --

10 A. No.

11 Q. -- or other big wine auctions?

12 A. No.

13 Q. So you've known the defendant since at least 2007, haven't
14 you?

15 A. Yeah, approximately. A little earlier than that.

16 Q. Because you had a business relationship with him?

17 A. Yes.

18 Q. And you, in the course of that business relationship,
19 you've gone out to dinners with him, haven't you?

20 A. There's two dinners that I can recall: One that I put on
21 and one that was put on by a mutual friend.

22 Q. Where were those dinners, the name of the restaurants?

23 A. Yeah.

24 Q. Could you name the restaurants?

25 A. Well, one of-- the one that I put one was a German wine

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DCHBKURT2 Collins - cross

- 1 tasting that was done -- I'm not going to be able to recall the
2 restaurant. It was a Beverly Hills restaurant.
3 Q. Okay.
4 A. I could look it up if it's important.
5 Q. And the other one? The other one, sir?
6 A. The other one was some restaurant in Hollywood, I believe.
7 THE COURT: In where?
8 THE WITNESS: In Hollywood.
9 Q. Okay. Have you ever been to a dinner with the defendant at
10 RN74 in San Francisco?
11 A. No.
12 Q. Have you ever been out to dinners with employees from the
13 defendant's business, The Wine Hotel?
14 A. Yes.
15 Q. Dan Perrelli, you know him. Right?
16 A. Yes.
17 Q. You do business with him and talk to him, don't you?
18 A. Yes. Well, I did, yes.
19 Q. You know a business associate, named Paul Wassermann, of
20 the defendant?
21 A. Yes.
22 Q. And you tried to do business with him. Right?
23 A. Paul Wassermann worked for me at one time.
24 Q. But that's not the period of time that I'm referring to.
25 A. No.

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DCHBKURT2

Collins - cross

1 Q. So you corresponded with him about trying to sell him wine,
2 too. Right?

3 A. Yes.

4 Q. Now, you testified about some of the Roumier and Ponsot
5 bottles.

6 Is it your opinion that the Ponsot bottles that are --
7 that the Clos Saint-Denis that are from before 1982, those are
8 fake. Right?

9 A. Yes.

10 Q. Now, am I also correct that you haven't seen any pre-1982
11 Domaine Ponsot Clos Saint-Denis in the wine marketplace until
12 you were retained for this case? Right?

13 A. That's correct.

14 Q. So no examples of it that you know of being sold at auction
15 or traded or bought in any public forum?

16 A. Well, not that I know of.

17 Q. Well, and the same thing for 1923 Roumier. Right? You
18 don't know of any examples of that being bought or sold in the
19 marketplace before you were retained in this case?

20 A. No, I couldn't-- I saw no examples.

21 Q. And you've never heard of a collector from Asia named Pak
22 Hendra, have you?

23 A. No.

24 Q. So, Mr. Collins, you don't have any testimony to offer that
25 links any of the fake bottles in this case to actual purchases

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DCHBKURT2 Collins - cross

1 made by the defendant. Correct?

2 A. No, not that I'm aware of. No.

3 Q. Now, are you aware that in this case the government has
4 offered a great deal of evidence that it alleges was used to
5 make counterfeit wines? Are you aware of that?

6 A. I haven't been shown anything. I only authenticated the
7 things I was looking at.

8 Q. My question is a little bit different. Are you aware of
9 that sitting here now?

10 A. I am not. No, I actually haven't followed the case.

11 Q. So when's the first time you heard about this case?

12 A. Well, the first time I heard about the case was when he was
13 arrested.

14 Q. That was in March of 2012?

15 A. Of this particular case. You know, prior to that I was
16 retained by a different law firm for a dispute that's not a--
17 I'm sorry, a civil case rather than...

18 Q. Okay. Mr. Collins, could I ask you to step down, if you
19 would, for a moment?

20 A. Sure.

21 Q. I want to show you a number of exhibits that have been
22 admitted into the case already. This is 1-182. It's a bag of
23 labels. It says "Domaine Roumier Bonnes-Mares, Domaine
24 Belorgey, 1923."

25 Do you see that?

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DCHBKURT2

Collins - cross

- 1 A. Uh-huh.
- 2 Q. Could you take a moment to take a look at that?
- 3 A. Sure.
- 4 Q. Mr. Collins, are those the same labels in 1-182 that's on
5 7-2?
- 6 A. They could be; they could not be. If you're asking me to
7 authenticate these labels, then I would need a little bit more
8 time than we have at the moment. The normal way that I would
9 do that would be to do a lab report.
- 10 Q. Okay.
- 11 A. A scientific...
- 12 Q. Because just looking at this stack of labels here, which is
13 about, I don't know, 4 or 5 inches thick, there's two stacks,
14 you can't tell just by examining whether these are authentic or
15 not?
- 16 A. Well, if you want me to-- if you want to give me some time
17 to examine them...
- 18 Q. Well, I'm just asking you based on your looking at them
19 right now. You can take them out of the bag if it would be
20 helpful.
- 21 A. All right.
- 22 Q. I thought you wanted to look at them.
- 23 A. I'd like a lot more time to look at them.
- 24 Q. All right.
- 25 A. To offer a professional opinion on it.

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DCHBKURT2 Collins - cross

1 Q. Fair enough. I'm not going to ask you to offer a
2 professional opinion if you need more time.

3 A. Okay.

4 Q. You can just put it back. We'll take care of it. You can
5 just leave it there.

6 A. Okay.

7 Q. I want to show you a few other items that have been
8 admitted into evidence. This is 1-299. It's maybe 4 or 5
9 inches thick. It contains, fair to say, hundreds of Reserve
10 Nicolas stamps on it?

11 A. Uh-huh.

12 Q. And on the back some stamps that say -- or labels, rather,
13 that say -- in French they say basically you should decant this
14 wine? Is that what that says?

15 A. That's right. Yeah.

16 Q. And I'm going to show you a bag that's been marked as
17 1-128.

18 Do you want to take a moment to look at those?

19 A. Uh-huh.

20 Q. These are stamps that replicate the information that would
21 be on the corks of great domaines and chateaus. Right?

22 A. I don't know. I've never seen stamps like this before.

23 Q. Okay. Well, how about 1-163? It's a stencil?

24 A. Uh-huh.

25 Q. Do you recognize this stencil?

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DCHBKURT2 Collins - cross

- 1 A. No. I've never seen it before.
2 Q. How about just the information on the stencil? Do you
3 recognize it from your more than 30 years in the wine business
4 of what this stencil could be referring to?
5 A. Well, the words are the same as what's imprinted on boxes
6 of Domaine de la Romanee-Conti.
7 Q. On original wooden cases. Right?
8 A. Well, the ones that I seen originally would, yes.
9 Q. Okay.
10 A. But they're not sprayed on.
11 Q. And if you would look at 1-172.
12 A. Uh-huh.
13 Q. This has been admitted. These are bags of wax sticks.
14 Do you recognize these as wax sticks? Have you ever
15 seen a wax stick before?
16 A. Yeah, I think you use them to put little imprints on the
17 back of letters, don't you?
18 Q. Yeah. You could use them for other things, though, too,
19 can't you? Isn't wax used to seal bottles?
20 A. I've never seen those kind of waxes used to seal bottles.
21 Q. But you've seen lots of bottles that have wax sealing on
22 the top, though. Right?
23 A. Sure.
24 Q. And then let me show you just one last exhibit. This is
25 1-101.

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DCHBKURT2

Collins - cross

1 Have you ever seen a device like this before?

2 A. That's a corking device.

3 Q. So this helps to put the cork back into the bottle.

4 Right?

5 A. Yeah.

6 Q. Okay. Great. Thank you. You could return to the stand.

7 I have some more questions for you, but we're done with this
8 portion.

9 So, Mr. Collins, the evidence I've just shown you, the
10 first time you've ever seen it was 30 seconds ago standing at
11 the table. Right?

12 A. Yes.

13 Q. You've never seen it before?

14 A. I've never seen the evidence before, no.

15 Q. All right. You didn't ask to see it. Right?

16 A. I'm sorry?

17 Q. You didn't ask to see it. Right?

18 A. No, I didn't request any-- I'm only looking at what I was
19 told I could see.

20 Q. Now, wouldn't looking at this evidence have helped you to
21 make an assessment as to whether or not the wines, the fake
22 wines at issue here, were bought from some other source or
23 created?

24 A. Well, I could have looked at any bottling machine that came
25 out of a home bottling place, but I don't think that-- I

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DCHBKURT2

Collins - cross

- 1 doubt -- it wouldn't be germane to this examination. What's
2 germane to this examination is to look at what I was offered to
3 look at and make an assessment on.
- 4 Q. So you don't think that looking at this evidence and
5 hundreds of other exhibits like it would help you to refine
6 your opinion as to whether or not any of these bottles were
7 purchased from another source or made in the defendant's
8 home?
- 9 A. No, it wouldn't change my opinion on these wines at all.
- 10 Q. Mr. Collins, the exhibits I've just showed you, isn't that
11 exactly the type of materials and things you would find in a
12 wine counterfeiting operation?
- 13 A. Well, I haven't been in a wine counterfeiting operation
14 recently, so I can't tell you.
- 15 Q. But you have spent your adult life authenticating wines and
16 trying to find and spot fake bottles. Correct?
- 17 A. That's right, yeah.
- 18 Q. So you know what components go into making a fake bottle of
19 wine, don't you?
- 20 A. Common components, yes, it appears so.
- 21 Q. And aren't the exhibits I just showed you exactly the types
22 of things you would need to make counterfeit wine?
- 23 A. They're the kind of things that you could or could not make
24 wine with, yes.
- 25 Q. A few final questions, Mr. Collins.

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DCHBKURT2

Collins - cross

1 You have been retained in this case to give your
2 expert opinion about a number of matters. Correct?

3 A. Yes.

4 Q. Isn't it true that you think that you are more
5 knowledgeable about fine and rare wine than the defendant?

6 A. I don't-- I don't know who measures with a bigger stick
7 here. That seems to be something that a lot of wine
8 authorities could take credit for.

9 Q. So you're not sure?

10 A. Whether I-- whether I know more about Burgundy than the
11 defendant?

12 Q. Correct.

13 A. No, I'm not sure.

14 Q. Okay. You remember you testified the week before this
15 trial started in this very courtroom on December 5th?

16 A. Yeah.

17 Q. And there was a hearing. You were asked questions by me,
18 by Mr. Mooney, and sometimes the judge would ask you questions.
19 Correct?

20 A. Yes.

21 Q. All right. And do you remember --

22 THE COURT: Could you hold on for one second? Let me
23 just see counsel for just a second.

24 (Continued on next page)

25

DCHBKURT2 Collins - cross

1 (At the sidebar)

2 THE COURT: So I'm not sure what questions and answers
3 you're going to refer to, but I think if they were questions
4 that I asked, you probably should not identify that the Court
5 asked the questions so the jury doesn't think that it's more
6 significant than not. Okay?

7 MR. HERNANDEZ: I will do that.

8 THE COURT: Good.

9 (Continued on next page)

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DCHBKURT2 Collins - cross

1 (In open court; jury present)

2 BY MR. HERNANDEZ:

3 Q. So, Mr. Collins, I asked you before we went to the sidebar
4 whether you thought you were more knowledgeable than the
5 defendant, and you said that you didn't --

6 A. If I remember right, I said I'm confident with my own
7 knowledge.

8 Q. Okay. Do you remember being asked the following question:

9 "Q. Do you think he"-- referring to the defendant-- "had the
10 same understanding of wine that you did or the same degree of
11 knowledge?"

12 "A. Without seeming egotistical, I've been at it for a very
13 long time. Opinions are like noses when it comes to wine:
14 Everybody has one. But I feel confident in my own."

15 A. Yes.

16 Q. Do you remember giving that answer?

17 A. Uh-huh.

18 Q. So you feel confident in your own opinion. Correct?

19 A. Yes.

20 Q. But isn't it also true that in the past you've asked the
21 defendant for his opinion about wine?

22 A. I've asked lots of people for their opinion about wine. I
23 don't think that --

24 Q. Isn't it true --

25 A. I don't think that that negatively reflects on my own

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DCHBKURT2

Collins - cross

1 ability.

2 Q. So just let me know, is it or is it not true that in the
3 past you, Mr. Collins, the expert testifying here today, have
4 asked the defendant for his opinion about wine?

5 A. I don't recall a specific, but perhaps you can assist me.

6 Q. Can you look at Government Exhibit 103?

7 A. Pardon.

8 Q. The exhibits I gave you.

9 A. Uh-huh.

10 Q. Can you look at Exhibit 103? Just let me know when you get
11 to that.

12 A. Okay. What did you want me to see on 103?

13 Q. Is that an e-mail that you sent to the defendant on July
14 18th, 2007?

15 A. Uh-huh.

16 Q. And in that e-mail, you are referring to some Burgundy
17 wines that you ordered. Correct?

18 A. That's right.

19 Q. And in that e-mail you write that you would be interested
20 "in your opinion of some wines that I'm importing" and "your"
21 refers to the defendant. Correct?

22 A. Yep.

23 Q. You in 2007 were asking the defendant for his opinion about
24 wines that you were importing. Right?

25 A. Yeah. That tasting-- that tasting is one that Paul

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DCHBKURT2 Collins - cross

1 Wassermann went to.

2 THE COURT: I'm sorry?

3 A. That's a polite way of seeing if he wished to buy anything.

4 MR. HERNANDEZ: No further questions.

5 THE COURT: Redirect?

6 MR. MOONEY: Thank you.

7 REDIRECT EXAMINATION

8 BY MR. MOONEY:

9 Q. So when you communicated with Rudy and with Paul Wassermann
10 back in 2007 about some burgundies that you were importing --

11 A. Yeah.

12 Q. -- had you already decided to import those?

13 A. Yes.

14 Q. And was the nature of your communications related to
15 wanting him to give you advice as to whether you should import
16 them?

17 A. I'm sorry?

18 Q. Were you asking if you should import them or whether he
19 wanted to buy some?

20 A. No, I already imported wines and Wassermann indicated that
21 The Wine Hotel might want to buy some of them.

22 Q. All right.

23 A. There was also a group of other private clients, and El
24 Grano, people like that.

25 Q. How long has it taken you to acquire the expertise that you

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DCHBKURT2

Collins - redirect

1 have?

2 A. Well, I've been working at it for over 35 years.

3 Q. And are you done? Do you know everything there is to know
4 about it?5 A. Well, a lot of-- a lot of burgundy, you find that you learn
6 more questions than answers when you go after things. So I
7 would like to think that I'm not done acquiring knowledge until
8 I'm dead.

9 Q. Do you assume you have all the answers?

10 A. No, I certainly don't.

11 Q. And back when you had been in the business for three or
12 four years, were you an expert back then?13 A. Well, I had the advantage when I started out from learning
14 from other experts, but that hadn't moved me up the chain of
15 command by any means.16 Q. Would it be-- would it have been easier to have made
17 mistakes back at the point you only had three or four years of
18 experience than it would be now?

19 A. Yes, absolutely.

20 Q. Mr. Hernandez asked you about the Patriarche wines.

21 A. Uh-huh.

22 Q. And you started to tell us a little bit about the
23 Patriarche wines.

24 Is that a decent wine?

25 A. Well, Patriarche is a very wealthy firm. They sell-- their

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DCHBKURT2

Collins - redirect

1 primary product that they've made a lot of money on is
2 sparkling Burgundy. They also-- so there's a lot of Patriarche
3 wine that would be inexpensive and common wines.

4 They also purchased the Chateau de Meursault, which
5 wouldn't necessarily be rated as a second-rate property. And
6 they've been an unswerving supporter of the Hospices de Beaune
7 charity auction for decades. And this is-- this is kind of the
8 Old Guard of the Beaune negociant firms, which, if I recall,
9 they've been in business for 250 years. And because they're
10 very large, they also have large stocks of older wines and they
11 have large stocks of Hospices wines from wines they've bought
12 from the charitable auction.

13 There's some that consider Patriarche and Louis Latour
14 as being the two stalwarts of the Hospices de Beaune auction
15 and even in weaker vintages, that they support-- they support
16 the organization. So --

17 Q. Is it a good drinking wine?

18 A. Pardon?

19 Q. Is it a good drinking wine? Patriarches.

20 A. Well, there's some good ones. One of the best bottles of
21 wine I've ever had actually came out of the cellar of-- they
22 have a large retail shop right across from the Hospices de
23 Beaune in downtown Beaune and they sell all sorts of
24 wine-related things and they're very active in the promotion of
25 the wines from Burgundy.

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DCHBKURT2

Collins - redirect

1 You know, if-- virtually all of the negociants are
2 probably-- they wouldn't be the places that the elitists would
3 want to be seen tasting wine at. But to dismiss them would
4 probably be a gross disservice to the whole concept of Burgundy
5 wines. You would get the impression on looking at this
6 evidence that Burgundy is only for people that have unlimited
7 amounts of money to spend and that there's only a very few
8 places that you should bother with and the rest of the-- the
9 rest of the industry is unimportant.

10 The reality of that is that most of the small domaines
11 wouldn't exist without the existence of big negociant firms who
12 come in and buy barrels of wine on harvest and give them
13 ready-needed cash to pay their workers and to be able to do
14 their own domaine bottling.

15 So it's a-- when I first went there in the '70s, the
16 negociant-- the negociant firms of Beaune virtually ran-- you
17 know, ran the show in Burgundy.

18 Q. You had mentioned in cross-examination the gray market.

19 A. Yeah.

20 Q. What's the gray market?

21 A. The gray market's a parallel market where someone can
22 directly buy-- directly buys bottles of wine from any source
23 that they care to in Europe and they import it without using
24 the primary importation system. So those are frequently wines
25 that you-- that someone who is a primary importer has to

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DCHBKURT2

Collins - redirect

1 compete with.

2 Q. Does that create some confusion in terms of the labeling
3 and authenticity of bottles?

4 A. Well, for one thing, if any of the number of firms that
5 we've spoken about here, such as Wildman, that are primary
6 importers, there's no question that the bottles of wine they're
7 importing come directly from the domaines involved.

8 It's exactly the opposite with the gray market.
9 There's frequently guys driving around with vans in various
10 parts of France and buying wines out of restaurants or out of
11 retail stores, and then they drive them to a central location
12 with one of the big shipping firms. They're sent in with
13 somebody that has paid them for the wine. So the process is
14 definitely broken.

15 Q. Back to the '23 Bonnes-Mares.

16 A. Yeah.

17 Q. Mr. Hernandez essentially asked you if this wasn't so
18 obvious that anybody would know better.

19 If a collector purchased this bottle and put the
20 picture on the front of an invitation and menu and even invited
21 Christophe Roumier, would he be an idiot?

22 A. Well, no, I don't believe we'd refer to him in that term.

23 Q. He could be forgiven being mistaken by this?

24 A. Yeah.

25 Q. You had to do research to make sure that this was

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DCHBKURT2

Collins - redirect

1 inaccurate?

2 A. I probably erred on the side of caution. I simply was
3 looking at trying to do as complete an authentication process
4 as I could here. If I hadn't already known about Belorgey
5 wines, I wouldn't have waited so long to make my decision on
6 it. My decision essentially supports the fact that's in the
7 book that the domaine started in 1924. I just wanted to make
8 sure there wasn't any records of any wines that have been
9 particularly brought into the United States that would have
10 preceded that date.

11 Q. Now, Mr. Hernandez asked you about all of this stuff.
12 Have you ever heard the term "reconditioning"?

13 A. Yes.

14 Q. What does reconditioning of wine mean?

15 A. A reconditioning is where you'll take, say, a large number
16 of bottles of a certain wine. You'll open them all up, you'll
17 check for bad bottles. You'll use -- you'll sacrifice one of
18 the bottles to top up the other bottles, and you'll reseal
19 them.

20 Q. And so something like Exhibit 1-101, a recorker, would be
21 something that you might use for reconditioning?

22 A. Yes.

23 Q. It's supposed to be done by the domaine, isn't it?

24 A. Yes.

25 Q. Do individuals also recondition occasionally?

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DCHBKURT2

Collins - redirect

1 A. Yes.

2 Q. Have you ever reconditioned wines?

3 A. Yes.

4 MR. MOONEY: No more questions.

5 THE COURT: Okay. We'll excuse the witness. Thank
6 you very much.

7 THE WITNESS: Thank you.

8 (Witness excused)

9 THE COURT: Mr. Mooney, do you have any other defense
10 witnesses?

11 MR. MOONEY: No, your Honor, the defense rests.

12 THE COURT: Okay. So the defense has rested; the
13 government has rested. So the presentation of evidence is
14 over. So in a minute I'm going to excuse the jury just to the
15 jury room and probably will need 15, 20 minutes, something like
16 that. And then, when you come back out, we will have
17 summations starting with the government and then the defense.
18 In our system, the government gets a brief rebuttal if it
19 wishes to.20 So we're very much on schedule, a little ahead of
21 schedule, and we'll see you in about 20 minutes. Could be a
22 little bit more. Not much.

23 (Jury excused)

24 (Continued on next page)

25

DCHBKURT2

Collins - redirect

1 (In open court; jury present)

2 THE COURT: So if counsel has a few minutes, we'll go
3 in the robing room. I'll just indicate the final changes to
4 the charges, the jury charges. So you won't be surprised when
5 either side hears the charges. Okay? We'll take the court
6 reporter with us.

7 (In robing room)

8 (Discussion off the record)

9 MR. MOONEY: We would object to leaving in the
10 language "It is not necessary for the government" through the
11 end of that paragraph on page 10 and then onto the top of page
12 11.

13 THE COURT: Fair enough. That preserves your
14 objection.

15 MR. MOONEY: Right.

16 (Discussion off the record)

17 THE COURT: We'll have the second objection from the
18 defense and that is what, Mr. Mooney?

19 MR. MOONEY: That's at page 13 and it's the paragraph
20 "If you find the defendant knowingly" through the end of
21 "defendant's conduct" in the middle of the page.

22 THE COURT: Okay. So that's noted for the record.

23 (Discussion off the record)

24 THE COURT: This is with respect to--

25 MR. MOONEY: Evidence of indebtedness, page 17. First

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DCHBKURT2

Collins - redirect

1 line uses the word "case regarding debts owed." And we think
2 use of "debts" is wrong. It ought to be "obligations owed."

3 THE COURT: So that objection is noted. We are going
4 with the word "debts" in the first line of that instruction,
5 but we are inserting the word "obligation" five lines below
6 that in place of the word "debt."

7 MR. MOONEY: That's correct.

8 MR. HERNANDEZ: Okay.

9 THE COURT: All right.

10 (Discussion off the record)

11 MR. MOONEY: Let's go on the record.

12 THE COURT: So with respect to the instruction
13 regarding defendant's right not to testify, Mr. Mooney has an
14 objection which, in summary, I believe is over his objection
15 not including language that he had proposed.

16 MR. MOONEY: That's correct, your Honor. So that's
17 page 19. And we had proposed in our request number 9 the
18 additional language: "This means it should not be mentioned,
19 discussed or commented upon in any way for your purposes during
20 deliberation. The fact that the defendant did not testify is
21 meaningless and completely irrelevant to your discussions of
22 the facts of the case and decision-making with respect to your
23 verdict."

24 THE COURT: So we note Mr. Mooney's objection because
25 we have not included that language.

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DCHBKURT2

Collins - redirect

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MR. MOONEY: Right.
THE COURT: Now we'll go off the record again.
(Discussion off the record)
(Continued on next page)

DCHAKUR3ps

1 THE COURT: Let's go on the record for this and say
2 that we've just agreed that, with respect to the instruction
3 variance in dates, amounts, etc., that begins on page 20, that
4 on page 21 we are going to delete the current last two
5 sentences of that instruction. Is that fair?

6 MR. HERNANDEZ: Yes.

7 MR. MOONEY: Yes, your Honor.

8 THE COURT: OK. So we'll go off the record again.

9 (Discussion held off the record)

10 THE COURT: Now let's go back on the record and ask
11 first the government if it is in agreement with the jury
12 instructions as we have just concluded them in the charge
13 conference.

14 MR. HERNANDEZ: Yes.

15 THE COURT: As I will present to the jury.

16 MR. HERNANDEZ: Yes, your Honor.

17 THE COURT: And how about the defense?

18 MR. MOONEY: Yes, your Honor, subject to the
19 objections that we've previously made.

20 THE COURT: There were several objections that you had
21 and that we've noted on the record. OK.

22 MR. MOONEY: Thank you.

23 THE COURT: So hold on for one second. Let's go off
24 the record.

25 (Discussion held off the record)

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1 THE COURT: And also, back on the record, is the
2 government in agreement with the verdict sheet?

3 MR. HERNANDEZ: Yes, your Honor.

4 THE COURT: And how about the defense?

5 MR. MOONEY: Yes, your Honor.

6 THE COURT: OK. So let me just -- we'll go off the
7 record.

8 (Discussion held off the record)

9 THE COURT: Let's go on the record and let me give you
10 the fuller ruling with respect to a motion in limine. This
11 ruling supplements the evidentiary ruling that I made on about
12 December 16, 2013 in short form on the record. This has to do
13 with the government's motion in limine to preclude the
14 defendant from introducing into evidence Mr. Kurniawan's brief
15 on appeal from the denial of his asylum status.

16 By letter dated December 13, 2013 the government moved
17 to preclude the defendant from offering into evidence his brief
18 on appeal from denial of his application for asylum. By letter
19 dated December 15, 2013, the defense opposed the government's
20 application. The background is this: The government called as
21 a witness James Grathwohl, a special agent for the Homeland
22 Security, to support its contention that the defendant lied on
23 his loan application to Fine Art Capital when he,
24 Mr. Kurniawan, said that he was a permanent resident of the
25 United States. Grathwohl testified that Mr. Kurniawan never

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1 submitted an application to become a permanent resident and in
2 fact is currently under an order of removal from the United
3 States.

4 The defense argues and argued that the defendant did
5 not knowingly and intentionally defraud Fine Art Capital in the
6 loan application because he believed and/or knew he was going
7 to be granted asylum, as his mother had been, and because the
8 actual denial of Mr. Kurniawan's asylum appeal was never
9 received by him and was mailed to the wrong address.

10 I earlier ruled that the government's motion is and
11 was granted in part and denied in part as follows: I allowed
12 the defendant to, and he did in fact, adduce evidence related
13 to (1) his immigration status in the United States; (2) the
14 history and current status of his asylum case; (3) the status
15 of his mother's asylum application; and (4) the addresses at
16 which he has lived in or near Los Angeles and the addresses to
17 which immigration authorities, their notices, including the
18 denial of this asylum application, were sent. Under that
19 ruling, defendant was not permitted to introduce into evidence
20 the contents of his brief on appeal on grounds of hearsay,
21 prejudice under Fed.R.Evid. 403, and relevance, under
22 Fed.R.Evid. 401, and also relied and relying on United States
23 v. Prince-Oyibo, at 320 F.3d 494, a Fourth Circuit case from
24 2003.

25 Among the other hearsay, irrelevant, and prejudicial

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1 comments which the Court feels were contained in defendant's
2 asylum brief, which is precluded, are the following: (A) "In
3 Indonesia, there is no protection, no safe haven, and no chance
4 for a life without the fear of being attacked"; (B) "We are
5 prisoners in our own home in Indonesia, and even then we are
6 not safe from the Muslim Indonesians' abuse, harassment,
7 discrimination, and persecution"; (C) "I have been
8 discriminated and persecuted by the Muslim native Indonesians
9 and have faced the total disregard of the Indonesian government
10 and its officials"; (D) "I have lived the majority of my life
11 in Indonesia and understand the," I think that's -- I don't
12 know if the word was "fervor" or "fever," but I'll say "fever"
13 for the moment, it may be "fervor" -- "and extreme measures
14 that Muslims will take to eliminate an enemy. My family and I
15 are Chinese and Christians, and to the Muslims in Indonesia, we
16 are the enemy and must be removed or completely destroyed"; (E)
17 "I am vulnerable and only death awaits me in Indonesia, where
18 the Muslim majority led by fanatics in a jihad want all
19 non-Muslims removed from Indonesia forever."

20 In that brief, Mr. Kurniawan also says, quote -- and
21 this is also precluded -- quote, I have not been charged or
22 targeted by the Indonesian government or its authorities, close
23 quote. We were not jailed or imprisoned by the government.
24 That's also in quotes.

25 There is one point I forgot to mention, and that is

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1 that one of the other reasons that the brief was precluded was
2 that Mr. Kurniawan had failed to file, as far as I could tell
3 from the record, a certificate of service of his brief as
4 required by immigration authorities. And there is a mention in
5 one of the government's immigration submissions in his asylum
6 case that no such brief had been timely filed. So that was a
7 point of contention. But there was no point of contention, no
8 one was able to locate a certificate of service from
9 Mr. Kurniawan.

10 So I think that, in sum, that is the ruling. I think
11 that it's -- I think it's fair to say, it's fair to say, you
12 may not agree that, this ruling permitted each side to adduce
13 testimony which, if the jury accepts it, would support their
14 respective positions.

15 So I think that's all the open business.

16 MR. MOONEY: One other short issue that's just come
17 up, your Honor. We've just been handed a PowerPoint for the
18 government's closing argument. They've included in that a
19 picture, I guess taken from our client's phone, of him with
20 somebody's Bugatti.

21 THE COURT: Oh. Car.

22 MR. MOONEY: A Bugatti is a half-a-million-dollar
23 automobile. It's not his and it was never his. And we think
24 it's improper to include that. Rule 403 should preclude them
25 from using that picture.

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1 MR. HERNANDEZ: I can't agree that we don't know that
2 it was his. And --

3 MR. MOONEY: You got all his stuff.

4 MR. HERNANDEZ: Well, I actually do believe it was his
5 and can show that he listed a Bugatti as one of the items that
6 he owns on an interrogatory or a request for information. So
7 perhaps maybe if I could show that to Mr. Mooney, and show that
8 he owns a Bugatti, that would -- that may not resolve the
9 objection, but I think on that portion we can establish that --

10 MR. MOONEY: He owns a Lamborghini.

11 MR. HERNANDEZ: A Bugatti, not a Lamborghini. I
12 believe I can. I would have to go back and look to see if I
13 can find these records.

14 MR. MOONEY: Even so, I think it's irrelevant. Just
15 inflammatory.

16 MR. HERNANDEZ: We think it shows the motivation for
17 both of the crimes and it's a theme that we opened upon, that
18 the defendant was motivated by greed, by a high -- a lifestyle
19 of fast cars and that sort of thing.

20 THE COURT: Is it one that can come out of the
21 PowerPoint easily enough?

22 MR. HERNANDEZ: We can make any changes to the
23 PowerPoint.

24 THE COURT: So I think it would, on balance, so we
25 don't have to do an investigation, would be preferable to leave

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1 that photo out if you don't mind. OK?

2 MR. MOONEY: Thank you, your Honor.

3 THE COURT: All right.

4 So now what are you guys -- are you ready?

5 MR. MOONEY: Yes, your Honor.

6 THE COURT: And you, Mister --

7 MR. HERNANDEZ: We'll need a minute just to make a
8 change to the PowerPoint, but otherwise yes.

9 THE COURT: OK. I'll be out in one minute.

10 (In open court; jury not present)

11 THE COURT: So, ladies and gentlemen, we're going to
12 bring the jury in at this point and begin our summations. And
13 our practice in our system, the government will go first,
14 followed by the defense, and then I don't know if you're
15 reserving any time for a brief rebuttal, but you can if you
16 wish to.

17 MR. HERNANDEZ: We would like to, your Honor.

18 THE COURT: OK. So let's bring out the jury.

19 (Jury present)

20 THE COURT: So please be seated, everybody. We are on
21 schedule. You've heard of the schedule we talked about. We're
22 going to have summations. After summations I will give you my
23 jury instructions. And then you will begin your deliberations.
24 Probably somewhere during the summations we'll have our lunch
25 break. So anyway. So we start with the government and

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1 Mr. Hernandez, or --

2 MR. FACCIPONTI: Me, your Honor. Your Honor, we have
3 a PowerPoint presentation. Is that going to be made available
4 for the jury's screens?

5 THE COURT: Yes.

6 MR. FACCIPONTI: Good morning, ladies and gentlemen.

7 The magic cellar, that's where Rudy Kurniawan, the
8 defendant said that he found a seemingly endless stash of
9 incredibly rare, incredibly valuable old wines that he sold to
10 the victims around the world for years, wines that were so rare
11 and so great that they were the stuff of legend, that even the
12 people whose families had made those wines said that they
13 didn't think that any bottles still existed. And for a while,
14 the defendant's magic show worked. He entranced the
15 wine-collecting community with his self-serving generosity and
16 self-declared expertise in all things related to fine wine.
17 And he sold his fakes for millions of dollars at auctions and
18 directly to collectors.

19 But there was just one problem. There was no magic in
20 the magic cellar. It was only the defendant's lies, lies that
21 he told to get his victims to pay the millions of dollars for
22 his fake wines, lies that he told about the origin of his fake
23 wines and where he got them, and lies that he told to cover his
24 tracks when others began to suspect that the magic cellar
25 wasn't truly magic at all, but just a bunch of smoke and

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Summation - Mr. Facciponti

1 mirrors. Ultimately, the defendant resorted to recruiting
2 someone else to sell his fakes for him, because by then too
3 many people suspected him of being a wine counterfeiter.

4 And why did he tell all these lies? Because of greed.
5 Well, the defendant's lies end now. You have seen the evidence
6 in this case. And I am going to explain to you why the
7 evidence establishes the defendant is of guilty beyond a
8 reasonable doubt.

9 So what did the defendant do? Well, during this trial
10 you learned that from at least 2004 through his arrest in 2012,
11 the defendant was a prolific wine counterfeiter, running a fake
12 wine factory in his home in Los Angeles, California, that the
13 defendant assembled everything he needed in his home to
14 manufacture his fake wine, everything from empty bottles,
15 corks, wax, glue, to a witch's brew of bad old and decent new
16 wines that he mixed to try to make passable fake wines. The
17 defendant created fake labels for rare and distinct vintages on
18 his computer and printed them with his laser printer. We saw
19 the evidence of the defendant's fake wine factory at this
20 trial, and there was a mass of evidence. We saw the evidence
21 and we learned that at first defendant was incredibly
22 successful in selling his fakes, making millions of dollars in
23 just a few years.

24 But that's not all the defendant did. Because he was
25 motivated by undying greed, he was also always looking for an

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Summation - Mr. Facciponti

1 opportunity to get his hands on more money. So when
2 opportunity struck in late 2007, he seized it and told a pack
3 of lies to a company called Fine Art Capital to get them to
4 lend him \$3 million. But the defendant had no intention of
5 paying this loan back. Just a few months after he got the
6 loan, he double-pledged the collateral that he had given to
7 Fine Art Capital to someone else, to secure a loan from them.
8 And that's what this case is about -- the defendant's lies and
9 his greed.

10 I now want to take some time to review the evidence
11 that you have seen so that when you go back and deliberate,
12 you'll have some help with that. But before I do that, I want
13 to explain something to you that Judge Berman has already
14 instructed you on and I expect he will instruct you again,
15 which is that in our system, a defendant has no obligation to
16 put on any case or defend himself at this trial. The burden of
17 proof rests at all times with the government, and the
18 government must prove the defendant guilty beyond a reasonable
19 doubt.

20 But there are times in a trial when there are some
21 things that are just not in dispute. And one of the things
22 that is not in dispute at this trial is that the defendant sold
23 fake wines. You just heard his expert witness testify this
24 morning that there were account -- there were authenticity
25 issues with all the bottles that he examined, the bottles that

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Summation - Mr. Facciponti

1 preserve the quality of the wines that were in his home, as you
2 heard Mr. Mooney suggest yesterday, but because he didn't want
3 anyone to see him soaking the labels off the bottles that were
4 sitting in his kitchen sink and the other bottles that had no
5 labels that were sitting there right next to it. He didn't
6 want anyone to see his wine-counterfeiting factory in
7 operation.

8 This is in the dish drain right next to the sink. And
9 what do we have here? Well, we have these things that you see
10 right on the table: Government Exhibit 1-101, a device for
11 inserting corks back into bottles; and Government's Exhibit
12 1-102, a special type of corkscrew -- not a corkscrew, but a
13 special type of device that takes a cork out of a bottle of
14 wine without breaking it, without putting a hole in it, as a
15 corkscrew would. And also, it's a plain old funnel so when the
16 defendant mixes his swill into the wines that he sells, he uses
17 this.

18 What else did we see? Well, we saw bottles from the
19 pictures in defendant's home of wine bottles without labels
20 lying all around his house. And we know that when wine bottles
21 are sold, in the testimony of the wine makers that you heard
22 testify today, they put a label on them. There is no reason
23 for the defendant to have bottles with no labels on them lying
24 around his house.

25 We also saw that he had drawers and drawers full of

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Summation - Mr. Facciponti

1 labels, labels that he would use to put onto the wine bottles.

2 We saw that he had bags and bags full of corks, corks
3 like the corks we see right here, corks of old vintages that
4 can only be used for one purpose -- to make counterfeits.

5 He also had all various other equipment and devices
6 and paraphernalia that could only be used for one purpose, and
7 that purpose was to make counterfeit wines. He had more fake
8 labels sitting in bins. He had stencils. He had markers.
9 There is some glue, which again you see, Government's Exhibit
10 1-106.

11 And here, in this picture, you see four bottles of
12 Patriarche. We're going to talk about Patriarche in a minute,
13 and there's been a good number of evidence given about it. But
14 it's safe to say that the only reason to buy this wine is not
15 to drink it but to use the bottles to make counterfeit wine and
16 to use what's in those bottles to try and make something that
17 might resemble an old French wine.

18 Now, let me address the stuff that is on the table in
19 front of you. You heard Special Agent Wynne testify about the
20 recovery -- stuff that was recovered from the defendant's home
21 when they searched it. And Special Agent Wynne literally
22 brought in a mountain of boxes that was full of this material.
23 So this is just a selection of it here. But what do we have?
24 We have a stencil that's marked Government's Exhibit 1-16163
25 that, as you can see, it's a stencil, a wooden box, that

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Summation - Mr. Facciponti

1 indicates that it came from Domaine de la Romanee-Conti, which
2 you heard is one of the most valuable and sought-after estates
3 in Burgundy. He had tins like Government Exhibit 1-233 for
4 burning wax and melting wax. He had ink stamps, Government's
5 Exhibit 1-157, for stamping things. And what was he stamping?
6 Serial numbers on bottles.

7 He had other stamps as well, stamps that you saw my
8 colleague, Mr. Hernandez, demonstrate for you. These stamps
9 stamp out a Nicolas label. And we heard that Nicolas used to
10 buy many fine wines and Burgundies and store them in their
11 cellar but they don't do this anymore. So what is the
12 defendant doing with a stamp that would indicate that if you
13 stamped it on a wine bottle, this was bought by Nicolas. Well,
14 you know what he's doing, ladies and gentlemen, is making
15 counterfeit wines.

16 You have other stamps that were used to stamp corks,
17 corks that would then be made to look as if they were made by a
18 domaine. You have sticks of wax, OK. Now, defendant is either
19 a very prolific letter writer and likes to stamp his letters
20 with wax, or he's making counterfeit labels and he's making
21 counterfeit wines.

22 And finally, you have very, very many labels as were
23 printed out by the defendant on his laser printer, labels from
24 Nicolas, labels from other importers, and also labels for
25 bottles. We heard Aubert de Villaine, who is the head of the

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Summation - Mr. Facciponti

1 "Small labels of years." And he draws two symbols. One looks
2 like a shield and one looks like a crescent moon. Well, we've
3 seen those as well. The one that looks like a shield, are the
4 vintage labels for Ponsot and other wineries. And the one that
5 looks like a crescent moon is the Monopole label for Domaine de
6 la Romanee-Conti. And these images were also recovered from
7 the defendant's home and his computer.

8 What else do we have? Well, here we have some
9 translations from Indonesian of the defendant taking notes on
10 labels that were in his home. And here what does he say?
11 "I've done it three times, keeps on being wrong. I don't want
12 it dark," something about "computer pixel" and the computers he
13 was using. "DRC paper." "DRC," we know, stands for the name
14 de la Romanee-Conti. "Thin -- non-glossy." What else did he
15 say? "Color and sharpness are important." And again, the
16 medium de la Romanee-Conti paper.

17 We also know, especially when Laurent Ponsot
18 testified, that we have examples of what genuine Ponsot labels
19 looked like from the '30s and '40s. Here's one on the screen.
20 Here's some that were recovered from the defendant's home.
21 There's another one on the screen. That's the genuine labels.
22 This is what we recovered from the defendant.

23 Finally, we have labels in which he made mistakes.
24 And this is how we know, this is one of the reasons we know he
25 was making the counterfeit wine. That "Sackvilee Street" for

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Summation - Mr. Facciponti

1 Percy Fox, an importer of wine, this is an example of a
2 "Sackvilee Street" with a misspelling, where it's spelled
3 S-a-c-k-v-i-l-e-e. And that's Exhibit 1-214, recovered from
4 the defendant's home. And here's a bottle of wine the
5 defendant tried to sell through Antonio Castanos in the
6 Spectrum auctions. That's Government Exhibit 3-1. And what do
7 you see, ladies and gentlemen? That it has an importer strip
8 with "Sackvilee Street," with the same misspelling. That's how
9 you know the defendant was making the materials in his home to
10 sell wines to others.

11 And that's not the only thing you know. Here is
12 Government Exhibit 1-401, which is a bottle of the very rare
13 1945 Domaine de la Romanee-Conti wine. Now, what do we know
14 about this bottle? We know that only 600 bottles of this wine
15 were ever produced. We know that Aubert de Villaine testified
16 that he would be very surprised if any, if very many if any of
17 these bottles were produced, and that his own domaine didn't
18 have any more in stock.

19 what else do we know? We know that this is the
20 defendant's bottle of Romanee-Conti 1945. Because you saw that
21 you have one bottle that he brought to a tasting in New York
22 that Mr. de Villaine attended that everyone signed, you
23 remember that bottle. That's one bottle in 1945. Then we
24 heard Susan Twellman testify that David Doyle purchased six
25 bottles of Romanee-Conti 1945 from defendant. And we have

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Summation - Mr. Facciponti

1 bottle. And ladies and gentlemen, if you can't see these well
2 up here, you can request these and bring them back to the jury
3 room with you.

4 The same thing with the Roumier Bonnes-Mares from
5 1923. Everyone who testified, including the defendant's expert
6 witness, agrees that this is a fake, that this too cannot
7 exist, for two reasons. Number one, Domaine Roumier didn't
8 exist until 1924, a year after this bottle was supposedly made.
9 And, two, Roumier didn't buy the ancient domaine Belorgey until
10 the 1950s. So there was no way that a 1923 bottle of this wine
11 can exist. And, again, from the labels that we recovered from
12 the defendant's home -- and here's examples of them, Government
13 Exhibit 1-182 -- we see that the labels matches exactly. And
14 not just exactly, but even the cuts and the scratches and bumps
15 that go around the edge of the label. This fake was made by
16 the defendant.

17 How else do we know the defendant was running a
18 counterfeit wine factory in his home? Well, we saw the record
19 of him making huge purchases of the exact materials that you
20 see in front of you there, materials that he could use to make
21 counterfeit wines. Here is a record -- here is Government
22 Exhibit 10-1, which is a record of the defendant buying wax,
23 \$755 of wax. That's not the only time he bought wax too. He
24 bought it again and again and again and again and again, for a
25 total of \$4,650, for wax.

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Summation - Mr. Facciponti

1 And what was special about this wax? How do we know
2 that he was using this wax to counterfeit wines? Well, here's
3 an e-mail from him to a company that makes wax. And you see
4 what he's asking for. He wants brittle wax, brittle wax like
5 the French sealing wax. Well, why would he want brittle French
6 wax unless he was making old French wines?

7 And that's not the only supplies he purchased. There
8 is ink. There is stamps. And there's even more wax from a
9 different company.

10 Now, we also heard that he purchased 904 bottles of
11 stale old French wine, Patriarche, wine that you heard Michael
12 Egan, the government's expert, testify he would only use
13 perhaps in cooking, if anything. And why did he buy this wine?
14 Well, a couple reasons. One, he wanted the bottles. Here you
15 see an e-mail, because he needs to see the punt before he would
16 buy the bottles. And why was that? Well, you heard Michael
17 Egan testify that an old French bottle, bottles from early in
18 the 20th century, had deep punts. And what is the punt? The
19 punt is the depression at the bottom of the bottle. Why would
20 that be important to the defendant, unless he was -- unless he
21 wanted these Patriarche bottles to make counterfeit wine? So
22 here we have a magnum of Patriarche and a magnum of fake
23 Romanee-Conti, which also has a deep punt.

24 Why else did he want the Patriarche wine? Because,
25 again, they were the right period for his counterfeits. If

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Summation - Mr. Facciponti

1 he's going to make lots of wines from the early 20th century,
2 he's going to want old French bottles there that period.

3 And we also have this e-mail exchange, in which he
4 asked for 20 bottles, in which the retailer in France says, I
5 have 20 bottles of this particular wine and he said, that's
6 good, I'll take it, and then the retailer came back and said,
7 actually, I have 120 bottles, and he said, I'll take that too.

8 Now, we also heard testimony from a number of people
9 that the defendant was obsessed with getting wine bottles. We
10 heard Brian Kalliel, a sommelier at Melisse, a fancy restaurant
11 in LA, testify that over the years the defendant had come there
12 and brought his own wines for wine tasting. He always demanded
13 the bottles and the corks back, maybe between 50 and a hundred
14 bottles. And Brian Kalliel testified, that is unprecedented.
15 Of all the clients he's ever had, no one has ever asked for all
16 their bottles back. At most, clients ask for, customers ask
17 for, maybe a bottle from their birthday as a memento, or a
18 bottle from a special occasion or an anniversary. But never
19 has anyone asked for everything back.

20 And what did the defendant say about the ways that
21 Mr. Kalliel pushed the corks out of the bottle when he asked
22 for the corks back? He always used to tell Kalliel, you don't
23 break the corks when you take them out.

24 Who else talked about how defendant wants bottles
25 back? Well, we heard from Doug Barzelay, who also had a

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Summation - Mr. Facciponti

1 tasting with defendant. And you heard how defendant hounded
2 him in an e-mail. That's Government Exhibit 13-26 if you want
3 to see that, for the bottles, the empty bottles in that case in
4 New York.

5 And finally, you saw an e-mail from Robert Bohr, who
6 was a sommelier at Cru, the restaurant that was used for some
7 of the auctions in Acker Merrall, in which defendant and
8 Mr. Bohr were talking about Mr. Bohr sending him empty bottles
9 from New York as well.

10 Now, why would the defendant want all those empty
11 bottles? And while I'm at it, why would the defendant need all
12 this stuff if he wasn't running a counterfeit operation? Well,
13 you heard Mr. Mooney suggest that maybe this is just some big
14 elaborate home improvement project, that defendant was looking
15 to make wallpaper or something out of all this material. Well,
16 that's preposterous. There was only one reason you would
17 assemble this stuff. And if you look at this, this does not
18 look like a home improvement project at all. This is not
19 wallpaper.

20 So why would defendant want lots and lots of empty
21 bottles, if not to make counterfeits? Well, the defendant
22 actually agrees with that. You saw an e-mail between him and
23 Jancis Robinson, who is a wine journalist in Great Britain, in
24 which she was talking about an article that she was writing
25 about him, and she was running by sections of that article to

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Summation - Mr. Facciponti

1 him, and the quotes that she was going to attribute to him, you
2 know, and the defendant was commenting on those. We saw in
3 that e-mail what he says about people who want empty bottles.
4 He says, Mr. Big is quite aware -- Mr. Big being the
5 defendant -- how naturally questions of provenance arise with a
6 collection like this. Quote. It is quoting defendant. When I
7 go to restaurants and drink great wines, I'm very careful to
8 ensure that the empty bottles are trashed or the labels are
9 marked so they can't be reused.

10 So we know why the defendant wanted all the empty
11 bottles -- so that he could make counterfeit wines.

12 What else do we know about the defendant? Well, we
13 learned two things. We learned, from a number of witnesses who
14 testified, that he has what's known in wine-collecting circles
15 as a great palate, that he's somebody who can taste a wine and,
16 without looking at the label or looking at the bottle, he can
17 tell you where it's from, with a year it is, and things of that
18 nature. And why would that experience be good or helpful to a
19 wine counterfeiter? Well, you see here, this is Government
20 Exhibit 1-406, the 2006 bottle of Marcassin, a California wine.
21 And it was recovered from the defendant's home. Now, what is
22 written on the back of that bottle? It looks like "40s, 50s,"
23 "40s/50s DCC," as in '40s/'50s Domaine de la Romanee-Conti.
24 The defendant was using his palate to identify cheaper wines
25 that he could use to mix to imitate old great wines to trick

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Summation - Mr. Facciponti

1 people.

2 Here's another example, Government's Exhibit 1-410, a
3 half bottle of who knows what, but the defendant has a formula
4 written on the body. And I don't pretend to know what the
5 formula is, but it looks like "Patriarche" something,
6 something, "61, two thirds percent, 1 third percent plus 7
7 cc's." He's mixing wine.

8 How else do we know the defendant is running a
9 counterfeit operation? You heard David Parker testify that he
10 sold the defendant several bottles of 1962 Romanee-Conti, and
11 that when he sold the defendant those bottles, they had 2 1/2
12 inches of ullage. And you heard that "ullage" is a fancy term
13 for measuring the distance in a wine bottle between the level
14 of the wine and the cork. And then Mr. Parker was surprised
15 that, just a few months later, those same bottles, with the
16 same serial number, showed up at the Acker auction, having
17 mysteriously generated an inch of wine. And you saw Mr. Parker
18 on the stand measure that and confirm that in the time the
19 defendant had those wines, they somehow mysteriously generated
20 an inch. The defendant had made wine appear out of nowhere.
21 Well, we know what happened. The defendant opened those
22 bottles and somehow managed to put wine into them. And we know
23 why that's a big deal. You hear Aubert de Villaine testify
24 that, first of all, his estate doesn't even recondition
25 Romanee-Contis or any of its wines anymore. But when they did,

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Summation - Mr. Facciponti

1 they would make sure to note that it had been reconditioned,
2 because, as several of the other witnesses testified, that's
3 something you want to know when you're buying wine. You don't
4 want to buy wine -- when you're buying a '52 bottle of fancy,
5 expensive French wine, you want to know if somebody else has
6 opened it and put something else in it.

7 How else do we know that the defendant was a wine
8 counterfeiter? Well, you heard some testimony from Mr. Collins
9 that said some of these fakes -- we don't have the bottle here
10 anymore, but it was a double magnum of Petrus -- were really,
11 were really amateurish fakes, that anyone with any wine
12 sophistication would be able to spot the difference but someone
13 who didn't wouldn't have been able to know that it was a fake.
14 Well, what have we learned at this trial about the defendant?
15 Everybody who testified said he knew a lot about wines. OK.
16 Doug Barzelay testified about his wine experience. And so were
17 two catalogues. You saw several testimonials about the
18 defendant's wine experience. Allen Meadows of Burghound wrote
19 about how defendant was obsessed with the minutia of labels and
20 details about wines. So is it likely that he's going to be
21 duped by any fakes he sees in the market?

22 We also know that when people started questioning the
23 defendant's wines, he started covering his tracks. And now I
24 want to talk about the April 2003 auction, in which a bunch of
25 fake Ponsots were offered for sale by the defendant. You heard

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Summation - Mr. Facciponti

1 the dramatic testimony of how Doug Barzelay called up Laurent
2 Ponsot in France and said, there's a bunch of your wines on
3 sale at Acker Merrall that I think are fake, and how Laurent
4 Ponsot flew to New York to stop those wines from being
5 auctioned, and how Laurent Ponsot then met with defendant
6 several times over the next few months to try and figure out
7 where he got those wines from.

8 And what did the defendant say? Well, at first he
9 couldn't remember. And that's odd, because there was about --
10 you heard Truly Hardy testify -- about \$400,000 worth of
11 Ponsots that were offered for sale. And how could he not
12 remember where he got them? And you also heard Laurent Ponsot
13 testify that defendant was evasive, that he was looking down,
14 staring down at his plate during lunch, didn't seem very
15 comfortable, you know, answering his questions.

16 You heard at a subsequent meeting between Ponsot and
17 defendant that Mr. Ponsot said that he got the -- the defendant
18 said he got the wines from someone named Pak Hendra in Asia.
19 And you heard Mr. Ponsot remark, well, Asia is a very big
20 place. And you also heard Mr. Ponsot learned that pak means
21 "mister" in Indonesia and Hendra is a common name. So it was
22 the equivalent of someone saying, I got the wines from
23 Mr. Smith somewhere in North America.

24 And when pressed further, the defendant eventually
25 gave Mr. Ponsot this piece of paper, with two telephone numbers

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Summation - Mr. Facciponti

1 We also heard that in 2012, Mr. Castanos tried to
2 consign wines that had been auctioned by Spectrum Wine Auctions
3 in London. And that's Mr. Castanos's name on a list of those
4 wines that had been consigned to auction, and you see their
5 values appraised between \$2.4 million and \$3.4 million. Well,
6 here's the funny thing about this list, ladies and gentlemen;
7 they came from the government's computer that was marked as
8 Government's Exhibit 14-4. And we know what happened at the
9 Spectrum auction. The wines were determined to be counterfeit
10 and they were ultimately pulled. What else do we know about
11 this arrangement between Castanos and the defendant? Well, the
12 defendant would give Castanos 5 percent of the sales of the
13 wine, and that Castanos made about \$400,000 from this
14 arrangement, which if you do the math, comes to something like
15 \$8 million from sales of wine from the defendant.

16 I'm going to move on to the next count of this case,
17 dealing with Fine Art Capital, in a moment. But I want to say
18 one thing about the mailings in this case, because the wine
19 counterfeiting charge in the indictment is a charge of mail
20 fraud, which means the government must also prove, in addition
21 to the fraud, that the defendant caused stuff to be sent in the
22 U.S. Mail, or the postal service or Fedex or some other
23 carrier. But you have several mailings in this case that are
24 after 2008, or after 2007.

25 You heard Truly Hardy testify that all the Acker

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Summation - Mr. Facciponti

1 catalogue were sent to the Acker auction, the Cellar II, and
2 the April 2008 auction in which the fake Ponsots were listed,
3 all those catalogues were sent in the U.S. Mail, through the
4 U.S. Postal Service, sent all around the country, from the post
5 office right here in Manhattan.

6 And you heard Doug Barzelay testify that he received
7 the catalogues from the April 2008 auction in the mail.

8 (Continued on next page)
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DCHBKURT4

Summation - Mr. Facciponti

1 acknowledges my/our understanding that any intentional or
2 negligent misrepresentations of the information contained in
3 this form may result in civil liability and/or criminal
4 penalties..."

5 So what lies did the defendant tell on this form? Lie
6 number one: Citizenship. He says that his citizenship was PR,
7 which is permanent resident, or as he later told Barbara Chu on
8 the telephone, he was applying for permanent residency.

9 He also lied about his debt. The debt section is a
10 little hard to make out. It says "Liabilities." And in his
11 liabilities he says he has a total of seven to eight million
12 dollars in outstanding debt, six million of which has to do
13 with his mortgage and 1.2 million has to do with outstanding
14 taxes he has to pay. And you heard Barbara Chu testify that
15 that was the only debt he disclosed to her. There was no other
16 debt that he mentioned when he applied for that loan.

17 And what was the other lie the defendant said? Well,
18 you heard that in a conversation with Barbara Chu, he said that
19 his living expenses, not including mortgage payments and real
20 estate taxes, but his living expenses were \$150,000 a year.
21 And we know that was a lie, and I'll start with that one
22 first.

23 This is a chart prepared by the FBI agent in this case
24 that shows the defendant's real personal expenses. And this is
25 not even comprehensive. This is just looking at the American

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DCHBKURT4

Summation - Mr. Facciponti

1 expense.

2 So let's talk about his immigration status right now.
3 You heard Special Agent Grathwohl of the Department of Homeland
4 Security testify that he reviewed the defendant's immigration
5 file. And what did he learn? He's a citizen of Indonesia.
6 He's never applied to be a permanent resident in the United
7 States. He never has been a permanent resident in the United
8 States. And in 2003 he was ordered to leave the country.

9 Now, you heard defense counsel, when he examined
10 Special Agent Grathwohl, examine him about -- questioning
11 whether or not the 2003 order was mailed to an older address
12 for the defendant and that maybe the defendant didn't receive
13 the 2003 order.

14 Well, what do we know? We know from Special Agent
15 Grathwohl's testimony that the defendant applied to stay in
16 this country early in 2001; that he appeared before an
17 immigration judge in 2001, and that that immigration judge
18 ordered him to leave the country. The immigration judge denied
19 his application, and that the defendant filed an appeal from
20 that immigration order and that appeal was denied in 2003.

21 Well, are you going to tell me that in the five years
22 that followed 2003, the four or five years before he applied to
23 Fine Art Capital, he never wondered or double-checked what the
24 result of that appeal was? That he didn't call the 1-800
25 number the Department of Homeland Security has to check on his

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Summation - Mr. Facciponti

1 immigration status? That the immigration consultant who had
2 been hired to help him never bothered to follow up with the
3 immigration service?

4 Let's just suppose, however, that the defendant didn't
5 bother to follow up and that when he applied for the loan and
6 told Barbara Chu that he was a permanent resident or that he
7 was applying for permanent residency when applied for loans
8 from Fine Art Capital, it was still an open question in his
9 mind about what happened with his appeal in 2003. What would
10 he have told her? Would he have told her that he was a
11 permanent resident? Would he have told her that he was
12 applying for permanent residency? No. He would have said, I
13 was ordered to leave the country, but I'm appealing that
14 decision. Or maybe he would have said, I honestly don't know.
15 I need to double-check. But he would not have said that he was
16 a permanent resident or that he was applying for permanent
17 residency when that was manifestly not true.

18 Now let's talk about the defendant's outstanding
19 indebtedness. And you remember on the form to Fine Art
20 Capital, he declared the total amount of money he owed was
21 seven to eight million dollars. Well, we know that that's
22 simply not true. What he didn't disclose to Barbara Chu, which
23 she took his application, was that he owed millions of dollars
24 to Acker Merrall and its clients. And Acker Merrall & Condit
25 being the auction house that was auctioning his wines for him.

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DCHBKURT4

Summation - Mr. Facciponti

1 defendant lied about his immigration status, how much personal
2 expenses that he has or the amount of debt that he has, she
3 wouldn't have made a loan to him; or, if she had made a loan to
4 him, it would have been a different loan.

5 And why is that? Because Acker Merrall and Condit--
6 I'm sorry, Fine Art Capital is in the business of lending
7 money. But it doesn't have an unlimited amount of money to
8 lend to people. It has to make decisions between who gets the
9 money and who doesn't and it has to rely on the information
10 that was given to them. And so you know that this information
11 was important. This information, as Judge Berman will instruct
12 you, was material to Barbara Chu when she made her decision of
13 whether or not to give a loan to the defendant.

14 Then you also heard during cross-examination of
15 Barbara Chu the defense counsel raised the fact that Fine Art
16 Capital ultimately was able to get its money back because the
17 defendant was able to sell the collateral the defendant had
18 pledged to. But let me tell you something about that
19 collateral. The defendant put up artwork in connection with
20 the loan to Fine Art Capital. But we know what he also did
21 just five months later: He pledged that same artwork to Acker
22 Merrall.

23 But let's talk about the collateral and Fine Art
24 Capital. You heard Barbara Chu testify that there is no
25 guarantee that Fine Art Capital could ever be made whole

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Summation - Mr. Facciponti

1 through the sale of collateral. You heard Barbara Chu testify
2 that the modern art the defendant put up is volatile; its price
3 goes up and down all the time. And just because it's worth
4 something today doesn't mean it's going to be worth something
5 tomorrow. And we know what was happening in the world when
6 Fine Art Capital finally had to sell that collateral. It was
7 in 2008 and 2009. And what was happening? The second Great
8 Depression. The economy was melting down and there was no
9 guarantee that Fine Art Capital would be able to be made
10 whole.

11 You also heard Barbara Chu testify that Fine Art
12 Capital is not an auction house. It's not in the business of
13 selling collateral. It doesn't want to sell collateral. It
14 wants its customers to repay their loans with interest on
15 time.

16 And you also will hear Judge Berman instruct you in a
17 moment that if you find that the defendant knowingly lied to
18 Fine Art Capital with an intent to defraud them, that is an
19 intent to get money from them, to get them to do something that
20 they wouldn't do otherwise but for his lies, that no amount of
21 belief on his part that the victim would ultimately be made
22 whole in all of this excuses him from fraud.

23 So before I conclude, I want to talk about the wire
24 payments for Count Two. Count Two, the Fine Art Capital loan,
25 charges wire fraud. And that means that the government has to

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Summation - Mr. Facciponti

1 prove that there was some transfer of-- there was communication
2 between two states by wire. We have that and the government
3 has proven that.

4 Government Exhibit 27-1 and 27-2 are records of the
5 Federal Reserve Bank. They're records of the loan proceeds for
6 Fine Art Capital, the \$2.5 million that they ultimately wired
7 to him being transferred from Fine Art Capital's bank account
8 in New York to the defendant's bank account in California. So
9 those are two wires that you can rely on.

10 The other wires you can rely on are all of the
11 telephone calls and faxes between the defendant's phone in
12 L.A.-- and we saw the records for that, it's Government Exhibit
13 41-1-- and Fine Art Capital in New York. And the agreements he
14 was faxing back and forth and the telephone conversations that
15 Barbara Chu testified to having with him.

16 I'm about to conclude my comments, ladies and
17 gentlemen. But as I said at the beginning, this is a case
18 about greed and lies, but those lies end today. You'll soon
19 receive instructions on the law from Judge Berman, and I ask
20 that you pay careful attention to those instructions. And when
21 you approach your deliberations, I ask that you use the same
22 common sense that you use outside of this courtroom as you go
23 about your business on a daily basis.

24 If you do those two things, ladies and gentlemen, I
25 submit that you will return on both counts of the indictment

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DCHBKURT4

Summation - Mr. Mooney

1 A F T E R N O O N S E S S I O N

2 (In open court; jury present)

3 THE COURT: So please be seated, everybody. We will
4 turn now to Mr. Mooney for the defense summation.

5 MR. MOONEY: Thank you, your Honor.

6 THE COURT: You're welcome.

7 MR. MOONEY: Ladies and gentlemen of the jury, it's
8 been a long week. Probably seems like forever that you've
9 been here and the weather hasn't exactly cooperated with us
10 either. But we are here, all of you are still here. We've
11 endured and we've gotten up to the point where we're at the
12 end.13 What happens at this point is the government, of
14 course, has had their chance to make a closing argument. I now
15 get a chance to make my closing argument. I only get to speak
16 the one time and when I'm finished talking, then they get
17 another chance to talk to you. And then after that's done,
18 Judge Berman will read you the instructions of the law.19 When that's done, we're all done talking to you. Then
20 you go in the room back there and at that point in time you'll
21 decide amongst yourselves what your verdict is going to be with
22 regards to this case.23 So that's the process. So, like I say, I get to talk
24 now. I told you back a week ago Monday that I get a chance to
25 talk to you again. This is it. When I'm done now, I don't get

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DCHBKURT4

Summation - Mr. Mooney

1 intended to cause other people to pay money which he would then
2 gain. Of course, the government's made no bones about that
3 being their theme. They said it's all about his greed. That's
4 been their mantra that they've been waving back and forth.
5 It's all about his greed. He's a greedy man. And because he's
6 a greedy man, he went out and he defrauded all of these other
7 people by creating all of these things that he did with regards
8 to the wines. And that's going to be their theme. It's been
9 their theme all along.

10 You're going to have to decide, and you're going to
11 have to decide beyond a reasonable doubt, if you think he did
12 things that he shouldn't have done. And I'm going to tell you
13 right now that I think there's some things that he did that he
14 should not have done. We'll talk about what some of those
15 things are in a moment. The evidence shows them to be clear.
16 Did he do those in a well-meaning fashion, did he do those in
17 sort of an innocent fashion, or did he do those things because
18 he specifically wanted to defraud somebody else? That's Count
19 One.

20 Count Two -- and we'll come back to Count Two later
21 on, and I think Count Two is going to be somewhat easier for
22 you. Count Two is going to be whether or not in November and
23 December of 2007 and January of 2008, when he went in and he
24 applied for a \$3 million loan, of which he was going to get two
25 and a half million dollars, when he applied for that loan,

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Summation - Mr. Mooney

1 whether or not he told lies with the intent of defrauding Fine
2 Art Capital. It's going to be what was in his mind. That's
3 what this is all going to be about.

4 So you're going to have to, when you go back into your
5 deliberations, try to open up his mind and look inside his mind
6 and try to think of what was he thinking? What were his
7 intentions when he did those things? And I wanted to talk
8 about that a little bit at this point because it's the
9 underlying theme that you have to gather together and you have
10 to look at when you look at all of the evidence.

11 Okay. So let's go to the one that we've seen most of
12 the evidence on, certainly in some ways the bigger, more
13 complicated part of it, and we've seen tons and tons of things:
14 The alleged counterfeiting of wine.

15 What do we know? The first thing that we know is that
16 in these wine markets, counterfeits are rampant. We know that
17 counterfeiting has been going on. I was going to say that
18 we've know it's been going on since the '70s, but we've
19 actually had evidence that takes it way back further than that.
20 Almost since the beginning of wine there's probably been
21 counterfeiting. So that's something that has existed when wine
22 is being passed off as something it's not.

23 Now, wine is to be consumed. So we've been talking a
24 lot about counterfeit wine, but we're not really seeing
25 counterfeit wine. What we've really been seeing -- and this is

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Summation - Mr. Mooney

1 going to be important when we get back to the intent issues --
2 what we've really been seeing for the most part here is
3 counterfeit bottles or inauthentic bottles, because we really
4 don't know what's in most of those bottles. We know things
5 have been done to bottles and bottles have been changed and
6 bottles have been modified. So we talk about counterfeit wine,
7 but what we're getting here instead is really not that. What
8 we've got is something different, and we know that that's been
9 going on for a long, long time. So that's one of the things
10 that we've learned.

11 We know that Rudy had become a voracious buyer of
12 wine. He comes onto the scene in about 2001. He's a very
13 young man, we've learned that. He doesn't have a big history
14 of wine before that. He doesn't have a degree in wine like
15 some of the other experts on the stand that we've seen. He
16 isn't even experienced with a big cellar that's already
17 established like a lot of the people that we know are the
18 buyers. That's not him.

19 He's somebody that suddenly discovers that this is
20 something that he likes and that he has a good palate for it.
21 And suddenly something happens. Because he has a good palate,
22 he's starting to be invited to more places and he's starting to
23 meet some other people. He wants to be with those other
24 people. He wants to be a part of what's happening with those
25 folks. So he starts buying. And we've heard witness after

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Summation - Mr. Mooney

1 witness after witness that have told you that the first thing
2 that causes people to pay attention to Mr. Kurniawan, to
3 Rudy, this young man, is the fact that he's buying such
4 prodigious amounts of wine. He'll go to an auction and buy
5 just about everything that's there. Millions and millions of
6 dollars.

7 Now, the government has told you, and will try to tell
8 you again, that, well, he was making counterfeit wine so he
9 could support his big lifestyle that he wanted to have, so he
10 could spend all of this money. Well, there's a little bit of a
11 problem with that in terms of the genesis, because it's not for
12 a couple of years after he comes onto the scene, in this first
13 scene, that he's selling wines. Instead he's spending millions
14 of dollars buying wine.

15 So it's the expenditure and collection of all of this
16 wine to begin with. And even though he starts to be recognized
17 for having a very good palate even early on and being able to
18 taste wines and really know about those wines, even though he's
19 known for that and that helps him get in with other people,
20 he's only been around a year, a couple of years. We would not
21 expect him to have the kind of knowledge that we've seen in the
22 experts. We've had two experts, Mr. Collins and Mr. Egan, that
23 testified before you. Look at the huge wealth of knowledge
24 that those men have accumulated over the course of their
25 career.

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DCHBKURT4

Summation - Mr. Mooney

1 And there's something important to keep in mind in
2 comparing them two to Rudy, and it helps us get a picture of
3 some of the issues that we're dealing with here. After 30 to
4 35 years of work, they still tell you I'm still learning. I
5 don't still necessarily know it all. Yet Rudy, after only a
6 few years, thought he knew it all. He told people, I know it.
7 I'm an expert at this. I can spot counterfeits. That's not a
8 problem for me. I know.

9 That doesn't work. It doesn't. It absolutely flies
10 in the face of what experience tells us and what we know. And
11 it tells us something else. It tells us that he's showing off.
12 He's trying to be more than he is. And when people do that,
13 what does it tell us about them? It tells us that they're
14 insecure. He doesn't feel like he belongs because he really
15 hasn't been allowed to belong. He wants to belong. He wants
16 to be a part of what's going on.

17 Now, he has money because of the family. So what does
18 he do? He's now got these expensive bottles of wine that he's
19 now starting to buy and collect. Now he starts to have some
20 dinners with people. And as he has dinners with people, he
21 brings out expensive bottles and wine and he pays for the whole
22 dinner. People who make huge amounts of money and he's buying
23 the dinner.

24 And then maybe he gets them to all sign off on the
25 bottle. I mean, we've got one. We saw in Defense Exhibit B-31

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DCHBKURT4

Summation - Mr. Mooney

1 this bottle. And this is a bottle of that almost nonexistent
2 '45 Roumier that we heard about. But he brings this bottle to
3 an event where Christophe Roumier signs it and all of the other
4 people signed it and everybody agrees it was just perfect. So
5 we know that he's accumulating good things.

6 We also can assume -- and we don't even have to assume
7 because the evidence is clear -- that buying in the quantities
8 that he's buying in, he's going to start getting things that
9 aren't good. He's going to start getting a number of bottles
10 that are fake. And he's not educated enough to know the
11 difference. When he gets a '23 Bonnes-Mares, when he buys that
12 bottle, he takes it home, he doesn't notice anything wrong with
13 it. He thinks it's fine.

14 Our experts, Mr. Collins and Mr. Egan, they know
15 there's something wrong with it. They know that you
16 shouldn't buy that bottle. They know that. He doesn't know
17 that. And that sort of leads us to the next thing that starts
18 happening. Now he's getting these bottles and the bottles are
19 coming back and he's putting them in his house. And he's got a
20 warehouse full of wine and he's also got all of the wine that
21 he's surrounded by inside the house.

22 And you heard Agent Wynne say that he's essentially
23 turned his house into a wine cellar. How does he turn his
24 house into a wine cellar? The temperature has been turned down
25 and he's blanked out the windows to keep the sunlight out to do

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DCHBKURT4

Summation - Mr. Mooney

1 the things that are necessary for the wine. The wine can live
2 easier in that house than the people can because the house has
3 been turned into a wine cellar. That's why your windows are
4 blocked out.

5 And now what does he do? He's got these. He wants to
6 start to fix them up. He wants to make them better. He wants
7 to improve the bottles that he's got. Now, he should have
8 figured out and he should have known that that's the wrong
9 thing to do. And so he starts ordering labels and he's copying
10 the things that he got. That's why he ends up with a stack of
11 '23, 1923, Bonnes-Mares labels. It's a chicken and egg
12 situation. The government wants to say, well, look, we've got
13 a bottle that says '23 Bonnes-Mares on it and we've got a bunch
14 of labels that say '23 Bonnes-Mares. That means that he
15 created that label and put it on that bottle.

16 But he had to get the idea from someplace. Well, he
17 got the idea from the bottle that he bought. So he gets the
18 bottle, he sees that, and then he starts fixing bottles up.
19 Now, should he be doing that? Probably not. But he's bought a
20 bunch of stuff that's bad and now he doesn't know. He doesn't
21 know what's good and what's not good. Because unless he -- his
22 only capability is through tasting it. If he tastes it, he'll
23 know. As long as he doesn't taste it, he doesn't know.

24 You'll recall that you heard -- and there's evidence
25 in the record that supports this -- Doug Barzelay, somebody

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Summation - Mr. Mooney

1 who-- and these are not people that are friends of his at this
2 point in time. These are people that think that this man
3 committed wine heresy. And to a degree he did commit wine
4 heresy, but not the kind of wine heresy that constitutes a
5 fraud because he wasn't doing it to defraud people.

6 If you'll recall, Doug Barzelay said that he had a
7 bunch of wines that had the same labels on them and the labels
8 were bad and the labels were too new. But some of the wines,
9 when they opened them and tasted them, some of the wines were
10 authentic and some of the wines were not. So what does that
11 tell us? What do we know from that? Why would there be
12 authentic wines with a bad label that matches up with
13 inauthentic wines with bad labels?

14 Well, one of the other things that we learned is that
15 there's lots of different sorts of labels, particularly in the
16 burgundies that got created. Mr. Collins told you about the
17 things that were going on with restaurants and the negociants,
18 and so there would be all sorts of different sorts of labels
19 that started to come up. And we also know that when you get
20 into the older wines -- and you've seen some examples here --
21 some of the labels start to get into pretty bad shape.

22 So he's cleaning up and fixing some of them. And why
23 would there be big stacks? Because whenever you send something
24 out to order from a printer, you don't order from the printer
25 and say, Send me one. You get like a hundred minimum. That's

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Summation - Mr. Mooney

1 the print run. We know that from our own common sense. So
2 don't get buffaloed by the fact that there'll be a stack of the
3 same label. If you want to get just one of them, you're going
4 to end up with a big stack of them. So he's cleaning up a few
5 bottles and fixing that up. We can see that from that
6 testimony that we got from Doug Barzelay.

7 We also know that he's recorking some of the bottles.
8 He's certainly got all of the tools to do that. Now, we know
9 that he's-- where's the exhibits with the corks in them? Are
10 they here someplace? The bag of corks. Can you get those?

11 MR. ROESER: It's locked in there.

12 MR. MOONEY: I'm sorry, I should have told you before
13 I wanted those. Just one of the bags of those.

14 And I'm going to show you those. We know that he's--
15 we also know, and we can tell from looking at the pictures of
16 the house and the things that we're seeing, that we're dealing
17 with somebody that's essentially obsessive, collecting
18 everything. He's keep everything.

19 And when you look at this bag, and the government
20 comes and says, Oh, this is this huge evidence of what he's
21 doing, I want you to take another look at this. Just the bag
22 of corks is the best example of that. Because when you look at
23 this bag of corks, you see this isn't a bag of corks to be kept
24 to be reused because these things aren't reusable. They're in
25 awful shape. They're falling apart.

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DCHBKURT4

Summation - Mr. Mooney

1 So it's just a matter of him collecting and having all
2 of this stuff together. But we do know that he had some decent
3 corks. We do know that he had wax. Now, having wax, to begin
4 with, if the bottle's starting to leak, again, maybe you
5 shouldn't fix it, but putting a little wax on it to keep that
6 from happening or, even better, opening the bottles up and
7 reconditioning them. Mr. Collins told you he's even
8 reconditioned bottles. People recondition bottles.

9 Now, Mr. Roumier told you that it's okay to
10 recondition bottles. It should be done at the domaine. Should
11 be. It's okay to recondition bottles, but the problem with
12 reconditioning the bottles is you need to have an extra bottle
13 of wine in order to recondition. Because when you fill the
14 bottles back up and when you recondition the bottles, you need
15 to put the same wine in. You can't put something else in. You
16 don't want to do that. And we have evidence that that
17 happened.

18 We know that, first of all, Benchmark -- and this was
19 Mr. Parker that testified about this. You'll recall that this
20 is the one invoice for five bottles of the '62 Romanee-Conti.
21 Notice he paid-- and this is not cheap wine. This is \$6,000.
22 \$6,000 that he's paying for that. Remember he got five of them
23 that way and then he got two more of them through a different
24 purchase.

25 So what do we have? We have a total of seven bottles

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Summation - Mr. Mooney

1 of the 1962 DRC, Romanee-Conti. Seven bottles. And you'll
2 recall that Mr. Parker testified that he had written down the
3 fill levels and the ullage, the ullage and the serial numbers
4 of those bottles. And six of them, six of them reappeared in
5 an auction. So seven bottles with 2-and-a-half-inch fills
6 became six bottles with a 1-inch fill. That's exactly how
7 Roumier told us it should be done. You take one bottle and use
8 it to top off the others. And that probably left you a little
9 bit to drink when you're done. You can open the bottles, make
10 sure they're right, recondition the bottles.

11 Is it the right thing to do? No, it's not the right
12 thing to do. Is it the ethical thing to do? Probably not. Is
13 it indicative of an intent to defraud people? No, it's not.
14 It's kind of in a line with -- you'll remember Mr. Koch talked
15 about the Remingtons that he collected and other memorabilia
16 and the experiences that he would have of people trying to fix
17 something up. They get something old and they want to fix it
18 up. They want to make it better.

19 We've become a little more educated through-- you get
20 into some of the television shows, if you start watching
21 Antique Road Show or a few other programs like that. You watch
22 somebody dragging in the treasure and putting it down in front
23 of them and the guy looking and saying, Well, if you hadn't
24 done this, if you hadn't polished it, if you hadn't cleaned it
25 up, if you hadn't made this repair, this thing would be

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DCHBKURT4

Summation - Mr. Mooney

1 But just think about the pictures. And you'll look at
2 the pictures again when you go in. What's this so-called
3 counterfeit factory? Well, we have a sink and sitting in the
4 sink are a couple of bottles that are soaking. Sitting on the
5 counter next to the sink are two bottles without labels. How
6 long does that take to do? Just getting the labels off of
7 these bottles, one or two a day maybe? Three a day? It takes
8 a long time to soak it, it takes a long time to get it off,
9 especially if you're trying to preserve labels. That's not a
10 quick process. We didn't see anything there that showed any
11 sort of a factory line to do that.

12 I mean, okay, we've got a regular kitchen funnel and
13 we've got a corking machine and we've got one single cork
14 puller. Hate to admit it, but I've got most of those things in
15 my kitchen. That's an assembly line?

16 If you remember, in the January 2006 auction, he sold
17 approximately four thousand bottles. Four thousand bottles.
18 In the October 2006 auction, nine months later, he sold
19 another eight thousand bottles. I don't think there's anybody
20 on earth that could be creating bottles like that. Just
21 wouldn't work.

22 And the other things that you find around the house,
23 the other things that go with it, all match in to his
24 obsession. You found a single bottle of Duckhorn that had some
25 comments on it that it tasted like a DRC. You found two

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DCHBKURT4

Summation - Mr. Mooney

1 bottles of another very expensive U.S. wine that tasted like a
2 French bordeaux. We know-- or French burgundy. We know that
3 he ordered approximately nine hundred bottles from Patriarche,
4 which Mr. Collins told you is a decent drinking wine, and he
5 paid a pretty good price for that. And we know that he had a
6 warehouse that was full of wine.

7 I don't know about you, but drinking-- we just saw
8 that the '62 DRC, the ones he reconditioned, he paid \$6,000 a
9 bottle for those. I represent to you sold about the same
10 price, \$6,000 a bottle. I've had wine a few nights when I
11 went out to dinner even recently, but the idea of paying
12 \$6,000 for a bottle of wine to have with my dinner spoils my
13 appetite for the dinner. People who are just drinking on a
14 regular basis, you may enjoy these others, these expensive
15 wines once in a while, but it just makes sense that he would be
16 looking for other wines that would taste like the ones that he
17 liked to be able to drink on a regular basis.

18 So what did we have in there? We had three bottles.
19 Three bottles. Then I think they showed you a picture of four
20 bottles of Patriarche. So it was there in terms of the
21 drinking wines. That's not much. And that's certainly not
22 enough to be running a factory. That's not a wine factory.
23 Just isn't. It doesn't support it. It doesn't work.

24 Now, the other sort of-- and important in the time
25 line -- and let's talk about it here because it also affects us

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Summation - Mr. Mooney

1 in other things. What starts to happen? He gets hooked up
2 with John Kapon at Acker Merrall and he starts supplying wines
3 into auction. Remember, he's met these people because he's
4 buying. He's a big buyer. He's bought thousands and thousands
5 and thousands of bottles. I think somebody said at one point
6 30,000 bottles. So he hooks up with Acker Merrall. He's
7 selling some now. Look, if you paid a million dollars to buy
8 it, you need to start selling some stuff. So now he's starting
9 to sell it.

10 And Acker Merrall, when he makes consignments of wine,
11 Acker Merrall gives him advances against that. They don't
12 bring him in and fill out loan agreements and stuff like that.
13 We'll talk more about that later. They just give him advances.
14 They say, okay, here. Here's your advance. You've given us
15 the stuff, we're going to put it together, we're going to sell
16 it at auction. You get your advance. You get your advance.
17 And then it sells.

18 And then you saw on the settlements, after it's sold
19 then they settle it all out. And it was kind of interesting,
20 wasn't it, when we looked at those things? The advances had
21 all been paid out and suddenly the sale takes place and at the
22 ends of the sale, there wasn't any money left. It was all
23 gone. Because they paid it out for expenses, they paid it out
24 for advances, they covered this and covered that. They say,
25 okay, now you've got to do the next auction.

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Summation - Mr. Mooney

1 So he comes along and he does another auction and the
2 next one that we have in evidence, we don't know exactly what's
3 happening through 2007, we had a little bit of evidence that
4 there was an auction there, but didn't connect it back. But we
5 get to 2008 and in April of 2008 there is another big Acker
6 Merrall auction.

7 So over the course of preparing for that, the same
8 thing is going on. He's getting his advances from Acker
9 Merrall, he's collecting the wines out of his collection, he's
10 putting them in. He puts them into the auction for the April
11 '08, and everything falls apart. Because what happens is he
12 suddenly collected this big mass of Ponsot wines that are no
13 good. They're all bad.

14 And Ponsot comes over, people get involved, the wines
15 get pulled, the wines aren't auctioned. Well, now we have a
16 horrible situation in a couple of ways. First of all -- and,
17 again, some of this plays important as we get to other things,
18 but it's important to the time line. Suddenly all of this wine
19 has been pulled and Rudy doesn't have the money anymore because
20 he's been paid advances against this wine. Now he owes money
21 to Acker Merrall because they don't have the wine to sell
22 against the advances because the wine's gone bad. So that
23 turns his world into a bit of a problem.

24 In addition, Mr. Ponsot himself comes over. He comes
25 in and says, Okay, I need to know where you got this. Well,

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Summation - Mr. Mooney

1 what else do we know about Rudy? We know that he came from
2 Indonesia. We know that when he came here from Indonesia after
3 he completed college, we know that he applied for asylum. He
4 asked for asylum in this country. We know that he still has
5 some family in Indonesia. And we know that his mother came and
6 that his mother also applied for asylum and that she was
7 granted asylum.

8 Rudy tells Ponsot that I got the Ponsot wines from
9 Mr. Hendra in Indonesia. That's what he tells him. That's
10 where I got it. And he seems nervous and he seems to be--
11 Ponsot said he seemed evasive. But we don't know anything
12 about this Mr. Hendra except that we know that he is from
13 Jakarta. And we know that the first counterfeit wines of
14 Ponsot wines that Mr. Ponsot found when he was out looking
15 around the world came from Kuala Lumpur, right next door.

16 Rudy is reluctant to tell Ponsot anything more about
17 Mr. Hendra. And maybe there's a very good reason why that
18 would be the case. A very good reason. Because we don't
19 know what the situation is with his family and with this
20 individual in Indonesia. And we don't know what dangers there
21 might be --

22 MR. HERNANDEZ: Objection.

23 THE COURT: Overruled.

24 MR. MOONEY: -- from such a person.

25 Now, it's interesting that later on, a year later, we

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DCHBKURT4

Summation - Mr. Mooney

1 have a dinner and at that dinner Mr. Ponsot asks again -- and
2 he tells us -- Well, Rudy, tell us who. Tell me more. And he
3 says that Rudy pulls out-- turn that on for, please -- that
4 Rudy pulls out this little piece of paper and writes down these
5 numbers. That Rudy wrote them down in front of him.

6 Now, when you go back into the jury room, one of the
7 things that I want you to think about a little bit is take a
8 look, take a hard look at Exhibit 36-1 and then take a look at
9 23-11. And look at the 7s, look at the 2s.

10 We have another example. This is Government 1-16
11 which I pulled out because it has a lot of numbers written on
12 it. Once again, look at the 7s, look at the 2s, look at the
13 9s.

14 (Continued on next page)

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DCHAKUR5ps

Summation - Mr. Mooney

1 regards to these things was starting to become problematic.

2 So as you look at this and as you see this evidence
3 and you see the things that were going on, it's easy to have
4 all this make it look like there's this nefarious activity
5 going on. But we know from what we've learned in this case
6 that it's easy to overrepresent it. We have 50 bottles, 50
7 bottles of wine that are evidence in this case. 50 bottles.

8 Now, our expert and the government's expert agrees
9 that these 50 bottles are all probably counterfeit. They agree
10 on that. We know that Mr. Egan looked at a larger number of
11 bottles. He said that he looked at a thousand bottles that
12 people attributed to Rudy. But what did we learn about that?
13 We learn, first of all, that the only bottles that he looked at
14 were the ones that people selected. And as you looked at the
15 invoices from the purchase, you saw that someplace in the
16 neighborhood of maybe a half of the bottles that had been
17 bought by Mr. Fascitelli -- that he had -- he was the one whose
18 invoices we had so that we could work from them as an
19 example -- about 50 percent of those were the bottles that he
20 then showed to Mr. Egan to look at. But it wasn't just that;
21 he also put in a bunch of additional bottles that weren't from
22 the invoice.

23 Now, the government said, well, didn't he often use
24 other paddle numbers? Well, we don't have that. All we know
25 is that out of the tens of thousands of bottles that Rudy

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Summation - Mr. Mooney

1 sold -- and, remember, we know that he sold 12,000 bottles in
2 just two auctions. So out of the thousands of bottles that he
3 sold, we know that Mr. Egan looked at maybe a thousand bottles,
4 not all of which can even be attributed to Rudy, and that a
5 percentage of the bottles that he looked at, between 60 and 75
6 percent, according to the reports he wrote of those, had
7 authenticity issues. It just keeps getting smaller and smaller
8 and smaller. And if you can just keep collecting things down,
9 pretty soon you can end up with a table full of stuff and say,
10 look, isn't that awful. Because it's just the way we work them
11 out. But you have to remember that you have to move back up.
12 It's done through a filtering process. And if you filter
13 things down, depending on the filtering step that you want to
14 use, you can filter things down and find about just anything
15 you want. I can use that same filtering process. Let me go
16 have access to their cellars. I'll use that filtering process,
17 and I'll give you a big huge table full of stuff that's all
18 just authentic. Doesn't mean a thing. Not a thing. And
19 neither does this table full of stuff that has authenticity
20 questions.

21 So don't get overwhelmed by the evidence. As you look
22 back at the things and look at the things that happened, think
23 about, what was Rudy's intent. What did he intend to do? Did
24 he go out there intending to defraud people? No, he didn't.
25 He went out there wanting to be a part of the club, wanting to

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Summation - Mr. Mooney

1 show off. Did that make him do some things that maybe he
2 shouldn't have done? Perhaps, probably. He may have gone out
3 there, he may have messed with some of them. He may have
4 recorked and reconditioned. That all makes sense. They
5 haven't proven their case beyond a reasonable doubt, with the
6 evidence that they have adduced.

7 Let's go to Count Two. Count Two is really, really
8 important. Count Two is where they're saying now that he lied,
9 he lied to Barbara Chu and the people at Fine Art Capital for
10 the purposes of stealing \$3 million from them. That's what
11 fraud is. Fraud is stealing. So I'm going to go steal \$3
12 million from this glorified pawn shop, that they call Fine Art
13 Capital, and in order to do it -- oh, first of all, they're
14 only going to give him 2 1/2 million. That's all I'm going to
15 get. But I'm going to take art and property that I own and I'm
16 going to put it in their hands, give it to them to hold on
17 to -- just like the pawn shop does -- that according to them is
18 worth \$6.8 million. That's what their appraisal was. Fine Art
19 Capital's appraisal was \$6.8 million for the stuff that he
20 turned over. If I use that method of stealing and defrauding
21 people, I'm going to get pretty broke pretty quick, because my
22 property is going to be gone. And I don't know how you come
23 out ahead. How can you possibly come out ahead by doing that?
24 And why is that important? It's important because, again,
25 we're talking about what his intent is. Did he intend to

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1 got the house. He moved out of the apartment in Pasadena and
2 he was living at the Naomi address in Pasadena. The government
3 files a responsive document. Proof of service is made to Rudy
4 at Naomi address in Arcadia.

5 Then a year later, in March of 2003, the appellate
6 panel rules against him. Little one-page ruling. Somebody
7 folds it up. Somebody sticks it in an envelope. And somebody
8 mails it, not to the Naomi address on Arcadia, but to the
9 address in Pasadena, the address in which he hasn't lived for
10 over a year. We know that from the evidence.

11 And then things just sit. We have pretty good
12 evidence that never got it, besides just the address, because
13 the agent told us that there were other remedies that would be
14 available to Rudy at that point. There were other things that
15 he could do. And he followed the other remedies so far. Is it
16 likely that if he knew the appeal was denied he wouldn't have
17 followed the next step, he wouldn't have taken the next remedy?
18 That makes no sense at all. The only logical thing is, he
19 didn't know. That's evidence that he didn't know. And they
20 never followed up. The INS never followed up on it. They
21 never issued a removal order. They never sent something else
22 out that says, you haven't complied. Their files sat. Nothing
23 happened. When he finally gets arrested on these charges, they
24 come down to see him and -- well, you remember what happened
25 then. He was given the opportunity to say, do you want a

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Summation - Mr. Mooney

1 hearing. And he requested a hearing. So he still isn't even
2 on the removal order, because when this case is all over he'll
3 get his hearing, according to the evidence that we've heard.

4 He had lived in this country, by December of 2007,
5 when he's filling out forms and talking to Barbara Chu, he had
6 lived in this country, we know, for almost ten years. He
7 certainly would feel like this is his permanent residency and
8 that everything was going to be good. And it's not like he was
9 even acting like he was worried about anything. He was still
10 at Naomi. He filed tax returns. The tax returns showed Naomi
11 in Arcadia. Tax returns. You saw one for 2007. You know that
12 he filed tax returns over those years. He was out there and
13 available and open. People could see him. Wasn't hiding out.
14 He wasn't pretending that he wasn't around. All of that is
15 absolutely consistent with his belief that everything was fine
16 with regards to his status in this country. And to say that he
17 put down that notation on that form with the intent to defraud
18 these people defies reason. It makes no sense.

19 So what's the next thing that they talk about? The
20 next thing they talk about is, OK, he said his living expenses
21 are \$150,000 a year. Well, we don't have, the form doesn't
22 have a definition of what's living expenses. And the
23 government keeps wanting to talk about personal expenditures.
24 I submit to you that we all have different sorts of ways of
25 categorizing things. I know I do. And I have in my mind what

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Summation - Mr. Mooney

1 are my necessary expenditures and my discretionary income. The
2 discretionary income is the stuff that's left after I pay the
3 bills that I have to pay. I have to pay the electrical bills.
4 I have to pay the cable bill, because my kids will kill me
5 otherwise. I have to pay the gas bill. I have to pay the
6 water bill. Those are bills I have to pay, those regular
7 reoccurring bills. And those are the ones that are kind of
8 fixed expenses. \$150,000 a year is pretty good for the things
9 that you have to pay. After you've paid the things that you
10 have to pay, you may have money left over to spend on other
11 things. That's when I can go to a restaurant. That's when I
12 can go out -- I have to buy food. But I can go out and buy
13 something more expensive. That's when I can go do some extra
14 shopping. And that's my discretionary income. That's not
15 living expenses. That's discretionary spending.

16 So is he lying to them when he says it's about
17 \$150,000 a year? That's a good figure to sort of figure, you
18 know, people can handle their expenses, their reoccurring
19 automatic required expenses pretty well through that. That can
20 pay your insurance. That can pay for your utilities. That can
21 pay for those things that are bills that have to be paid. And
22 if you get in tight circumstances, then you can tighten up your
23 belt and come back to those. If you're talking about, you
24 know, being able to pay on an obligation, that's the sort of
25 thing you're talking about. It's not what I spend on when I

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Summation - Mr. Mooney

1 2008, when the Ponsot wines all go south and the auction goes
2 bad and now he's got all these problems with advances that he
3 has been paid, which he's used to just receiving. He's used to
4 receiving notes and then they just work out the finances. Now,
5 if these are big important loans that he should be aware of and
6 worried about disclosing to you, where are the notes? Where
7 are all the notes for those things? Acker Merrall is giving
8 him money. They're making these advances to him. And why are
9 they making these advances to him? Because they've got the
10 wine that they're going to sell. And he knows that they've got
11 the wine that they're going to sell, so he's just thinking of
12 them in that term.

13 And all of this other stuff, in terms of,
14 Mr. Fascitelli showed you this wonderful, wonderful copy of the
15 legal pleading prepared by Acker Merrall's lawyers where it
16 said, I have debts for loans and I owe you all this money. And
17 he signed off on that thing. He confesses to that. Months and
18 months and months and months after. If he had done that the
19 year before, yes, that would be different. But he didn't.
20 It's a year later. And it's almost 11 months after the loan is
21 made at Fine Art Capital. And even then I don't think it would
22 have mattered because of the other things that would have
23 seemed normal to him.

24 So was he lying about that? No, because in his mind,
25 in his mind, the relationship with Acker Merrall is one where

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Summation - Mr. Mooney

1 they're paying advances against sales that are going to happen
2 and he doesn't see them, he doesn't see it as being debt. He
3 sees it essentially as being prepaid, paid in advance.
4 Advance. Paid in advance, for something that he's going to be
5 entitled to coming up in the future. So that doesn't wash, in
6 terms of that being the basis for a count.

7 And then finally now -- and I don't seen know how this
8 would make any sense -- they want to say, OK, somehow also he
9 lied to Fine Art Capital in January, when he gave them the 25
10 payings -- and, remember, he had to physically deliver. It
11 wasn't like, I'm giving a security interest in these paintings.
12 He had to physically deliver. If you'll remember the
13 testimony, he didn't get part of the money that he was -- the
14 \$2.5 million, he doesn't get the last part of it until they get
15 the final group of paintings that had to be sent from
16 California to Fine Art Capital, until they had those in hand.
17 His promise to them wasn't good enough. They had to have them
18 in hand before they would give him the last part.

19 So they physically have the art. They look, they have
20 appraised the art at \$6.8 million. We know he paid at least
21 that for it. And they give him 2 1/2 million on the basis of
22 that. And then later, when things go sideways with Acker
23 Merrall, he pledges the remainder interest in those to Acker
24 Merrall. And you'll recall, he told Acker Merrall that they
25 were pledged already to Fine Art Capital. He told them that.

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Summation - Mr. Mooney

1 He didn't even lie to them about it. How was that later act of
2 pledging that to Acker Merrall, after Acker Merrall now is
3 putting pressure on him against the advances that he can't pay
4 back, how is that somehow fraud back in January? That doesn't
5 make any sense.

6 So when you look at the Fine Art Capital transaction,
7 the evidence screams that there was never any intent on Rudy's
8 part to defraud anybody, because the only person on earth who
9 ends up losing in that deal is Rudy. When everything goes
10 south, and you heard mention of being in like this horrible
11 recession, what happens in the middle of that horrible
12 recession, Biblical horrible recession, Rudy works with him to
13 try to see if he could get the best money out of the art
14 pieces. They work with him on that basis. They sell the art
15 pieces. And they are able to sell enough art pieces to recover
16 all the money to Fine Art Capital and \$500,000 for Acker
17 Merrall. And that wasn't even all the art.

18 So the argument that, well, it was so speculative, you
19 know, because we were in this horrible recession, because we
20 were in the horrible recession at the time that this all came
21 together, at that point in time we were in the time when one
22 could walk into a lending institution, sign your name, and walk
23 out with just about anything. It was still 2007 when that came
24 together, just before the collapse. Just on the cusp of it.

25 So you have to find, before you can convict him of

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Summation - Mr. Mooney

1 fraud there, you have to find that he intended to defraud those
2 people. And I submit to you, not only has the government not
3 proven beyond a reasonable doubt that he intended to defraud
4 them; the evidence screams to the counter. The evidence is
5 clear that he certainly had no intent. He could have taken
6 that art and sold it someplace. We know that because it was
7 later sold. It was sold at fire sale. And even selling it at
8 fire sale created the money. He didn't want it. He wanted to
9 keep his art. That's why you borrow on it. You take your
10 stuff down to the pawn shop -- hopefully you don't -- but if
11 you do take it down to the pawn shop, you do that because you
12 know you're going to get far less than it's worth because you
13 want to get it back. And he wanted to get it back. And when
14 he wanted to get it back, that's not intent to defraud.

15 So we've gone on for a long time. I hope I have
16 answered the questions that you had with regards to these. The
17 Judge is going to give you instructions after Mr. Hernandez
18 gets a chance to argue some more. He's going to tell you all
19 the reasons why I'm wrong. So I want you just to try to think,
20 try to think of what I might say about what he's going to say
21 about everything that I've said about why it's wrong. Because
22 I don't get another chance to talk to you. And I can assure
23 you that I would have something to say about that if I had the
24 chance. So once again, thank you very much for your time.
25 Thank you for your attention. And thank you for the service

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Rebuttal - Mr. Hernandez

1 resident applying for a Green Card. He told them those lies
2 knowing they were false because he knew those three things
3 together would help him get the loan.

4 There is nothing innocent about what the defendant
5 did. There is no other explanation. And there's no good
6 faith. And if you think that the defendant was just polishing
7 up some authentic bottles and that he wasn't intentionally
8 lying to Fine Art Capital, then you might think that maybe
9 sometime next week a man with a white beard is going to come
10 down your chimney and leave you have a case of 1945
11 Romanee-Conti under your tree.

12 Let's talk about reality. Was the evidence that we
13 saw in this case and what really actually happened? There is
14 abundant evidence that this man, Rudy Kurniawan, intended to
15 trick people into buying wines they otherwise wouldn't have
16 bought, wine where he altered labels, where he change the
17 corks, where he's manipulated the contents, and wines that
18 don't even exist. That's why he collected empty bottles from
19 three different sources that you heard about, 50 to a hundred
20 bottles from Brian Kalliel at Melisse, the restaurant, bottles
21 from Robert Bohr at the restaurant here in New York, Cru, the
22 empty bottles from Doug Barzelay at the Romanee Conti tastings.

23 And he not only collected these bottles in quantities
24 that other collectors just don't do -- you heard the witnesses
25 say, no one else asked for this quantity of bottles -- but he

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Rebuttal - Mr. Hernandez

1 knew that other people couldn't know that he was doing it. So
2 when he was interviewed by Jancis Robinson, who is a journalist
3 in the wine press, he makes a point of telling her in the
4 interview another lie, to cover up the fact that what he knows
5 he is doing is wrong, and it can't get out there that he's
6 collecting cases and cases of empty bottles. He lies and says,
7 when I go to restaurants, I make sure the bottles are destroyed
8 or marked so they can't be reused. Well, that's not true. He
9 does quite the opposite. He collects the bottles. So why is
10 he lying? He's lying because he is perpetrating a scheme where
11 he sells fake wine to other people. Why is he buying all the
12 supplies? Is he just interested generally in rewaxing wines?
13 Is that why he spent \$4500 on wax that looked just like the
14 kind, the brittle French wax, and buying the ink pads? No,
15 he's trying to find a material that is as close as possible to
16 the real thing, to deceive and trick people who examine the
17 bottles, get his very general provenance of a "magic cellar,"
18 and hopefully they look at the wax and says, huh you, looks
19 French and brittle enough to me, and they sell the wine. It is
20 part of the scheme.

21 Why does he lie to Laurent Ponsot -- and I'm going to
22 talk a lot about Pak Hendra, the Indonesian wine gangster, OK,
23 who doesn't exist. We're going to talk about him. But he lies
24 to Laurent Ponsot about where those bottles come from, came
25 from, because there is no good answer. He cannot tell him the

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Rebuttal - Mr. Hernandez

1 truth. He cannot tell him that these wines were made in his
2 kitchen. He's lying because he knows what he is doing is
3 wrong. It's not a mistake. It's not something that was done
4 innocently. It is part of the scheme.

5 How about the Patriarche bottles? 904 bottles of old
6 cheap bad wine. Maybe a couple of them taste good. 114
7 bottles of a 1971 white wine called Meursault Charmes?
8 Remember that's the one where broker says, I have 20, and he
9 says, I'll take them, and the broker says, oops, I have 120,
10 and the defendant says, I'll take them -- wines that have
11 absolutely no place in the cellar of the supposed great
12 collector that the defendant is. And his deep interest in the
13 physical features of the bottles? These are wines that no one
14 counterfeits. They're 64 euros. No one is interested in the
15 Patriarche bottles. But he's very interested not in, hey, how
16 are these tasting recently, have you tried one, are they any
17 good. He wants to know the punt. Is the punt deep? Why did
18 he want to know the punt? Because he's making counterfeit
19 wines with them. He's dressing up the bottles.

20 Why is he using Antonio Castanos to consign wines? If
21 there's nothing wrong and he's not cheating anyone and what he
22 thinks he's doing is OK, why does he have to pay 5 percent,
23 \$400,000, in 2012 still, to a man to just consign wine, meaning
24 send a list to the auction house and just make sure you don't
25 tell them it's my name? He got 5 percent for just sending

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Rebuttal - Mr. Hernandez

1 lists around and doing a little bit of logistical work. It's
2 because he knew his reputation was bad at times. It had been
3 sullied by the Ponsot affair and a number of other things. And
4 he had to hide behind someone else. He's hiding to try and
5 trick people into thinking this is Antonio Castanos's wine, not
6 his.

7 The suspect Bordeaux e-mail, all the way back in 2004,
8 if the defendant thinks that he's not doing anything wrong, why
9 is he telling another major collector that he can move suspect
10 Bordeaux for him? Well, to move a product, to get rid of it,
11 why is he offering to do that? He's doing it because he's a
12 wine counterfeiter and he can move those products for him.

13 Mr. Mooney admitted that he's refilling bottles.
14 You've heard from the witnesses, recorking is done at the
15 domaine, reconditioning is done at the domaine, it's not
16 sanitary to do it at home, you don't know what you're getting
17 when it's done that way. And why does he have all the cork
18 stamps that say it was reconditioned in 1977 or 1980 or
19 different years? It's he's trying to deceive people into
20 thinking that these are authentic wines that have been handled
21 and worked with by chateaux in the domaine, not by him in his
22 kitchen in Arcadia. He's refilling the bottles to increase
23 their value. Remember Dave Parker told you the bottle is worth
24 more if the wine level is higher. So he is refilling the
25 bottles and doing lord knows what to the contents, drinking

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Rebuttal - Mr. Hernandez

1 them, refilling them maybe, say, with the wines you saw from
2 his home, the California wines with the notations on them, the
3 most obvious indications of counterfeiting, that bottles he
4 thought could pass for old French wine, small bottles with
5 formulas on them. Of course you know what's in the contents of
6 these bottles. It's counterfeit wine. That's how you make a
7 profit. You put cheaper wine in and you sell it as a really
8 expensive authentic wine.

9 How do you know what's in the bottle? Well, let's
10 take a couple of examples. Ponsot Clos Saint-Denis in the
11 1940s, '50s, and '60s, it's not Ponsot Clos Saint-Denis,
12 guarantee it's not. They didn't make that wine. The 1923
13 Roumier, that wine made by Georges Roumier? No. Because they
14 started making wine in '24. Had that little domaine Belorgey
15 label on it. That can't be until 1952. So if you need a
16 couple bottles -- or more than a couple, because remember there
17 are 97 of the Ponsot bottles and four to six of those '23
18 Roumiers, and many other Roumiers. If you need to hang your
19 hat on something to say the liquid in the bottle is absolutely
20 false, the liquid in the bottle is absolutely false. And
21 remember first off Roumier tried the '23 and said, uh-huh, not
22 authentic, OK, not wine that my grandfather made, not something
23 that we did.

24 Why, then, is he not trying to trick people that he
25 only has labels for the great vintages? Why doesn't he have

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Rebuttal - Mr. Hernandez

1 labels for some of the off vintages, the not great years? And
2 if he only has -- if the reason he has stacks of labels is
3 because you can only order them in the hundreds, here is the
4 stack of Romanee-Conti, the bottle. Remember, this is the wine
5 that only 800 bottles were made of, the super super rare wine
6 that not even the guy who owns this place has any more of.
7 There are 38 here. Where are the other 62 labels? Well, on
8 one fake in his home. He sold six bottles to David Doyle, in
9 the same summer when all those great collectors couldn't find a
10 single bottle, and the defendant was able to scrounge up one.
11 Where the are the other labels?

12 Ladies and gentlemen, what Rudy Kurniawan did was
13 wrong. He knew it was wrong. That's why he did it. That's
14 why he shuttered the window in his kitchen so no one could see
15 in. That's why he lied to people about the sources of his
16 wine. That's why he tried to cover his tracks.

17 Now, Mr. Mooney says, well, there are a lot of
18 counterfeits in the market and maybe he bought some of them.
19 Well, obviously he didn't because we've shown you overwhelming
20 evidence matching the labels and the stamps exactly to show
21 that he created them. And there has been no evidence, no
22 evidence in this trial that any of the bottles that you have
23 seen were purchased by the defendant at some wine auction or
24 for some retailer. I'll remind you, the government has the
25 burden of proof. It stays with us. It doesn't ever shift to

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Rebuttal - Mr. Hernandez

1 the defendant. He doesn't have to prove that he bought the
2 bottles. But they did put an expert on and Mr. Mooney did say,
3 hey, there are a lot of counterfeits out there, maybe he bought
4 them. So once he makes that argument, you get to say, well,
5 what's the evidence of that? All right. Because you can't
6 base your verdict on speculation. It has to be based on some
7 of the facts in the case, or some actual inferences. But
8 there's no evidence that he bought these bottles. And remember
9 what his expert, Mr. Collins says: No market activity, no
10 buying and selling, of those fake Ponsots. He can find no
11 record of it. No record of buying and selling of 1923 Roumier.
12 So there is no record of those bottles being bought and sold
13 anywhere in the market. Where do they come from? They didn't
14 come from Pak Hendra. They came from the defendant.

15 And the fact that he may have wanted to fit in is
16 totally irrelevant, because what you've seen in this case is
17 that he tried to fit in with a group of people who were very
18 wealthy and were big-time collectors. But what he did is, he
19 befriended them, and then he tricked them. He fed them some
20 good authentic wine. And by the way, we've never said that he
21 only sold fake wine, OK. The case from the get-go has been
22 that he sold legitimate wines with fake wines. And we don't
23 have to prove that a certain percentage were fake or that most
24 of them were fake. We just have to prove that this man, the
25 defendant, had devised or participated in a scheme to trick

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Rebuttal - Mr. Hernandez

1 people, to defraud them, to sell them wines that were not
2 authentic. And we've done that by showing you plenty of
3 bottles of fake wine that were created by the defendant that
4 were fake. So there's no threshold here. There's no magic
5 number. We don't have to say most were fake or 350 percent
6 were fake or not.

7 And that's why there are times when the defendant, for
8 example, to impress a big group of people, like that big
9 Romanee-Conti case, he'd bring an authentic bottle of '45s.
10 Raises his stature. The wine maker is going to be there. That
11 would be a bad one to bring an obvious fake to, the rarest wine
12 in the world basically with a man who knows what it tastes
13 like. So of course he brought those good wines. And it was
14 all part of the plan, the scheme, to make the persona of Rudy
15 Kurniawan, the great collector, the guy who buys so much and
16 has the great cellar. That's how this fraud worked. That's
17 how he was able to sell it. That's why people believed. It
18 was creating that image that allowed him to do it.

19 Now, Mr. Mooney also raised the notion that maybe he
20 was just trying to improve the bottles. I think I've already
21 responded to that. This is not a case where the defendant was
22 just, you know, knocking off the dust. You saw that old
23 Patriarche bottle, maybe just, you know, wiping it down. We've
24 shown you, step by step, bottles being soaked, rinsed off,
25 labels being made on a mass-production scale, from 2003 and

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Rebuttal - Mr. Hernandez

1 2004. Remember the computer evidence shows that these scans
2 were being put in the computer way, way, way early, a year or
3 two after he even started being interested in wine. And the
4 whole purpose of it was just to make the labels as authentic
5 and the bottles as legitimate-looking as possible so that when
6 people look at those features, because the defendant knows what
7 people look at, they're going to be fooled and duped too. And
8 if it comes from the great Rudy Kurniawan cellar, the man who
9 will spend thousands and thousands of dollars for other
10 collectors, who brings these great wines, this great
11 connoisseur, the man with the great palate, well, it's
12 something you can trust. It's something you can trust. It was
13 all a con. It was a bait-and-switch done to gain their
14 confidence and to sell them things, as you heard from Mr. Koch,
15 that they would never ever buy if they knew the truth. If they
16 knew that the defendant was manipulating these wines or doing
17 things to them, changing the labels, even if the liquid was
18 authentic, the auction houses wouldn't take it. It destroys
19 the value. Certainly it depresses it. You can no longer be
20 sure of what's inside the bottles. The guarantee of
21 authenticity is the label, it's the cork. Yeah, it protects
22 the wine, the cork. But it also tells you that what is inside,
23 the liquid -- this is food, after all, that you're going to put
24 into your body -- is authentic.

25 Now, Mr. Mooney spent a fair amount of time talking

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Rebuttal - Mr. Hernandez

1 about the exchange with Laurent Ponsot in which the defendant
2 gave the name Pak Hendra for the source of those bottles and
3 then some phone numbers.

4 So first of all, there is no evidence that Pak Hendra
5 exists. Think about that.

6 (Continued on next page)

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Rebuttal - Mr. Hernandez

1 MR. HERNANDEZ: Is there any evidence in this trial
2 that that is a real human being? There absolutely isn't. No
3 evidence. It is a fabrication that the defendant came up with
4 because he knew he had to think of something. So he came up
5 with the "Mr. Smith" name, basically of the region. And then
6 when he met with Laurent Ponsot, who was dogged and determined
7 and wanted to find out who was selling his domaine's name, the
8 place where his father and his grandfather worked, and he gave
9 him these two phone numbers, the defendant did.

10 Now, Mr. Mooney has asked you to compare some of the
11 writing. And he's suggesting -- if not outright saying -- that
12 the defendant didn't write those two numbers down. Really? So
13 did Laurent Ponsot write down these two numbers then or was
14 this entirely fabricated? Is that really what happened here?
15 Or did maybe this time the defendant, when he made his 7, just
16 didn't put the little notch that goes below the 7? It's easy
17 enough to do. You can do the 7 straight down, probably the way
18 everyone was taught in elementary school, or you can just put
19 the little notch on the 7.

20 Think of it this way: Rudy Kurniawan knew he was
21 lying to Laurent Ponsot. He was lying about Pak Hendra. He
22 was going to lie about the phone numbers. So is it reasonable
23 then that maybe he just tried to change the way he writes the 7
24 or the 2 very, very slightly so it couldn't be connected to
25 him, or is it more likely that Laurent Ponsot made these

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Rebuttal - Mr. Hernandez

1 numbers up or that he wrote down the numbers wrong but they
2 just happened to lead to the second phone number for a regional
3 Indonesian airline?

4 And Mr. Ponsot said he called the numbers, he got a
5 fax line, and one rang. And Mr. Mooney says, Well, shouldn't
6 there have been someone there to pick up? Maybe. Maybe the
7 airline practices in Jakarta, they don't have as many people
8 standing by to pick up the phone. We don't know.

9 But to believe that somehow Laurent Ponsot wrote down
10 the numbers wrong or that somehow the numbers weren't even
11 written down by defendant is preposterous. It's preposterous.
12 The defendant told them it was a man from Asia. Mr. Kurniawan
13 is from Indonesia. He gives two phone numbers in Jakarta.
14 This was meant to give the French winemaker some information to
15 make him go away, to please just go away. But he didn't. He
16 came back. Ponsot called the numbers; they were false. He met
17 with Rudy Kurniawan again and he confronted him and said, You
18 haven't given me accurate information. I want to know the
19 truth now.

20 Well, did Rudy Kurniawan say, What are you talking
21 about? I gave you the numbers. Did he say, What are you
22 talking about? His name is Pak Hendra. Here's another number
23 for him. Did he say, What are you talking about? What numbers
24 did you call? No. No. He said something that shows you that
25 he knew that he had been caught. He promises to get Laurent

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Rebuttal - Mr. Hernandez

1 Ponsot the information. He promises to get him the
2 information? If he had told him accurate information the first
3 time, he would have just said, I already gave it to you.
4 What's wrong with the number? What number are you dialing?
5 But that's not what he said. He basically admitted, he said
6 I'll get you the information, and then he doesn't.

7 They never talked again. He never gets him the
8 information because this was a cover story. Okay? There's no
9 person in Indonesia who Mr. Kurniawan's going to cross by
10 revealing this information. Right? The provenance of the
11 Ponsot bottles is not Jakarta. It's Arcadia. Okay? It's his
12 home. And that's what happened there.

13 And, finally, with respect to this count, Mr. Mooney
14 made the argument that you've only seen a certain number of
15 bottles and that the defendant sold quite a few. Remember,
16 Mr. Egan has several clients who bought a lot of wine from The
17 Cellar I and The Cellar II at a number of these auctions. By
18 his numbers he can trace a thousand bottles, from what his
19 clients have told him, from these purchases to the defendant.
20 It's an enormous amount.

21 And if look at the scale of the operation, you know
22 this was not an operation designed to make a couple of bottles
23 here or there. Okay? This was an operation on a massive,
24 massive scale.

25 And as you saw when we conducted the examination of

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Rebuttal - Mr. Hernandez

1 Mr. Egan, that really, really big bottle that's not on Mike
2 Fascitelli's purchase list? Well, he got it because that's the
3 bottle that has The Cellar II sticker on the back of it and
4 there was only one of those sold. So clearly Mr. Egan's data
5 is reliable.

6 But, again, we don't have to prove a certain number of
7 bottles to you. The judge will instruct you on that. These
8 bottles don't come from the market. These weren't bottles made
9 in honor of Napoleon, fake bottles. These weren't bottles made
10 for the wine frhrer in Germany. The defendant didn't buy these
11 on the market. He made them and he lied to people to trick
12 them into buying them and that's what he did until he got
13 caught.

14 Now, with respect to Count Two, Mr. Mooney has argued
15 that there couldn't be a fraud here because the defendant
16 posted collateral. Well, he did post collateral. He was
17 required to do that. But he also lied to Fine Art Capital in
18 ways that would have affected their decision about whether to
19 extend the loan at all or under what terms, like the interest
20 rate, if he had been honest.

21 But let me dispel this notion for you. Just because
22 you post collateral doesn't mean that you can lie, lie, lie to
23 induce someone to give you money. Think of a home. You can
24 apply for a mortgage. Okay? The mortgage is backed by a home.
25 There's a piece of property there. It's physical. You may

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Rebuttal - Mr. Hernandez

1 even have to put a down payment down.

2 Does the fact that there's a home there that the bank
3 can take from you if you don't pay the mortgage mean that you
4 can lie about your income when applying for the mortgage? You
5 can way overstate how much money you make? You can way
6 understate your debts and your liabilities? You can lie about
7 your immigration status? Is that what it means? Of course
8 not. Of course not.

9 You still have to give honest answers so that the
10 mortgage company, or Fine Art Capital, can make a judgment: Is
11 it worth our time? Do we want to make this decision and extend
12 this loan even with the collateral? It's their money. They
13 get to decide who to give it to. They get to decide whether
14 it's worth the hassle of potentially having to sell the
15 collateral and the risk of being able to successfully sell the
16 collateral.

17 So with respect to this count, I want you to remember
18 that there are three lies that the defendant told to induce
19 Fine Art Capital to extend this loan and that if he had told
20 the truth, they wouldn't have given him the loan. And he was
21 trying to defraud them because he was desperate for money, he
22 needed to badly -- deep, deep, deep s-H-I-T badly -- and he was
23 willing to tell them whatever he thought would get him the
24 loan.

25 The three lies, though -- we don't have to prove all
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Rebuttal - Mr. Hernandez

1 three lies. If you find that one of the lies was material and
2 that the defendant told it intentionally, that is enough to
3 support a conviction on this count.

4 So, first, the immigration argument. Mr. Mooney says
5 that, well, Fine Art Capital knew he was applying for a green
6 card, and he went through the whole explanation of how
7 immigration didn't mail that final order saying your appeal has
8 been denied to the Naomi address. Okay? So for purposes here
9 now of this argument, assume that he never got the notice.
10 There was no mail forwarding, let's say.

11 So what did Rudy Kurniawan know about his immigration
12 status-- again assuming he didn't get that final notice-- when
13 in 2007 he said he was a permanent resident applying for a
14 green card? The last thing he knew was that an immigration
15 judge told him that his application had been denied and that he
16 would have to leave the country and that he had filed an
17 appeal. That's it. So the last decision he knew about was not
18 in his favor.

19 He also knew that he had never been a permanent
20 resident. You heard that from James Grathwohl. He's never
21 been a permanent resident and he never applied for a green
22 card. So when he tells Barbara Chu I'm a permanent resident or
23 I'm applying for a green card, that is all false. He's never
24 been any of those things.

25 The truthful answer would have been-- again, assuming

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Rebuttal - Mr. Hernandez

1 he didn't get the final notices-- I've been ordered to leave by
2 an immigration judge, but I'm appealing and I'm waiting for the
3 decision. That would have been giving Fine Art Capital the
4 information they needed to make the decision about whether they
5 wanted to extend the loan. If he had been honest, they
6 wouldn't have given him the loan. He knew that, so he lied.
7 Simple as that.

8 Second thing, the living expenses. And we heard
9 Mr. Mooney's living expenses versus discretionary expenses and
10 who's to say what are expenses anyways? It was difficult to
11 follow, but here's what I think all of you, as commonsense New
12 Yorkers, will be able to come to a conclusion on. Four hundred
13 thousand bucks for Hermes? That's a living expense. It's
14 living-high-on-the-hog expense. It's very, very nice. But
15 when in 2007 you spend \$2.4 million-- or, I'm sorry, \$6 million
16 on your American Express card and several hundreds of thousands
17 of dollars just on Hermes-- suits, belts, whatever else it is
18 that they make-- and then on your taxes you say you only have
19 \$500,000 in business expenses, that leaves \$5.5 million to
20 live on. And whether that's for cable or food or Hermes or
21 whatever it is, it's a heck of a lot more than a hundred fifty
22 thousand bucks.

23 He lied because he knew that he had to keep his
24 expenses down because otherwise Fine Art Capital would say,
25 Well, if you're spending crazily, if you're spending six

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Rebuttal - Mr. Hernandez

1 million bucks a year, how on earth are you going to repay this
2 loan? We're not going to give you this loan. We're in the
3 loan repayment business. That's how we make our money, not by
4 selling collateral. If you want money by selling collateral,
5 just go sell your art. But he didn't sell his art. He went to
6 Fine Art Capital because he needed to be liquid fast and he
7 knew that that they would give it to him if he lied about his
8 immigration status and about how much money he spent.

9 And then the other lie is about the debt. And
10 Mr. Mooney again is trying to parse things in ways that,
11 frankly, don't make any sense. Oh, these were obligations.
12 They weren't debts or they weren't loans or whatever they were.
13 You heard Truly Hardy. It was money that was given to the
14 defendant that he has to pay back. That is a debt. It is a
15 liability. It is a loan. It's money that has to be repaid.
16 And we're not talking about a few bucks here. We're talking
17 about millions of dollars of liabilities that in no way Fine
18 Art Capital would have approved even with the collateral if he
19 had been honest about. And, remember, he signed a legal
20 document under oath acknowledging that he had all of these
21 debts, all of these loans.

22 Mr. Mooney said, Well, where are the notes? Where are
23 the documents? That document says that Rudy Kurniawan, which
24 he signed under oath, owes Acker Merrall \$10.4 million. Is
25 Mr. Mooney really suggesting that he signed his name on a legal

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Rebuttal - Mr. Hernandez

1 document saying I owe \$10.4 million, but maybe it doesn't
2 exist? Maybe those loans aren't for real? Maybe he doesn't
3 owe that money? Don't you think if you were going to put your
4 name on an obligation for 10.4 million bucks, you'd probably
5 want to be sure that you're signing something that you believe
6 was yours. And that document, which he reviewed and signed,
7 uses the word "loans" all over the place because that's what it
8 was. And if he had a question about it, he could have told
9 Barbara Chu what it was, but he chose not to.

10 And, finally, one good way to look into the
11 defendant's intent here, he lied about all these things that we
12 know that he was lying about, that art that he pledged to Fine
13 Art Capital and he promised to them he wouldn't pledge to
14 anyone else in January of '08? Five months later, four or five
15 months later, in May of '08, a portion of that art he pledges
16 to Acker Merrall, the people he owes all that money to to get
17 them off his back.

18 So you tell me, what does that tell you about whether
19 or not he was trying to be straight up and honest with Fine Art
20 Capital or was he trying to deceive them? The whole plan all
21 along was to deceive them. Give them the art, double pledge
22 the art if necessary, because he has all these other existing
23 loans to Acker Merrall, lie to them about immigration, lie to
24 them about liabilities, lie to them about my expenses.
25 Basically create an application that's likely to be approved,

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Rebuttal - Mr. Hernandez

1 dupe them, have them give me the money, and then all will be
2 fine. I'm out of deep, deep S-H-I-T.

3 Look, you have seen overwhelming evidence in this case
4 to show that what he did was intentional and it was meant to
5 defraud and deceive people. The arguments made by Mr. Mooney
6 are that, in essence, oh, he's just a misunderstood guy. He's
7 kind of an unlucky guy. If he is, he's the most misunderstood
8 guy in the world. Okay? He's the guy who thinks genuinely
9 that you can mix and match the liquid contents of the bottles,
10 change the labels, sell them, lie to people about it, not tell
11 them where the bottles actually come from, lie to people who
12 you want to get money from, and in the end say, well, I wasn't
13 trying to trick you or deceive you. I was just trying to fit
14 in.

15 Ladies and gentlemen, there's only one verdict that's
16 consistent in this case on the facts, on the law as the judge
17 is about to instruct you, and the proof is overwhelming. As we
18 told you from the beginning, it is that the defendant is guilty
19 on both counts.

20 Thank you.

21 THE COURT: Thank you, Counsel.

22 So here's what I'm going to do just to give you a
23 heads up. I'm about to give you jury instructions. I'm going
24 to give you a two-minute break in between just to collect
25 yourselves.

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Rebuttal - Mr. Hernandez

1 And let me just say this. You're certainly free to
2 take notes when I give you jury instructions, but they're
3 pretty lengthy and pretty technical. And you should know in
4 advance that when you go into the jury room, after I'm finished
5 giving you these instructions, I'm going to give each of you a
6 copy of the exact instructions that I read to you. So you'll
7 have them in there. I could say you're welcome to take notes,
8 but you'll have your own set of instructions.

9 So let's take a really quick two minutes and then
10 we'll have the jury instructions.

11 (Jury excused)

12 (Recess)

13 (Continued on next page)

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Rebuttal - Mr. Hernandez

1 (In open court; jury not present)

2 THE COURT: So this is for the attorneys. So I have a
3 practice of giving the jury all of the exhibits during
4 deliberations. But in order to do that, both sides have to
5 agree what the exhibits are. I'm hoping you've done that
6 already and that you'll be able to expeditiously get those
7 exhibits into the jury room as soon as they're ready to go.
8 So if you haven't, I'll give you two minutes to figure that
9 out.

10 MR. MOONEY: Okay. I think we've been working on it.

11 THE COURT: Good. Because what happens is immediately
12 when they go in there, so do the exhibits.

13 MR. HERNANDEZ: Judge, obviously we have a lot of
14 bottles. Do you want us to take them out of all of their cases
15 and --

16 THE COURT: Do you have some sort of a cart or handy
17 way that they could get in there? It would be cumbersome to
18 walk them in there --

19 MR. HERNANDEZ: All I'm saying is the way we transport
20 the bottles is in our cases. So we can just take all of the
21 cases and put them in there, but then they have to open each
22 one to look for the bottle that they're looking for.
23 Otherwise, we could take all of the bottles out of the cases
24 and put them on the table in the jury room.

25 THE COURT: You could do that or you could-- how many

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Rebuttal - Mr. Hernandez

1 are there?

2 MR. MOONEY: Fifty? Why don't we just give them the
3 cases and let them know they're in the cases.

4 THE COURT: No, no. Just hold on one second. So,
5 frankly, what I think is easier -- I'm looking at a cart over
6 here. If you had a couple of carts like that, you could wheel
7 them right in there and you could probably get in two or three
8 carts all of the bottles.

9 MR. HERNANDEZ: In the cases?

10 THE COURT: They don't need to be in the cases.

11 MR. HERNANDEZ: I don't think we could put the bottles
12 loosely in the carts just because it's glass. They clank. If
13 one breaks --

14 MR. MOONEY: It could be evidence.

15 THE COURT: So why don't you bring in a case. Let me
16 see what it looks like that way.

17 MR. HERNANDEZ: Sure.

18 THE COURT: And why don't you talk, also, if there's a
19 possibility of coming up with a representative sample, perhaps,
20 of all of the bottles?

21 MR. HERNANDEZ: We can do that. Judge, is it your
22 practice to give the jury a list of admitted exhibits as well,
23 an index?

24 THE COURT: Since there's so many, I don't have any--
25 if you're agreeable to doing that, I don't have a problem with

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Rebuttal - Mr. Hernandez

1 (In open court; jury present)

2 THE COURT: Please be seated, everybody.

3 So, ladies and gentlemen of the jury, thank you for
4 your patience. You have now heard all of the evidence in this
5 case as well as the final arguments of the lawyers for the two
6 sides, both parties.

7 And my duty at this point is to instruct you as to the
8 law that applies in this case. And it's your duty as jurors to
9 accept these instructions of law and apply them to the facts as
10 you determine them, just as it has been my duty to preside over
11 the trial and decide what testimony and what evidence is
12 relevant under the law for your consideration.

13 On these legal matters, you must take the law as I
14 give it to you. If any attorney has stated a legal principle
15 different from any that I state to you in my instructions, it
16 is my instructions that you must follow.

17 And you should not single out any instruction as alone
18 stating the law, but you should consider my instructions as a
19 whole when you retire to deliberate in the jury room. And as I
20 mentioned to you before, you will each receive a copy of these
21 instructions -- along with a verdict sheet to be filled out by
22 the jury -- to take with you into the jury room. Your
23 decision, your verdict, must be unanimous.

24 You should not, any of you, be concerned about the
25 wisdom of any rule that I state. Regardless of any opinion

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Rebuttal - Mr. Hernandez

1 that you might have as to what the law may be-- or ought to
2 be-- it would violate your sworn duty to base a verdict upon
3 any view of the law other than the one I give to you in these
4 instructions.

5 Your role, as I've said earlier, is to consider and
6 decide the fact issues in this case. You, the members of the
7 jury, are the sole and exclusive determiners of the facts. You
8 pass upon the evidence; you determine the credibility or
9 believability of the witnesses; you resolve whatever conflicts
10 may exist in the testimony; and you draw whatever reasonable
11 inferences and conclusions you decide to draw from the facts as
12 you have determined them; and you determine the weight of the
13 evidence as well.

14 In determining the facts, you must rely upon your own
15 independent recollection of the evidence. What the lawyers
16 have said in their opening statements, in their closing
17 arguments, in their objections, or in their questions is not
18 evidence. Nor is anything I may have said during the trial or
19 may say during these instructions about a fact issue to be
20 taken instead of your own independent recollection. What I say
21 is not evidence. In this connection, remember that a question
22 alone put to a witness is never evidence. The answer is the
23 evidence. But you may not consider any answers where an
24 objection was sustained and that I directed you to disregard or
25 that I directed be struck from the record.

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Rebuttal - Mr. Hernandez

1 If there's any difference or contradiction between
2 what any lawyer has said in their arguments to you and what you
3 decide the evidence showed, or between anything I may have said
4 and what you decide the evidence showed, it is your view of the
5 evidence-- not the lawyers' and not mine-- that controls.

6 I also ask you to draw no inference from the fact that
7 upon occasion I may have asked questions of certain witnesses
8 or attorneys. These questions were intended by me only to
9 clarify things or to move things along, and certainly were not
10 intended to suggest any opinions on my part as to the verdict
11 you should render in this case or whether any of the witnesses
12 may have been more credible than any of the other witnesses.
13 It is important that you understand that I wish to convey no
14 opinion as to the verdict you should render in this case, and
15 that if you nevertheless believe that I did convey an opinion,
16 you would not be obliged in any way to follow it.

17 In determining the facts, you must weigh and consider
18 the evidence without regard to sympathy, prejudice or passion
19 for or against any party and without regard to what the
20 reaction of the parties or the public might be to your verdict.
21 I will later discuss with you how to pass upon the credibility
22 of witnesses.

23 The two-count indictment in this case is not evidence.
24 It merely describes the charges made against the defendant. It
25 is a set of accusations. It may not be considered by you as

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Rebuttal - Mr. Hernandez

1 evidence of the guilt of the defendant. Only the evidence or
2 lack of evidence decides that issue.

3 A copy of the indictment will be furnished to you
4 before you begin your deliberations.

5 So what is the evidence? The evidence from which you
6 are to decide what the facts are consists of the following:
7 First, the sworn testimony of witnesses, on both direct and
8 cross-examination, regardless of who called the witness;
9 second, the documents and exhibits that were received in
10 evidence; and, third, any facts or testimony to which the
11 lawyers have agreed or stipulated. Nothing else is evidence.

12 And you should draw no inference or conclusion for or
13 against any party by reason of lawyers making objections or my
14 rulings on such objections. Counsel have not only the right
15 but the duty to make legal objections when they think that such
16 objections are appropriate. You should not be swayed for or
17 against either side simply because counsel for any party has
18 chosen to make an objection. Nor should you be swayed by any
19 ruling I made on an objection. And whether or not I may have
20 sustained more objections for one side or the other has no
21 bearing on your function, which is to consider all of the
22 evidence that was admitted in this case.

23 Further, do not concern yourself with what was said at
24 sidebar conferences or during my discussions with counsel. Nor
25 does it make any difference whether any lawyer or whether I

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Rebuttal - Mr. Hernandez

1 asked for a sidebar conference. Those discussions related to
2 rulings of law and not matters of fact.

3 At times I may have admonished a lawyer or a witness
4 or directed a witness to be responsive to questions or to keep
5 his or her voice up. At times I may have questioned a witness
6 myself or made comments to a lawyer. Any questions that I
7 asked or any instructions or comments that I gave were intended
8 only, as I said before, to move things along or to clarify the
9 presentation of evidence and to bring out something which I
10 thought may have been unclear. And, again, you should draw no
11 inference or conclusion of any kind, favorable or unfavorable,
12 with respect to any witness or any party in the case by reason
13 of any comment, question or instruction of mine. Nor should
14 you infer that I have any views as to the credibility of any
15 witness, as to the weight of the evidence, or as to how you
16 should decide any issue that is before you. That is entirely
17 your role as jurors.

18 If an objection is sustained, you must not speculate
19 as to what might have been said had the evidence been allowed.
20 Nor may you consider in evidence any statement where an
21 objection was made and sustained even though you may have heard
22 it before the objection and the ruling by me.

23 The defendant has pled not guilty to the charges in
24 the indictment. As a result of his plea of not guilty, the
25 burden is on the prosecution-- that is to say, the government--

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Rebuttal - Mr. Hernandez

1 to prove the defendant's guilt beyond a reasonable doubt. This
2 burden never shifts to the defendant for the simple reason that
3 the law never imposes upon a defendant in a criminal case the
4 burden or duty of testifying himself or calling any witness or
5 of locating or producing any evidence.

6 The law presumes the defendant to be innocent of all
7 the charges against him. I, therefore, instruct you that the
8 defendant is to be presumed by you to be innocent when the
9 trial began, at this very moment, and throughout your
10 deliberations and until such time, if it comes, that you as a
11 jury are unanimously satisfied that the government has proved
12 him guilty beyond a reasonable doubt.

13 The presumption of innocence alone is sufficient to
14 acquit the defendant unless you as jurors are unanimously
15 convinced beyond a reasonable doubt of his guilt, after a
16 careful and impartial consideration of all of the evidence in
17 this case. If the government fails to sustain its burden with
18 respect to any element of a particular count, you must find the
19 defendant not guilty on that particular count.

20 The burden is always upon the government to prove
21 guilt beyond a reasonable doubt. This burden, as I've said,
22 never shifts to a defendant, to the defendant, for the law
23 never imposes upon a defendant in a criminal case the burden or
24 duty of testifying or of calling any witnesses or producing any
25 evidence.

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Rebuttal - Mr. Hernandez

1 It is not required that the government prove guilt
2 beyond all possible doubt. The test is one of reasonable
3 doubt. A reasonable doubt is a doubt based upon reason and
4 common sense, the kind of doubt that would make a reasonable
5 person hesitate to act. Proof beyond a reasonable doubt must,
6 therefore, be proof of such a convincing character that a
7 reasonable person would not hesitate to rely and act upon it in
8 the most important of his or her own affairs.

9 Unless the government proves beyond a reasonable doubt
10 that the defendant has committed each and every element of an
11 offense charged in the indictment, you must find the defendant
12 not guilty of that offense. If the jury views the evidence as
13 a whole in the case as reasonably permitting either of two
14 conclusions-- one of innocence, the other of guilt-- then the
15 jury must, of course, adopt the conclusion of innocence. The
16 absence of evidence in a criminal case is a valid basis for
17 reasonable doubt.

18 You have had now the opportunity to observe all of the
19 witnesses and it's now your job to decide how believable each
20 witness was in his or her testimony. You are the sole
21 determiners of the credibility of each witness and of the
22 importance of witness testimony.

23 So how do you determine where the truth lies? You
24 should use all of the tests for truthfulness that you would use
25 in determining matters of importance to you in your everyday

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1 lives. You should consider any bias or hostility that a
2 witness may have shown for or against any party as well as any
3 interest the witness has in the outcome of the case. It is
4 your duty to consider whether the witness has permitted any
5 such bias or interest to color his or her testimony.

6 You should consider the opportunity the witness had to
7 see, hear, and know the things about which they testified, the
8 accuracy of their memory, their candor or lack of candor, their
9 intelligence, the reasonableness and probability of their
10 testimony and its consistency or lack of consistency and its
11 corroboration or lack of corroboration with other believable
12 testimony. You watched the witnesses testify. Everything a
13 witness said or did on the witness stand counts in your
14 determination. How did the witness appear? What was the
15 witness's demeanor while testifying? Often it is not what
16 people say but how they say it that moves us.

17 In deciding whether to believe a witness, keep in mind
18 that people sometimes forget things. And you need to consider,
19 therefore, whether in such a situation the witness's testimony
20 reflects an innocent lapse of memory or an intentional
21 falsehood, and that may depend on whether it has to do with an
22 important fact or with only a small detail.

23 If you find that any witness has willfully testified
24 falsely as to any material fact-- that is to say, an important
25 matter-- the law permits you to disregard completely the entire

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1 testimony of that witness upon the principle that one who
2 testifies falsely about one material fact is likely to testify
3 falsely about everything. You are not required, however, to
4 consider such a witness as totally unworthy of belief. And so
5 you may accept so much of the witness's testimony as you deem
6 true and disregard what you feel is false. As the sole judges
7 of the facts, you, the jurors, must decide which of the
8 witnesses you will believe, what portion of their testimony you
9 accept, and what weight you will give to it.

10 Your decision on the facts of this case should not be
11 determined by the number of witnesses testifying for or against
12 a party. You should consider all of the facts and
13 circumstances in evidence to determine which of the witnesses
14 you choose to believe or not to believe.

15 You remember we talked at the beginning about direct
16 and circumstantial evidence. There are these two kinds of
17 evidence: One is called direct and the other is
18 circumstantial. Direct evidence is direct proof of a fact,
19 such as testimony by a witness about what that witness
20 personally experienced through his or her own senses; something
21 seen, felt, touched, heard or tasted. Direct evidence may also
22 be in the form of an exhibit where the fact to be proven is its
23 present existence or condition.

24 Circumstantial evidence is evidence which tends to
25 prove a disputed fact by proof of other facts. And there's a

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1 simple example of circumstantial evidence which we usually say
2 and usually use which goes as follows: We ask the jury to
3 assume that when they came into the courthouse this morning,
4 the sun was shining and it was a nice day. It's a
5 hypothetical. Assume that the courtroom blinds were drawn and
6 you could not look outside.

7 As you were sitting here, on the facts that I've asked
8 you to assume, assume that someone walks in the back with an
9 umbrella that is dripping wet. And then assume further that a
10 few minutes later another person also entered with a wet
11 umbrella. Now, on the facts I gave you and asked you to
12 assume, you cannot look outside of the courtroom and you cannot
13 see whether or not it is raining. So you have no direct
14 evidence of that fact. But on the combination of facts which I
15 have asked you to assume, it would be reasonable for you to
16 conclude that it had been raining.

17 That's all there is to circumstantial evidence. You
18 infer on the basis of reason and experience and common sense
19 from one established fact the existence or nonexistence of some
20 other fact.

21 (Continued on next page)
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23
24
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1 THE COURT: Circumstantial evidence is of no less
2 value than direct evidence. The law makes no distinction
3 between direct and circumstantial evidence, but simply requires
4 that your verdict must be based on all the evidence presented.

5 Let's talk a minute about the indictment. The
6 indictment, as we know, contains two counts, or two charges,
7 against the defendant. Count One of the indictment alleges
8 that from in or about 2004 up to and including in or about
9 February 2012, the defendant committed mail fraud by using the
10 mails or interstate carriers in a scheme to create, sell, and
11 attempt to sell very expensive counterfeit wines. Count Two of
12 the indictment alleges that from on or about November 28, 2007
13 up to and including on or about May 2, 2008, the defendant
14 committed wire fraud by using telephone and/or interstate wire
15 transfers in a scheme to defraud Fine Art Capital by making
16 false representations to Fine Art Capital when applying for a
17 \$3 million loan. As I've said before, the indictment is not
18 evidence but simply contains the charges against the
19 defendants. Each count charges a separate crime. Each count
20 must be considered separately. And you must return a separate
21 verdict for each count. And you will see when you go into the
22 jury room on the verdict sheets that there will be questions
23 asked for each count.

24 As I mentioned previously, a copy of the indictment
25 will be furnished to you when you begin your deliberations.

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1 So now let's talk about each count, and each count
2 consists of certain elements. And I'm going to endeavor to
3 describe each of these elements to you. This gets a little bit
4 technical, but I'm sure you'll get it.

5 So Count One is the mail fraud count. It's the
6 alleged scheme to create, sell, and attempt to sell counterfeit
7 wines. The mail fraud statute is called Section 1341 of Title
8 18 of the United States Code. It provides, in pertinent part,
9 as follows. And now I'm just going to quote from the statute,
10 and thereafter I'm going to try and explain what that quote
11 means. So the statute says in part that "whoever, having
12 devised or intending to devise any scheme or artifice to
13 defraud, or for obtaining money or property by means of false
14 or fraudulent pretenses, representations, or promises, for the
15 purpose of executing such scheme or artifice or attempting to
16 do so, places in any post office or authorized depository for
17 mail matter, any matter or thing whatsoever to be sent or
18 delivered by the postal service, or deposits or causes to be
19 deposited any matter or thing whatever to be sent or delivered
20 by any private or commercial interstate carrier, or takes or
21 receives therefrom any such matter or thing, or knowingly
22 causes to be delivered by mail or such carrier according to the
23 direction thereon, or at the place at which it is directed to
24 be delivered by the person to whom it is addressed, any such
25 matter or thing, shall be guilty of a crime."

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1 So that's the technical statutory language. Let me
2 explain to you what the elements of mail fraud are.

3 So in order to find the defendant guilty of Count One,
4 which is the mail fraud count that I just read from the
5 statute, the government must establish beyond a reasonable
6 doubt the following four elements: first, that at or about the
7 time alleged in the indictment, there was a scheme or artifice
8 to defraud, or to obtain money or property, by false and
9 fraudulent pretenses, representations, or promises -- that's
10 the first element. And by the way, I'm going to explain each
11 of these elements in more detail. But that is the first
12 element. The second element is that the scheme or artifice to
13 defraud, or the false statements and representations, concerned
14 material facts. Third, that the defendant knowingly and
15 willfully devised or participated in the scheme or artifice to
16 defraud, with knowledge of its fraudulent nature and with
17 specific intent to defraud. And fourth, that the United States
18 mails or a commercial carrier was used in furtherance of the
19 scheme, as specified in the indictment.

20 Thus, in order to convict, you must find beyond a
21 reasonable doubt the existence of a scheme or artifice to
22 defraud or to obtain money or property by means of false or
23 fraudulent pretense, representations, or promises. You must
24 find that the scheme or artifice or the false statements and
25 representations concerned material facts. You must also find

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1 that the defendant devised or participated in the fraudulent
2 scheme knowingly, willfully, and with intent to defraud. And
3 you must also find that the United States mails or a commercial
4 carrier was used in furtherance of the scheme.

5 So, again, I'm going to define each of these elements
6 in even more detail.

7 So let's talk about the first element of mail fraud.

8 The first element the government must prove beyond a
9 reasonable doubt is that at or about the time alleged in the
10 indictment there was a scheme or artifice to defraud or to
11 obtain money or property by false and fraudulent pretenses,
12 representations, or promises.

13 And let me define some of these terms for you.

14 The language describing this first element is almost
15 self-explanatory. That is, a scheme or artifice is simply a
16 plan for the accomplishment of an object. A scheme to defraud
17 is any plan, devise, or course of action to deprive another of
18 money or property by means of false or fraudulent pretenses,
19 representations, or promises. It is a plan to deprive another
20 of money or property by trick, deceit, deception, swindle, or
21 overreaching.

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

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1 truth, or deliberate disregard for the truth.

2 A pretense, representation, or promise is fraudulent
3 if it was made falsely and with intent to deceive. A statement
4 may also be fraudulent if it contains half-truths or if it
5 conceals material facts in a manner that makes what is said or
6 represented deliberately misleading.

7 It is not necessary for the government to establish
8 that any particular person actually relied on, or actually
9 suffered damages as a consequence of any fraudulent
10 representation or concealment of facts. Nor need you find that
11 the defendant profited from the fraud. It is enough if you
12 find this a false statement, or a statement omitting material
13 facts that made what was said deliberately misleading was made
14 as part of a fraudulent scheme in the expectation that it would
15 be relied upon.

16 In addition to proving that a statement was false or
17 fraudulent, in order to establish a scheme to defraud, the
18 government must also prove that the alleged scheme contemplated
19 economic harm by depriving another of money or property.

20 The government is not required to establish that
21 anyone relied upon or actually suffered damages as a
22 consequence of any false statement or omission of any material
23 fact. Nor is it necessary for the government to establish that
24 the scheme actually succeeded, that is, that any defendant
25 realized any gain from the scheme or that the intended victim

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Charge

1 suffered any loss. It is enough if you find that a false
2 statement, or a statement omitting material facts that made
3 what was said deliberately misleading, was made as part of a
4 fraudulent scheme in the expectation that it would be relied
5 upon. You must concentrate on whether there was such a scheme,
6 not on the consequences of the scheme.

7 So that is the first element of mail fraud.

8 The second element of mail fraud is as follows. The
9 second element, you'll remember, I said was materiality. The
10 scheme or artifice to defraud, or false or fraudulent
11 representations or concealment, must relate to a material fact
12 or matter. A material fact is one that would have been
13 significant to a reasonable and prudent person in relying on
14 the representation or statement, or failure to disclose, in
15 making a decision. That means if you find a particular
16 statement or matter was false or that it concealed facts that
17 made what was said deliberately misleading, you must determine
18 whether that statement was one that a reasonable person might
19 have considered important in making his or her decisions.

20 So that's the second element, materiality.

21 The third element of mail fraud that the government
22 must establish beyond a reasonable doubt is there the defendant
23 devised or participated in the fraudulent scheme knowingly,
24 willfully, and with intent to defraud.

25 So an act is done knowingly if it is done

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(212) 805-0300

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1 deliberately, or purposefully. That is, the defendant's act
2 must be the product of his conscious objective rather than the
3 product of a mistake or accident or mere negligence,
4 carelessness, or recklessness, or some other innocent reason.

5 "Willfully" means to act with knowledge that one's
6 conduct is unlawful and with the intent to do something the law
7 forbids, that is to say, with the bad purpose to disobey or
8 disregard the law.

9 The words "devised" and "participated" are words that
10 you are familiar with, and therefore I do not need to spend
11 much time defining them for you. To devise a scheme to defraud
12 is to concoct or plan it. To participate in a scheme to
13 defraud means to associate oneself with it, with a view and
14 intent toward making it succeed.

15 "An intent to defraud" means to act knowingly with the
16 specific intent to deceive, for the purpose of causing some
17 financial or property loss to another. The question of whether
18 a person acted knowingly, willfully, and with intent to
19 defraud, these are questions of fact for you, the jurors, to
20 determine, like any other fact questions. This question
21 involves one's state of mind.

22 Direct proof of knowledge and fraudulent intent is
23 almost never available. An individual's intent, though
24 subjective, may be established by circumstantial evidence,
25 based upon a person's outward manifestations, his words, his

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1 conduct, his acts, and all the surrounding circumstances
2 disclosed by the evidence and the rational or logical
3 inferences that may be drawn from them.

4 Since an essential element of the crime charged is
5 intent to defraud, it follows that good faith on the part of
6 the defendant is a complete defense to a charge of mail fraud.
7 A defendant, however, has no burden to establish the defense of
8 good faith. The burden is on the government to prove
9 fraudulent intent and the consequent lack of good faith beyond
10 a reasonable doubt.

11 Under the mail fraud statute, even false
12 representations or statements, or omissions of material facts,
13 do not amount to a fraud unless done with the intent to
14 defraud. However, misleading or deceptive a statement or even
15 a plan may be, it is not fraudulent if it was devised or
16 carried out in good faith. An honest belief in the truth of
17 the representations made by a defendant is a good defense,
18 however, inaccurate the statements may turn out to be.

19 If you find that the defendant knowingly and willfully
20 participated in the scheme to defraud with the intent to
21 defraud the victims, no amount of honest belief on the part of
22 the defendant that the victims of the scheme would be made
23 whole in the end will excuse the defendant's conduct.

24 And here is the fourth and last element of Count One,
25 mail fraud. The fourth and final element that the government

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1 must establish as to mail fraud is the use of the mails in
2 furtherance of the fraudulent scheme. The use of the mails as
3 I have used it here includes material sent through either the
4 United States Postal Service or a private or commercial
5 interstate carrier, such as Federal Express.

6 It is not necessary that the defendant be directly or
7 personally involved in the use of the mails, or to have had
8 anything whatsoever to do with the mails, so long as the
9 mailing is reasonably foreseeable in the execution of the
10 scheme to defraud that is alleged in Count One of the
11 indictment.

12 In this connection, it would be enough to establish
13 this element of the crime if the evidence justifies a finding
14 that defendant caused mailing by others; and this does not mean
15 that defendant himself must specifically himself have
16 authorized others to do the mailing.

17 This mailing requirement can be satisfied even if the
18 mailing was done by the person being defrauded or some other
19 innocent party. When a person does an act with knowledge that
20 the use of the mails will follow in the ordinary course of
21 business or where such use of the mails can reasonably be
22 foreseen by that person, even though he or she does not
23 actually intend such use of the mails, then he nevertheless,
24 nonetheless causes the mails to be used. Incidentally, the
25 mailed matter need not itself be fraudulent. For example, the

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(212) 805-0300

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1 mailed matter need not contain any fraudulent representations
2 and indeed may be completely innocent.

3 With respect to the use of the mails, the government
4 must prove beyond a reasonable doubt that a particular mailing
5 charged in the indictment occurred. However, the government
6 does not have to prove that any particular use of the mails was
7 made on the exact date charged in the indictment. It is
8 sufficient if the evidence establishes beyond a reasonable
9 doubt that a particular use of the mails charged in the
10 indictment occurred on a date that was substantially similar to
11 that date and on or after May 5, 2007.

12 MR. HERNANDEZ: Your Honor --

13 THE COURT: And the jury must unanimously agree on the
14 act or acts of mailing.

15 (Pause)

16 THE COURT: I understand that I misspoke about the
17 date. If I said "May" I misspoke. I meant March 5, 2007.
18 Fortunately it is stated correctly in the instructions.

19 So that's Count One. That's the mail fraud. And
20 those are the four elements. Now we move to Count Two, which
21 is the wire fraud, the scheme to defraud Fine Art Capital.

22 There are some similarities between Count One and
23 Count Two. And you'll see in the instructions some overlap.

24 The wire fraud statute is Section 1343, although it is
25 a separate count in a separate charge, as we said before. The

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(212) 805-0300

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Charge

1 wire fraud statute is Section 1343 of Title 18 of the United
2 States Code. And that section, 1343, reads, in pertinent part,
3 as follows. I will read the section of the statute just as I
4 did with respect to mail fraud. Then I'm going to define the
5 elements of wire fraud, just as I did the elements of mail
6 fraud. And you'll see with respect to wire fraud there are
7 also four elements.

8 So the statute says, "Whoever, having devised or
9 intending to devise any scheme or artifice to defraud, or for
10 obtaining money or property by means of false or fraudulent
11 pretenses, representations, or promises, transmits or causes to
12 be transmitted by means of wire, radio, or telephone
13 communications in interstate or foreign commerce any writings,
14 signs, signals, pictures, or sounds for the purpose of
15 executing such scheme or artifice shall be guilty of a crime."

16 So let's talk about the elements of wire fraud. In
17 order to establish wire fraud, the government must establish
18 beyond a reasonable doubt the following four elements: first,
19 that there was a scheme or artifice to defraud or obtain money
20 or property by false and fraudulent pretenses, representations,
21 or promises; second, that the scheme and artifice and false
22 statements and representations concerned material facts; third,
23 that the defendant knowingly and willfully devised or
24 participated in the scheme or artifice to defraud, with
25 knowledge of its fraudulent nature and with specific intent to

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(212) 805-0300

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Charge

1 defraud; and, fourth, that in the execution of that scheme, the
2 defendant used or caused the use of interstate or foreign
3 wires.

4 So let's talk about these four elements now. The
5 first, second, and third elements of wire fraud are identical
6 to the first, second, and third elements of mail fraud. Thus,
7 in order to convict on Count Two -- that's the wire fraud count
8 that we're talking about now -- you must find beyond a
9 reasonable doubt the existence of a scheme or artifice to
10 defraud or to obtain money or property from Fine Art Capital by
11 means of a false or fraudulent -- by means of false or
12 fraudulent pretenses, representations, or promises, apart from
13 the counterfeit wine (mail) fraud scheme. So we're talking
14 about another scheme in the wire fraud count. So you must find
15 that the scheme or artifice or the false statements and
16 representations concerned material facts. You must also find
17 that the defendant devised or participated in the fraudulent
18 scheme knowingly, willfully, and with intent to defraud Fine
19 Art Capital. In making these determinations, you should rely
20 on the instructions I gave you with respect to these same
21 elements under mail fraud as well as the definitions that I
22 gave you just a few minutes ago with respect to terms under
23 mail fraud that are identical to the terms that apply in the
24 wire fraud count.

25 So let's talk a minute about the fourth element of

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1 wire fraud. The fourth and final element that the government
2 must establish as to wire fraud is that interstate or foreign
3 wire facilities would be used in furtherance of the scheme to
4 defraud. The wire communication must pass between two or more
5 states, or between a foreign country and the United States.
6 For example, a telephone call or an e-mail between New York and
7 California are examples of interstate wire communications. A
8 wire communication also includes a wire transfer of funds
9 between banks in different states. It is not necessary that
10 the defendant be directly or personally involved in any wire
11 communication, as long as the communication is reasonably
12 foreseeable in the execution of the alleged scheme to defraud,
13 that is, within the scope of the scheme. When one does an act
14 knowledge that the use of a wire will follow in the ordinary
15 course of business, or where such use of the wires can
16 reasonably be foreseen, even though not actually intended, one
17 causes wires to be used. Incidentally, this wire-communication
18 requirement is satisfied even if the wire communication was or
19 would be done by a person with no knowledge of the fraudulent
20 scheme, including the victim of the alleged scheme.

21 The use of the wire need not itself be fraudulent.
22 Stated another way, the material wired need not contain any
23 fraudulent representation, or even any request for money. It
24 is sufficient if the wires were used to further or assist in
25 carrying out the scheme to defraud.

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1 The government must establish beyond a reasonable
2 doubt the particular use charged in the indictment. However,
3 the government does not have to prove that the wire was used on
4 the exact date charged in the indictment. It is sufficient if
5 the evidence establishes beyond a reasonable doubt that the
6 wire was used on a date reasonably near the date alleged in the
7 indictment.

8 And finally with respect to this fourth element of
9 Count Two, if you find that the wire communication was
10 reasonably foreseeable and that the interstate wire
11 communication charged in the indictment took place, then this
12 element is satisfied, even if it was not foreseeable that the
13 wire communication would cross state lines.

14 So those are the two, what we call substantive counts,
15 Count One and Count Two. I hope you got that. And as you
16 know, you will have these instructions in the jury room. But
17 there are some more jury instructions that I want to give you
18 before you go home.

19 One relates to evidence of indebtedness. The
20 government in this case has introduced evidence regarding debts
21 owed by the defendant to Acker Merrall & Condit in 2007. And
22 the government has argued that this evidence is proof that the
23 defendant lied about the extent of his indebtedness when he
24 applied to Fine Art Capital for a \$3 million loan, as charged
25 in Count Two of the indictment. The defendant denied that he

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Charge

1 has committed the offense charged in Count Two of the
2 indictment, and the defense has elicited evidence that the
3 nature of this obligation was largely in the form of advances
4 on auction consignments.

5 It is for you, the jury, to decide what weight to give
6 this evidence, if any. However, should you choose to credit
7 this evidence, I instruct you that you may directly consider it
8 when deciding whether the government has met its burden to
9 prove the defendant committed the offense charged in Count Two
10 of the indictment beyond a reasonable doubt.

11 The government has also argued that the defendant's
12 indebtedness establishes a motive to commit the offense charged
13 in Count One in the indictment, that is, the creation, sale,
14 and attempted sale of counterfeit wines. I instruct you that
15 you may consider evidence of indebtedness, if you find such to
16 be the case, only as proof of the defendant's motive to commit
17 the offense charged in Count One. Proof of motive does not
18 establish guilt. If the guilt of a defendant is shown beyond a
19 reasonable doubt, it is immaterial what the motive for the
20 crime may be -- or whether any motive may have been shown.

21 For both counts of the indictment, Count One and Count
22 Two, I instruct you that you may not consider evidence of the
23 defendant's indebtedness as establishing that he is a bad
24 person who is more likely to commit crimes -- that is, that he
25 has a propensity to commit crimes.

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Charge

1 In addition to all the foregoing elements that I have
2 talked about relating to the mail and wire fraud counts I have
3 described, you also must consider the issue of what we call
4 venue, namely, whether any act in furtherance of the unlawful
5 activity occurred within the Southern District of New York,
6 which includes Manhattan and other counties north of Manhattan.

7 In this regard, the government need not prove that the
8 crimes charged were committed in the Southern District of New
9 York or that the defendant was even physically present here.
10 It is sufficient to satisfy this venue requirement if any act
11 in furtherance of each of the crimes charged occurred within
12 the Southern District of New York, which, as I say, includes
13 Manhattan. Such an act would include, for example, that a
14 defendant mailed items or wired funds from, through, or into
15 the Southern District of New York, or caused others to mail
16 items or wire funds from, through, or into the Southern
17 District of New York, in furtherance of the crimes charged,
18 then this element of the charges will have been satisfied, this
19 venue element.

20 And as to this venue requirement only, the government
21 need not meet the burden of proof beyond a reasonable doubt.
22 On this venue requirement only, the government meets its burden
23 of proof if it establishes by a preponderance of the evidence
24 that an act in furtherance of the crimes charged occurred
25 within this district. "A preponderance of the evidence" means

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(212) 805-0300

DCHAKUR7ps Charge

1 that something is more likely than not.

2 If you believe that the defendant has committed the
3 crimes -- that the defendant has committed crimes not charged
4 in the indictment, you may not speculate as to why those
5 charges were not included in this matter, in this case. The
6 defendant is charged with the crimes I have identified for you
7 in these instructions, as set forth in the indictment. You may
8 not find him guilty of the crimes charged herein because you
9 think he may have committed some other crime. He is only on
10 trial for the charges alleged in the indictment.

11 The defendant did not testify in this case. Under our
12 Constitution, he has no obligation to testify or to present any
13 other evidence, because it is the prosecution's burden to prove
14 the defendant guilty beyond a reasonable doubt. That burden
15 remains with the prosecution throughout the entire trial and
16 never shifts to the defendant. The defendant is never required
17 to prove that he is innocent.

18 You may not attach any significance to the fact that
19 the defendant did not testify. No adverse inference against
20 him may be drawn by you because he did not take the witness
21 stand. You may not consider this against the defendant in any
22 way in your deliberations.

23 You must consider, as we've said before, each count of
24 the indictment separately, and you must return a separate
25 verdict for each count.

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Charge

1 The case against the defendant, on each count, stands
2 or falls on the proof or the lack of proof against the
3 defendant on each count, and should not control your decision
4 as to any other count.

5 You've heard testimony in this case of one or more
6 witnesses who were employed as law enforcement officers. The
7 fact that a witness may be employed by the government as a law
8 enforcement officer does not mean that his or her testimony is
9 necessarily deserving of any more or less consideration than
10 that of an ordinary witness. As with other witnesses, you may
11 consider whether that person's testimony is colored by a
12 personal or professional interest in the outcome of the case.
13 It is your decision, after reviewing all of the evidence, to
14 give the testimony of a law enforcement witness whatever
15 weight, if any, you think it deserves.

16 There are several persons whose names you may have
17 heard during the course of this trial but who did not appear
18 here to testify, and one or more of the attorneys may have
19 referred to their absence from the trial. I instruct you that
20 each party had an equal opportunity or lack of opportunity to
21 call any of these witnesses. And therefore, you should not
22 draw any inference or reach any conclusions as to what they
23 would have testified had they been called. Their absence
24 should not affect your judgment in any way.

25 You should, however, remember my instruction that the

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1 law does not impose on a defendant in a criminal case the
2 burden or duty of calling any witnesses or producing any
3 evidence.

4 And you may not draw any inference, favorable or
5 unfavorable, toward the government or the defendant from the
6 fact that there may be persons who have not been charged or
7 tried as the defendant has been in this case. You may also not
8 speculate as to the reasons why other persons have not been
9 charged or tried. Those matters are wholly outside your
10 concern and have no bearing on your function as jurors in this
11 case. You will notice that the indictment refers to various
12 dates and amounts. It does not matter if a specific
13 transaction is alleged to have occurred on or about a specific
14 date but the testimony indicates that in fact it was a
15 different date. The law requires only a substantial similarity
16 between the dates and amounts alleged in the indictment and the
17 dates and amounts established by the evidence.

18 Charts and summaries. The government has presented
19 information and/or data in the form of charts and summaries.
20 We discussed this earlier in the case. These exhibits purport
21 to summarize the underlying evidence that was used to prepare
22 them, and were shown to you to make the underlying evidence
23 more meaningful and to aid you in considering the evidence.
24 The charts and summaries are no better than the testimony or
25 documents upon which they are based and are not themselves

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1 independent evidence. Therefore, you are to give no greater
2 weight to these charts and summaries than you would give to the
3 evidence on which they are based.

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

10 You've heard testimony about evidence seized in
11 connection with a search conducted by law enforcement officers
12 of the defendant's home in Arcadia, California, and searches of
13 various e-mail accounts. Evidence obtained from the searches
14 was lawfully obtained and properly admitted in this case, and
15 may be properly considered by you. Whether you whether you
16 approve or disapprove of how it was obtained should not enter
17 into your deliberations because I instruct you that the
18 government's use of this evidence is entirely lawful. You must
19 therefore, regardless of your personal opinions, give this
20 evidence full consideration, along with all the other evidence
21 in the case, in determining whether the government has proved
22 the defendant's guilt beyond a reasonable doubt.

23 You have heard testimony from two witnesses called
24 expert witnesses. Those were Mr. Michael Egan and Mr. C.
25 Robert Collins. Mr. Egan and Mr. Collins testified as experts

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1 in the field of fine and rare wines, wine auctions, and wine
2 authentication. An expert is allowed to express his or her
3 opinion on those matters about which he or she has special
4 knowledge and training. Expert testimony is presented to you
5 on the theory that someone who is experienced in a particular
6 field can assist you in understanding the evidence or in
7 reaching an independent decision on the facts.

8 In weighing the expert's testimony, you may consider
9 the expert's qualifications, his or her opinions, and his or
10 her reasons for testifying, as well as all of the other
11 considerations that ordinarily apply when you are deciding
12 whether or not to believe a witness's testimony. You may give
13 the expert testimony whatever weight, if any, you find it
14 deserves in light of all the evidence in the case. You should
15 not, however, accept a witness's testimony merely because he or
16 she is an expert. Nor should you substitute it for your own
17 reason, judgment, and common sense. The determination of the
18 facts in this case rests solely with you, the jury. All
19 experts, having been qualified and accepted as experts by the
20 Court, stand equally before you, the jury, and it is up to you
21 to decide how to choose to accept or reject and/or utilize
22 their testimony, or any part thereof, in your deliberations.

23 We're kind of close to the end, another ten minutes or
24 so, or 15 minutes.

25 In this case you have heard evidence in the form of

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1 stipulations of testimony and fact. We discussed stipulations
2 early on. A stipulation of testimony is an agreement between
3 or among the parties that, if called as a witness, the person
4 would have given certain testimony. You must accept as true
5 the fact that the witness would have given that testimony.
6 However, it is for you to determine the effect to be given to
7 that testimony.

8 You have also heard evidence in the form of a
9 stipulation that contained facts which were agreed to, to be
10 true. You must accept the facts in those stipulations as true.

11 In this case, the government has alleged that the
12 defendant created certain documents in the Indonesian language.
13 In addition, evidence has been admitted that was translated
14 from the French language. For that reason, it was necessary
15 for the government to obtain an English translation of these
16 documents. Translated documents were prepared by a translator
17 whose testimony was set forth what's called a testimonial
18 stipulation. These English-language translations are admitted
19 into evidence to enable you to understand the foreign-language
20 documents.

21 If you are familiar with the Indonesian or French
22 language used in these translated documents, you should not
23 rely in any way on any knowledge you may have of Indonesian or
24 French. You must rely on the translations that have been
25 admitted into evidence.

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1 You should not consider the question of possible
2 punishment of the defendant, that is to say, the question of
3 punishment in the event you were to determine that the
4 defendant was guilty. Under our system, sentencing or
5 punishment is exclusively a function of the Court. It is not
6 your concern and you should not give any consideration to that
7 issue in determining what your verdict will be.

8 Therefore, I instruct you not to consider punishment
9 or possible punishment at all in your deliberations in this
10 case.

11 So, now, ladies and gentlemen, you are about to go
12 into the jury room and begin your deliberations. The exhibits
13 will be given to you at the start of your deliberations. And
14 in fact, since we're coming close to the end of the day,
15 probably, when you get back there now, I'm going to -- not
16 probably -- I'm going to excuse you and let you go home. So
17 you needn't start deliberations. And not all the exhibits,
18 maybe none, will yet be in the jury room. But when you come
19 back tomorrow morning, and only when you're all together, may
20 you begin your deliberations. And at that time, I will see to
21 it that the exhibits are in the jury room.

22 I've suggested to the lawyers that with respect to the
23 wine bottles, not all of them be placed in the jury room.
24 Perhaps a representative sample of 10 to 15 bottles. But there
25 are more bottles in evidence. And if you should want to see

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1 any of the other bottles that are not back there, you just send
2 me a note and we'll get it for you. I'm going to get to notes
3 in a minute also.

4 If you want any, during your deliberations, any of the
5 testimony read back, you may also request that that happen.
6 Please remember that if you do ask for testimony, the court
7 reporter must search through his or her notes and the lawyers
8 must agree on what portions of the testimony may be called for.
9 And if they were to disagree, then I would have to resolve
10 those disagreements. All that means is that, it is to say that
11 that can be a time-consuming process. So please try to be as
12 specific as you possibly can in requesting portions of the
13 testimony if in fact you do so.

14 Your requests for testimony -- and in fact any
15 communication with the Court -- should be made to me in
16 writing, signed by your foreperson, and -- we'll come to that
17 in a minute -- and given to one of the marshals who will be
18 standing outside the jury room while you deliberate. And in
19 any event, do not tell me or anyone else how the jury stands on
20 any issue until after a verdict is reached.

21 The government, to prevail, must prove the essential
22 elements of any crime charged beyond a reasonable doubt, as has
23 already been explained in these instructions. If it succeeds,
24 your verdict should be guilty on that charge. If it fails,
25 your verdict should be not guilty.

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1 A verdict, as I said before, must be unanimous. Your
2 verdict must represent the considered judgment of each juror.
3 Whether your verdict is guilty or not guilty, it must be
4 unanimous.

5 Your function is to weigh the evidence in the case and
6 determine whether or not the defendant is guilty, solely based
7 upon such evidence.

8 Each juror is entitled to his or her opinion. Each
9 should, however, exchange views with his or her fellow jurors.
10 That's the very purpose of jury deliberations -- to discuss and
11 consider the evidence, to listen to the arguments of fellow
12 jurors, to present your individual views, to consult with one
13 another, and to reach an agreement based solely and entirely
14 upon the evidence -- if you can do so without surrendering your
15 own individual judgment.

16 Each of you must decide the case for yourself after
17 consideration with your fellow jurors of the evidence in the
18 case. But should not hesitate to change an opinion that, after
19 discussion with your fellow jurors, may appear incorrect. If,
20 after carefully considering the evidence and the arguments of
21 your fellow jurors, you hold a conscientious view that differs
22 from the others, you are not required to change your position
23 simply because you are outnumbered. Your final vote must
24 reflect your conscientious belief as to how the issues should
25 be decided.

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1 When you go into the jury room -- I think we'll do
2 this first thing in the morning -- before you begin your
3 deliberations, you select someone to be your foreperson. And
4 the foreperson can be any of the jurors -- the first juror,
5 last juror, or any juror in between. You decide first who the
6 foreperson is and then, if that person would send me a note in
7 the morning indicating so-and-so, I, so-and-so, have been
8 selected as the foreperson. Your foreperson will preside over
9 the deliberations and speak for you all here in open court.
10 The foreperson has no greater voice or authority than any other
11 juror. The foreperson will send out any notes and, when the
12 jury has reached a verdict, he or she will notify the marshal
13 that the jury has reached a verdict.

14 I'm going to give you also a verdict sheet to be
15 filled out by the jury. The purpose of the questions on the
16 verdict sheet form is to help us -- the Court and counsel -- to
17 understand what your findings are. And I will hand this form,
18 which contains a set of questions, in this case just two
19 questions, to Christine, and she'll give it to you so that you
20 may record the decision of the jury with respect to each
21 question.

22 No inference is to be drawn from the way the questions
23 are worded as to what the answer should be. The questions are
24 not to be taken as any indication that I have any opinion as to
25 how they should be answered. I have no such opinion, and even

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1 if I did, it would not be binding upon you in any way.

2 Before the jury attempts to answer any one question,
3 you should read the entire set of questions and make sure that
4 everybody understands each question. Before you answer the
5 questions, you should deliberate in the jury room and discuss
6 the evidence that relates to the questions you must answer.
7 When you have considered the questions thoroughly and the
8 evidence that relates to those questions, record the answers to
9 the questions on the verdict sheet, on the form that I will
10 give you, and remember that all answers must be unanimous. And
11 then you'll see that there is place for everybody to sign, when
12 you've reached your verdict, your name. And insert the date.

13 So conclusion: I'm nearly finished with these charges
14 and my instructions to you. And I thank you again for your
15 patience and attentiveness all week, this week and last week.
16 And please remember that no single part of this charge is to be
17 considered in isolation. You are not to consider any one
18 aspect of these charges out of context. And the entire charge
19 is to be considered as an integrated statement and to be taken
20 together.

21 Now, I say this not because I think it's necessary but
22 because it is the tradition in this courthouse. I remind the
23 jurors to be polite and respectful to each other, as I'm sure
24 they will be, you will be, in the course of your deliberations
25 so that each juror may have his or her position made clear to

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DCHAKUR7ps Charge

1 all the others.

2 I remind you once again that your oath is to decide
3 without fear or favor and to decide the issues based solely on
4 the evidence and my instructions on the law.

5 And I thank you.

6 Now, I'm going to ask you to remain in place. I need
7 to talk to the lawyers just for a minute. And then, if you
8 haven't heard enough, I'm going to give you my instructions
9 that would apply between tonight as you leave and tomorrow
10 morning when you come back to deliberate. By the way, you can
11 again leave your pads on the chair and Christine will take care
12 of them overnight and return them to you tomorrow morning.
13 Just hold on for a second.

14 (Pause)

15 (In the hallway)

16 THE COURT: So I just want to ask counsel if they have
17 any objections to the reading of the jury instruction, as
18 opposed to the content, which we discussed earlier.

19 MR. MOONEY: No, your Honor.

20 MR. VERDIRAMO: No.

21 MR. HERNANDEZ: We have no objection. I think there
22 was the one word that your Honor caught that you were going to
23 address.

24 THE COURT: There is. So "television" instead of
25 "telephone."

DCHAKUR7ps

Charge

1 MR. MOONEY: "Television" instead of "telephone." So
2 you're going to correct that --

3 THE COURT: I will. It makes no sense to me that it
4 is "television" instead of "telephone." But my own opinion
5 does not apply. So I'm going to make that correction, read
6 them their instructions as jurors, send the first 12 into the
7 jury room and then home. I'm not going to -- there's no point.

8 MR. MOONEY: Right.

9 THE COURT: And then you all will fill the jury room
10 with exhibits. And I'll have somebody in there cleaning out
11 the, you know, garbage, etc. And then first thing tomorrow
12 morning we will give them the jury instructions and the
13 indictment.

14 And with respect to the indictment, though, the
15 indictment, I think, still has forfeiture language in there.

16 MR. MOONEY: Yes. It should be taken out.

17 THE COURT: I wonder -- I think that probably should
18 be excised before we give them a copy of the indictment.

19 MR. HERNANDEZ: We can redact a copy.

20 THE COURT: OK?

21 MR. MOONEY: Agreed.

22 THE COURT: Anything else we need to do?

23 MR. MOONEY: No.

24 MR. HERNANDEZ: No, your Honor.

25 (In open court close; jury present)

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1 THE COURT: OK. Couple of things to do. One error in
2 the reading of the instructions. You'll see tomorrow, in the
3 statute, in the wire fraud statute, I think I said "telephone."
4 The statute says "television." So -- you'll see. Just note
5 that on page 14 it's actually four lines up from the bottom,
6 that I misspoke and said "telephone" instead of "television."

7 So now let's go over the instructions again between
8 tonight and tomorrow.

9 So we won't send in the jury instructions until you're
10 all there in the morning. And that's when we'll also give you
11 a copy of the indictment. The exhibits will be placed in the
12 jury room overnight. And when you get there in the morning,
13 I'm going to -- when you're all assembled, the first thing is
14 to pick your foreperson and have that foreperson send me a note
15 and say so-and-so has been appointed foreperson.

16 So here are the instructions as you've heard
17 throughout the week and last week. First, do not talk to each
18 other about this case or about anyone who has anything to do
19 with it until the end of the case, when you go to the jury to
20 decide, deliberate on your verdict. And you shouldn't
21 deliberate or decide unless the full jury is present. Second,
22 do not talk with anyone else about this case or about anyone
23 would has anything to do with it until the trial has ended and
24 you have been discharged as jurors. And by "talking," as I've
25 said before, I'm also referring to e-mailing, texting,

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DCHAKUR7ps Charge

1 tweeting, blogging, in addition to face-to-face conversations.
2 I'm also referring to any type of communication in any type of
3 form, including without limitation Facebook, my space, and
4 Twitter. Additionally, do not remain in the presence of other
5 persons who may be discussing this case face to face, orally,
6 or online. Third, do not let anyone talk to you about the case
7 or about anyone who has anything to do with it. And if someone
8 should try and talk to you about the case, please report that
9 to me immediately. Fourth, do not read any news or Internet
10 stories or articles or blogs, or listen to any radio or TV or
11 Internet reports about the case, or about anyone who has
12 anything to do with it. And, fifth, do not do any type of
13 research or any type of investigation about the case on your
14 own.

15 So the parties are entitled to have you personally
16 render a verdict in this case on the basis of your independent
17 evaluation of the evidence that's been presented here in the
18 courtroom. So obviously, speaking to another -- others about
19 the case, including members of your family, before you
20 deliberate as a complete jury, or exposing yourself to evidence
21 outside the courtroom in any way would compromise your jury
22 service and fairness to the parties.

23 So we've made good progress. I think we're ahead of
24 the schedule we originally anticipated. I'm now going to ask
25 the first 12 of you to go into the --

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1 Hold on one second. We will ask the marshal to come
2 forward and swear him in. And he will escort the first 12 of
3 you to the jury room.

4 (Marshal sworn)

5 THE COURT: So he's going to escort you in and then
6 out. And we'll see you first thing tomorrow morning. And
7 we'll take care of both your notes and the jury room, make sure
8 it's set up for you tomorrow.

9 (The jury left the courtroom; time noted 4:50 p.m.)

10 (Alternate jurors present)

11 THE COURT: So please be seated, everybody. So jurors
12 13 and 14, you turn out to be our alternate jurors in this
13 matter. We couldn't have a trial without alternate jurors.
14 And we never know if we are going to need the alternate jurors
15 or not to engage in deliberations. In this case we won't
16 because the first 12 jurors have been here all throughout the
17 trial, and they will be asked to do deliberations.

18 So what we say to the alternates is certainly thank
19 you, first of all, for being here. We also ask that -- the
20 alternates do not need to come back tomorrow, you can go
21 home -- but that you be on a sort of standby in the sense that,
22 in some instances, although rare, it's conceivable that we
23 might still need one of you, or two of you, to serve. It's
24 unlikely, I would say. But it's possible. So in that -- in
25 the case that we do or we did, we would contact you. But you

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1 can go about your regular daily business. And if you would
2 like to know what the verdict is when the verdict is reached,
3 we'll be happy to call you and let you know, if we haven't
4 spoken to you beforehand.

5 So let's just hold on for one second. And let me just
6 address the lawyers for the moment. So now we're going to do
7 the exhibits. So that when the jurors come back in the
8 morning, the exhibits that you all have agreed should go back
9 with them will be there. OK. So you can start --

10 MR. VERDIRAMO: That's been completed, your Honor.

11 THE COURT: I'm sorry?

12 MR. VERDIRAMO: That's been completed.

13 THE COURT: Oh, you did. And things are already in
14 the jury room?

15 MR. VERDIRAMO: They're right there.

16 THE COURT: Oh, OK. All right. So we'll wait till
17 the jury room is cleared out, and the bottles are which?

18 MR. VERDIRAMO: We took care of paper documents. The
19 bottles are the bottles.

20 MR. HERNANDEZ: Well, we're going to select --

21 MR. VERDIRAMO: Yes, we're going to select some.

22 MR. HERNANDEZ: 15 or 10. We still need some time to
23 complete our mixed case.

24 THE COURT: No problem.

25 MR. MOONEY: Your Honor, perhaps people who have been
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Charge

1 watching the trial should be advised that these jurors, that
2 the alternates are still on standby, so they are not to be
3 talked to now.

4 THE COURT: Yes. That's exactly right. And no juror
5 can be talked to, whether they are deliberating or alternate
6 jurors.

7 MR. MOONEY: Thank you, your Honor.

8 THE COURT: OK. Hold on one second, everybody.

9 (Pause)

10 THE COURT: So you probably have things that the jury
11 room. You can collect them. Christine will give you a hand.
12 Thanks again, both of you.

13 JUROR NO. 14: Thank you.

14 THE COURT: Hope you feel better.

15 JUROR NO. 14: Thank you.

16 (The alternate jurors left the courtroom;)

17 THE COURT: So we'll see you at 9.

18 MR. HERNANDEZ: Thank you, your Honor.

19 THE COURT: Thanks so much.

20 MR. HERNANDEZ: Judge, just the exhibits, when the
21 jurors leave the jury room, do you lock them up? Do you want
22 to us take them down to our room?

23 THE COURT: That's a good question. Yeah, maybe we
24 will take them down. I just want to make sure that the jury
25 room is secured.

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MR. HERNANDEZ: OK.

(Discussion held off the record)

THE COURT: So we'll put this on the record. So I have had a conference with counsel as to whether or not after a verdict is reached the members of the press can see the exhibits. And we're taking the matter under advisement, but the answer is probably yes.

(Adjourned to 9:00 a.m., December 18, 2013)

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INDEX OF EXAMINATION

Examination of:	Page
CORNELIUS ROBERT COLLINS	
Direct By Mr. Mooney1139
Cross By Mr. Hernandez1166
Redirect By Mr. Mooney1202

GOVERNMENT EXHIBITS

Exhibit No.	Received
1-4021310

DEFENDANT EXHIBITS

Exhibit No.	Received
B-331310

