

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
VS.)	NO. CR. 14-00534 CRB-1
)	NO. CR. 14-00534 CRB-3
JOSEPH GIRAUDO, KEVIN)	
CULLINANE,)	
)	
) Defendant .)	

San Francisco, California
Tuesday, September 19, 2017

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

U.S. Department of Justice
Antitrust Division
450 Golden Gate Avenue, Room 10-0101
San Francisco, CA 94102-3478
(415) 436-6660
(415) 436-6687 (fax)

**BY: ANDREW J. NICHOLSON-MEADE
THOMAS GREENE**

For Defendant Joseph G. Girardo:

Vinson & Elkins LLP
555 Market Street, Suite 2000
San Francisco, CA 94105
(415) 979-6900

**BY: ERICA CONNOLLY
MATTHEW J. JACOBS**

Reported By: Lydia Zinn, CSR No. 9223, FCRR, Official Reporter

1 **APPEARANCES :**

2 For Defendant Kevin B. Cullinane:
3 Law Offices of Doron Weinberg
4 523 Octavia Street
5 San Francisco, CA 94012
6 (415) 431-3472
7 (415) 552-2703 (fax)
8 **BY: DORON WEINBERG**

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1 Tuesday - September 19, 2017

2:40 p.m.

2 P R O C E E D I N G S

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4 **THE CLERK:** Calling Criminal Action CR. 14-0534, USA
5 versus Joseph J. Giraud; USA versus Kevin B. Cullinane.

6 **MR. NICHOLSON-MEADE:** Good afternoon, Your Honor.
7 Andrew Nicholson-Meade, on behalf the United States.

8 **MR. JACOBS:** Good afternoon, Your Honor. Matt Jacobs
9 and Erica Connolly, on behalf of Joseph Giraud, who is present
10 in court.

11 **MR. WEINBERG:** Good afternoon, Your Honor.
12 Doron Weinberg, appearing with Kevin Cullinane, who is present.

13 **MR. NICHOLSON-MEADE:** And, Your Honor, these
14 defendants were charged by Indictment, but Mr. Giraud was
15 charged with two counts that remain in that Indictment.
16 Mr. Cullinane is charged with one count. I think perhaps for
17 clarity of the Record, it might make sense to proceed
18 separately with each defendant.

19 **THE COURT:** I think so. I think it's just better.
20 Well, I don't know.

21 **MR. JACOBS:** We have no objection if the Court wants
22 to proceed in unison.

23 **THE COURT:** The only thing that's different -- I
24 mean, there are some differences, but the problem is that in
25 the application, the factual recitation, Mr. Jacobs, was, *I*

1 *plead guilty to Counts One and Six in the Indictment.* Okay?

2 **MR. JACOBS:** No. It was broader than that,
3 Your Honor. In paragraph --

4 **THE COURT:** Where do you see it? Did I miss it?

5 **MR. JACOBS:** Yes, I believe so, Your Honor.

6 **THE COURT:** Oh, I did. I missed it. I missed it.
7 How could I have missed it? It's paragraph 5. And that's
8 fine. That's not a problem.

9 **MR. JACOBS:** We're also happy to go with the factual
10 basis that Mr. Weinberg's --

11 **THE COURT:** Mr. Weinberg, where is yours?

12 **MR. WEINBERG:** It's there, Your Honor. Mr. Cullinane
13 admits that he agreed with others to limit bidding in
14 foreclosures auctions in San Mateo County.

15 **THE COURT:** Actually --

16 **MR. WEINBERG:** That's paragraph 5.

17 **THE COURT:** It has to have dates. It has to have
18 maybe amounts. I don't know.

19 **MR. NICHOLSON-MEADE:** And, Your Honor, I have not
20 seen these applications with the factual basis, so the
21 Government would request the opportunity to review them, to
22 make sure that the defendants are adequately pleading to what's
23 been charged in the Indictment.

24 **THE COURT:** Well, I would say as to Mr. Cullinane,
25 that's not adequate; but there may be ways to take care of

1 it --

2 **MR. WEINBERG:** Yes.

3 **THE COURT:** -- which we can talk about.

4 I don't know, because I overlooked Mr. Jacobs'
5 presentation. Why don't you take a moment? And let's look at
6 this. And then we'll just sort of figure out --

7 What I was going to suggest, Mr. Weinberg, is that since
8 you sat here listening to the recitation, I wondered whether it
9 makes any difference -- you know the case much better than I.

10 And I'm actually talking to the Government here. If they
11 were to agree to the factual recitation that is in the previous
12 set of pleas, would that address that issue as to the colloquy?

13 First of all, I have no idea if they would agree to it.

14 But I guess first I should ask the Government: Is that
15 adequate? It has to be adequate, from the Government's point
16 of view; doesn't it? Unless I --

17 **MR. NICHOLSON-MEADE:** Well, Your Honor, the
18 Informations that charged the prior defendants have different
19 time periods that they were charged with. So the Indictment
20 does charge, perhaps, a longer time period than the
21 Informations that -- these defendants agreed to each of their
22 own individual factual bases. So I think that these defendants
23 are required to admit to the facts as alleged in the
24 Indictment, which includes the time period of the conspiracy.

25 **THE COURT:** Well, not necessarily. They have to

1 admit to the crime, but I don't know that we're in a position
2 to go forward today on this, because I think that if -- there
3 are a couple of things.

4 If -- I could take the Indictment, and I could -- and we
5 can look at the Indictment, and go through Count One, or
6 whatever it is. And then if a defendant says, *I agree that all*
7 *of that's true* -- if he did say that -- I don't know whether he
8 would, or not -- obviously, that's adequate.

9 Now, if he says, *Well, I agree to most of it*, I need to
10 know what the "most of it" is.

11 **MR. WEINBERG:** Well, Your Honor --

12 **THE COURT:** So that's the only way we can proceed
13 forward, absent a paragraph, which Mr. Jacobs has provided,
14 that may or may not meet the test.

15 But if what you think you should do is take 24 hours, and
16 come back tomorrow with a paragraph or something of that
17 nature, I can do that on Friday. I can do that.

18 But I don't want to start this big --

19 (Discussion off the record)

20 **THE COURT:** -- you know, proceeding, and get halfway
21 through it, and just stop the whole thing because we're not in
22 a position to go forward.

23 But I need --

24 **MR. WEINBERG:** Your Honor --

25 **THE COURT:** What's obvious is I need a complete

1 factual basis from the defendant. And I don't intend to
2 question them and have them describe verbally what they did.
3 That's fraught with all sorts of problems.

4 So I sort of leave this up to you.

5 **MR. WEINBERG:** It seems to me, Your Honor, that the
6 defendants need only to admit to the elements of the crime.

7 I confess that Mr. Cullinane has not specifically said
8 that he knew that his conduct interfered with interstate
9 commerce. Other than that, I don't think they -- there's
10 nothing else that they need to do in order to admit the crime.

11 **THE COURT:** Well, let's take loss. I don't know
12 where I'm supposed to be on loss.

13 **MR. WEINBERG:** Well, that's for sentencing,
14 Your Honor. I mean --

15 **THE COURT:** Well, is he admitting any loss?

16 **MR. JACOBS:** Well, first of all, with respect to --

17 **THE COURT:** He may not have to.

18 **MR. JACOBS:** With respect to loss --

19 **THE COURT:** He may not have to.

20 **MR. JACOBS:** I don't believe that even the Plea
21 Agreements agree to a particular number, but that's clearly not
22 an element of the offense.

23 I think what the defendants have to admit to -- and I'm
24 hoping that the Government, upon reviewing our proposed factual
25 basis, will agree it's adequate. It says that on behalf of

1 Mr. Giraudo, he agreed to accept money not to bid, and he paid
2 money not to bid; that it affected interstate commerce; it was
3 in San Mateo and San Francisco Counties. And gives the time
4 periods. It tracks the Indictment.

5 So we're ready to proceed. I think that's an adequate
6 basis.

7 **THE COURT:** I think that's right. I mean, I just
8 read it.

9 **MR. WEINBERG:** And Mr. Cullinane would be willing to
10 agree to the same.

11 **MR. NICHOLSON-MEADE:** So, Your Honor, I think
12 Mr. Giraudo's does recite an admission of the elements, as well
13 as the time period.

14 I agree with you that the paragraph in Mr. Cullinane's
15 application is deficient as --

16 **THE COURT:** Well, but he's going further.
17 Mr. Weinberg is saying that his client would adopt the
18 statement that is contained in Mr. Giraudo's --

19 **MR. WEINBERG:** Absolutely --

20 **THE COURT:** Sorry. Mr. Giraudo's claim.

21 **MR. WEINBERG:** -- except for the San Francisco part
22 of it. Mr. Cullinane acted only in San Mateo County.

23 **MR. NICHOLSON-MEADE:** And that's fine. He's only
24 been charged with the participation in the San Mateo
25 conspiracy.

1 If I might have just one moment to confer with my
2 colleagues.

3 **THE COURT:** That's fine with me. I'm fine with it.
4 (Discussion off the record.)

5 **MR. NICHOLSON-MEADE:** Your Honor, the Government's
6 prepared to proceed with the paragraph that's specified in
7 Mr. Giraudo's application.

8 **THE COURT:** Now let me ask a further question, which
9 is whether there is any issue as to 5K1.

10 **MR. WEINBERG:** No, Your Honor, there's no issue as to
11 5K1 with either of these defendants.

12 **THE COURT:** Okay. So it doesn't exist. What you're
13 saying is that you do not believe -- you're not prepared to
14 offer substantial assistance to the Government?

15 **MR. JACOBS:** So, Your Honor, on behalf of
16 Mr. Giraudo, we sent a letter to the Court and to the
17 Government --

18 **THE COURT:** Mm-hm.

19 **MR. JACOBS:** -- offering to provide substantial
20 assistance if the Government wished to avail itself of that.
21 Thus far they have not, but we stand ready to provide
22 substantial assistance.

23 **THE COURT:** I understand.

24 **MR. JACOBS:** And if we did, the Government could make
25 that motion, but I don't think for purposes of today we need to

1 resolve that issue.

2 **THE COURT:** Putting it another way, the entry of the
3 plea is not conditioned, from your point of view, on the
4 granting of a 5K1.

5 **MR. WEINBERG:** Correct. I want to be clear for the
6 record that in the beginning of 2012 on Mr. Cullinane's behalf
7 I wrote a letter to the Government proposing that Mr. Cullinane
8 was prepared to plead guilty to bid rigging, and cooperate
9 fully about his own conduct and the conduct of all others
10 involved, but that he declined to plead guilty to mail fraud,
11 because he did not think that that charge was valid.

12 The Government refused, and said that they would not
13 accept a plea and cooperation unless he also pled to mail
14 fraud.

15 **THE COURT:** Okay.

16 **MR. NICHOLSON-MEADE:** Your Honor, just as it pertains
17 to 5K, I'll note that we appeared earlier at the status hearing
18 and indicated that we've reached agreements in principle with
19 the other indicted defendants in this case. So these two
20 defendants are the last remaining defendants. I do not
21 anticipate that the government would be moving for a 5K
22 departure.

23 **THE COURT:** Okay. All right. I think we're all set,
24 then.

25 **MR. JACOBS:** Your Honor, one housekeeping note, if I

1 might.

2 **THE COURT:** Yes.

3 **MR. JACOBS:** In the application we submitted for
4 Mr. Giraudo there was an error. It said that he was 80 years
5 of age. He's actually 79 and a half.

6 **THE COURT:** Well, that's important, actually.

7 **MR. JACOBS:** Just trying to be accurate, Your Honor.

8 **THE COURT:** Okay. Okay. Would you administer the
9 oath to both defendants?

10 **THE CLERK:** Please raise your right hand.

11 **JOSEPH JOHN GIRAUDO,**

12 called as a defendant for the The Court, having been duly
13 sworn, testified as follows:

14 **DEFENDANT GIRAUDO:** I do.

15 **KEVIN BRIAN CULLINANE,**

16 called as a defendant for the The Court, having been duly
17 sworn, testified as follows:

18 **DEFENDANT CULLINANE:** I do.

19 **EXAMINATION BY THE COURT**

20 **THE COURT:** Okay. So let's start with you,
21 Mr. Giraudo. Do you understand you are now under oath, and
22 must answer my questions truthfully?

23 **DEFENDANT GIRAUDO:** I do.

24 **THE COURT:** What is your full name?

25 **DEFENDANT GIRAUDO:** Joseph John Giraudo.

PROCEEDINGS

1 **THE COURT:** When were you born?

2 **DEFENDANT GIRAUDO:** April 8th, 1938.

3 **THE COURT:** How old are you?

4 **DEFENDANT GIRAUDO:** Seventy-nine.

5 **THE COURT:** How far did you go in school?

6 **DEFENDANT GIRAUDO:** Graduate school. Two years of
7 graduate work.

8 **THE COURT:** Have you been treated recently for any
9 mental illness, or addiction to narcotic drugs of any kind?

10 **DEFENDANT GIRAUDO:** No, I haven't.

11 **THE COURT:** Are you currently under the influence of
12 any drug, medication, or alcoholic beverage of any kind?

13 **DEFENDANT GIRAUDO:** No, I'm not.

14 **THE COURT:** Have you received a copy of the charges
15 pending against you?

16 **DEFENDANT GIRAUDO:** Yes, Your Honor.

17 **THE COURT:** Have you had an opportunity to discuss
18 those charges and your case with your attorney?

19 **DEFENDANT GIRAUDO:** Yes, Your Honor.

20 **THE COURT:** Are you fully satisfied with the
21 representation given to you in this case by your attorney?

22 **DEFENDANT GIRAUDO:** Yes, Your Honor.

23 **THE COURT:** There is no Plea Agreement in this case.

24 Do you understand that the Court is not required to follow any
25 recommendation by the Government or your attorney, and that the

1 Court is not required to permit you to withdraw your guilty
2 plea, and may impose a sentence more severe than you
3 anticipate?

4 **DEFENDANT GIRAUDO:** I do.

5 **THE COURT:** Has anyone attempted in any way to force
6 you to plead guilty, or otherwise threatened you?

7 **DEFENDANT GIRAUDO:** No, Your Honor.

8 **THE COURT:** Has anyone made any promises or
9 assurances of any kind to get you to plead guilty?

10 **DEFENDANT GIRAUDO:** No, Your Honor.

11 **THE COURT:** Are you pleading guilty of your own free
12 will because you are guilty?

13 **DEFENDANT GIRAUDO:** Yes, Your Honor.

14 **THE COURT:** Are you a citizen of the United States?

15 **DEFENDANT GIRAUDO:** I am.

16 **THE COURT:** Okay. Now let me turn to you
17 Mr. Cullinane. And you understand you're under oath, and must
18 answer my questions truthfully?

19 **DEFENDANT CULLINANE:** I do.

20 **THE COURT:** What is your full name?

21 **DEFENDANT CULLINANE:** Kevin Brian Cullinane.

22 **THE COURT:** When were you born?

23 **DEFENDANT CULLINANE:** May 14th, 1965.

24 **THE COURT:** How old are you?

25 **DEFENDANT CULLINANE:** Fifty-two.

PROCEEDINGS

1 **THE COURT:** How far did you go in school?

2 **DEFENDANT CULLINANE:** Four years of college.

3 **THE COURT:** Have you been treated recently for any
4 mental illness, or addiction to narcotic drugs of any kind?

5 **DEFENDANT CULLINANE:** No.

6 **THE COURT:** Are you currently under the influence of
7 any drug, medication, or alcoholic beverage of any kind?

8 **DEFENDANT CULLINANE:** No.

9 **THE COURT:** Have you received a copy of the charges
10 pending against you?

11 **DEFENDANT CULLINANE:** I have.

12 **THE COURT:** Have you had an opportunity to discuss
13 those charges and your case with your attorney?

14 **DEFENDANT CULLINANE:** Yes.

15 **THE COURT:** Are you fully satisfied with the
16 representation given to you in this case by your attorney?

17 **DEFENDANT CULLINANE:** Yes.

18 **THE COURT:** There is no Plea Agreement in this case?

19 **DEFENDANT CULLINANE:** Correct.

20 **THE COURT:** Do you understand that the Court is not
21 required to follow any recommendation by the Government or your
22 attorney; and the Court is not required to permit you to
23 withdraw your guilty plea, and may impose a sentence more
24 severe than you anticipate?

25 **DEFENDANT CULLINANE:** I do.

1 **THE COURT:** Has anyone attempted in any way to force
2 you to plead guilty, or otherwise threatened you?

3 **DEFENDANT CULLINANE:** No.

4 **THE COURT:** Has anyone made any promises or
5 assurances of any kind to get you to plead guilty?

6 **DEFENDANT CULLINANE:** No.

7 **THE COURT:** Are you pleading guilty of your own free
8 will because you are guilty?

9 **DEFENDANT CULLINANE:** I am, sir.

10 **THE COURT:** Are you a citizen of the United States?

11 **DEFENDANT CULLINANE:** Yes, I am.

12 **THE COURT:** What are the potential consequences of
13 the pleas -- of the charges to which the defendants are
14 pleading?

15 **MR. NICHOLSON-MEADE:** For Counts One and Six of the
16 Indictment, which Mr. Girauda has been charged with, in
17 violation of the United States Code Section 1, the maximum
18 penalties are a term of imprisonment of ten years; a fine of
19 \$1 million, or twice the -- or two times the gross gain or
20 loss, whichever is greater; a period of Supervised Release of
21 not more than three years; a \$100 Special Assessment per count,
22 totaling \$200, as well as restitution.

23 For Mr. Cullinane --

24 **THE COURT:** Let me ask Mr. Girauda first.

25 Do you understand those are the possible consequences?

1 **DEFENDANT GIRAUDO:** I do.

2 **THE COURT:** Thank you.

3 **MR. NICHOLSON-MEADE:** For Mr. Cullinane, who's been
4 charged with Count One of the Indictment, the maximum penalties
5 under United States Code, Section 1, are a term of imprisonment
6 of ten years; a fine of \$1 million, or two times the gross gain
7 or loss, whichever is greater; a period of Supervised Release
8 of not more than three years; a \$100 Special Assessment, as
9 well as restitution.

10 **THE COURT:** Do you understand those are the possible
11 consequences?

12 **DEFENDANT CULLINANE:** Yes, sir.

13 **THE COURT:** Do each of you understand you have the
14 right to plead not guilty to any offense charged against you;
15 persist in that plea? You would then have the right to a trial
16 by jury. At trial you'd be presumed to be innocent, and the
17 Government would have to prove your guilt beyond a reasonable
18 doubt? That you would have the right to assistance of counsel
19 for your defense, appointed by the Court, if necessary, at
20 trial and every other stage of the proceedings; the right to
21 see and hear all of the witnesses, and have them cross-examined
22 in your defense; the right on your own part to decline to
23 testify, unless you voluntarily elected to do so in your own
24 defense; and the right to compel the attendance of witnesses in
25 your defense?

1 Mr. Giraudo?

2 **DEFENDANT GIRAUDO:** I do.

3 **THE COURT:** Mr. Cullinane?

4 **DEFENDANT CULLINANE:** I do.

5 **THE COURT:** Do you understand that, should you decide
6 not to testify or put on any evidence, these facts cannot be
7 used against you?

8 Mr. Giraudo?

9 **DEFENDANT GIRAUDO:** I do.

10 **DEFENDANT CULLINANE:** I do.

11 **THE COURT:** Do you further understand that by
12 entering a plea of guilty, if the plea is accepted by the
13 Court, there will be no trial, and you will have given up your
14 right to a trial, as well as other or rights associated with
15 the trial, as I've just described?

16 **DEFENDANT GIRAUDO:** I do.

17 **DEFENDANT CULLINANE:** I do.

18 **THE COURT:** What are the essential elements?

19 **MR. NICHOLSON-MEADE:** To establish a violation of
20 Section 1 of the Sherman Antitrust Act, 15 United States Code,
21 Section 1, the United States must prove beyond a reasonable
22 doubt that, one, the conspiracy to suppress and restrain
23 competition described in the Indictment existed at or about the
24 time alleged.

25 In Count One, that's August 2008 until January 2011.

1 In Count Six, that's November 2008 until January 2011.

2 Second, that the defendant knowingly became a member of
3 the conspiracy.

4 And, third, that the conspiracy described in the
5 Indictment substantially affected interstate commerce, or
6 occurred within the flow of interstate commerce.

7 **THE COURT:** Mr. Giraudo and Mr. Cullinane, do each of
8 you believe that if this case went to trial, the Government
9 would be able to prove each and every element of the offenses
10 beyond a reasonable doubt?

11 **DEFENDANT GIRAUDO:** I do, Your Honor.

12 **DEFENDANT CULLINANE:** I do.

13 **THE COURT:** All right. Now, looking -- we'll start
14 with you, Mr. Giraudo. Looking at the Plea Agreement -- pardon
15 me -- at the Plea Application on page 2, commencing on -- it's
16 paragraph 5, commencing line 8 and going through line 17. Do
17 you see that before you?

18 **DEFENDANT GIRAUDO:** I do.

19 **THE COURT:** And is everything --

20 Did you read it carefully before you signed the
21 application?

22 **DEFENDANT GIRAUDO:** I did.

23 **MR. JACOBS:** We haven't yet signed, Your Honor, but
24 we're prepared to do it.

25 **THE COURT:** Oh. What happened, then?

1 **MR. WEINBERG:** We're supposed to sign in open court
2 your Honor.

3 **THE COURT:** Okay. Well, sign it, if you wish.

4 **MR. WEINBERG:** Do you have mine?

5 **MR. NICHOLSON-MEADE:** I guess I do.

6 (Pause in proceedings.)

7 (Whereupon a document was tendered to the Court.)

8 **THE CLERK:** Thank you.

9 **THE COURT:** Keep it in front of you. They're now
10 both signed. Is that correct?

11 **MR. JACOBS:** Right, Your Honor.

12 **THE COURT:** So looking at your signed copy of the
13 Plea Application, Mr. Giraud, I'm looking at page 2,
14 paragraph 5. That starts on line 8, and runs through line 17.
15 Before you signed it, did you read that paragraph carefully?

16 **DEFENDANT GIRAUDO:** Yes, I did, Your Honor.

17 **THE COURT:** And is everything stated in there true
18 and correct?

19 **DEFENDANT GIRAUDO:** Yes, Your Honor.

20 **THE COURT:** Okay. And, Mr. Cullinane, I guess I need
21 you to look at --

22 **MR. WEINBERG:** Mr. Giraud's.

23 **THE COURT:** Well, I think I'll read it to you, and
24 you can tell me whether what I'm reading to you is true and
25 correct, in terms of what you believe you did in connection

1 with these matters; that at the San Mateo County Public
2 Auction, you knowingly and voluntarily entered into agreements
3 to refrain from or to stop bidding against others; that you
4 agreed to compete [sic] -- pardon me.

5 **MR. WEINBERG:** Not to compete. Not to compete,
6 Your Honor.

7 **THE COURT:** Pardon?

8 **MR. WEINBERG:** Not to compete.

9 **THE COURT:** Thank you. I'm going to start again.

10 (Reading.)

11 *At the San Mateo County Public Auction, you knowingly and*
12 *voluntarily elected entered into agreements to refrain from or*
13 *to stop bidding against others; you agreed not to compete to*
14 *purchase selected properties in return for payoffs; and you*
15 *refrained from or stopped bidding for selected properties; and*
16 *that your actions affected interstate trade and commerce; that*
17 *you engaged in this conduct at the San Mateo County Public*
18 *Auctions from August 2008 until January 11, 2011.*

19 **DEFENDANT CULLINANE:** I did. I agree.

20 **THE COURT:** And is everything that I've said in that
21 recitation true and correct?

22 **DEFENDANT CULLINANE:** It is.

23 **THE COURT:** Okay. You may take the pleas from these
24 defendants.

25 **THE CLERK:** Mr. Joseph Girauda, the Government has

1 filed an Indictment charging you in Count One and Count Six, in
2 violation of 15 U.S.C., Section 1: Bid rigging. How do you
3 plead?

4 **DEFENDANT GIRAUDO:** Guilty.

5 **THE CLERK:** Your Honor, a guilty plea has been
6 entered.

7 Mr. Kevin Cullinane, the Government has filed an
8 Indictment charging you in violation of 15 U.S.C., Section 1;
9 in Count One, a violation of bid rigging.

10 How do you plead: Guilty, or not guilty?

11 **DEFENDANT CULLINANE:** Guilty.

12 **THE CLERK:** Your Honor, a guilty plea has been
13 entered.

14 **THE COURT:** It is the finding of this Court in these
15 cases that the defendants are fully competent and capable of
16 entering informed pleas; that the defendants are aware of the
17 nature of the charges the consequences of the pleas; and the
18 pleas of guilty are knowing and voluntary pleas supported by an
19 independent basis in fact containing each of the essential
20 elements the offenses. The pleas are therefore accepted, and
21 the defendants are now adjudged guilty of those offenses.

22 So sentencing March 21st. Is that what I said?

23 **MR. WEINBERG:** Well, Your Honor, our suggestion would
24 be a sentencing in February. I think actually --

25 **THE COURT:** I can't do it, because I just can't do

1 the report. I want to get them all together.

2 **MR. JACOBS:** I think our suggestion, Your Honor, in
3 principle -- whether it's February or March, or whatever -- is
4 that because our -- we expect our sentences to be contested,
5 that we would recommend to the Court that we deal with those
6 issues first, before the other --

7 **THE COURT:** Well --

8 **MR. JACOBS:** -- defendants.

9 **THE COURT:** Well, that's fine, but I'm going to set
10 it all for March 21st, with the understanding that the work
11 will all be done in terms of Presentence Report, in terms of
12 your objections, and so forth. And somebody should just
13 highlight to me -- I'm sure you won't be shy -- that there are
14 issues that have to be adjudicated before the imposition of
15 sentence.

16 I very much like to deal with the Sentencing Guideline
17 issue before I get into figuring out the appropriate sentence.
18 So I think if you're going to raise certain issues, it would be
19 useful to adjudicate it before; but I think the process is we
20 go through the Report; you raise them to the Probation Officer;
21 you have your objections; she or he tries to resolve them.

22 If he's unable to resolve them after the Government's
23 input, then we have a hearing. And I can do the hearing at
24 some point.

25 **MR. JACOBS:** Okay. Is Your Honor's intention that we

1 would file our Sentencing Memos prior to that date?

2 **THE COURT:** Well, yes.

3 **MR. JACOBS:** Okay.

4 **MR. WEINBERG:** Yeah. The only thing we were
5 thinking, Your Honor, is that since these defendants are the
6 only two who have not cooperated and are not looking for a 5K1,
7 that it does make sense to sentence them first, if you're
8 looking for parity.

9 **THE COURT:** I may sentence them first. I don't know
10 if I'll sentence them first, second, third, fourth. I just
11 don't know.

12 And my sense is that, of course, a factor may be whether
13 or not a defendant is cooperated. Obviously, that's an issue,
14 but it's not the only issue. There are all sorts of other
15 issues.

16 And what I don't want to do, among other things, is, like,
17 get terribly inconsistent opinions as to how you measure the
18 Guidelines -- that doesn't serve anybody well -- or not figure
19 out where everybody fits in this thing.

20 **MR. WEINBERG:** Yeah.

21 **THE COURT:** And so I want to try to do as much of
22 that in advance of sentencing as possible.

23 Now, I will -- you know, I'm not in a hurry to sentence.

24 **MR. WEINBERG:** Understood.

25 **THE COURT:** But I'm in a hurry -- if that's the right

1 word -- to get all of the that groundwork accomplished. Done.

2 **MR. JACOBS:** Could I just make a suggestion for the
3 Court's consideration?

4 And that would be that once the Presentence Reports are
5 done, and we figure out where these issues are, that perhaps
6 this -- the two defendants here could come back and have a
7 hearing in front of the Court --

8 **THE COURT:** Of course.

9 **MR. JACOBS:** -- to talk about what the best way of is
10 of proceeding.

11 **THE COURT:** Sure. No problem with that.

12 **MR. NICHOLSON-MEADE:** Your Honor, I just would like
13 the Government to have the opportunity, once the -- the --
14 Probation has done has done its work and submitted the reports,
15 that we can comment on it. The Government will have the
16 opportunity to express its opinion on what the appropriate
17 order of sentencing will be.

18 **THE COURT:** Oh, absolutely. Absolutely.

19 But that may or may not -- that may follow some
20 adjudication of some of these other issues. I'm not walking
21 into this without the Government giving me a complete list of
22 what they think are the relevant culpabilities, where groups
23 are, and their recommendations.

24 **MR. NICHOLSON-MEADE:** That would be our intention.

25 **THE COURT:** Yeah. Their recommendations.

1 But you have to start somewhere. And the "starting
2 somewhere" is: You have the reports. You have the objections.
3 You have the responses to the objections. And you have some
4 Probation Department saying something.

5 And then it all comes to me. And at that point I get
6 involved in it. I don't get involved in it before that. But
7 then I'll do whatever.

8 **MR. JACOBS:** Once all of that has happened,
9 Your Honor, we will come back to the Court and propose to come
10 before Your Honor and figure out the best way of proceeding.

11 **THE COURT:** Yeah. You can write a letter. Yeah. Do
12 any number of things. You know how to get my attention. It's
13 not like we haven't had any litigation in this case. Right?

14 **MR. JACOBS:** Correct, Your Honor.

15 **MR. NICHOLSON-MEADE:** A little bit.

16 **THE COURT:** We've had a little bit. A little bit.
17 Right. Outlasted two of my law clerks. I have no intention of
18 your outlasting a third. So -- you might outlast me; I don't
19 know.

20 Okay. Please take your clients to the Probation
21 Department.

22 **MR. WEINBERG:** Thank you, Your Honor.

23 **MR. NICHOLSON-MEADE:** Thank you, Your Honor.

24 **THE CLERK:** That is it.

25 **THE COURT:** Is that all? I thought you said I had a

1 big calendar.

2 So what about -- Mr. James, have you ever seen mass pleas?
3 They do this in down in Texas, and have been criticized for it,
4 too, by the way.

5 **MR. JACOBS:** And in certain foreign countries.

6 **THE COURT:** And certain foreign countries. Well,
7 that gives me some pause. Okay. Thank you very much.

8 (At 3:07 p.m. the proceedings were adjourned.)

9 I certify that the foregoing is a correct transcript from the
10 record of proceedings in the above-entitled matter.

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13 _____ February 28, 2018

14 Signature of Court Reporter/Transcriber Date

15 Lydia Zinn

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