

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
)	
Raymond A. Grinsell,)	
)	
Defendant.)	
_____)	

San Francisco, California
Tuesday, May 8, 2018

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

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Reported By: Pamela A. Batalo, CSR No. 3953, RMR, FCRR
Official Reporter

1 Tuesday - May 8, 2018

10:30 a.m.

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

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4 **THE CLERK:** Calling criminal action CR-14-00534,
5 United States vs. Raymond A.Grinsell.

6 Counsel, please step forward and state your appearances
7 for the record.

8 **MR. FEUCHTBAUM:** Good morning, Your Honor. Louis
9 Feuchtbaum for Ray Grinsell, who is present in court.

10 **THE COURT:** Good morning.

11 **MR. MAST:** Good morning, Your Honor. Andrew Mast on
12 behalf of the United States.

13 **THE PROBATION OFFICER:** Good morning, Your Honor.
14 Jill Spitalieri, Probation.

15 **THE COURT:** Good morning.

16 This is the second sentencing of a group of co-defendants,
17 23 in number, involved in these criminal conspiracies.

18 At the first sentencing, prior to its commencement as to
19 Mr. Girauda, the Court made a number of statements.

20 Were you here, counsel?

21 **MR. FEUCHTBAUM:** I was, Your Honor, and I have advised
22 Mr. Grinsell of the Court's statements.

23 **THE COURT:** Okay. So I'm not going to repeat it, but
24 of course it is the Court's views as to the nature of the
25 criminal offense, as well as the Guidelines, the nature of the

1 law, and as well as the general deterrent sentence -- service
2 of a sentence, and now we move to the individualized
3 characteristics.

4 I want to say at the outset -- and I indicated it
5 yesterday -- I am concerned about Mr. Grinsell's health
6 conditions. They are very well-documented. I have read with
7 great care the Presentence Report, as well as the submissions
8 by Defense counsel.

9 It is not my intention to commit Mr. Grinsell to the
10 general prison population. It is my intention to structure a
11 sentence, after I hear all the factors and if warranted, that
12 will permit Mr. Grinsell to continue with his medical doctors,
13 his medical care, access to hospitals, if necessary, that he is
14 familiar with and has a relationship with.

15 I wanted to say that at the outset just because I think
16 that that has to be a very important consideration and you
17 don't have to address that.

18 **MR. FEUCHTBAUM:** Thank you.

19 **THE COURT:** Now, it's -- believe me, I'm not going
20 to -- you can say whatever you want to say. This is
21 sentencing. But you don't have to convince me of the
22 seriousness of your client's medical conditions. I'm aware of
23 it. I'm prepared to address it. I believe it to be genuine,
24 and I think that I can come up with some reasonable situation,
25 reasonable confinement system, if I decide that confinement is

1 appropriate.

2 But you already have my views on that subject, at least
3 from a general point of view, so now I think I should listen to
4 the Government and then I will listen to you, counsel, and
5 we'll proceed with the sentencing.

6 **MR. MAST:** Yes, Your Honor.

7 **THE COURT:** Just in the context, the first -- first of
8 all, is there a 5K1 motion?

9 **MR. MAST:** There is, Your Honor.

10 **THE COURT:** The Court grants the 5K1 motion. The
11 adjusted offense level is 17. The Sentencing Guideline range
12 is 24 to 30 months.

13 **MR. MAST:** Yes.

14 **THE COURT:** Okay. Now, go ahead.

15 **MR. MAST:** So, Your Honor, Mr. Grinsell is among the
16 most culpable among the 23 defendants in this case. He has a
17 significant volume of commerce which was stipulated in the Plea
18 Agreement to be between 10 million and 50 million, and the
19 Government submits that his volume of commerce is
20 \$28.66 million.

21 The Government is making a motion for a downward departure
22 for 20 percent off the bottom of his Guidelines range,
23 applicable Guideline range, and the resulting recommendation is
24 a sentence of 19 months, which the Government recommends be
25 served in custody.

1 Turning first to the nature and circumstances of the
2 offense. Mr. Grinsell was significantly involved in
3 bid-rigging conduct occurring at the auctions. He knew his
4 conduct was wrong, but nevertheless joined the conspiracy and
5 continued to participate time and time again.

6 His volume of commerce does not account for all of the
7 properties he rigged and, indeed, was involved in rigging 61
8 properties in which he received payments not to bid which are
9 not reflected in his volume of commerce.

10 Grinsell was also a member of the most dominant group of
11 bidders referred to as the "Big 5," which collectively
12 controlled the auctions, and Mr. Grinsell has stipulated to a
13 manager/supervisor role in the offense adjustment which the
14 Court has applied.

15 Now, Mr. Grinsell's influence within the Big 5 was more
16 limited than the others and certainly more limited than
17 Mr. Giraudó. Mr. Grinsell actually resisted the others joining
18 when he was partnering with Mr. Giraudó initially and resisted
19 the others joining.

20 But he knowingly participated in this bid-rigging conduct
21 and profited immensely from his participation, so despite
22 resisting some of the criminal overtures, he continued to
23 participate in that conduct.

24 A sentence will also need to reflect respect for the law
25 and provide a just punishment. And here, as I mentioned,

1 Grinsell understood his conduct was wrong and, in fact, after
2 initially participating in the more limited form of bid-rigging
3 conduct sporadically in the 1990s, he abruptly stopped after
4 hearing that another co-conspirator, who was charged in the
5 East Bay cases, was being investigated for unknown matters.
6 Yet despite knowing the illegality of his conduct, Mr. Grinsell
7 resumed bid rigging in the mid to late 2000s and continued
8 until 2011.

9 And at times, it appears he justified his unlawful conduct
10 because the payoffs were not always made in cash form, but were
11 rather credited for prior payoffs or offsetting debts made with
12 prior payoff debts.

13 As the Court is well aware, a sentence will need to
14 address general deterrence. And as I mentioned at the last
15 hearing, this conduct was rampant, and 23 individuals in this
16 case have pleaded guilty. It's not just been occurring in
17 San Mateo and San Francisco and there have been approximately
18 60 defendants who were sentenced by either Judges Hamilton or
19 Donato for participating in similar conspiracies, and the
20 Government has prosecuted similar bid-rigging cases that have
21 occurred in Florida, Georgia, North Carolina, Alabama, and just
22 recently many Mississippi.

23 This shows that the bid-rigging conduct is profitable at
24 foreclosure auctions, and that unless and until courts impose
25 adequate sentences necessary to deter this criminal conduct, it

1 will continue. And fines alone, especially as here where a
2 defendant has substantial assets, will not provide an adequate
3 deterrence.

4 The Government does not believe Mr. Grinsell is likely to
5 reoffend but nevertheless believes a custodial sentence is
6 necessary to ensure as much.

7 The Government understands that Mr. Grinsell attends the
8 auctions. Unlike Mr. Giraud, the Government does not believe
9 he partners with co-defendants and he does seem genuinely
10 remorseful for his conduct, which was expressed during his
11 interviews with the Government.

12 A substantial sentence is necessary to avoid sentencing
13 disparities. As the Court is well aware, the Court will
14 sentence another 21 individuals in this case, and Mr. Grinsell
15 is among the most culpable participants when compared to the
16 whole group of other defendants.

17 Judge Hamilton varied substantially for first-time
18 offenders who accepted responsibility and cooperated with the
19 Government in the East Bay cases, but in each of those cases,
20 the Government sought custody, and in each of these cases
21 before Your Honor, the Government will be seeking custody as
22 well.

23 And respectfully, noncustodial sentences for bid-rigging
24 crimes, even for first-time offenders who do cooperate, are not
25 contemplated by the antitrust guidelines, as expressed in the

1 commentary Your Honor articulated at the first proceeding.

2 The Guidelines indicate that antitrust offenses should
3 result in custodial sentences and that should be common.

4 It's also worth noting that Judge Hamilton did impose
5 Guidelines sentences on some defendants. Michael Marr received
6 30 months, which was a Guideline sentence at the low range.
7 Glenn Guillory received 18 months, which was a low-end sentence
8 of the Guidelines, and he just rigged about 20 properties,
9 which pales in comparison to the number of properties rigged by
10 Mr. Grinsell.

11 Now, both those defendants proceeded to trial, which, of
12 course, Mr. Grinsell did not. But Judge Hamilton also imposed
13 Guidelines sentences for pleading defendants such as Stephan
14 Florida, who received the Guidelines sentence of 10 months,
15 Nicholas Diaz, who received the Guidelines sentence of six
16 months. And Judge Donato sentenced Alvin Florida, another
17 leader in an Alameda conspiracy, to 21 months in custody,
18 although this was a variance. The Government submits that
19 Mr. Grinsell should likewise receive a Guidelines sentence.

20 Turning to the nature and circumstances of the defendant,
21 Mr. Grinsell is being sentenced because of what he did, not
22 because of who he is. And the Government is aware of
23 Mr. Grinsell's health issues. In fact, the Government
24 witnessed some of those firsthand when a scheduled interview
25 had to be rescheduled to accommodate medical appointments in an

1 issue that arose. But Mr. Grinsell's submissions do not
2 indicate that the Bureau of Prisons cannot handle someone in
3 Mr. Grinsell's capacity, and I do recognize the comments you
4 made up front, Your Honor.

5 It might not be the same care he receives at this time,
6 but the Government submits that that's a common occurrence for
7 many defendants facing prison who have medical issues.

8 Mr. Grinsell has pleaded guilty and has accepted
9 responsibility for his conduct, but that does not negate his
10 offense nor justify the dramatic variance proposed by
11 Probation.

12 Accordingly, the Government recommends a substantial
13 Guidelines level custodial sentence necessary to reflect the
14 seriousness of his conduct, promote respect for law, deter
15 future bid rigging and white-collar crime generally and
16 respectfully requests the Court impose a 19-month custodial
17 sentence consistent with the Guidelines, as well as the
18 Government's motion for a downward departure, serve three years
19 of supervised release, pay a criminal fine of \$20,000
20 consistent with the parties' Plea Agreement, order restitution
21 of \$156,147, also consistent with the parties' Plea Agreement,
22 and pay a \$200 special assessment.

23 Thank you, Your Honor.

24 **THE COURT:** Let me just ask you a question about the
25 parties' agreement.

1 The Court, on page 6 of the Plea Agreement in connection
2 with the fine, states as follows:

3 "The fine calculated as 1 to 5 percent of the volume of
4 commerce but not less than \$20,000," and then it has a range of
5 100,000 to 2,500,000.

6 So that's the agreement between the parties with respect
7 to the range. I understand that the United States agreed to
8 recommend a fine between 20,000 and 200,000.

9 **MR. MAST:** Yes.

10 **THE COURT:** But the Court is not be bound by that.

11 **MR. MAST:** The Court would not be bound by it. I also
12 just note that the range as calculated as five percent is
13 actually probably capped at \$2 million, given the statutory max
14 of --

15 **THE COURT:** Well, if you take the five percent, as
16 I -- five percent of the volume of commerce, the fine would be
17 \$1,433,035.

18 **MR. MAST:** I trust your math, Your Honor.

19 **THE COURT:** Oh, don't trust my math. I relied on the
20 Probation Office.

21 Ms. Spitalieri, is that correct?

22 **THE PROBATION OFFICER:** I believe I calculated it at
23 \$10 more, \$1,433,045, but \$10 is --

24 **THE COURT:** Okay. But at any rate, that's the --
25 that's the -- that is within the sentencing table, as I

1 understand it?

2 **MR. MAST:** Yes, Your Honor. And --

3 **THE COURT:** But the Government has committed that its
4 recommendation would be a fine between 20,000 and 200,000. I
5 understand.

6 **MR. MAST:** Right.

7 **THE COURT:** Okay.

8 **MR. MAST:** Correct.

9 **THE COURT:** All right. Thank you.

10 **MR. MAST:** Thank you, Your Honor.

11 **THE COURT:** Okay.

12 Counsel.

13 **MR. FEUCHTBAUM:** Good morning, Your Honor.

14 Your Honor, as I've met with the Government personally
15 probably half a dozen times in preparing for Mr. Grinsell's
16 proffer and I've spoken with Mr. Mast on many occasions about
17 our relative views of the case, and I have to say that from
18 Mr. Mast's representations here, while fully, I think,
19 truthful, it leaves out details that risk creating a
20 misimpression as to the degree of Mr. Grinsell's involvement
21 and it makes some assumptions about others. I don't know that
22 it's necessary to belabor the point, but I do at least want to
23 make mention of them.

24 Mr. Grinsell was, and the evidence supports and I believe
25 Mr. Mast would agree -- that within the Big 5, the core group

1 that had the most influence collectively at the foreclosure
2 auctions, Mr. Grinsell was at the periphery of that group.

3 Mr. Grinsell in no way contests his culpability and his
4 criminal culpability for being part of that larger conspiracy.
5 However, it would be a misstatement and an injustice to the
6 facts to misunderstand that involvement as Mr. Grinsell having
7 been actively involved in bid rigging 150 properties.

8 It's clear and uncontested that Mr. Grinsell, as a
9 conspirator, is culpable for all of that. However, what the
10 evidence suggests, and some of which I know the Court has seen
11 in our earlier hearings on the recordings, was that
12 Mr. Grinsell was treated with disdain, disrespect, and pushed
13 out by his business partners.

14 Of the 150 properties that the Government referred to,
15 there is evidence of Mr. Grinsell having actually been directly
16 involved, meaning going and soliciting people to participate in
17 bid rigging or actively accepting payment on only a handful of
18 occasions. Your Honor, I want to be clear. This is not a
19 defense. Mr. Grinsell does not seek to defend himself based
20 upon that. But it's important for the context of
21 Mr. Grinsell's involvement in this conspiracy.

22 The Government concludes that from Mr. Grinsell being part
23 of the Big 5, which we know was a group that had immense
24 influence at the auctions, had immense influence through bid
25 rigging, the Government concludes that Mr. Grinsell, even

1 though he had a peripheral role within that group, is more
2 culpable than every other bidder at the auctions.

3 Your Honor, having thought of this case every which way
4 possible and looking at the evidence, I don't know how one
5 could reasonably support that conclusion. I think it is an
6 open issue as to what Mr. Grinsell's relative culpability is
7 with respect to the larger group of conspirators.

8 But it is undeniable that starting in 2008 after a period
9 of ten years, approximately ten years, when Mr. Grinsell had
10 said, "I am not going to do this, I am not going to involve
11 myself in bid rigging," it is undeniable that he made the
12 decision to again participate in that criminal enterprise.

13 I appreciate the Court's comments when we started about
14 its recognition of Mr. Grinsell's health issues and certainly
15 the majority of our filings were all focused upon that. I
16 think it's important today to address Mr. Grinsell as a person.

17 Your Honor, with the Court's permission, there are a lot
18 of people who came today to be present to support Mr. Grinsell,
19 and with the Court's permission I would like to ask them to
20 stand.

21 (Whereupon, people in the gallery stand)

22 **MR. FEUCHTBAUM:** And, Your Honor, I would just like to
23 make note of who these people are because I think the greatest
24 testament to Mr. Grinsell's character and his soul are the
25 people who believe in him and some of whom have traveled, you

1 know, at great distance to be here today and also the length of
2 time that they've known him.

3 Present today -- and if you would raise your hand when you
4 hear your name -- Cynthia Chang, who I will refer to later, who
5 was a client and has known Mr. Grinsell for 35 years.

6 Kathleen Hohalek, a friend who has been friends with the
7 Grinsells for 30 years.

8 Bowman Leong, a friend and at one time an employee who has
9 been friends with Mr. Grinsell and known him well for 25 years.

10 Ed Koplowitz, Mr. Grinsell's attorney, who became more
11 than an attorney as they got to know each other through their
12 children going to the same schools. Twenty-five years.

13 Mike Larson, who has traveled here from Seattle, a friend
14 for 25 years.

15 Sherman Coultas, a friend for 25 years.

16 Charles Karich, who came up from, I believe, L.A. this
17 morning, a professional associate for 23 years.

18 Brad Lagomarsino, a professional associate for 20 years.

19 Marsha Mayer, a friend for 20 years.

20 Jim Hickey, who I will refer to more later, a friend for
21 20 years.

22 Dale Ames, a friend for 20 -- I'm sorry, 15 years.

23 Zach Kaufman, a young man who Mr. Grinsell came to know
24 through his son and who I'll comment on more later, but who has
25 known Mr. Grinsell for 14 years.

1 Simone Grudzen, who has not known Mr. Grinsell for very
2 long, but for his 70th birthday five years ago, she prepared a
3 legacy video recording Mr. Grinsell's history and has had
4 insights to Mr. Grinsell from doing that.

5 Her father, Dr. Gerry Grudzen, who is a minister, who has
6 got to know Mr. Grinsell through Mr. Grinsell helping in his
7 ministry.

8 Rene Vasquez, an employee who has worked for Mr. Grinsell
9 for 25 years, who I will talk more about later.

10 Jannette Madarang, an employee for 24 years, so I will
11 talk more of later.

12 Beatrice Yuen, an employee for 23 years, who I will talk
13 about more later.

14 Tom Carpio, an employee for 10 years.

15 Rachel Kwok, an employee.

16 Anderson Jones, not really an employee, but a contractor
17 who works almost exclusively for Mr. Grinsell.

18 William Yuen, an employee who I will talk about more
19 later.

20 Merlin Larson, I believe is present with his wife Bianca
21 and his children Sabrina and Christopher, who have been friends
22 with Mr. Grinsell for 30 years. The parents have been friends
23 for 30 years, not the children, Your Honor.

24 Greg Grinsell, Mr. Grinsell's nephew.

25 And Rita Grinsell, his sister-in-law of Mr. Grinsell's

1 recently-deceased brother, Fritz.

2 Basha Frost Rubin, Mr. Grinsell's daughter-in-law.

3 Mary Gianopoulos, Mr. Grinsell's niece's mother-in-law.

4 Nick Gianopoulos, her husband.

5 Gina Gianopoulos, Mr. Grinsell's niece.

6 And, of course, Scott Grinsell, Mr. Grinsell's son, who is
7 here from New York today.

8 And also Gale Grinsell, Mr. Grinsell's wife.

9 **THE COURT:** You may be seated. And thank you very
10 much for coming.

11 **MR. FEUCHTBAUM:** Thank you, Your Honor.

12 **THE COURT:** Let me just note that I have received from
13 you many letters from a number of the individuals that you have
14 identified who are here today and I've read those letters.

15 **MR. FEUCHTBAUM:** Thank you, Your Honor. I don't want
16 to impose upon the Court by presenting more letters at this
17 point in time; however, I do have letters from some of the
18 people who are present and I've brought copies, if the Court
19 would like them. I have them for the Government as well.

20 **THE COURT:** I have them.

21 **MR. FEUCHTBAUM:** Okay.

22 I think, Your Honor, in understanding not only the context
23 of Mr. Grinsell's involvement in the crime, but also
24 Mr. Grinsell as a human being that the Court needs to look at
25 in full in imposing sentence, it's important to look at

1 Mr. Grinsell's background and his life and the key influences
2 in his life.

3 Mr. Grinsell grew up in a working-class family in
4 Sausalito back in the time where it was still possible for
5 working-class families to live in Sausalito.

6 His father was a shipyard worker back in the days when
7 there were shipyards there and then became a used car salesman
8 and his mother was a housewife.

9 Mr. Grinsell had one brother Fritz with whom he developed
10 an extremely close relationship that lasted for their lifetime,
11 and I think that was due in large part to that relationship
12 having been forged in their difficult upbringing.

13 Mr. Grinsell's father was an alcoholic. And as described
14 in the PSR, it was -- it was not an abusive home. Certainly
15 this would not rank among the worst case I'm sure that the
16 Court sees of abuse, yet it was a difficult upbringing that
17 left, I think, emotional scars for which Mr. Grinsell has been
18 trying to recover his whole life.

19 His father was distant. Would typically drink on his way
20 home from work. Come home late. Go to bed and have no
21 interaction. That type of involvement that Mr. Grinsell had
22 from his father lasted his whole life.

23 In fact, the first time that Mr. Grinsell can ever
24 remember his father saying something positive about him was
25 when Mr. Grinsell was already well into his 40s and after a

1 long period of being estranged from his father, they became
2 reacquainted after the birth of Mr. Grinsell's son Scott, and
3 on that occasion, Mr. Grinsell's father remarked to Ray about
4 Scott's smile and that it reminded him of Ray's smile, and that
5 minimal, minimal praise was something that stayed with Ray for
6 all this time because his upbringing was so devoid of that.

7 His mother was a housewife and at first very loving, but
8 that presence evaporated over time, as his mother was dealing
9 with the financial stresses of a home that never had enough and
10 also dealing with what ended up being the breakup of her own
11 marriage.

12 All of this left Mr. Grinsell someone who did not have the
13 type of nurturing that many of us, and I think -- I hope most
14 of us -- enjoy, and I think Mr. Grinsell's been living most of
15 his life in reaction to not having that.

16 From a young age, Ray had to work from the time he was, I
17 think, about 14 years old. Held a steady job. As a child, he
18 would always turn his money over to his mother to help support
19 the family, and, in fact, as Gale Grinsell notes in her letter
20 to the Court, the -- Mr. Grinsell's brother Fritz and also
21 Mr. Grinsell's mother, up until the time that each died, would
22 talk to Gale about how Mr. Grinsell was such a support and a
23 stalwart in their family by doing that. How grateful each of
24 them felt for his doing that.

25 In spite of all of that disaffection in going up,

1 Mr. Grinsell graduated third in his class from Tamalpais High
2 School. He was accepted to both Stanford and Berkeley, but he
3 realized he couldn't afford to go to Stanford so he went to
4 Berkeley. He had no financial support. His father refused
5 and -- during his last year to provide financial support. So
6 Mr. Grinsell worked his way through college.

7 And he had no guidance when he came out of college.
8 Didn't know what to do. Wanted to become a teacher and did
9 that for a time. And he had a little bit of an itinerant life
10 for a professional life for several years while trying to find
11 his way. And that itinerant professional life led him to
12 teaching, to being a guidance counselor, to running a daycare
13 center, all things, with the possible exception of teaching --
14 I don't think that really resonated with Ray, but being a
15 guidance counselor, working in daycare for underprivileged
16 youth were things that really resonated and appealed to Ray's
17 heart.

18 And Ray lived that way, and he was married to Gale at that
19 point in time. Where -- and they lived with -- you know, a
20 life of -- I don't want to say "want" because I have no
21 indication that they couldn't meet their basic needs, but a
22 life of, you know -- of things being tight until Mr. Grinsell
23 discovered real estate.

24 And then finally for the first time in his life, he had a
25 mentor, someone who took him under his wing and showed him the

1 way that he could work hard, be honest and be successful. And
2 that indeed was Ray Grinsell's life up until the time when he
3 committed bid rigging.

4 And there was an incident or a period of him doing that in
5 the 1990s. Maybe in the 1980s, though we can't be sure when
6 bid rigging at foreclosure auctions was rampant, and as it's
7 been described, it was a cesspool. The big rigging occurred.
8 It was open, notorious. People didn't even have a need to hide
9 it, and anyone walking into that environment, while not an
10 excuse for the conduct, quickly realized that to do business in
11 that area, one needed to participate in bid rigging or have the
12 wherewithal, the financial wherewithal, to withstand it.

13 I believe -- I've known Ray Grinsell for seven-and-a-half
14 years now, and I think in the context of this client
15 relationship, I've gotten to know him well. And while I don't
16 vouch for clients in Court and in this case not because I don't
17 want to but because it's improper, I believe that what other
18 people have said about Ray resonates with the person that I
19 know. And what I see from all of that is a person throughout
20 his whole life who has lived trying to fill the holes that were
21 left from his -- his disaffected youth.

22 Ray Grinsell has spent, I think, much of his life striving
23 for acceptance and respect from other people around him. And
24 Ed Koplowitz, his attorney and then friend, refers to Ray as
25 embodying some of those -- some of those characteristics of

1 being forthright, honest, reliable, and concerned for the
2 welfare of others.

3 Sherman Coultas, a friend of 25 years, refers to Ray as a
4 gentleman and a sportsman, but living a life of respectable and
5 admirable conduct that others would look up to has been such a
6 core tenet of Ray Grinsell's life up until the time of these
7 crimes, that is the only exception that I think that anyone
8 would declare would -- where he fell short of those key values.

9 He has -- he has believed in the virtues of hard work and
10 honesty and generosity. And we know that from what people
11 sitting in this room have said.

12 Cynthia Chang, a person who has known him for 35 years,
13 relates to the Court in the letter we submitted that when Ray
14 was recovering from major surgery, she was in the process of
15 having her home foreclosed upon, and she called Ray for help.
16 And notwithstanding the fact that he had just gone through
17 major surgery and was recovering and wasn't feeling well, he
18 spoke to her and helped her try to rescue her home. And in
19 doing that, he offered to provide money. Unfortunately, the
20 home was foreclosed upon anyway. But later in life, Ray
21 provided Ms. Chang with financial support to help her.

22 Kathleen Hohalek, a friend of 30 years, discusses and
23 describes for the Court how when she became a widow at 58, how
24 Ray provided key emotional support and advice to help her and
25 her family get through the loss. And her comment about Ray,

1 quote -- from that letter, is "Ray is generous with everyone in
2 his family except himself. He does not engage personal
3 indulgences."

4 Due to that, Your Honor, I can inform the Court for
5 someone of Mr. Grinsell's substantial wealth, he has traveled
6 out of the country on three occasions: Once to go to Mexico
7 with Gale; on two occasions to go visit his son Scott when he
8 was a Marshall Scholar at Oxford.

9 So the lack of an extravagant life for someone who has
10 obtained the means to have so much I think is a significant
11 testament to what it is that motivates Mr. Grinsell. It's not
12 greed or avarice.

13 Mike Larson is a friend of Mr. Grinsell's who sadly lost
14 his wife about a year ago in a battle to cancer, and he informs
15 the Court in a letter how when they traveled to Hawaii together
16 for a vacation last year, while Ray was undergoing all the
17 stress and anxiety associated with this case and just needed a
18 break, Mrs. Larson was ill and Mike Larson describes how Ray
19 would sit with her and comfort her and how meaningful and
20 important that was and how unexpected it was, given everything
21 Ray was worried about and experiencing.

22 Beyond that, Mike Larson informs the Court about the
23 generosity that Mr. Grinsell exhibited to just ordinary staff
24 at the resort. They had been there many times. Mr. Grinsell
25 would talk with them and he would follow up with them on what

1 was going on with their life or with their lives, what they
2 could do to get over stumbling blocks that were getting in
3 their way.

4 I've just learned yesterday, Your Honor, of an event that
5 I didn't know of, which tends to be the way it is with
6 Mr. Grinsell. I have learned a lot of great things and I hear
7 something more where I'm not certain if it was at this resort
8 but another place where they regularly stayed, there was a
9 woman employee there who they knew over years who had horrible,
10 horrible orthodontia, and Mr. Grinsell gave her \$5,000 just so
11 she could go get her teeth fixed. Someone to whom he didn't
12 know other than that passingly but saw a need and saw that he
13 had a way to make her life better.

14 Dale Ames, a friend of 15 years, informs the Court about
15 Mr. Grinsell ensuring that a friend of theirs who had cancer
16 was included in social events and making sure dinners were
17 arranged so that this person would get out of the house and
18 have meaningful outlets.

19 Dr. Gerry Grudzen, mentioned a little bit earlier, the
20 minister, joined a -- or formed a group for older men who are
21 experiencing different types of distress, whether it's from
22 unemployment or health issues or other sources of misfortune,
23 and Ray joined that group, and he became an informal
24 facilitator for that group because of his openness and generous
25 spirit.

1 Beatrice Yuen, Mr. Grinsell's accountant for 23 years,
2 described to the Court how when her family was experiencing
3 financial hardship and her husband was laid off, Mr. Grinsell
4 hired her husband to work at his company, and he remains there
5 to this day.

6 William Yuen, Beatrice Yuen's husband, who Mr. Grinsell
7 hired and who is still there, describes an event where an old
8 woman who was handicapped just showed up in Mr. Grinsell's
9 office late one afternoon wanting advice on real estate, and
10 that without an appointment, without any opportunity to have a
11 business transaction with this woman, there were no other --
12 there was no possible gain for Mr. Grinsell, he took time to
13 sit and talk with this woman and give her advice, and only
14 afterwards, because it was dark and because this woman could
15 not walk well, Ray drove the woman home.

16 And another event related by William Yuen where a person
17 unknown to Mr. Grinsell, but a family that was friends with one
18 of Mr. Grinsell's employees, had a death in the family. And
19 Ray overheard how that family was experiencing financial
20 hardship. So even though he didn't know the family, he
21 provided them with financial support.

22 All of this, I think, really speaks to the character of
23 someone who is so different than the type of person who would
24 normally engage in bid rigging, which shows that that conduct
25 was truly aberrant behavior and does not reflect the person

1 that Mr. Grinsell is.

2 Among his reactions in trying to, I think, backfill these
3 holes that were left in his early life are Mr. Grinsell's
4 commitment to the value of family and the value of community
5 and helping people around him. And there are many people who
6 attest to that who are here today.

7 Bowman Leong, who has known Mr. Grinsell for 28 years,
8 describes how he had become estranged from his family and that
9 Mr. Grinsell, through a lot of talking, encouraged him to mend
10 his family ties because of the importance of maintaining that,
11 and Mr. Leong describes how Mr. Grinsell's mentorship and his
12 warmth and affection changed Mr. Leong's life by getting him to
13 a place where he could forgive and reestablish family contact.

14 Similarly, Mr. Leong discusses that he had worked for
15 Mr. Grinsell briefly and he wanted to get started in finance.
16 So Mr. Grinsell put Bowman in touch with Mr. Grinsell's own
17 business contacts to get him established in finance.

18 Several years later being disillusioned and not finding a
19 career in finance particularly rewarding, Mr. Leong wanted to
20 change to photography, and he was concerned that in doing so,
21 Ray would feel let down because he had expended personal
22 capital in getting Bowman established in finance. But Bowman
23 describes that with all that fear, Ray embraced him and told
24 him that he has to do what's going to make him happy in life
25 and again supported him, and Bowman Leong discusses how that

1 has -- how Ray's presence, both with his family and with giving
2 him the -- encouraging him and giving him the courage to do
3 what he wants, how all that has changed his life.

4 Charles Karich, who I believe is up here presently, came
5 up from L.A., has known Ray for 23 years, but knew him
6 professionally, and in spite of the relationship being one that
7 was solely professional, the affection, respect that Mr. Karich
8 developed for Ray has led to him to refer to Ray as "Uncle Ray"
9 and looking up to him in the way that one does a benevolent
10 uncle.

11 Jim Hickey is a friend or has known Mr. Grinsell for 20
12 years. In a letter to the Court, he describes about how 17
13 years ago, Mr. Hickey was arrested, and he called up many
14 friends to bail him out and no one would, and even though he --
15 at that time he only knew Ray professionally, he called up Ray,
16 and without any questions asked, Ray posted \$25,000 bail so
17 that Mr. Hickey would be released.

18 It turns out for whatever it matters, that Mr.-- it was
19 determined that Mr. Hickey had done nothing wrong. His arrest
20 was based on a false report. But Mr. Hickey describes that
21 after -- as this was all transpiring, once he got out, Ray
22 asked him, "Hey, by the way, where do you live?" So this is a
23 person who was willing to put up \$25,000 at a time when Ray
24 Grinsell did not have as much as he presently does because it
25 was quite a while ago, just to get someone out of jail because

1 it was a person that Mr. Grinsell knew and knew that that
2 person was in need.

3 And in encouraging family relationships, Mr. Grinsell told
4 Jim Hickey that an estranged son that Jim had, that that
5 relationship really needed to be repaired, and there was a lot
6 of discussion about it, and Mr. Grinsell's advice, summed up by
7 Jim Hickey, is a son needs a father's love, something that
8 Mr. Grinsell did not have in his life.

9 Zach Kaufman was a friend -- is a friend of Scott
10 Grinsell's and he was attending Stanford. So Ray and Gale
11 Grinsell knew Zach through only passing. And Scott -- I'm
12 sorry -- Zach became ill and needed assistance, and he recounts
13 Ray as a second father -- ray became a second father when there
14 was no need for him to behave as such.

15 Jannette Madarang, Ray's employee for 24 years, she so
16 strongly believes in Ray's virtues, which she describes at
17 length in the letter to the Court, that she made him godfather
18 to her daughter Khloe.

19 Marsha Mayer, a neighbor and friend for 20 years, sums up
20 Ray's life as being all about community and family.

21 And then, of course, Simone Grudzen, who has not known
22 Mr. Grinsell very long, but who bore witness to his life as she
23 made a legacy tape and saw people describing their interactions
24 with Ray and Gale and describing the type of person, member of
25 the community, and the type of father that Ray is. She

1 describes Ray as having relationships that are remarkable and
2 remarkably unusual because of their quality.

3 Along those lines, having come from a family where there
4 was not a lot of love, except for from his mother for a time
5 before she evaporated and except for the love and warmth that
6 Ray had with his brother Fritz, Ray has backfilled, I think,
7 that hole in his life by being a man committed to his family in
8 ways that I think any of us would admire in spite of growing up
9 in the best circumstances.

10 Gina Grinsell Gianopoulos, who is here today, we provided
11 the Court with a letter about Ms. Gianopoulos, who had some
12 severe hardship, and without going into the full details here,
13 if the Court -- I'm sure the Court recalls it, but
14 Ms. Gianopoulos had -- was sentenced to prison, and Ray became
15 the force that was always there for her, visiting her
16 regularly, writing letters to her. When she was about to be
17 released, he offered her a job at his business, and rather than
18 being a person with a felony conviction at a young age who
19 would have a hard time getting established in life, instead,
20 Gina is now a licensed real estate salesperson, she is
21 responsible for running many aspects of Ray's office, she's
22 gotten married, had or is having a child, has recently bought a
23 house. Without Ray's presence, Gina's life would have been
24 much different, and she credits Ray with saving her life in
25 that way.

1 She and her brother Greg discuss how when Ray's brother
2 Fritz died of a heart attack about three years ago and they
3 were suddenly left fatherless, how Ray stepped in and became
4 the bedrock of support for their family and became the second
5 father to them. And that is the sentiment that is echoed by
6 Ray's sister-in-law, Rita Grinsell, who comments that losing
7 Ray, if there were a sentence of incarceration, would be
8 devastating to everyone around him.

9 All of these family members -- Gina, Greg and Rita -- talk
10 about Ray's commitment to truthfulness and leading an honest
11 life, which seems to be the common theme that so many people
12 attest to for him.

13 Ray's wife Gale discusses the remarkable man who she met
14 48 years ago and has been married to for, I think, 47 of those
15 years. As a positive and loving person. She describes how Ray
16 chooses grace and forgiveness, even when he has been harmed by
17 others. And provided a couple of examples, some of which are
18 attested to by other of Mr. Grinsell's employees.

19 One of those examples was Ray had discovered an employee
20 stealing from him. And while hurt and upset, he came to
21 understand that this person had a drug problem, so rather than
22 call the police, Ray called this person's parents to get them
23 into rehab.

24 Another employee of Ray's was found accepting kickbacks,
25 and this man was ill and he had children or had a child who he

1 had to support, so Ray could not take it to fire the man
2 because of the effect that that would have upon him dealing
3 with an illness and upon his family.

4 I think most significant in Ray's mind in perhaps all of
5 his accomplishments is his son Scott, and from my very first
6 meeting with Ray seven-and-a-half years ago, the central
7 concern, beyond what his own jeopardies were, was how Ray,
8 being investigated for felonies in serious crimes, could harm
9 his son, who at that time had been informed that he would be
10 serving as a Supreme Court law clerk. And Scott's provided a
11 letter to the Court that describes Ray's commitment as a father
12 and how having a father like Ray changed Scott's life.

13 A true role model is how Scott describes him. Scott
14 suffered with very severe dyslexia when he was a child and he
15 was told and Ray and Gale were told that he would be years
16 behind his peer group, never learning how to read. And instead
17 of acceding to that and accepting that as the reality, Ray
18 committed himself and Gale to ensuring that Scott overcame that
19 severe handicap, and overcome it he did, going to Williams
20 College, graduating with honors, becoming a Marshall Scholar,
21 graduating from Oxford with advanced degrees, and then
22 graduating from Yale Law School and of course going on to serve
23 as a clerk at the Supreme Court.

24 Most significantly, Scott describes how his mother has
25 suffered through all of this. And I've described what I think

1 is the greatest pride that Ray has in his life, and I think the
2 greatest shame that Ray has in his life from all that I know of
3 him is how his actions have affected his family, but especially
4 Gale, who has again been his bedrock of support, always present
5 for him, never wavering. And then every once in a while, Ray
6 will get an insight to some of the slights that are -- Gale has
7 perceived from people not being very kind after Ray was accused
8 of a crime, but trying to protect Ray from that and also
9 dealing with seeing the harm that Gale Grinsell suffered from
10 all the stress and worry about how this case would turn out and
11 how it would affect Ray.

12 Your Honor, I think that the most, perhaps, telling
13 testimonials from the people who are here today are from Ray's
14 employees. And, Your Honor, with the Court's permission, I
15 think it's important for the Court to appreciate the number of
16 people who rely upon Ray for their livelihood. So with the
17 Court's permission, I would like to ask the people who work for
18 Ray to stand: Jannette Madarang, Beatrice Yuen, Tom Carpio,
19 Rachel Kwok, William Yuen, Gina, and then, Your Honor, there
20 are three contractors who do almost all of their work
21 exclusively for Ray. If you would stand, please: Rene
22 Vasquez, Anderson Jones, and Calvin Tran.

23 Thank you. You can sit down.

24 Your Honor, beyond these people, the contractors who work
25 almost exclusively for Ray employ about 12 other people, so

1 there are about 21 people who rely upon Ray for their
2 livelihoods, and all of these people talk of Ray in the same
3 glowing terms that his family does. Refer to Ray being
4 committed, honest, a model landlord, someone who considers the
5 bigger picture in doing acts of kindness for others. And there
6 are a couple that I would like to mention particularly.

7 Tom Carpio has worked for Ray for 10 years, and he
8 describes Ray as being a supportive boss, a steadfast human
9 being in times of hardship.

10 Rachel Kwok affirms something that Gina Grinsell or Gina
11 Gianopoulos attests to, that employees are like family.

12 Anderson Jones, the contractor, talks about Ray's unerring
13 fairness in dealing with employees and tenants.

14 And, Your Honor, Rene Vasquez, who is probably wearing
15 the -- the most lively of any garments in the courtroom today,
16 came to this country from El Salvador about 25 years ago to
17 flee war there, and the letter Rene submitted to the Court I'm
18 quite familiar with because I transcribed what Rene had
19 reported to me in a meeting in my office. There was concern
20 about whether he would be able to put it on paper. So I did my
21 best to take it word for word.

22 What Rene describes in his relationship with Ray is that
23 he met Ray through a third party, and Ray saw someone who was
24 in need and thought maybe there was an opportunity by which he
25 could help him out, and he hired Rene to do some odd jobs for

1 him. And once he saw that Rene was honest and reliable and did
2 good work, not only did Ray hire Rene to work for him very
3 frequently to the point where now, I believe, Rene is solely
4 working only for Ray on projects that his business does, but he
5 describes how Ray would always give him extra money to make
6 sure that he was okay.

7 And of all the letters I've read, I was most touched when
8 Rene looked at me and with tears in his eyes said something to
9 the effect of "I would go to prison for Ray. People need him
10 and people deserve him."

11 Your Honor, that's the person who you have to sentence
12 today. I believe that even putting aside the medical concerns,
13 which are substantial and overwhelming, that the reasons for a
14 lenient sentence are justified by the Sentencing Reform Act.
15 And I would like to address those briefly.

16 Ray's role in this offense is not one of a person who was
17 instrumental in driving a crime. It was not one of a person
18 who was committed to engaging in crime. It's one of a person
19 who slouched in his morals. And after a period of almost ten
20 years, Ray gave in and decided to start participating in bid
21 rigging.

22 I do not want to imply by that that Ray was unknowing or
23 that he erred and suddenly realized, "Whoops, there I am. I
24 guess being I've been done it, I might as well continue." That
25 is not what happened.

1 Ray was working with a business partner who he looked up
2 to as a father figure, and Ray enjoyed the reflected light from
3 being in the presence of the person at auctions who was key,
4 who was respected by all, and who had great influence among
5 others. And after a couple of years of doing business with
6 that person and repeatedly saying to this person, "You will --
7 "don't bid rig, it's wrong, it's stupid, why are you doing it,"
8 and believing that they were not engaged in bid rigging for the
9 first couple of years they worked together, finally one day Joe
10 Giraudo presented Ray with a list of properties, and because of
11 conversations that had occurred around that list, Ray
12 understood that those properties had been purchased with bid
13 rigging, albeit not with his knowledge.

14 But at that point, for whatever reason that I don't know
15 any of us could really understand, Ray gave in and became a
16 participant. I can only speculate it was influenced by being
17 fatigued by the years of disdain and abuse from others at
18 auctions because Ray would be cursed at when he refused to
19 participate in bid rigging for that nine- to ten-year period,
20 would commonly hear, "Oh, fucking Ray." He would be shoved
21 around. He would be excluded, and people would bid up
22 properties to cost him more money when he wanted to buy a
23 property.

24 How much of an influence did having a -- an elevation
25 above all of that to work with someone who was well-respected

1 have upon Ray, we can only speculate, but it is consistent with
2 the character of this person that that would have been a
3 significant influence.

4 Ray's involvement in bid rigging is -- he is guilty of it,
5 he has admitted to it, and he fully accepts the consequences.

6 I take to heart the Court's comments in the earlier
7 sentencing today about the need for general deterrence, and I
8 have spoken with Ray about that before coming in here today to
9 inform him what occurred and what the Court's sentiments are,
10 and I know Ray appreciates and understands that need, too.
11 Because the truth is for a period of ten years, Ray would have
12 benefited had there been general deterrence.

13 So the Court may ask, "Well, if that's the need, doesn't
14 it make sense for Mr. Grinsell to serve as a vehicle for
15 general deterrence to others?" I submit, Your Honor, that it's
16 not for a few reasons.

17 We know from the Government's -- from the various
18 interviews they've done as documented in the 302s, that since
19 the bid-rigging investigation became public on January 11th of
20 2011, bid rigging stopped. Most of the defendants stopped
21 buying properties in groups with others. No more joint
22 venturing.

23 Mr. Grinsell, from the date that he learned of the
24 investigation, has stopped buying properties with anyone else.
25 He has committed himself to doing business as he always had up

1 until the time when he slouched towards criminality in 2008 and
2 has -- and has committed -- has conducted his business
3 admirably.

4 But the need for general deterrence is certainly an
5 important consideration, but for the number of convictions that
6 there have been, the number of guilty pleas there have been
7 both in the East Bay and here, certainly we see the general
8 deterrent effect.

9 The Court has imposed, you know, significant -- a
10 significant sentence this morning and I think will likely have
11 a difficult time in formulating appropriate sentences for the
12 other remaining 21 defendants after the Court sentences
13 Mr. Grinsell, but undoubtedly the collective effect of all of
14 that is one which has communicated a message to the nation at
15 large even, not just within the Bay Area, that bid rigging is a
16 crime, it's a serious crime, and one will be subject to severe
17 sanctions if they participate in it.

18 And, indeed, this morning Mr. Mast mentioned many of those
19 instances in recounting where the Department of Justice has
20 pursued these types of bid-rigging cases. And we also know
21 this because these types of cases are always promoted with
22 great -- with great zeal by the Department of Justice for the
23 purpose, I think, of creating a greater deterrence. And we
24 know from Mr. Mast that in Florida, Georgia, North Carolina,
25 Alabama, and Mississippi, there have been other types of

1 criminal conspiracies that have been prosecuted.

2 Here besides here in the Northern District of California,
3 both here in San Francisco and the East Bay, and the Eastern
4 District of California, there were many cases that were
5 prosecuted.

6 I appreciate the difficulty that the Court has in
7 fashioning a sentence for Mr. Grinsell, but in keeping with the
8 mandate of 3553 that a sentence be sufficient but not greater
9 than necessary to establish the statute's objectives,
10 Your Honor, I submit to the Court that a custodial sentence
11 certainly, without -- even before considering Mr. Grinsell's
12 health issues, is not necessary to accomplish those objectives.

13 For one, I think it would put Mr. Grinsell in a position
14 where he would be sentenced disproportionately to others who
15 have committed similar types of crimes. In the East Bay for
16 cooperators, almost all have received probationary sentences
17 and two of those people had the same type of volume of commerce
18 that Mr. Grinsell had.

19 And, again, as I mentioned at the outset and perhaps the
20 point on which Mr. Mast and I have disagreement, I believe that
21 while Mr. Grinsell is undoubtedly criminally culpable for all
22 of the associated bad acts of his conspiracy, that his -- the
23 volume of commerce does overstate his degree of involvement.

24 And Mr. Mast will certainly speak for himself to this
25 issue, but this was something we discussed at length in the

1 time that led up to Mr. Grinsell entering into a Plea Agreement
2 and then -- well, it was actually after he entered into the
3 Plea Agreement.

4 I believe that the volume of commerce overstated
5 Mr. Grinsell's involvement. I don't think it's significant for
6 purposes of the Guidelines. It would not change the Guideline
7 range. I do believe it's significant, though, for determining
8 the relative culpability of Mr. Grinsell to his co-defendants.
9 And in these discussions, I was -- I was trying to impress upon
10 the Government that the \$28.6 million volume of commerce is too
11 high because as compared to two of the co-conspirators, that
12 being Mr. Rezaian Mr. Rosenbledt who have volumes of commerce
13 around 24 million, we know that Ray was much less involved and
14 we know that from a few things.

15 We know it by the number of auctions in which he was
16 present. There were -- due to health issues, Mr. Grinsell
17 ceased regularly attending auctions in 2008. He still did and
18 he went with frequency, but he was not present at as many
19 auctions as were his co-conspirators. So his -- the number of
20 properties in which he could be involved was necessarily less.

21 And as I mentioned earlier from things that I know the
22 Court has seen in recordings through the lengthy litigation we
23 had on the suppression issues, it's obvious on videotapes that
24 Mr. Grinsell was not regarded by his co-conspirators as being
25 someone who was within the -- you know, within a control

1 position within that core group. And the Court may recall
2 there was about a 35-minute audio recording which figured
3 prominently, we believed, in the suppression issue because it
4 went to the issue of whether or not there was an expectation of
5 privacy between two of Mr. Grinsell's co-conspirators for about
6 35 minutes talking and maligning -- one of them in particular
7 maligning Mr. Grinsell, talking about how he was not pulling
8 his weight, he was not doing what the others were doing, he was
9 riding their coattails.

10 And, again, Your Honor, there is no contesting -- and I
11 wish there were -- Mr. Grinsell's involvement in the
12 conspiracy. These facts only, I believe, are relative to
13 his -- his relative culpability to his co-conspirators to the
14 extent that is important to the Court in fashioning an
15 appropriate sentence.

16 I think finally -- I think finally -- Your Honor,
17 Mr. Grinsell -- I appreciate the Court granting the
18 Government's motion for a 5K departure. I am not at liberty to
19 argue any of the factors under the Guidelines because those are
20 agreed to by us in the Plea Agreement. But I do strongly
21 believe that under 3553, before we consider health issues, a
22 variant sentence is necessary to comply with the mandates of
23 the statute.

24 If the Court were to impose a sentence as the Government
25 has requested of 19 months on Mr. Grinsell, putting aside the

1 health issues for the moment, it would be disproportionate
2 because two of the other conspirators -- for two of the other
3 conspirators, the Government is recommending a 12- and 14-month
4 sentence when those people were much more fully involved.

5 Now, I concede that the Government's lesser recommendation
6 for those two players is a result of a greater 5K
7 recommendation, which the Government is totally within the
8 Government's province and discretion as to what they recommend
9 for a 5K departure and I can't argue the Guidelines, but what I
10 can argue is that it would be manifestly unfair under 3553 to
11 give those defendants, who were more culpable and much more
12 directly involved in this criminal conspiracy, a lesser
13 sentence than Mr. Grinsell, and I say that for the following
14 reasons.

15 Besides the obvious point that this would result in a
16 disproportionate sentence, Mr. Grinsell was not able to plead
17 early because of my understanding of the case. From my
18 earliest discussions with the Government, we were told that any
19 Plea Agreement would need to include various counts of mail
20 fraud, and I believe there were five counts finally included in
21 the Indictment. Initially, Your Honor, I believed -- before I
22 was fully aware of the facts and thought maybe mail fraud was
23 viable, I believed that the Government's --

24 **THE COURT:** Let me make a comment about that because
25 it comes up -- I mean, you're the first one to raise it

1 verbally with the Court, but it comes up in every context which
2 is that the Indictment, as drafted, contained counts that were
3 unacceptable to a defendant for legal and actual reasons. And
4 I understand that. And I understand how it progressed over
5 time. It was ultimately one of my colleagues -- you know, I
6 don't even know whether it was a formal ruling or a suggestion
7 or how it evolved, but clearly as a result of her either
8 rulings or her suggestions, the mail fraud counts were
9 dismissed. I understand that.

10 Now, what I don't understand, though, is why a defendant
11 would wait to see how those counts were treated before entering
12 a plea. I mean, I sort of understand that there were tactical
13 or strategic reasons that maybe a defendant wants to wait, but
14 anybody who has practiced in my court for 21 years knows that
15 at any time a defendant can come in and plead to a count and
16 without the -- without the agreement of the United States
17 Attorney, the Antitrust Division or so forth, they come in and
18 plead. I've had little cases and I've had enormous cases and I
19 have had defendants come in and plead to one count in little
20 cases and one count in big cases. And what the practical
21 effect has been that -- that I have never insisted on -- on a
22 plea to the sheet.

23 The only impediment I've ever seen to that practice has
24 been mandatory minimums because you run into a real problem
25 there. But other than that, a judge can't simply sentence on

1 the one count, and then if the defendant remains in jeopardy on
2 the other counts, it really becomes an issue of how did that
3 sentence arrive at at the first count.

4 And anybody who has been here -- you haven't but others
5 have -- knows that's exactly the way the Court acts, much to
6 the consternation of the United States government. But I'm not
7 here to please the United States government. I'm not here to
8 please the Defense. I'm here to please what my view is of the
9 law, provided that it's consistent with what my appellate --
10 appellate decisions tell me, as well as my common sense.

11 So, you know, I don't really want to hear a discussion
12 about "Gee, you know, the Antitrust Division created this
13 terrible obstacle and that's why we waited," nor do I
14 particularly want to hear an argument that they were engaged in
15 unconstitutional eavesdropping. I've ruled on that.

16 I have subscribed to the view that you urged. I thought
17 that as an independent matter, it was important to say
18 something about that. I've always wondered why they simply
19 just didn't get a search warrant or an appropriate Title III
20 over here, whichever -- now I've forgotten which would be the
21 proper remedy. They didn't. I was very concerned about
22 process, and I ruled accordingly.

23 Okay. After having said all that, I don't think it
24 affects the sentencing one iota. The fact that he is here
25 today and wasn't here three years ago or four years, that's all

1 right. That's okay. I don't think it in any way demonstrates
2 a lack of remorse. So you can be satisfied that it's not his
3 insistence that brought him here.

4 I think whenever a person is charged with a crime, they
5 hire a lawyer. He managed to have a very good lawyer. The
6 lawyer then says "here are the options" and advises, and I
7 don't know whether it's the lawyer's advice that carries the
8 day, the -- the -- you know, it's odd that a defendant would
9 hire a lawyer. A lawyer says do X and the defendant says, "no,
10 I want to do Y." You can do that. You can do that. But why
11 bother hiring a lawyer if you're not going to listen to the
12 lawyer's advice. So I don't attribute it to Mr. Grinsell that
13 we are here so late in the game, if it is late. I have no
14 opinion on that. I think we can set those issues -- I don't
15 think they have any bearing.

16 **MR. FEUCHTBAUM:** Your Honor, I appreciate the Court's
17 sentiments so I'm not going to continue on this. Certainly the
18 things that the Court raised, though, were issues for
19 discussion, and if this were a particular issue for the Court's
20 consideration, I would discuss it at greater length, but I see
21 it's not, so I will move on.

22 Your Honor, ultimately the Court needs to consider the
23 nature and circumstances of the defendant when it imposes
24 sentence. Here we have a person by all evidence -- the many
25 letters that the Court has received, the full gallery of

1 people, some of whom have traveled a great distance to be here.
2 And from all evidence that we otherwise have from
3 Mr. Grinsell's -- how he has conducted himself throughout his
4 life, we have a person who is a moral and upright citizen who
5 cares about doing the right thing and who at one critical
6 moment made a decision not to. And that is a consequence for
7 which Mr. Grinsell is going to, regardless of the severity of
8 the Court's sentence -- that is something that Mr. Grinsell is
9 going to have to live with for quite some time.

10 The collateral consequences for Mr. Grinsell are
11 significant, to say nothing of the fact that he will be losing
12 his real estate license, although he arguably will still be
13 able to conduct business so his employees will still have a
14 place where they can earn a living.

15 But besides that, I think Mr. Grinsell has lost the thing
16 that is most important to him, and that is for a lifetime, he
17 worked hard with a belief that being honest and upright would
18 garner for him the type of respect that he didn't have growing
19 up. He believed that by behaving in that manner, he would
20 serve as an example to inspire others. He believed that by
21 being a committed and good member of society, he would serve
22 his family well. And whatever the reality is and how people
23 look at Mr. Grinsell -- and from the number who have come here
24 today, I want to believe that the severity and judgment of
25 Mr. Grinsell from the people who he cares about most -- I want

1 to believe that maybe it is not quite so severe.

2 But nonetheless, Mr. Grinsell has suffered the loss of
3 self-esteem, the loss of his life's definition, the loss of
4 everything he has committed himself to because of the crimes
5 that he committed becoming public and because of coming in and
6 confessing to them and being very open about the nature of his
7 involvement.

8 Your Honor, for all of those reasons, before the Court
9 considers health issues, I do believe that a noncustodial
10 sentence would be appropriate under 3553.

11 And I will submit on that.

12 **THE COURT:** Mr. Grinsell, do you want to address the
13 Court?

14 **THE DEFENDANT:** I do.

15 **THE COURT:** Okay.

16 **THE DEFENDANT:** I do, Your Honor.

17 Your Honor, I am deeply ashamed to be in front of you
18 today. To say that I'm sorry is not enough, but I am sorry. I
19 know that what I did was wrong and that people were hurt by
20 what I did.

21 I have thought about what I did every day, sometimes
22 several times a day, for the past seven-and-a-half years, and I
23 have regretted and I have mourned my decisions each day. For
24 almost all that time, I was consumed by guilt. I've had many
25 dark nights of the soul. The only reason that I'm still here

1 and could stay even reasonably together for the past
2 seven-and-a-half years is the love and acceptance of the people
3 who came today to support me. But the reality is I have let
4 them down, each and every one of them.

5 Much worse, worst of all, I have shamed my wife and son,
6 who are the two best people that I know and love totally and
7 would do anything to protect. It is particularly hard for me
8 to live with the fact that I have shamed my son, who has had
9 amazing academic and professional success and has a good and
10 sweet soul.

11 My actions forced my wife Gale and my son Scott to endure
12 the difficulties of my involvement in bid rigging becoming
13 public. I know Gale has felt a burden of judgment from social
14 acquaintances. Even though she doesn't talk about it to me, I
15 know it goes on.

16 Scott, my son, has had to deal with the stigma of
17 understanding that his father's committed felonies while also
18 worrying about how that might be perceived in his professional
19 career and having had to explain it to his future in-laws when
20 he and but sha fell in love and got married.

21 As a father, betraying the love and respect of your son is
22 unforgivable, and I will never forgive myself for doing that.

23 I worked very hard all my life. I was driven to give my
24 family the honor and respect I didn't have as a kid. Until the
25 last seven-and-a-half years, I thought I had done that.

1 Instead, I have tarnished my family name, and more importantly,
2 the names of my wife, my son, my nieces, and my nephews. I
3 have also put at risk the jobs and families of those who work
4 for me and have believed in me even in this difficult time.

5 Despite having achieved financial success that I or
6 probably nobody else who knew me could have ever imagined for
7 me growing up, especially growing up in a family that struggled
8 so much emotionally and financially, I have lost the pride I
9 had in that accomplishment.

10 Before, I always felt good about what I had done. Now I
11 don't feel good anymore. I feel that people look at me and see
12 me as somebody who cheated to be successful. All that matters
13 is that I made bad decisions and participated in bid rigging.
14 The most important thing was I had an opportunity to do the
15 right thing and I didn't do it.

16 I did what was easy and convenient, and in doing so,
17 caused serious harm. I was not brave enough. I thought I was
18 brave, but I wasn't brave enough, and I did not have enough
19 courage to do the right thing or enough integrity to do the
20 right thing.

21 The kind of sorry I feel cannot be completely expressed in
22 words. I wish it could because I would really like to say it
23 in the way I feel it.

24 I am very, very sorry. I have felt sorry every day since
25 this started and will wear sorrow and the shame for the rest of

1 my life.

2 Thank you, Your Honor.

3 **THE COURT:** Mr. Grinsell, before you sit down, first
4 of all, I think you should remain. I would like you to turn
5 around and I would like you to look at all these people and I
6 would like to tell you that you have made a big difference in
7 their lives, and even though, even though, this terrible thing
8 happened to you and you did something that is truly
9 reprehensible, you have not diminished their lives, you have
10 contributed to their lives, and I would say that they still
11 love you and admire you for what you have accomplished on your
12 own. So I -- I -- this is a very upsetting time for you,
13 Mr. Grinsell.

14 **THE DEFENDANT:** I can't --

15 **THE COURT:** And I just want you to know that
16 everything -- you have not destroyed your life.

17 **THE DEFENDANT:** I --

18 **THE COURT:** We have many things in our lives. It
19 consists of many -- it consists of days, it consists of deeds,
20 it consists of struggles, it consists of relationships. That
21 is still there. That's part of you. And if you are not the
22 kind of person that you hope to have been, these people would
23 not be here today in your support, and I just want you to
24 understand that.

25 **THE DEFENDANT:** I -- I still can't forgive myself.

1 **THE COURT:** I understand that. And I think --

2 **THE DEFENDANT:** I don't think I'm ever going to
3 forgive myself.

4 **THE COURT:** I think you have suffered a great deal and
5 I think you will continue to suffer and I understand it.

6 I would just say to the people here, and especially to
7 your son who has embarked on a career not unlike careers that I
8 have seen over my years of service, that I'm sure it's very
9 upsetting to you. I know it's devastating. It's complicated.
10 But I also know -- and believe me I know, I really do -- that
11 this is not a mark against you and how you react to it, how you
12 deal with it, how you honestly deal with it is extraordinarily
13 important for your entire life going forward.

14 I'm sure it was difficult for you to tell your prospective
15 in-laws. I'm sure to the extent you have shared this with
16 employers and so forth, it's very difficult, it's humiliating,
17 but you have to be honest about it, and unless you are honest
18 about it, you will never come to terms with it and it will
19 always be out there as something not to disclose, not to come
20 to terms with.

21 And so I say to you and I say to everybody else here, this
22 is a shameful moment, but it's also a moment that you have to
23 understand happens to people. We're all frail in so many
24 different ways. We have different opportunities, and some of
25 us are very lucky by circumstances that we take path number one

1 or path number two, and it's not necessarily because of
2 strength of character or -- that we take one or two. It may be
3 set of circumstances.

4 But I am very sorry, Mr. Grinsell, that when given the
5 opportunity when you had enough courage and integrity and guts
6 to step out of this thing, you didn't understand that you
7 should not have gone back into it, and I think, as your lawyer
8 candidly points out in conversations with you, that had there
9 been the understanding that you rigged bids there is a
10 substantial likelihood you'll go to jail, I think you wouldn't
11 have thought about participating in it for five seconds. And
12 indeed, that's part of the general deterrence that a court must
13 send to the public and intends to by all of these sentences to
14 reflect the fact that if you do rig bids, small, large,
15 whatever it may be, you stand in jeopardy of going to jail.

16 I would also say one other thing about the -- your comment
17 about obviously to avoid disparities among sentencings. The
18 Guidelines provides in 3553(a)(6) that the Court should avoid
19 unwarranted disparities. And the question is since people did
20 get very different sentences, as you point out, is this a
21 disparity that if I give a different sentence to Mr. Grinsell,
22 is it a disparity that is warranted or unwarranted, and the
23 Court feels that it is a warranted disparity.

24 I've looked at all of these sentences. I've looked at
25 them all, and I don't pretend to understand what happened in

1 the East Bay conspiracy or this conspiracy or that and so
2 forth, nor I do know any of the defendants nor do I know what
3 was adduced at the trial. I have no knowledge of any of that.
4 But it doesn't appear to me to necessarily form the conclusion
5 that it would be an unwarranted disparity.

6 I think I'm far more responsible for avoiding unwarranted
7 disparities with respect to the 23 people that I'm sentencing
8 because indeed it is the same conspiracies.

9 So the adjusted offense level is set is 17. Criminal
10 history category 1. The Guideline range is 24 to 30 months.
11 The court is granting a departure pursuant to 5H1.4 for health
12 considerations. The Court is also granting a departure with
13 respect to 5K1.1, substantial assistance to the Government.

14 Pursuant to the Sentencing Reform Act of 1984, it is the
15 judgment of the Court that -- I'm sorry. I have the wrong one.
16 Let me just get this.

17 Pursuant to the Sentencing Reform Act of 1984, it is the
18 judgment of the Court that Raymond Grinsell is hereby
19 committed -- no. I'm doing this wrong. I'll -- wait a minute.
20 Let me start again.

21 Pursuant to the Sentencing Reform Act of 1984, it is the
22 judgment of the Court that Raymond Grinsell is hereby placed on
23 probation for a term of three years on the following
24 conditions:

25 One, you shall reside at a halfway house/residential

1 reentry center for a period of 10 months and shall abide by the
2 rules and regulations of that facility.

3 Two, you shall perform 600 hours of community service at a
4 homeless shelter designated by the Probation Department. While
5 on probation, you shall not commit another federal, state, or
6 local crime and shall comply with the following additional
7 conditions.

8 You shall pay any restitution, fine, and special
9 assessment that is imposed by this judgment and that remains
10 unpaid at the commencement of the term of supervised release.

11 You shall cooperate in the collection of DNA as directed
12 by the Probation Officer.

13 You shall not own or possess any firearms, ammunition, or
14 destructive devices or other dangerous weapons.

15 It is further ordered that you shall pay to the
16 United States a special assessment of \$200. Payments shall be
17 made to the Clerk, U.S. District Court, 450 Golden Gate Avenue,
18 Box 36060, San Francisco, California, 94102.

19 It is further ordered that you shall pay to the
20 United States a fine in the amount of \$1,433,045.

21 The fine must be paid in a lump sum no later than 90 days
22 from placement on probation. The fine payments shall be made
23 to the Clerk, U.S. District Court, Attention Financial Unit,
24 450 Golden Gate Avenue, Box 36060, San Francisco, California,
25 94102.

1 It is further ordered that the defendant shall pay
2 restitution totaling \$156,146.79 to the victims set forth in
3 page 6 of the Presentence Report.

4 Criminal monetary penalties are due immediately and shall
5 bare interest pursuant to 18 U.S.C. Section 3612(f).

6 You shall surrender on or before July 9th, 2018. In the
7 event that there is some difficulty in designating the
8 facility, which the Court recommends be in the San Francisco
9 Bay Area, then your attorney will contact the Court and we will
10 rearrange for a further extension.

11 The purpose, so it's absolutely clear --

12 **THE PROBATION OFFICER:** Your Honor, he didn't get
13 sentenced to custody, so there is no BOP facility because you
14 gave him probation.

15 **THE COURT:** Yes. So in the event that the Probation
16 Department is unable -- did I sentence him to the Bureau of
17 Prisons -- the custody of the Bureau of Prisons?

18 **THE PROBATION OFFICER:** No. Because the halfway house
19 is under the probation condition.

20 **THE COURT:** Yes, but, I mean, I'm saying in the event
21 there is some delay in designating the community center, the
22 facility, they can come back --

23 **THE PROBATION OFFICER:** It's not under the Bureau of
24 Prisons, though. It's a public law referral so it goes to us
25 so we do all of that -- so the Bureau of Prisons has nothing to

1 do with it --

2 **THE COURT:** I know. What I'm trying to say is -- I
3 assume you will find a facility. The Probation Department will
4 find a facility.

5 **THE PROBATION OFFICER:** Right, Your Honor, but there
6 is no --

7 **THE COURT:** Okay. So you do not surrender. I think I
8 got it.

9 You are not to surrender to the Bureau of Prisons. You
10 are to make yourself available to the -- at the direction of
11 the Probation Office. Once the Probation Office has located a
12 facility that will take -- that -- for which you will be
13 confined for the period indicated, you are to report to that
14 facility.

15 Is that correct?

16 **THE PROBATION OFFICER:** Yes, Your Honor.

17 **THE COURT:** Okay. I finally got it right.

18 Look, the purpose of the punishment -- of the sentence is
19 to punish. The purpose of the sentence is to not just punish
20 you, but to provide a general deterrent for this action. The
21 purpose of the punishment is to ensure that other people, when
22 confronted with the choices that you are confronted, do not
23 make the same mistake.

24 I think, Mr. Grinsell, you are a very decent person. I
25 think these people have truly come forward because of your

1 respect and admiration for you.

2 But even decent people make terrible mistakes, and this
3 was not just a moment of a mistake. This was a long-term
4 mistake, and regretfully, from your point of view and
5 society's, you didn't stop it when you could have stopped it.

6 So I wish you luck.

7 **THE DEFENDANT:** Thank you.

8 **MR. FEUCHTBAUM:** Your Honor, if I may, just one
9 clarification?

10 **THE COURT:** Yes.

11 **MR. FEUCHTBAUM:** The Court's order, I believe, is for
12 the residential reentry center to be in the Bay Area, and that
13 if we need additional time to find one in the Bay Area, we
14 would come back, but it's limited to a Bay Area facility?

15 **THE PROBATION OFFICER:** Yes. Since it's under
16 probation with the Northern District of California, the only
17 facilities we have are in Oakland and San Francisco.

18 **THE COURT:** The idea is so you are immediately
19 accessible to health treatment, which will be at your expense
20 and the doctors that have been treating you.

21 Anything further?

22 **MR. FEUCHTBAUM:** No, Your Honor. Thank you.

23 (Proceedings adjourned at 12:06 p.m.)

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CERTIFICATE OF REPORTER

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

DATE: Thursday, May 10, 2018

Pamela A. Batalo

Pamela A. Batalo, CSR No. 3593, RMR, FCRR
U.S. Court Reporter