

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRANK PEAKE,

Defendant

Criminal No.:11-512 (DRD)



INSTRUCTIONS

MEMBERS OF THE JURY:

Now that all the evidence is in and the parties have rested, it becomes my duty to instruct you on the applicable law of this case.

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Instruction No. 1

Duty of the Jury to Find the Facts and Follow the Law

It is your duty to find the facts from all the evidence admitted in this case. To those facts you must apply the law as I give it to you. The determination of the law is my duty as the presiding judge in this court. It is your duty to apply the law exactly as I give it to you, whether you agree with it or not. You must not be influenced by any personal likes or dislikes, prejudices or sympathy. That means that you must decide the case solely on the evidence before you and according to the law. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions, or into anything I may have said or done, any suggestions by me as to what verdict you should return—that is a matter entirely for you to decide.

Instruction No. 2

Presumption of Innocence, Proof Beyond a Reasonable Doubt

It is a cardinal principle of our system of justice that every person accused of a crime is presumed to be innocent unless and until his or her guilt is established beyond a reasonable doubt. The presumption is not a mere formality. It is a matter of the most important substance.

The presumption of innocence alone may be sufficient to raise a reasonable doubt and to require the acquittal of a defendant. The defendant before you, Mr. Franke Peake, has the benefit of that presumption throughout the trial, and you are not to convict him unless you are persuaded of his guilt beyond a reasonable doubt.

The presumption of innocence until proven guilty means that the burden of proof is always on the government to satisfy you that Mr. Peake is guilty of the crime with which he is charged beyond a reasonable doubt. The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to Mr. Peake. It is always the government's burden to prove each of the elements of the crimes charged beyond a reasonable doubt by the evidence and the reasonable inferences to be drawn from that evidence. Mr. Peake has the right to rely upon the failure or inability of the government to establish beyond a reasonable doubt any essential element of a crime charged against him.

If, after fair and impartial consideration of all the evidence, you have a reasonable doubt as to defendant's guilt of the charged crime,

it is your duty to acquit him of that crime. On the other hand, if, after fair and impartial consideration of all the evidence, you are satisfied beyond a reasonable doubt of Mr. Peake's guilt of the crime charged, you should find him guilty of that crime.

Instruction No. 3
Defendant's Constitutional Right Not to Testify

Mr. Peake has a constitutional right not to testify and no inference of guilt, or of anything else, may be drawn from the fact that the defendant did not testify. For any of you to draw such an inference would be wrong; indeed, it would be a violation of your oath as a juror.

Instruction No. 4
What is Evidence & Inferences

The evidence from which you are to decide what the facts are consists of sworn testimony of witnesses, both on direct and cross-examination, regardless of who called the witness; the exhibits that have been received into evidence; and any facts to which the lawyers have agreed or stipulated.

Although you may consider only the evidence presented in the case, you are not limited in considering that evidence to the bald statements made by the witnesses or contained in the documents. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw from facts that you find to have been proven such reasonable inferences as you believe are justified in the light of common sense and personal experience.

Instruction No. 5

Kinds of Evidence: Direct and Circumstantial

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness that the witness saw something. Circumstantial evidence is indirect evidence, that is proof of a fact or facts from which you could draw the inference, by reason and common sense, that another fact exists, even though it has not been proven directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

Instruction No. 6
What is Not Evidence

Certain things are not evidence. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they say in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them from the evidence differ from the way the lawyers have stated them, your memory of them controls.

2. Questions and objections by lawyers are not evidence. Lawyers have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by my ruling on it.

3. Anything that I have excluded from evidence or ordered stricken and instructed you to disregard is not evidence. You must not consider such items.

4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at trial.

5. The indictment is not evidence. This case, like most criminal cases, began with an indictment. You will have that indictment before you in the course of your deliberations in the jury room. That indictment was returned by a grand jury, which heard only the government's side of the case. I caution you, as I have before, that

the fact that Mr. Peake has had an indictment filed against him is no evidence whatsoever of his guilt. The indictment is simply an accusation. It is the means by which the allegations and charges of the government are brought before this court. The indictment proves nothing.

Instruction No. 7
Number of Witnesses & Credibility of Witnesses

Whether the government has sustained its burden of proof does not depend upon the number of witnesses it has called or upon the number of exhibits it has offered, but instead upon the nature and quality of the evidence presented. You do not have to accept the testimony of any witness if you find the witness not credible. You must decide which witnesses to believe and which facts are true. To do this, you must look at all the evidence, drawing upon your common sense and personal experience.

You may want to take into consideration such factors as a witness' conduct and demeanor while testifying; their apparent fairness or any bias they may have displayed; any interest you may discern that they may have in the outcome of the case; any prejudice they may have shown; their opportunities for seeing and knowing the things about which they have testified; the reasonableness or unreasonableness of the events that they have related to you in their testimony; and any other facts or circumstances disclosed by the evidence that tend to corroborate or contradict their versions of the events.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimonies of different witnesses, may or may not cause you to disbelieve or discredit such testimony. Two or more persons witnessing an incident or a transaction may simply see or hear it differently. As to the credibility of any witness, an innocent misrecollection, or a failure to recall, is not an uncommon experience.

In weighing the effect of a discrepancy, however, always consider whether it pertains to a matter of importance, or an insignificant detail, and consider whether the discrepancy results from innocent error or from intentional falsehood.

Therefore, after evaluating a witness' testimony pursuant to this instruction, you have three choices:

- (1) You believe him totally;
- (2) You reject his testimony totally; and
- (3) You believe him partially.

Instruction No. 8
Caution as to Cooperating Witness

You have also heard the testimony of Peter Baci, Gregory Glova and Gabriel Serra, who were all charged as defendants in a parallel case, were convicted of participating in the instant conspiracy and entered into cooperation agreements with the government.

Some people in this position are entirely truthful when testifying. Still, you should consider the testimony of these individuals with particular caution. They may have had reason to make up stories or to exaggerate what others did because they wanted to help themselves.

You must determine whether the testimony of such a witness may have been affected by any interest in the outcome of the instant case, any prejudice for or against Mr. Peake, or by any of the benefits offered by the government in plea agreements. You are not to consider their guilty pleas as evidence against Mr. Peake.

Instruction No. 9
Impeachment by Prior Inconsistent Statement

You have heard evidence that before testifying at this trial, some witnesses made a statement concerning the same subject matter as his testimony in this trial. You may consider that earlier statement to help you decide how much of the witness' testimony to believe. If you find that the prior statement was not consistent with witness' testimony at this trial, then you should decide whether that affects the believability of witness' testimony at this trial.

Instruction No. 10
Indictment

The Court includes as part of the instructions the indictment. The indictment is only an accusation, nothing more. It is not evidence. It is not proof of guilt or anything else.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,
Plaintiff,

v.

FRANK PEAKE,
Defendant.

INDICTMENT

DRD

Criminal No. 11-519

Violation: 15 U.S.C. § 1

ONE COUNT

THE GRAND JURY CHARGES:

GENERAL ALLEGATIONS

At all times relevant to this Indictment:

1. Freight was transported by water on scheduled ocean continental United States and Puerto Rico ("Puerto Rico freight services").
2. Puerto Rico freight services were offered by freight carriers that operated self-propelled ships and other freight carriers that operated barges. Freight carriers that offered Puerto Rico freight services transported for customers a variety of cargo shipments, such as heavy equipment, medicines, food, beverages, and consumer goods.
3. For their Puerto Rico freight services, freight carriers charged their customers a price that consisted of a base rate and, at times, various surcharges and fees, such as a bunker fuel surcharge. The base rate charged for Puerto Rico freight services could vary based on a variety of factors, including the point of origin or destination, the type of cargo being transported, whether the cargo was containerized, and the type and size of the cargo container.

DESCRIPTION OF THE OFFENSE

4. The General Allegations of this Indictment are re-alleged and incorporated herein by reference.

5. From at least as early as late 2005, and continuing until at least April 2008, the exact dates being unknown to the Grand Jury, in the District of Puerto Rico and elsewhere, and within the jurisdiction of this Court:

FRANK PEAKE

the defendant herein, and his co-conspirators, did enter into and engage in a combination and conspiracy to suppress and eliminate competition by agreeing to fix rates and surcharges for Puerto Rico freight services. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and his co-conspirators, the substantial terms of which were to fix rates and surcharges for Puerto Rico freight services. The combination and conspiracy engaged in by the defendant and his co-conspirators was in unreasonable restraint of interstate trade and commerce. All in violation of Title 15, United States Code § 1.

DEFENDANT AND CO-CONSPIRATORS

6. During part of the period covered by this Indictment, the defendant **FRANK PEAKE** was the Chief Operating Officer, and subsequently President, of Corporation A, a freight carrier providing Puerto Rico freight services by self-propelled ship.

7. Various corporations and individuals, not made defendants in this Indictment, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

8. Whenever in this Indictment reference is made to any act, deed or transaction of any corporation, the allegation means that the corporation engaged in the act, deed, or transaction

by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control or transaction of its business or affairs.

MEANS AND METHODS OF THE CONSPIRACY

It was part of the means and methods of the unlawful conspiracy that:

9. For the purpose of forming and carrying out the charged combination and conspiracy, the defendant **FRANK PEAKE** and his co-conspirators did those things that they combined and conspired to do, including, among other things:

- (a) participating in meetings, conversations, and communications in the continental United States and Puerto Rico to discuss customers, rates, surcharges and bids for the sale of Puerto Rico freight services;
- (b) agreeing during those meetings, conversations and communications to allocate customers of Puerto Rico freight services between and among the conspirators;
- (c) agreeing during those meetings, conversations, and communications to fix, stabilize, and maintain rates and surcharges charged to customers of Puerto Rico freight services;
- (d) agreeing during those meetings, conversations, and communications to rig bids submitted to government and commercial customers of Puerto Rico freight services;
- (e) engaging in meetings, conversations and communications for the purpose of monitoring and enforcing adherence to the agreed-upon rates and surcharges;

- (f) selling Puerto Rico freight services at collusive and noncompetitive rates and surcharges pursuant to the agreements reached;
- (g) accepting payment for Puerto Rico freight services at collusive and noncompetitive rates and surcharges; and
- (h) authorizing and consenting to the participation of subordinate employees in the conspiracy.

TRADE AND COMMERCE

10. During the period covered by this Indictment, bills of lading, manifests, invoices for payment, payments and other documents essential to the provision of Puerto Rico freight services were transmitted in interstate commerce between and among offices of the defendant and his corporate co-conspirators and their customers located in various states and Puerto Rico.

11. During the period covered by this Indictment, the defendant and his corporate co-conspirators transported substantial volumes of freight in a continuous and uninterrupted flow of interstate commerce between various states and Puerto Rico.

12. During the period covered by the Indictment, the business activities of the defendant **FRANK PEAKE** and his corporate co-conspirators, in connection with the Puerto Rico freight services that are the subject of this Indictment, were within the flow of, and substantially affected, interstate commerce.

JURISDICTION AND VENUE

13. The combination and conspiracy charged in this Indictment was carried out, in part, within the District of Puerto Rico within the five years preceding the return of this Indictment.

All in violation of Title 15, United States Code §1.

TRUE BILL

Instruction No. 11
Judge's Questions

During the course of a trial, I occasionally ask questions of a witness in order to bring out facts not then fully covered in the testimony. Do not assume that I hold any opinion on the matters to which my questions are related. Remember at all times that you, as jurors, are at liberty to disregard all comments of the court in arriving at your own findings as to the facts.

Instruction No. 12
Attorney Interviewing Witness

It is proper for, and thus no improper inferences should be made as to, attorneys and U.S. attorneys interviewing witnesses prior to trial as well as meeting and interviewing any witness in preparation for trial.

Instruction No. 13
Charged Offense

The Indictment charges a violation of Section 1 of the Sherman Act, which provides:

Every contract, combination . . . or conspiracy, in restraint of trade . . . is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of an offense against the United States.

The term "person" includes individuals, corporations, partnerships, and every other association or organization of every kind and character.

Instruction No. 14
Elements of the Offense

In order to establish the offense of conspiracy to fix prices charged in the Indictment, the government must prove each of these elements beyond a reasonable doubt:

1. that the conspiracy described in the Indictment existed at or about the time alleged;
 2. that the defendant knowingly and intentionally became a member of the conspiracy;
- and

3. that the conspiracy described in the Indictment either affected interstate commerce in goods or services or occurred within the flow of interstate commerce in goods or services.

If you find from your consideration of all the evidence that each of these elements has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all of the evidence that any of these elements has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

Instruction No. 15
Conspiracy Explained

The type of relationship condemned by the Sherman Act as a conspiracy is often described as a "partnership in crime," in which each person found to be a member of the conspiracy is liable for all acts and statements of the other members made during the existence of and in furtherance of the conspiracy. To create such a relationship, two or more persons must enter into an agreement or mutual understanding that they will act together for some unlawful purpose or to achieve a lawful purpose by unlawful means. It is the agreement to act together that constitutes the crime. Whether the agreement actually is carried out or whether it succeeds or fails does not matter.

In order to establish the existence of a conspiracy, the evidence need not show that the members of the conspiracy entered into any express, formal, or written agreement; that they met together; or that they directly stated what their object or purpose was, or the details of it, or the means by which the object was to be accomplished. The agreement itself may have been entirely unspoken. What the evidence must show in order to prove that a conspiracy existed is that the alleged members of the conspiracy in some way came to an agreement or mutual understanding to accomplish a common purpose.

Direct proof of a conspiracy may not be available. A conspiracy may, however, be disclosed by the circumstances or by the

acts of the members. Therefore, you may infer the existence of a conspiracy from what you find the parties actually did, as well as from the words they used. However, competitors may have legitimate, lawful reasons to have contacts with each other. Mere similarity of conduct among various persons or the fact that they may have associated with one another and may have met or assembled together and discussed common aims and interests, does not necessarily establish the existence of a conspiracy. If actions were taken independently by them, solely as a matter of individual business judgment, without any agreement or mutual understanding among them, then there would be no conspiracy.

A conspiracy may vary in its membership from time to time. It may be formed without all parties coming to an agreement at the same time, knowing all the details of the agreement, or knowing who all the other members are. Thus, you need not find that the defendant agreed specifically to or knew about all the details of the crime, or knew every other co-conspirator or that he participated in each act of the agreement or played a major role, but the government must prove beyond a reasonable doubt that he knew the essential features and general aims of the conspiracy. Further it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it. Even if the defendant was not part of the agreement at the

very start, he can be found guilty of conspiracy if the government proves that he knowingly joined the agreement later. It is not essential that all members acted exactly alike or agreed to play any particular part in carrying out the agreement. The unlawful agreement may be shown if the proof establishes that the parties knowingly worked together to accomplish a common purpose.

In determining whether a conspiracy has been proved, you must view the evidence as a whole and not piecemeal. You should consider the actions and statements of all the alleged conspirators. The conspiracy may be inferred from all the circumstances and the actions and statements of the participants. Acts that are by themselves wholly innocent acts may be part of the sum of the acts that make up a conspiracy to restrain trade in violation of the Sherman Act.

The evidence does not have to establish that the defendant agreed to all the means or methods set forth in the Indictment or that such means and methods were actually used. Nor does the evidence have to show that all the persons alleged to have been members of the conspiracy actually were members. What the evidence must show is that the conspiracy charged existed at or about the time stated in the Indictment, and that the defendant knowingly and intentionally became a member of the conspiracy.

A conspiracy ends only when its purposes and objectives have been accomplished or all the parties to the conspiracy abandon or terminate it.

Instruction No. 16
Price-Fixing

The Indictment charges the defendant with conspiring to fix prices. A conspiracy to fix prices is an agreement or mutual understanding between two or more persons from competing companies to fix, control, raise, lower, maintain, or stabilize the prices charged, or to be charged, for products or services.

A price-fixing conspiracy is commonly thought of as an agreement to establish the same price; however, prices may be fixed in other ways. Prices or, in this case, freight rates and surcharges, are fixed if the range or level of rates or surcharges is agreed upon by the conspirators. Prices are also fixed if some component of the total price or rate is agreed upon. They are considered fixed because they are agreed upon. Thus, any agreement to raise a price, to set a maximum price, to stabilize prices, to set a price or price range, to set a component of a rate, to set a surcharge, or to maintain a price is illegal.

If you should find that the defendant entered into an agreement to fix prices, it does not matter whether the rates or surcharges agreed upon were reasonable or unreasonable, justifiable or unjustifiable, or harmful or harmless. If you should find that the defendant entered into an agreement to fix prices, the fact that the defendant or his co-conspirators did not abide by it, or that one or more of them may not have lived up to some aspect of the agreement, or that they may not have been successful in achieving their

objectives, is no defense. The agreement is the crime, even if it is never carried out.

If the conspiracy charged in the Indictment is proved, it is no defense that the conspirators actually competed with each other in some manner or that they did not conspire to eliminate all competition. Nor is it a defense that the conspirators did not attempt to collude with all of their competitors. Similarly, the conspiracy is unlawful even if it did not extend to all services sold by the conspirators or did not affect all of their customers.

Evidence of similarity of business practices of the defendant and alleged coconspirators, or the fact that they may have charged identical prices for the same goods, does not alone establish an agreement to fix prices, since such activities may be consistent with ordinary and proper competitive behavior in a free and open market.

The defendant and alleged coconspirators may charge the same prices, may copy each other's price lists or may follow and conform exactly to each other's price policies and price changes; and such conduct would not violate the Sherman Act, unless you find it was done pursuant to an agreement between two or more conspirators, as alleged in the indictment.

Nevertheless, you may consider such facts and circumstances along with all other evidence in determining whether the evidence of competition, evidence of prices actually charged, similarity of business practices, and similarity of prices resulted from the independent acts or business judgment of the defendant and alleged

coconspirators freely competing in the open market, or whether it resulted from an agreement among or between two or more of them.

Instruction No. 17
"Knowingly" Joining the Conspiracy

As previously noted, the second element the government must prove beyond a reasonable doubt for you to find the defendant guilty is that the defendant knowingly joined the conspiracy charged in the indictment. To act "knowingly" means to act voluntarily and intentionally, and not because of a mistake, accident, or other innocent reason. Therefore, before you may convict the defendant, the evidence must establish that the defendant joined the conspiracy to fix prices with the intent to aid or advance the object or purpose of the conspiracy.

A person may become a member of a conspiracy without full knowledge of all the details of the conspiracy, the identity of all of its members, or the parts they played in the charged conspiracy. Knowledge of the essential nature of the conspiracy is enough. On the other hand, a person who has no knowledge of a conspiracy but who happens to act in a way which furthers some object or purpose of the conspiracy does not thereby become a member of the conspiracy. Similarly, mere knowledge of a conspiracy without participation in the conspiracy is also insufficient to make a person a member of the conspiracy. Mere presence at the scene of the conspiracy is insufficient to make a person a member of the conspiracy but you may consider it among other factors.

Your determination whether the defendant knowingly joined the conspiracy must be based solely on the actions of the defendant as established by the evidence. You should not consider what others

may have said or done to join the conspiracy. Membership of the defendant in this conspiracy must be established by evidence of his own conduct - by what he said or did.

If you find that the defendant joined the conspiracy, then the defendant is presumed to remain a member of the conspiracy and is responsible for all actions taken in furtherance of the conspiracy until the conspiracy has been completed or abandoned or until the defendant has withdrawn from the conspiracy.

Instruction No. 18
Interstate Commerce

The third element of an offense prohibited by the Sherman Act is that the alleged unlawful conduct must involve interstate trade or commerce. The government must prove beyond a reasonable doubt that the conspiracy charged in the Indictment either affected interstate commerce in goods or services or occurred within the flow of interstate commerce in goods or services.

The term "interstate commerce" includes transactions that move between states or between states and other places under the jurisdiction of the United States. Puerto Rico is treated as a state for purposes of interstate commerce. If the conduct charged in the Indictment involves transactions that are in the flow of commerce, the interstate commerce element is satisfied and the size of any such transaction is of no significance.

Instruction No. 19
Statute of Limitations

The Indictment charges that the alleged conspiracy began at least as early as late 2005 and continued until at least April 2008. The government need not prove that the conspiracy existed on those exact dates or that the conspiracy continued for the entire period charged in the Indictment. It is sufficient if the government proves beyond a reasonable doubt that the conspiracy existed during or reasonably near the time period alleged in the Indictment, and that the defendant joined the conspiracy some time during the period alleged in the Indictment.

The grand jury returned its indictment of the defendant on November 17, 2011. There is a five-year statute of limitations which applies to the offense charged here. This means that the defendant cannot be found guilty unless you find beyond a reasonable doubt that the conspiracy existed at some point within the period of the statute of limitations, which, for purposes of this case, is the period beginning November 17, 2006 and continuing until November 17, 2011. One way the government can prove the conspiracy existed in this period is to prove that one or more members of the conspiracy performed some act after November 17, 2006 and before November 17, 2011 in furtherance of the purposes and objectives of the conspiracy.

You may consider evidence of the defendant's conduct prior to November 17, 2006, insofar as it tends to prove or disprove the existence of the conspiracy and the defendant's acts after that date.

Instruction No. 20
Venue

Before you can find the defendant guilty of committing the crime charged in the Indictment, you must find by a preponderance of the evidence that, from at least as early as late 2005 and continuing until at least April 2008, the conspiratorial agreement or some act in furtherance of the conspiracy by any member of the conspiracy occurred in the District of Puerto Rico. To prove something by a preponderance of the evidence is to prove it is more likely true than not true. This is a lesser standard than "beyond a reasonable doubt."

Instruction No. 21
What Not to Consider

The fact that Puerto Rico may have potentially been affected or consumers and/or prices and/or business is not to be considered by, in your judgment as to guilt or not guilt of the defendant. The effect on businesses' prices or consumers in Puerto Rico is not an element of the offense.

You are not to decide this case based on pity and sympathy to Puerto Rican businesses, to Puerto Rico, or to Puerto Rican consumers.

The effect on Puerto Rico is only material as to potentially establishing an effect on interstate commerce and compliance with venue.

This case is about a potential conspiracy in violation of the antitrust law, and whether or not the defendant, Mr. Peake, joined the conspiracy, complying with the element of the offense as more fully stated in the instructions read to you.

Sympathy to Puerto Rico, its businesses or consumers, does not play any role in your consideration of this case.

Any statement made in any opening statement or any question and answer that may have implied or that you may have understood that this is a case relating to the effects on Puerto Rico is an erroneous interpretation. I sternly order you not to take such statements into consideration.

So therefore, any effect on Puerto Rico is not to be considered at all, except as to as to potentially establishing an effect on interstate commerce and/or as to venue as previously stated.

Instruction No. 22
Co-Conspirators Not On Trial

The Indictment charges that the defendant conspired with certain persons and companies that are not now on trial. There is no requirement that all members of a conspiracy be charged and prosecuted, or tried together in one proceeding. You should not be concerned with or speculate about why certain persons or companies are not on trial or about why any persons or companies have not been charged in the Indictment.

Instruction No. 23

Charts and Summaries - Admitted under Fed. R. Evid. 1006

The government has presented exhibits in the form of charts and summaries. I decided to admit these charts and summaries in place of the underlying documents that they represent. You should consider the charts and summaries admitted into evidence as you would any other evidence and assign to them the weight you believe appropriate.

Instruction No. 24

Demonstrative Charts and Summaries -- Not Admitted

Certain charts and summaries have been shown to you in order to help you understand the facts disclosed by the books, records, and other documents which are in evidence in the case. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts shown by the evidence in this case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

Instruction No. 25
Notetaking

You have been permitted to take notes during the trial. Most of you--perhaps all of you-- have taken advantage of that opportunity. You must use your notes only as a memory aid during deliberations. You must not give your notes priority over your independent recollection of the evidence. And you must not allow yourself to be unduly influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than your memories or impressions about the testimony.

Instruction No. 26
Duty to Deliberate

Any verdict must represent the considered judgment of each one of you. In order to return a verdict it is necessary that each juror agree to it. In other words, your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate in an effort to reach agreement if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but only after an impartial consideration of evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all time that you are not partisans. You are the judges of the facts. Your sole interest is to determine from the evidence in this case whether the Government has proved its case beyond a reasonable doubt.

Instruction No. 27
Consideration of Evidence

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

Instruction No. 28
Jury Not to Consider Punishment

The punishment provided by law for the offense charged in the Indictment is a matter exclusively within the province of the Judge, and should never be considered by you in any way in arriving at an impartial verdict as to the guilt or innocence of the defendant, Frank Peake.

Instruction No. 29
Foreperson's Role; Unanimity

I come now to the last part of the instructions, the rules for your deliberations.

When you retire you will discuss the case with the other jurors to reach agreement if you can do so. You shall permit your foreperson to preside over your deliberations, and your foreperson will speak for you here in court. Your verdict must be unanimous.

Instruction No. 30
Communications with the Court

If it becomes necessary during your deliberations to communicate with the Court, you may send a written note through a Marshal, signed by your foreperson, or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than signed written note; and the Court will never communicate with any member of the jury on any subject touching the merits of the case, otherwise than in writing, or orally, in open Court.

If you send out a question, I will consult with the parties as promptly as possible before answering it, which may take some time. You may continue with your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone, including me, how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged.

Instruction No. 31
Jury Verdict

Now, I want to read to you what is called the verdict form. This is simply the written notice of the decision you will reach in this case.

[Read form.]

After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it, and advise the jury officer outside your door that you are ready to return to the courtroom.

After you return to the courtroom, your foreperson will deliver the completed verdict form as directed in open court.

The foreperson is to be elected among yourselves; he/she will sign any jury verdict form or written questions to the Court together with any one of you, if you deem so.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 25th day of January, 2013.

/s/ DANIEL R. DOMÍNGUEZ

DANIEL R. DOMÍNGUEZ
U.S. District Judge