

Jury in Quattrone Case Remains Deadlocked

Note to Judge Says Jurors Believe They Won't Be Able to Reach Unanimous Verdict on Charges

By KARA SCANNELL and RANDALL SMITH

The jury in the trial of former Silicon Valley investment banker Frank Quattrone said it remains deadlocked on all three counts of obstruction of justice and witness tampering, raising the chances of a hung jury or mistrial in the four-week-old case.

U.S. District Court Judge Richard Owen dismissed the jurors for the day at 5 p.m. Thursday after their fourth full day of deliberations, which began late on Oct. 15. Resumption of their efforts, which were interrupted Monday and Tuesday by the birth of one juror's child, followed instructions Wednesday morning from the judge on breaking the deadlock they first reported a week ago.

The jury of six men and five women gave the judge a note late Thursday saying, "The jury's consensus is that we will not be able to reach a unanimous vote on any of the three counts." In response, the Quattrone defense renewed its motion for a mistrial, and for the first time, Judge Owen reserved a decision instead of rejecting it outright. He granted jurors' request to adjourn at 2 p.m. Friday. And the jury indicated it wasn't willing to deliberate during the weekend.

Although a mistrial or hung jury isn't a foregone conclusion, Judge Owen indicated he wasn't "blind" to the jurors' lack of progress. Indeed, after the note he asked prosecution and defense lawyers whether he should ask the jurors if they are "hopelessly deadlocked? And I take it at that point," he continued, "I'm authorized to grant a mistrial?" The judge still has the option of giving the jury another set of instructions aimed at breaking the deadlock when the panel members return to the federal courtroom at 10 a.m. Friday.

"It seems significantly unlikely that they will be able to reach a unanimous verdict, because having just reconvened on Wednesday, and to respond so quickly, suggests some jurors' views are fixed firmly," said **David Fein**, a former federal prosecutor who now is a defense lawyer at Wiggin & Dana LLP.

The jury has struggled with details of the allegations that Mr. Quattrone nearly three years ago tried to obstruct two government investigations and a grand-jury inquiry into allocations of initial public offerings at Credit Suisse First Boston, where he was an investment banker. The case rested on a single e-mail that Mr. Quattrone forwarded from a subordinate on Dec. 5, 2000, urging members of his technology-sector unit to "clean up" their files. If convicted, Mr. Quattrone could face as long as two years in prison. Prosecutors have said they likely would seek to retry the case if there is a hung jury.

Mr. Quattrone is the most prominent Wall Street financier to face a criminal trial in decades, and the case, featuring the excesses of the technology-stock bubble as a backdrop, could influence how other executives on trial proceed. But the trial has been a challenge for the government from the start because its allegations are based on a single act and only circumstantial evidence of criminal intent.

The heart of the case: the file-cleanup e-mail and testimony by a former in-house CSFB attorney, who told jurors he had warned Mr. Quattrone -- just eight hours before the e-mail was dispatched -- that the IPO examination could be turning in his direction and that he ought to get his own lawyer. The prosecution contended that Mr. Quattrone knew the investigations would encompass documents possessed by his tech-sector group, threatening the business he had built since joining the Credit Suisse Group unit in 1998. As motive, prosecutors disclosed that Mr. Quattrone earned more than \$120 million in 2000 alone.

Mr. Quattrone, 48 years old, a dapper, mustachioed son of a pants-presser from south Philadelphia who attended high school and college on scholarship, testified he forwarded the e-mail without thinking, believing it was up to CSFB's legal department to ensure compliance with subpoenas and other document requests from investigators.

The inquiries were focused on whether brokers at CSFB had received kickbacks from hedge funds in exchange for hot IPOs, and Mr. Quattrone maintained that another division of the securities firm, not his unit, had responsibility for allocations. Such IPO shares were widely coveted because they commonly skyrocketed in value on their first day of trading.

CSFB eventually paid \$100 million, without admitting or denying wrongdoing, to settle Securities and Exchange Commission and National Association of Securities Dealers charges that it improperly shared IPO profits with hedge funds. Although three brokers who worked in Mr. Quattrone's group were fired for violating company policy in the matter, Mr. Quattrone himself was given a clean bill of health by CSFB on the kickback issue.

He was forced to resign from CSFB in March, after he refused to testify before the NASD about a different set of allegations, some related to his brokers' program to steer IPO shares to Mr. Quattrone's investment-banking clients. Mr. Quattrone has contested the charges, which remain pending.

The jury's struggle with the case also could bode well for other executives on trial. Domesticity doyenne Martha Stewart is preparing to fight charges of securities fraud and obstruction in a trial slated for January. Moreover, the difficulty in reaching a conviction is likely to strengthen the resolve of defense attorneys, who now may have greater faith that jurors will give executives the benefit of the doubt. Like the government's case against Mr. Quattrone, Ms. Stewart's is viewed as being weak.

A new trial could help Mr. Quattrone by giving him a chance to redo some of the most damaging testimony of the trial -- his own. In particular, he would have an ability to cast a string of e-mails connecting him to IPO allocations in a more benign light.

In questioning by his own lawyers, Mr. Quattrone emphasized that tech-industry investment banking had "had no responsibility for deciding IPO allocations," and his lawyers hadn't brought up the e-mails. On cross-examination, the prosecution introduced the e-mails to shoot holes in Mr. Quattrone's credibility. In several, Mr. Quattrone recommended that certain potential investment-banking clients, including Dell Co., receive IPO shares of Corvis Inc., an optical-networking concern.

Following a three-day holiday weekend, Quattrone lawyer John Kecker responded by asking Mr. Quattrone if he had any decision-making authority for IPO allocations. Mr. Quattrone explained that he often got requests for IPOs, and had merely forwarded them to the equity-capital markets group, a section of the securities firm that had formal responsibility for IPO allocations.

Prosecutors Steven Peikin and David Anders argued that Mr. Quattrone sought to hinder the investigations before they led to him. While the government did have a star witness in the former CSFB in-house lawyer, David Brodsky, it didn't have a smoking gun that showed Mr. Quattrone was trying to impede the IPO probes when he shot off the e-mail. As Judge Owen reminded the jury Thursday, "You can't cut open a person's head and see what he was thinking."

For now, it appears that Mr. Quattrone wasn't just one of the most damaging witnesses to his case -- he also may have been one of the best. Smiling and making eye contact, he won over at least some jurors using the same salesman skills that snared Amazon.com Inc. and Cisco Systems Inc. as investment-banking clients.

Mr. Quattrone's team was creative in appealing to individual jurors. Russell Hall, one of Mr. Quattrone's business-school friends, testified that Mr. Quattrone's "whole family is active in the Girl Scouts ... his wife

is a Girl Scout leader." One of the jurors is a senior executive of the Girl Scouts of Westchester & Putnam Inc.

Using charts larger than his frame, Mr. Keke also sought to portray Mr. Quattrone as so busy that he couldn't have been thinking about the grand-jury investigation when he forwarded the e-mail. To buttress that point, he read through the 20 e-mails that Mr. Quattrone sent or received in the 48 minutes leading up to the file-cleanup e-mail.

Mr. Keke also blamed CSFB's in-house lawyers. He argued that they put concerns about leaks to the public about the grand-jury scrutiny ahead of safeguarding documents sought by the investigators. Mr. Keke used Mr. Brodsky's testimony to his advantage, pointing out to jurors that Mr. Brodsky told Mr. Quattrone that he would take care of matters. Mr. Quattrone testified that, based on his conversation with Mr. Brodsky, he believed the investigation "wasn't a big deal."

Favoring a torrent of verbiage over crisply organized material, Mr. Keke drew a caustic comment Thursday from Judge Owen that captured his style. "Sir, how can I stop you? You're like a fire hydrant on the corner of New York City in the summer, and I can't turn you off. Just going on and on and on." Later in the same session, Mr. Keke jokingly acknowledged the critique. "Your Honor," he asked, "could I make one last request, without being too fire hydranty about it?"

Thursday, the jurors made some requests for additional testimony and material that could have been helpful to Mr. Quattrone. They asked whether any testimony showed whether Mr. Quattrone knew the exact contents of the two subpoenas. None did. They reheard testimony from one of Mr. Quattrone's colleagues, banker John Hodge, that Mr. Quattrone had no responsibility for allocating IPOs. And they asked for a copy of part of CSFB's document-retention policy, which Mr. Quattrone testified he relied on in forwarding the e-mail urging employees merely to comply with rules mandating routine destruction of certain documents.

The jurors also asked for more guidance on the word "corruptly," a feature of all three charges.

"It sounds as though the jury is struggling not only with the facts concerning Quattrone's knowledge of the investigation or the subpoena, but also with the law that would apply to those facts. Corrupt intent is an amorphous concept. Usually you know it when you see it. Here, it's not quite so clear cut," said Jan L. Handzlik, a defense lawyer with Kirkland & Ellis.