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The Gupta Indictment: Government Cocky After Rajaratnam Conviction?

United States attorney Preet Barbara has a challenge before him if he wants to prove that Rajat Gupta was the “eyes and ears of in the boardroom for his friend and business associate, Raj Rajaratnam.” The government alleges that Mr. Gupta, who was once a director of Goldman Sachs and Proctor & Gamble, fed information to Mr. Rajaratnam, who was recently convicted of insider trading. The indictment filed last week details six seemingly incriminating exchanges between Gupta and Rajaratnam, but they don’t amount to much. To convict Mr. Gupta of insider trading, the government must show that confidential information was exchanged which resulted in illicit trades. Mr. Gupta was once recorded disclosing details about a possible Goldman Sachs purchase to Mr. Rajaratnam, but Mr. Rajaratnam didn’t trade on it. On another occasion, Mr. Rajaratnam said that he had been tipped off on a trade by a Proctor & Gamble board member, but didn’t say who had provided the information. Aside from these two instances, the government only has telephone records: Mr. Gupta called Mr. Rajaratnam after speaking to the Goldman Sachs’ board and Mr. Rajaratnam later had his hedge fund, Galleon, trade Goldman stock. Of the six charges of securities fraud and conspiracy to commit securities fraud that Mr. Gupta faces, all are based on stock purchases soon after two of these telephone records. This entire case will turn on whether the government can prove *what* Gupta said in those telephone calls from *when* and to *whom* he said it.

The jury will have to decide whether Mr. Gupta was betraying his colleagues’ confidence when he called Mr. Rajaratnam. In his favor, Mr. Gupta was friends and business partners with Mr. Rajaratnam and they presumably had much to talk about aside from Goldman Sachs. Nevertheless, Mr. Gupta placed one call just sixteen seconds after a conference call with the Goldman Sachs board. The jury will be asked to weigh Mr. Gupta’s reputation as a self-made man, esteemed member of the financial

community, and notable philanthropist against Mr. Rajaratman's recent conviction of insider trading in a huge and highly publicized trial. Growing sentiment against the financial sector and the Wall Street elite will not help in that evaluation. However, Mr. Gupta's attorney, Gary Naftalis, fought the SEC's initial proceedings against Mr. Gupta in March in part because he wanted a jury trial. Presumably, he has some confidence that he can sway the jurors.

Why would someone like Mr. Gupta, who earned so much wealth and good will after years of hard work, get himself involved in all of this? What could he have hoped to gain that he didn't already have? Questions like these will be at the forefront of the jurors' minds. The optimist might say that Mr. Gupta had no reason or motivation to cheat, but the cynic will contend that, in a culture of greed and deceit, he could not have succeeded any other way.