

1 opinion or belief, that defendant also knowingly makes false
2 or fraudulent pretenses, representations or promises to
3 others." That language obviously needs to be included and is
4 important.

5 The defense of good faith clearly applies to fraud.
6 And the proposed instruction, however, in my judgment, broadly
7 and indiscriminately applies the defense to all of these
8 charges. Before the instruction goes to the jury, it will
9 need to be modified to apply only to those counts and
10 racketeering acts involving mail fraud.

11 The proposed instruction also is incomplete or, I
12 think, inaccurate, and I say this with the hope that it may be
13 helpful to the extent it applies to state the defendant's
14 theory of defense. I think the defense, from what I've heard,
15 is, as to a number of these matters, simply that the defendant
16 did not engage in the conduct and participate at all. The
17 defendant has not, I think in the presentation of the case,
18 relied solely on the defense of good faith. Rather, such a
19 defense appears to apply only to those objects of the
20 conspiracy in Counts 12, involving O/R releases and traffic
21 tickets. As to the allegations of bribery, it appears to me
22 that the defendant has been arguing that he did not engage in
23 any such conduct.

24 Accordingly, the theory of defense instruction, I
25 think, will need to be revised if you want it to accurately

1 reflect the defendant's various theories. And you're
2 certainly entitled to a theory of defense. But it will have
3 to be redone, and the Government's instruction as well will
4 have to be redone. And I'm talking about the right to honest
5 services defined.

6 We'll take a recess sometime before you make your
7 arguments, and we'll have to finally resolve those. We've
8 been able to make most of the changes that we spoke about last
9 night, and will be in the effort of trying to perfect those.
10 But I'm not going to rewrite the -- those two instructions for
11 you. But they're both unsatisfactory as far as I'm concerned,
12 as I've indicated.

13 Now, that in mind, we're going to bring the jury in
14 and conclude the testimony of the defendant.

15 (Off-record colloquy)

16 (Jury reconvened at 8:40 a.m.)

17 THE COURT: Please be seated.

18 THE CLERK: You're reminded, Mr. Bongiovanni, that
19 you're still under oath.

20 THE WITNESS: Yes.

21 GERARD BONGIOVANNI, DEFENDANT'S WITNESS, REMAINS UNDER OATH

22 THE COURT: Will counsel, stipulate to the presence
23 of the jury?

24 MR. PITARO: Yes, Your Honor.

25 MR. JOHNSON: Yes, Your Honor.

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7

1 THE COURT: Let me just take a moment with the jury.
2 There has been, in this case, a considerable amount of media
3 attention. The Court has instructed you from time to time.
4 Is there anyone who has not followed the instruction of the
5 Court? Are there any of you who have read any of the articles
6 that have appeared in the paper, or listened to any of the
7 medium -- media transmissions about this case?

8 The record should indicate that all of the jurors
9 indicate that they have not violated the order of the Court.
10 Thank you very much.

11 Mr. Johnson, you may proceed.

12 MR. JOHNSON: Thank you, Your Honor.

13 (Off-record colloquy)

14 CROSS-EXAMINATION (Continued)

15 BY MR. JOHNSON:

16 Q Mr. Bongiovanni, would you turn to the transcript for
17 Government Exhibit 169?

18 MR. JOHNSON: Your Honor, Government Exhibit 169 was
19 a tape that was admitted into evidence concerning a telephone
20 conversation intercepted on October 13, 1995, at approximately
21 3:05 p.m. The parties were Gerard Bongiovanni and Del Potter.

22 BY MR. JOHNSON:

23 Q Mr. Bongiovanni, I'd like you to look at page 1 of the
24 transcript, and where it says: "Potter" -- "Department IV,
25 Potter." You respond, "Are you aware of the TOR we got on

1 Monday." Potter says, "Oh, yeah." "Bongiovanni: Okay."
 2 "Potter: Yeah, I am." You state then, "Kutash." "Potter:
 3 Yeah, Jeffrey Kutash." You respond, "Paul's job's on the
 4 line." And Potter says, "Uh-oh, we gotta take care of that
 5 then."

6 Mr. Bongiovanni, in this conversation with Del Potter,
 7 you were the one, were you not, to raise the fact that you had
 8 a TRO hearing for Jeff Kutash on Monday?

9 A That's correct.

10 Q All right. Now, Mr. Bongiovanni, if you would look at
 11 Government Exhibit 172, please?

12 MR. JOHNSON: And, Your Honor, Government Exhibit
 13 172 is an admitted tape, in this case the telephone, October
 14 15, 1995, at approximately 9:35 a.m. This conversation was
 15 between Paul Dottore and Gerard Bongiovanni.

16 BY MR. JOHNSON:

17 Q I believe the parties have all agreed, and you testified
 18 yesterday, Mr. Bongiovanni, that it was Paul Dottore who
 19 called you in this conversation?

20 A That's correct.

21 Q All right. Now, during the conversation, however, you
 22 were the one to bring up the fact that Jeff Kutash had a case
 23 coming up in your court on Monday, is that correct?

24 A Yes, Mr. Dottore didn't know anything about it.

25 Q All right. And you were the one who brought it up, is

1 that correct?

2 A Yes.

3 Q Now, I'd like you, if you would, Mr. Bongiovanni, to look
4 at page 2 and the top of page 3 of the transcript. Toward the
5 bottom quarter of page 2 you state: "He's trying -- they're
6 fighting over control of the show or something." Dottore
7 responds, "I don't know, nobody said nothing to me." You
8 state, "No" and start to laugh. And Dottore then states,
9 "That's too bad," and both of you then laugh. Do you see that
10 part of the transcript?

11 A Yes.

12 Q All right. Now, when Mr. Dottore makes the statement to
13 you, "that's too bad," and you both then laugh in regard to
14 that statement, at that time you understood Mr. Dottore to be
15 commenting that it was too bad that no one had talked to him,
16 because he would have been able to work out a bribe for you to
17 fix the case, weren't you?

18 A No.

19 Q What did you understand Mr. Dottore to mean when he said,
20 "that's too bad"?

21 A Well, I was laughing about the other part, he nobody said
22 nothing to me. He was a part-time maitre d' there and it
23 seemed -- I thought he was joking around, that here he is
24 working part-time work, and that they're supposed to tell him
25 about their business? It seemed a little -- I thought he was

1 making a joke.

2 Q And when Mr. Dottore said, "that's too bad," what did you
3 understand him to mean?

4 A I thought he was being sarcastic, meaning that he had
5 enough of his own problems, he's got to worry about these
6 other people.

7 Q And that's what you understand him to mean there, was he
8 had too many of his own problems to be worrying about these
9 other people?

10 A Yes, that's what I --

11 Q That's your testimony?

12 A -- thought he had meant. I thought he was being
13 sarcastic.

14 Q Now, Mr. Bongiovanni, if you would, please look at
15 Government Exhibit 180?

16 MR. JOHNSON: Now, Government Exhibit 180, Your
17 Honor, is an admitted tape of a conversation occurring on
18 October 15, 1995.

19 BY MR. JOHNSON:

20 Q This is the same day as your conversation earlier with
21 Paul Dottore at 5:35, is that correct, Mr. Bongiovanni?

22 A Yes.

23 Q And the time of this conversation is approximately 1:48
24 p.m. in the afternoon. The participants in the conversation
25 are Paul Dottore and Gerard Bongiovanni. In looking at this

1 one-page transcript, Mr. Bongiovanni, do you see the part
2 where it states, "Paul Dottore: You're sleeping already?"
3 "What?" "Dottore: You're laying down?" You respond, "No."
4 Dottore says, "I've got to run by for a minute." And you
5 respond, "All right."

6 Now, at the time this conversation occurred, Mr.
7 Bongiovanni, was it your understanding that Mr. Dottore was
8 going to come over to your residence at or near that time?

9 A Yeah, he says, "I'm going to run by a minute." That was
10 not unusual.

11 Q And in fact Mr. Dottore did come right over to your
12 residence, is that correct?

13 A I don't know if he come right over, I don't remember.
14 But I know he came that day.

15 Q All right, now --

16 A I don't know if it was in minutes or what.

17 Q Now, let me go on to Government Exhibit 181, which a
18 stipulation was entered into evidence regarding this exhibit.
19 This was a telephone conversation concerning a telephone call
20 at 10/15/1995. The time of --

21 THE COURT: Now, what exhibit, counsel? I'm sorry.

22 MR. JOHNSON: 181, Your Honor.

23 THE COURT: 181.

24 BY MR. JOHNSON:

25 Q The time of the conversation was 1352 hours or 1:52 p.m.

1 The participants in the conversation are Peter Flangas and
2 Gerard Bongiovanni. There was a stipulation, Mr. Bongiovanni,
3 that near the end of this conversation you stated to Mr.
4 Flangas, "Your best client Pete -- I mean Paul's at the door.
5 I mean, Paul's at the door, so I'll see you later." Now, Mr.
6 Bongiovanni, when you said, "Paul's at the door," did that
7 mean that Paul Dottore had arrived?

8 A I believe so, yes.

9 Q And so Paul Dottore did come over to your house sometime
10 after 1:52 p.m. on October 15, 1995?

11 A Yes, he did.

12 MR. JOHNSON: Your Honor, may I approach the
13 witness?

14 THE COURT: You may.

15 BY MR. JOHNSON:

16 Q Mr. Bongiovanni, I'm going to show you what's been marked
17 Government Exhibit 201B, which has been identified as cellular
18 telephone records for Paul Dottore. Looking at October 15, at
19 approximately 2:01 p.m. there's been what's been identified a
20 telephone call from the cellular phone of Paul Dottore to
21 Starr Leavitt's telephone number. Now, that occurred at 2:01
22 p.m. Mr. Dottore didn't make that telephone call at your
23 house, did he?

24 A I don't recall him making any phone calls from my house,
25 no.

1 Q All right. So, Mr. Dottore had left your house then, by
2 the time that he made this call to Starr Leavitt?

3 MR. PITARO: Your Honor, I'm going to have to
4 object. He cannot tell when or what Mr. Dottore did; he can
5 tell what he did.

6 MR. JOHNSON: Well, he can tell whether Mr. Dottore
7 had --

8 MR. PITARO: Well, he can't tell if Mr. Dottore --

9 MR. JOHNSON: -- made the --

10 MR. PITARO: -- made a call to Starr Leavitt or not,
11 unless he was present.

12 THE COURT: Well, why don't you rephrase the
13 question.

14 BY MR. JOHNSON:

15 Q Mr. Dottore could not have -- you do not recall Mr.
16 Dottore making any telephone call at your residence?

17 A That's right, I do not recall.

18 Q So, if he had made --

19 A He was only there a couple minutes.

20 Q -- a telephone call at 2:01 p.m., he would have left your
21 residence by this time?

22 A I'm sorry, I didn't hear that.

23 Q If Mr. Dottore had made a call to Starr Leavitt at 2:01
24 p.m., he would have left your residence at this time -- by
25 this time?

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14

1 A Yes.

2 Q Now, you've given some testimony regarding a corporation
3 known as Massbo, is that -- that's correct?

4 A Yes.

5 Q And that was a corporation or a business that you were
6 involved in?

7 A Yes.

8 Q And you were part owner of that business, is that
9 correct?

10 A I was an investor, yes.

11 Q Well, an investor's an owner, right?

12 A I was an investor.

13 Q And an investor is someone --

14 A With a corporation.

15 Q -- who owns part of a business?

16 A Yeah, we never issued stock or anything, so we were just
17 getting off the ground.

18 Q Now, also involved in this business was Peter Flangas and
19 Del Potter, is that correct?

20 A That's right.

21 Q And then Mr. Dottore and Mr. Gresser were involved in it?

22 A That's right.

23 Q You indicated your brother, Carl Bongiovanni, was
24 involved in it?

25 A That's correct.

1 Q And another individual, Dominic -- I can't -- I don't
2 remember --

3 A Loccisano.

4 Q Loccisano.

5 A That's correct.

6 Q How much was each member supposed to contribute to
7 Massbo?

8 A Well, I believe the franchise was for thirty thousand
9 dollars, if I -- if I remember correctly, so we initially each
10 put in two, and then we put in another two later. But I think
11 we were supposed to get it up to thirty thousand dollars.
12 That's what we were represented that it would cost --

13 Q Did you put in --

14 A -- to get it off the --

15 Q -- two thousand dollars (\$2,000)?

16 A I put in a total of four thousand dollars (\$4,000).

17 Q All right. And how did you put that money into the
18 business?

19 A I wrote a check -- two checks to I believe Mr. Gresser.

20 Q You wrote two checks to Mr. Gresser?

21 A Right.

22 Q Did you provide any cash toward the business?

23 A No.

24 Q Now, you were not listed on any of the corporate
25 documents as an officer, or director, or incorporator of the

1 business, is that correct?

2 A No. No.

3 Q And this was a business venture that I think you said you
4 were involved in with Paul Dottore?

5 A Yes.

6 Q Now, you had some concerns about the legality of this
7 business, didn't you?

8 A Yeah, I wanted to make sure it was legal.

9 Q Do you recall a conversation with your brother, Carl, on
10 March 3rd, 1995, in which you told your brother that you hoped
11 the Massebo deal was not an illegal deal?

12 A No. We discussed it. I know we did --

13 Q Do you recall a --

14 A We may have discussed it, legality of it, and we had to
15 research it and be satisfied before we got involved. I
16 certainly wouldn't want to get involved in any illegal
17 business deals.

18 Q By March 3rd, 1995, you had already invested money in the
19 business, hadn't you?

20 A I don't recall the dates.

21 Q Do you recall, in a conversation on March 3rd, 1995, with
22 your brother, Carl Bongiovanni, that you stated to your
23 brother, Carl Bongiovanni, that you hoped the deal was not
24 illegal, but that everything was put in Gresser's name, just
25 in case?

1 A If you could show me the tape, it might refresh my
2 memory. I don't --

3 Q You don't recall that conversation now?

4 A I had a lotta conversations with my brother. Mr. Gresser
5 is the one whose -- it was his idea; he approached Paul
6 Dottore and Paul came to me. So, I wanted to check everything
7 out and make sure it was legal before anybody got involved in
8 it.

9 Q Now, was one of the reasons that you kept cash -- or,
10 kept your name off any of the documents for the corporation,
11 was that you were worried about taxes?

12 MR. PITARO: What? I'm sorry.

13 THE COURT: I'm sorry?

14 MR. PITARO: I'm sorry, I didn't hear the last part.

15 THE WITNESS: I don't know, it may have been. I
16 don't remember. I just wanted to be an investor, I didn't
17 want to run the business, 'cause it was going to be out of
18 state, and I just wanted to be an investor. I didn't have
19 time to do anything with this business. And the main reason
20 we got involved -- one of the main reasons --

21 MR. JOHNSON: That's -- Your Honor?

22 THE WITNESS: -- was to help Paul Dottore.

23 MR. JOHNSON: Can I interrupt him, 'cause I think
24 he's going beyond?

25 THE COURT: You may. It's not responsive.

1 MR. JOHNSON: Thank you.

2 THE WITNESS: Okay.

3 BY MR. JOHNSON:

4 Q Now, was one of the reasons that you kept your name off
5 any of the documents involved with Massbo was because Peter
6 Flangas was involved in the business, and your joint business
7 venture would present a conflict for Mr. Flangas to appear in
8 front of you?

9 A No, I -- I don't know if that ever came up. It may have,
10 I don't know.

11 Q Well, you are aware that the --

12 A You're asking me things that happened two, three years
13 ago, and I just don't remember. If you could --

14 Q Well, you testified to a number of things --

15 A If you could point me to a --

16 Q -- yesterday that happened two or three years ago, Mr.
17 Bongiovanni, with some level of detail.

18 MR. PITARO: Your Honor, that's argumentative.

19 THE COURT: Let's move on.

20 BY MR. JOHNSON:

21 Q Let me ask you, you're aware, under the Judicial Code of
22 Conduct, that you can't be involved in a business venture with
23 an attorney that regularly appears in your court?

24 MR. PITARO: Your Honor, that is -- that is not
25 true, and there's no evidence to support that.

1 THE COURT: The question -- counsel, you'll get an
2 opportunity to cross-examine. The question is an --

3 MR. PITARO: But he's -- he's asserting --

4 THE COURT: -- appropriate question. I'm going to
5 allow the question.

6 THE WITNESS: What was the question?

7 THE COURT: State the question again.

8 MR. JOHNSON: Just one second, if you would, Your
9 Honor?

10 (Pause in proceedings)

11 BY MR. JOHNSON:

12 Q All right. Mr. Bongiovanni, are you aware that the
13 Nevada Code of Judicial Conduct in canon 4(d)(1)(B) provides
14 that a judge shall not engage in financial and business
15 dealings that involve the judge in frequent transactions or a
16 continuing business relationship with those lawyers or persons
17 likely to come before the court on which the judge serves?

18 A Vaguely -- do I know -- that is, I said I know it now
19 that you read it.

20 Q All right.

21 A I'm -- I don't know if I was strictly aware of it then,
22 or -- but, this business never got off the ground anyway.
23 Until the business would get off the ground --

24 Q Let's -- let's not focus --

25 A -- I don't think we would have to comply with that.

1 Q Well, was that your thought pattern at that time or is
2 that your excuse for that conduct at this time?

3 A I'm not trying --

4 MR. PITARO: Well, Your Honor, I think that's --

5 THE WITNESS: -- to make excuses.

6 MR. PITARO: -- argumentative.

7 MR. JOHNSON: No, Your Honor, I'm asking --

8 THE COURT: He may respond.

9 MR. PITARO: Yes, it is argumentative.

10 THE COURT: Let's move on.

11 MR. JOHNSON: Thank you.

12 THE COURT: He may respond.

13 MR. JOHNSON: Thank you.

14 THE WITNESS: I'm not trying to make excuses for
15 anything, Mr. Johnson.

16 BY MR. JOHNSON:

17 Q No, and I understand --

18 A And I don't remember --

19 Q -- what you're saying.

20 A -- what was in my mind at that time.

21 Q Okay. But you did have this business relationship with
22 Mr. Flangas, starting in February or March of 1995?

23 A Well, it was in the initial stages --

24 Q You had invested --

25 A -- of --

1 Q -- four thousand dollars (\$4,000)?

2 A Yes.

3 Q Mr. Flangas, I take it, invested four thousand dollars
4 (\$4,000)?

5 A I don't know, you'd have to ask him.

6 Q You're not aware if he ever put any money into it?

7 A I -- I believe he did, but I'm not sure. I think we all
8 did.

9 Q And --

10 A But I'm not sure. I didn't see him give anybody four
11 thousand dollars (\$4,000).

12 Q And Mr. Flangas continued to have -- appear before you
13 after March and February of 1995, asking for O/Rs and in
14 various cases, is that correct?

15 A That's correct.

16 Q I think you mentioned that Paul Dottore had leased an
17 office space in Boston for the corporation?

18 A Yes.

19 Q And who was responsible for that lease after the
20 corporation folded?

21 A He and -- he and Mickey Gresser went out there and leased
22 the corporation. I don't know whose -- who signed for it,
23 or --

24 MR. JOHNSON: Could I have Government Exhibit 221,
25 please?

1 May I hand the witness 221, Your Honor?

2 THE COURT: Yes. Has that been received?

3 THE CLERK: Yes, Your Honor.

4 MR. JOHNSON: Yes, Your Honor.

5 BY MR. JOHNSON:

6 Q Mr. Bongiovanni, I've handed you Government's Exhibit
7 221. And this is a transcript of the arraignment of Terry
8 Salem on Wednesday, December 21st, 1994, is that correct?

9 A Yes, appears to be.

10 Q And you handled the arraignment of Terry Salem on that
11 date, is that correct?

12 A Yes, I did.

13 Q Now, if you look at page 3 of the exhibit at line 17, you
14 state, "Okay, does the State wish to" -- or, let me go up a
15 second, to make sure that we're clear here. Looking at page
16 2, at lines --

17 A Page 2?

18 Q Yeah. Lines 11 to 13. You see Gus Flangas state at that
19 point, "we will also waive the sixty-day rule and we will also
20 move for O/R release pending trial, Your Honor." Do you see
21 that?

22 A Yes, I do.

23 Q Then, if you go to page 3, line 17 -- starting at line
24 17, you state at this point, "Okay, does the State wish to
25 respond to his motion for O/R." And then the district

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1 attorney, Mr. Quam, states that he believes an appropriate
2 bail would be more reasonable than an O/R, at approximately
3 lines 22 and 23. Do you see that?

4 A Yes.

5 Q Now, by this time, when you asked the DA to respond to
6 the motion for O/R, you had already decided to give Mr. Salem
7 an O/R, isn't that correct?

8 A I was leaning toward that way because my law clerk
9 researched it, he had lived in Las Vegas ten years, it was a
10 white collar crime, he had -- still had ties to the community.
11 I believe he had a son or daughter that was still living here
12 he would visit --

13 Q Mr. Bongiovanni, let me interrupt you here.

14 A Why do you -- can't I finish?

15 Q The evening before, on December 20th, 1994, you spoke
16 with Mr. Potter, and agreed at that time that you were going
17 to give Mr. Salem an O/R in open court the next day, isn't
18 that correct?

19 A Because he qualified for one.

20 Q MR. Bongiovanni --

21 A He was turning himself in.

22 Q -- I'm asking --

23 A I knew that.

24 Q I'm asking --

25 A Okay.

1 Q -- this question, and please listen to it. At the time
2 you asked the State's attorney, Mr. -- how do you pronounce
3 his name, I'm just --

4 A Lester Quam.

5 Q Quam? Mr. Quam.

6 A Yes.

7 Q When you asked Lester Quam, the State's district
8 attorney, what the State's position was on the motion for O/R,
9 you had already decided with Del Potter the evening of
10 December 20th, the evening before this hearing, that you were
11 going to grant Mr. Salem an O/R in open court?

12 A I was inclined to, unless the State could come up with
13 some information that would change my mind. If I could
14 explain, I'll go right down the list.

15 Q That's all right, Mr. Bongiovanni, your --

16 A Okay.

17 Q -- attorney will have a chance to have you explain.

18 A Fine.

19 Q Now, Mr. Potter was your law clerk, is that correct?

20 A Yes, he was.

21 Q Would you look at Government Exhibit 101 for me, please?

22 A What was that exhibit that I just --

23 MR. JOHNSON: Your Honor --

24 BY MR. JOHNSON:

25 Q I'm sorry?

1 A You want this back?

2 Q Keep Exhibit 221 handy, 'cause we're going to be
3 referring back to that.

4 A Okay.

5 Q But if you would at this point go to Government Exhibit
6 101? Are you there?

7 A Exhibit 101, yes.

8 Q Thank you.

9 MR. JOHNSON: Your Honor, Exhibit 101 is an admitted
10 tape of a conversation occurring on -- or, December 21st,
11 1994, 8:27 a.m.

12 BY MR. JOHNSON:

13 Q Now, this conversation would have occurred prior to the
14 arraignment of Terry Salem, is that correct, Mr. Bongiovanni?

15 A Yes, 'cause court was at 9:00 o'clock; this was 8:27,
16 yeah. That's --

17 Q Now, in this conversation, if you would look at page 2 of
18 the conversation, at approximately one-third of the way down,
19 Mr. Flangas states, "[unintelligible] should I ask for an O/R
20 today." And your law clerk, Mr. Potter, says, "Oh, yeah,
21 yeah, you're going to get that." So again, Mr. Bongiovanni,
22 I'll ask you if at the time of the arraignment, when you asked
23 the district attorney what the State's position was on the
24 O/R, hadn't you already decided by that time to grant an O/R
25 for Terry Salem?

1 A I don't see me in here saying, "Oh, yeah, you're going to
2 get that." Mr. Potter was probably reflecting his opinion.

3 Q Now --

4 A I know -- I know that Gus Flangas was a new admittee, and
5 he was appearing on this matter, I think, for Pete Flangas.
6 And Mr. Potter had went over the information with him, to --
7 to help him out.

8 Q Well, that's what I want to go on next --

9 A Okay.

10 Q -- so I think you'll get a chance to talk about that.

11 A All right.

12 Q Mr. Flangas then, on page 2 of the transcript, asks,
13 "what grounds" for the O/R, right?

14 A That's right.

15 Q At the middle?

16 A Wait a minute, what page?

17 Q Page 2 of the transcript, 101.

18 A Okay. "What's the grounds," all right.

19 Q And Mr. Potter essentially then lays out all the grounds
20 for justifying an O/R for --

21 A That's correct.

22 Q -- Terry Salem, is that correct?

23 A Yeah, 'cause Gus -- Gus Flangas was a new admittee.

24 Q Okay.

25 A And he wasn't familiar with the procedures. Mr. Potter

1 was offering him his assistance. He did that for a lotta new
2 attorneys.

3 MR. JOHNSON: Your Honor, I think we --

4 THE COURT: Mr. Bongiovanni, if you will --

5 MR. JOHNSON: -- we'll go on to the next point.

6 THE COURT: -- listen to the questions, and respond
7 to the questions, your attorney will have an opportunity to
8 come back to you.

9 THE WITNESS: Yes, sir.

10 BY MR. JOHNSON:

11 Q Now, if you can go back -- keep Exhibit 101 handy, in
12 case we need to refer to it, but if you could go to --

13 A 101. Okay.

14 Q -- Exhibit 221 now? And if you'd look at page 4? After
15 Mr. Quam concludes at line 3 his request that Mr. Salem
16 receive some type of bail, not an O/R, Mr. Flangas then

17 launches into a variety of reasons why Mr. Salem should get an
18 O/R, is that correct?

19 A Yes.

20 Q And these reasons are essentially the same ones that Mr.
21 Potter had told him to say -- Mr. Flangas to say in their 8:27
22 conversation, is that correct?

23 MR. PITARO: Your Honor, the transcripts will speak
24 for themselves. The -- the -- Potter -- that's fine.

25 THE COURT: This is appropriate cross-examination,

1 counsel. Let's move on.

2 THE WITNESS: I don't know word for word, if there's
3 anything missing, but there's a lot of similar things there.

4 BY MR. JOHNSON:

5 Q Pretty close. Now, at no time during this arraignment
6 did you say to Mr. Quam, "My law clerk's already discussed
7 this with Mr. Flangas and he's already provided him the
8 reasons for why Mr. Salem should get out," do you?

9 A No, I didn't know I had to.

10 Q At no time during this proceeding do you state to Mr.
11 Quam that Paul Dottore had been calling you asking for an O/R?

12 A At no time -- I didn't understand that question.

13 Q At no time during this proceeding did you tell Mr. Quam
14 that anyone had contacted you outside of that hearing and
15 requested an O/R for Mr. Salem?

16 MR. PITARO: Your Honor, I think that assumes facts
17 not in evidence. Dottore said he didn't call.

18 THE WITNESS: Nobody called me about an O/R.

19 BY MR. JOHNSON:

20 Q Well, Mr. Potter, in his conversation with you --

21 A Oh, except --

22 Q -- on the evening of --

23 A -- Potter indicated that he had been arrested.

24 Q And he indicated that Paul had been calling him asking
25 that you O/R him?

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1 A Paul was not calling me. He never called me about it.

2 Q All right. But you indicated to -- you did not at any
3 time indicate to Mr. Quam that you had had discussions about
4 this case outside your court concerning the issue of the O/R?

5 MR. PITARO: Well, Your Honor, I think that's
6 misleading. Talking to his -- a law clerk is not outside the
7 court.

8 THE COURT: He can respond, counsel. You may
9 respond.

10 THE WITNESS: Oh, I'm sorry, I didn't hear you.
11 What was the question again?

12 BY MR. JOHNSON:

13 Q You, at no time, during the arraignment of Terry Salem,
14 said anything to the district attorney that parties had been
15 contacting your office regarding arranging for the O/R release
16 of Terry Salem?

17 A It doesn't appear so, from reading this.

18 Q Now, looking at page 4 of the arraignment, Exhibit 221,
19 in looking at Mr. Flangas's recitation of the reasons for
20 release, at lines 10 through 14, Mr. Gus Flangas at that point
21 states to you, "As this proceeding was put on we arranged to
22 have this put on yesterday, and he was going to be in my
23 office this morning at 8:30 to take -- to make this
24 proceeding, and he was arrested last night while outside his
25 hotel out of the blue, so he doesn't constitute a flight

1 risk." The transcript here indicates that you interrupted Gus
2 Flangas and asked the question, "He came here yesterday to
3 appear for this morning's trial?" You see that in the
4 arraignment transcript?

5 A Yes.

6 Q Now, at the time you asked that question, you already
7 knew that Mr. Salem had come over from California, and had
8 been planning to make that morning trial, didn't you?

9 A I believe Mr. Potter told me that the other night, the
10 night before.

11 Q That's correct, he did. So, when you're making this
12 question to Mr. Flangas, you're asking a question that you
13 already knew the answer, isn't that correct?

14 A I may not have heard him and I was repeating to make sure
15 I understood what he said. But I knew what --

16 Q In essence, Mr. --

17 A -- but I did know it the night before, I believe, from
18 talking to Mr. Potter.

19 Q In essence, Mr. Bongiovanni, this was a staged
20 proceeding, was it not?

21 A No. I don't know what you mean by a staged proceeding.

22 Q Everybody had their lines and the only person who didn't
23 know what was going on during this proceeding was Mr. Quam,
24 isn't that correct?

25 A I don't know what you mean by that.

1 THE COURT: Let's move on, counsel.

2 MR. JOHNSON: I am, Your Honor.

3 THE WITNESS: I know I was prepared at the time to
4 hear this motion. I had gathered information on it, as I do
5 on --

6 MR. JOHNSON: Your Honor, I don't believe a question
7 is --

8 THE WITNESS: -- all my cases.

9 MR. JOHNSON: -- before the witness.

10 THE COURT: There is no question, Mr. Bongiovanni.

11 THE WITNESS: Well, I thought he said to explain.
12 Okay.

13 MR. JOHNSON: Your Honor, at this point I'd ask that
14 we play a short conversation, Government Exhibit 112. I have
15 a series of questions about that conversation.

16 THE COURT: 112?

17 MR. JOHNSON: Yes, Your Honor.

18 THE COURT: It's been received?

19 MR. JOHNSON: Yes, Your Honor.

20 THE COURT: You may play the tape.

21 MR. JOHNSON: Your Honor, Government --

22 MR. PITARO: Your Honor, with all due -- I thought
23 the procedure was to use the transcript?

24 THE COURT: Well, normally it is.

25 MR. JOHNSON: I'm only going to be using the tape a

1 few times during the course of my cross-examination, Your
2 Honor.

3 THE COURT: Okay. Well, it's in evidence, counsel.
4 In the interest of time, I appreciate using the transcript,
5 but if counsel has some reason, and you may have the same
6 reason on occasion.

7 MR. PITARO: Well, when I did, you told me I had to
8 use the transcript.

9 THE COURT: I'm sorry?

10 MR. PITARO: I thought when I wanted to play some
11 tapes you told me to use the transcript.

12 THE COURT: Well, I think you played some tapes.

13 MR. PITARO: New tapes.

14 MR. JOHNSON: Your Honor, Government Exhibit 112 is
15 a conversation that was taped on December 29, 1994, at
16 approximately 6:29 p.m. The participants in the conversation
17 are Gerard Bongiovanni and Joe Argenio. I'd ask that we play
18 the call at this time.

19 (Plaintiff's Exhibit No. 112 is played)

20 BY MR. JOHNSON:

21 Q Mr. Bongiovanni, would you look at page 4 of the
22 transcript at the bottom third of the page? Mr. Argenio
23 comments to you, "So then we'll go over there, I'll call you
24 Monday morning." You state, "Yeah, remind me, don't let me
25 pull that." Argenio chuckles and says, "Yeah, see, he's got a

1 little thing." You state, "Okay." Argenio responds, "And I
2 want you to meet him." You state, "All right." And Mr.
3 Argenio says, "And, uh, I want him to take care of you in the
4 golf course whenever you want to go. He's got a season pass."

5 Now, Mr. Bongiovanni, you subsequently met with the
6 gentleman that Mr. Argenio was talking about, is that correct?

7 A I believe so, yes.

8 Q And you had lunch with him at Spanish Trails Club?

9 A We had lunch, yes.

10 Q Who was the individual that Mr. Argenio was talking
11 about?

12 A I'm trying to think of his name. Sonny. Can't think of
13 his last name. I'm bad with names. Sonny was his first name.
14 I can't think of his last name right now, I'm sorry.

15 Q Now, Mr. Argenio states, "Yeah, see, uh, he's got a
16 little thing, and, uh, I want you to meet him."

17 What was the little thing that Mr. Argenio was referring
18 to that the guy had, this Sonny had?

19 A I didn't know at that time. I thought maybe he had a
20 problem or -- of some sort.

21 Q Did you subsequently find out what the little thing was?

22 A I believe someone -- I don't know if it was his or his
23 wife's, had a traffic citation.

24 Q Now, looking at page 6 of the transcript, Mr. Argenio
25 states, "And then when you run, I want him to throw a party

1 for you at Spanish Trails and see what we can do over there."
 2 You state, "Yeah, that'll be nice." Mr. Argenio states,
 3 "That's why I want ya in with this guy." You state, "Uh."
 4 Mr. Argenio then says, "It's a bad way of getting in to him,
 5 but, uh, one way or another at least I'm" --

6 THE COURT: "Into with him."

7 MR. JOHNSON: I'm sorry?

8 THE COURT: "Into with him."

9 BY MR. JOHNSON:

10 Q "Into with him," I'm sorry. "But one way or another, at
 11 least, I'm sure he's going to be there this time, you know."

12 Mr. Bongiovanni, what did Mr. Argenio mean when he said,
 13 "It's a bad way of getting into with him"?

14 MR. PITARO: Your Honor, he can't testify to what
 15 Mr. Argenio meant.

16 THE WITNESS: I don't know what he meant by that.

17 MR. JOHNSON: He's a participant in the
 18 conversation, Your Honor.

19 THE COURT: You may respond.

20 THE WITNESS: I really don't know what he meant by
 21 that.

22 THE COURT: Okay. He's answered, let's move on.

23 MR. JOHNSON: Thank you, Your Honor.

24 BY MR. JOHNSON:

25 Q Mr. Bongiovanni, would you look at Government Exhibit

1 117, please?

2 (Alarm sounds in the courtroom)

3 THE COURT: Let me invite the jury to recess. Go to
4 the jury room and do not talk with anyone about this matter.

5 (Court recessed until 9:54 a.m., for a fire drill)

6 (Jury is present)

7 THE COURT: Please be seated. Needless to say,
8 ladies and gentlemen, these alarms have nothing to do with
9 this trial.

10 Counsel, will you stipulate to the presence of the
11 jury?

12 MR. PITARO: Yes, Your Honor.

13 MR. JOHNSON: Yes, Your Honor.

14 THE COURT: Okay. Mr. Johnson, you may proceed.

15 MR. JOHNSON: Thank you, Your Honor.

16 BY MR. JOHNSON:

17 Q Mr. Bongiovanni, we just got done looking at Government
18 Exhibit 117, which concerned Mr. Argenio setting up a meeting
19 between you and a Sonny, is that correct?

20 A That's right.

21 Q You actually did subsequently meet with Sonny, isn't that
22 correct?

23 A Yes, we all went out to lunch.

24 Q Could you -- I'm sorry, we were looking at Exhibit 112 --
25 could you turn now to Exhibit 117?

1 A Okay.

2 MR. JOHNSON: Your Honor, Exhibit 117 has been
3 admitted into evidence. It's a recorded conversation on
4 January 2nd, 1995 at 14:27 hours, or 2:27 p.m.

5 BY MR. JOHNSON:

6 Q Looking at page 4 of the transcript, Mr. Bongiovanni, at
7 approximately the middle, you're talking with Paul Dottore,
8 and you state, "Went and had lunch over at Spanish Trails.
9 "Dottore: Huh." "Bongiovanni: Argenio, he introduced me to
10 some guys."

11 You're referring to the lunch with Sonny at this point in
12 time, are you not?

13 A That's correct.

14 Q Going over to page 5, about the third phrase down from
15 the top, you state: "Those guys got money." "Dottore: Yes,
16 sir, they sure do." You state, "We're walking out, and he
17 says, 'Wait a minute, I got a Christmas gift for you, Joe, and
18 then he brought me one too, a bottle of Dom Perignon.'"
19 "Dottore: No kidding, that's like seventy-five dollars a
20 bottle." "Bongiovanni: Yeah, and said, 'anytime you want to
21 golf, give me a call.'"

22 Now, at that point in time, during this luncheon, you
23 received from Sonny a bottle of Dom Perignon?

24 A No, it was on the way out. He opened up his trunk, there
25 was a few people there, not just Joe and myself. And he was

1 -- it was during the holidays and he was handing everyone a
2 bottle of champagne.

3 Q All right. And he gave you a bottle of Dom Perignon?

4 A Yes, he did.

5 Q And this was on January 2nd, right?

6 A If that's the date. January 2nd.

7 Q And told you if you if you wanted to play golf anytime
8 you could do it with him for free, right?

9 A He told me if I ever wanted to golf give him a -- call
10 him up.

11 Q And he was going to let you play for free, isn't that
12 correct?

13 A I don't know if he had a membership there, or whatever.
14 I never did play golf with him, so I don't know.

15 Q And if you'd look at page -- bottom of page 6, Dottore
16 asks you --

17 A Page 6.

18 Q -- "Yeah, what's he do," you respond, "I don't" -- on top
19 of page 7, "I don't know, I didn't ask (chuckles)." Dottore
20 says, "Yeah, who cares."

21 So, you didn't know at the time you spoke with Dottore on
22 January 2nd what Sonny's business was, did you?

23 A I may have and forgot, or I just didn't remember at that
24 time. I don't remember now as I sit here either.

25 That was the last time I had contact with him.

1 MR. JOHNSON: Your Honor, I don't have a question
2 before the witness.

3 THE WITNESS: Okay, I'm sorry.

4 THE COURT: There is no question.

5 BY MR. JOHNSON:

6 Q Mr. Bongiovanni, if you would look at Exhibit 121? Are
7 you there?

8 A Yes, sir.

9 Q Okay. Look at page 2 of the exhibit, please.

10 MR. JOHNSON: Your Honor, this was a conversation
11 recorded on January 3rd, 1995 at approximately 8:22 p.m. It's
12 between Paul Dottore and Gerard Bongiovanni.

13 BY MR. JOHNSON:

14 Q Mr. Bongiovanni, about a third, quarter of the way down
15 on page 2, you make the statement, "If your guy comes
16 through." When you were referring to "your guy," you were
17 referring to Terry Salem, isn't that correct?

18 A That's correct. As I remember now.

19 MR. JOHNSON: Your Honor, I don't have any other
20 question for the witness.

21 THE COURT: All right. Let's move on.

22 THE WITNESS: Okay.

23 BY MR. JOHNSON:

24 Q If you would, Mr. Bongiovanni, would you look at
25 Government Exhibit 131.

1 MR. JOHNSON: Your Honor, Government Exhibit 131 is
2 a tape recording of a conversation on January 17, 1995 at
3 approximately 7:53 p.m. It's a conversation between Gerard
4 Bongiovanni and Paul Dottore.

5 BY MR. JOHNSON:

6 Q In the middle of the page 1 of the transcript Dottore is
7 speaking to you and he states, "Uh, you want to stop by a
8 minute?" And you reply, "Okay." Did you go over to Mr.
9 Dottore's house on January 17, 1995?

10 A I believe I did, I'm not sure. But if the tapes show I
11 did, I did.

12 Q When you went over --

13 A I think I did.

14 Q -- to Mr. Dottore's house on January 17, 1995, didn't he
15 give you seven -- seventeen hundred and fifty dollars (\$1750)
16 as a bribe payment from Terry Salem?

17 A No, he did not.

18 Q But you did get some golf balls that night, didn't you?

19 A What tape are you referring to now?

20 Q Well, let me just ask you before we talk about a tape.
21 Do you recall getting golf balls on January 17th, 1995 when
22 you went over to Paul Dottore's house?

23 A I -- Paul and I were always exchanging golf balls.

24 Q So if you did go over to Mr. Dottore's house --

25 A I may have, yes.

1 Q Okay.

2 A That could be.

3 Q Now, if Mr. Dottore gave you golf balls on January 17,

4 1995, would those have been golf balls from Mr. Dottore?

5 A They may have been the ones -- I think there was a

6 conversation with Mr. Strano that he bought us golf balls or

7 something.

8 Q Okay. So Mr. -- at one time Mr. Dottore gave you golf

9 balls from Mr. Strano?

10 A Yes.

11 Q Okay.

12 A I believe Mr. Strano brought 'em to his house, and Paul

13 gave 'em to me.

14 Q All right. Let's look at Government Exhibit 133 --

15 A Okay.

16 Q -- and maybe this will refresh your recollection.

17 A Okay, that's the 17th, okay.

18 MR. JOHNSON: Your Honor, Government Exhibit 133 is

19 a tape conversation on January 17, 1995 at approximately 9:21

20 p.m. It's a conversation between Dottore, Dominic Strano,

21 with Gerard Bongiovanni in the background.

22 BY MR. JOHNSON:

23 Q Have you had a chance to look at that conversation, Mr.

24 Bongiovanni?

25 A Yes.

1 Q And does that refresh your recollection as to whether or
2 not on January 17, 1995 --

3 A Right.

4 Q -- Paul Dottore gave you golf balls from Dominic Strano?

5 A I believe I got on the phone and thanked Dominic for the
6 golf balls.

7 Q All right. Now Dominic Strano at this time you knew was
8 -- had been charged with cheating at casinos here in the state
9 of Nevada, is that correct?

10 A I believe he got arrested January -- New Year's Eve, or
11 something.

12 Q All right. So on --

13 A Some -- something like that.

14 Q -- January 17th you were aware that he was --

15 A Yeah, I was aware of it.

16 Q -- charged with --

17 A Right.

18 Q -- cheating at a casino?

19 THE WITNESS: I'm sorry.

20 (Colloquy between Witness and Court Recorder)

21 MR. JOHNSON: I'm sorry, Mr. Bongiovanni, I'll
22 repeat the question.

23 BY MR. JOHNSON:

24 Q So on January 17th you were aware that he was charged
25 with cheating at a casino?

1 A That's correct.

2 Q And Dominic Strano was the individual that Mr. Dottore
3 was getting the black box for the illegal cable signals for
4 your home, isn't that correct?

5 A I don't recall where he was getting it from.

6 Q How many times have you met Dominic Strano?

7 A Oh, I met him at least six or seven times; we had coffee
8 over at Paul's house.

9 Q And you always met him then through Paul Dottore?

10 A I met him -- yeah, he was Paul's friend. I met him at
11 Paul's house, I think I was over at Vegas World once and I met
12 him there, he was working in the show there as a maitre d'.

13 MR. JOHNSON: Your Honor, I'm going to ask to play a
14 tape now because I'm going to ask the defendant to see if he
15 can identify his voice in the tape.

16 THE COURT: What tape you talking about?

17 MR. JOHNSON: This will be Government Exhibit 50.

18 THE COURT: 50?

19 MR. JOHNSON: Yes, Your Honor.

20 THE CLERK: 1-5, Eric? Fifteen?

21 MR. JOHNSON: 50, 50.

22 THE CLERK: Five zero.

23 MR. JOHNSON: Five zero, I'm sorry. Five zero, 50.

24 THE CLERK: That's been admitted?

25 MR. JOHNSON: Yes.

1 THE CLERK: That has been admitted, Your Honor.

2 MR. JOHNSON: Can I ask the agent to go ahead and
3 play the tape, Your Honor?

4 THE COURT: You may. You may be able to ask Mr.
5 Bongiovanni whether or not he acknowledges his voice on this
6 tape.

7 MR. JOHNSON: Well, we'll start out that --

8 BY MR. JOHNSON:

9 Q Mr. Bongiovanni, would you look at Exhibit 50?

10 A Yes.

11 Q Do you recognize this conversation as one you've listened
12 to?

13 A I've listened to this tape, yes.

14 Q And were you present in Mr. Dottore's house at the time
15 that Mr. Dottore and Mr. Gresser had this conversation over
16 the telephone?

17 A I was -- I believe I was present in the house, but I
18 didn't overhear the entire phone call.

19 Q Okay, where were you during the phone call?

20 A Well, I know that I was there with a friend of mine,
21 Jerry Sheppis [phonetic].

22 Q I didn't ask who you were there with --

23 A Oh, I -- okay, I'm sorry.

24 Q -- I've asked where you were during this phone call.

25 A I believe I was sitting in his kitchen, that's where we

1 always had coffee.

2 Q All right. And Mr. Dottore was there in the kitchen
3 during the phone call?

4 A I don't remember where he was. He -- Mr. Dottore, he
5 would get ton -- dozens of calls a day, and he'd walk around,
6 he had a portable phone, he'd walk around talking to people.
7 He'd walk in in and out -- in and out of the room. I didn't
8 pay attention to him.

9 Q Well, did he do that with this conversation?

10 A He may have.

11 Q You recall, though, that you were there, though, in the
12 kitchen during at least a portion of this conversation?

13 A Yes, I do.

14 Q And in fact, at the beginning of the conversation,
15 looking at Government Exhibit 50, Mr. Dottore states, "I
16 figure I was doing wrong, Gerard." And then starts, "Yeah,

17 swinging." And Dresser [sic] says, "You."

18 Was Mr. Dottore referring to you when he said, "I figured
19 I was doing wrong, Gerard"?

20 A Was he referring to me?

21 Q Right. Was he talking to you at the time he was saying
22 that?

23 A Well, I believe -- it sounds that way.

24 Q And during the conversation when Mr. Dottore is sitting
25 there talking about what --

1 MR. PITARO: Well, there's no testimony that Mr.
2 Dottore was sitting there talking about --

3 MR. JOHNSON: I'm sorry.

4 BY MR. JOHNSON:

5 Q When -- during the conversation when Mr. Dottore was
6 there talking about what court it was in, the ticket that Mr.
7 Dresser [sic] was referring to. Let me stop for a second and
8 we'll go back.

9 This conversation in -- was one in which Mr. Dresser
10 [sic] was asking Mr. Dottore to arrange for you to handle a
11 ticket, isn't that correct?

12 MR. PITARO: Well, Judge, he --

13 THE WITNESS: I didn't know who was on the other
14 line.

15 MR. PITARO: Well, that, I guess, obviates the
16 objection.

17 BY MR. JOHNSON:

18 Q All right. This was a conversation in which, what little
19 you say you overheard, you were able to tell Mr. Dottore was
20 talking to somebody who wanted you to arrange to handle a
21 ticket, isn't that correct?

22 MR. PITARO: No, Your Honor, that is not what he
23 said. He was asked that in preparation for this has he heard
24 that tape.

25 THE COURT: Counsel, this is a different question

1 and it's an appropriate question and the witness can answer.

2 THE WITNESS: Would you repeat the question, please?

3 BY MR. JOHNSON:

4 Q While you were there during this conversation you
5 understood -- you overheard Mr. Dottore talking with someone
6 where -- in which you understood that the person Mr. Dottore
7 was talking to was wanting you to handle a ticket, isn't that
8 correct?

9 A He was wanting me to help with a ticket, that's correct.

10 A And in fact there was discussion concerning this -- in
11 this conversation concerning what court the ticket was in,
12 isn't that correct?

13 MR. PITARO: Your Honor, once again, there's not the
14 foundation as to whether Mr. Bongiovanni -- he was originally
15 asked about this conversation basis -- with the tape.

16 THE COURT: Counsel, the question is he can say yes
17 or no.

18 MR. PITARO: But he can't ask --

19 THE COURT: The question is a proper question.

20 MR. PITARO: Not when he's asking what someone else
21 is saying on a tape.

22 THE COURT: He can say, "I didn't hear."

23 BY MR. JOHNSON:

24 Q During the conversation, Exhibit 50, you were present in
25 the room with Mr. Dottore when there was a discussion

1 concerning what court the ticket was in front of, isn't that
2 correct?

3 A That is what I'm trying to figure out.

4 THE COURT: Counsel, it may be better for you to
5 play the tape if it -- this sounds like it's taking longer
6 than playing the tape.

7 THE WITNESS: It seems like something I would ask,
8 if there was a problem with it, so I may have been.

9 (Pause in proceedings)

10 BY MR. JOHNSON:

11 Q Did Mickey Gresser ever give you any golf balls for
12 arranging to handle a ticket?

13 A No.

14 Q Did you ever receive golf balls from Mickey Gresser?

15 A No.

16 Q Did Paul Dottore ever give you golf balls from Mickey
17 Gresser?

18 A Paul Dottore and I gave each other golf balls, I don't
19 recall him ever telling me that it was from Mickey Gresser.

20 Q How many times would Mr. Dottore give you golf balls
21 during the course of the year?

22 A Oh, constantly. I -- we -- I'd go buy some, in a couple
23 of weeks he'd buy some. We'd buy these X'd out golf balls
24 that cost like ten dollars a dozen.

25 Q But you're unaware of any golf balls from Mickey Gresser?

1 A I don't recall Paul ever telling me that Mickey Gresser
2 gave us golf balls -- or gave me golf balls.

3 Q Did you ever receive any free suit from Joe Milano?

4 A No, I did not.

5 Q You never received any suit from Joe Milano for handling
6 a ticket?

7 A No, I did not. I did business at his store.

8 Q Did you ever receive any free clothing from his store?

9 A No, nothing free.

10 Q Well, let me just -- that sort of runs the question, did
11 you ever receive clothing at a reduced price?

12 A Well, if you'll let me explain, I'll tell you what
13 happened.

14 Q Why don't you answer the question? Did you ever receive
15 clothing at a reduced price?

16 A Well, that depends in the eye of the beholder, I guess.

17 Q Okay.

18 A If I could explain, I could explain it to you.

19 Q Did you ever receive clothing for less than what Mr.
20 Milano would charge the general public?

21 A I don't know what Mr. Milano charged the general public.

22 Q Did you ever receive clothing for less than what it was
23 marked for sticker price?

24 A I never remember seeing sticker prices on the clothing
25 there. If you -- if you -- okay.

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1 Q Did you ever handle any tickets for Mr. Milano?

2 A I believe I helped him with a citation. Was happy to do
3 it.

4 Q How long have you known Kenneth Lombard?

5 A Since he moved here. I don't know when he moved here.
6 Sometime in the '80s.

7 Q I think you --

8 A Maybe ten years, I don't remember.

9 Q Didn't you testify yesterday it was ten or twelve years?

10 A Well, if that's how long he's been here that's -- I met
11 him when he first moved here.

12 Q You didn't know him back --

13 A I must have met him ten, twelve years, I don't know.

14 Q -- you didn't know him back in Buffalo?

15 A No, I did not. I was close friends with his uncle.

16 Q And Mr. Lombard became a friend of yours?

17 A Well, I was friends with his uncle.

18 Q When Mr. --

19 A He was -- he was part of the baggage, let's put it that
20 way.

21 Q And you considered Mr. Lombard part of the baggage of
22 being friends with the uncle?

23 A Yeah, we were friendly, but I wouldn't say a close
24 friend.

25 Q You bowled together in the same league?

1 A That's correct.

2 Q And you were members of the Elk's Lodge together?

3 A That is correct, with his uncle.

4 Q You handled legal matters for him?

5 A Tried to help him because of his uncle.

6 Q And you went to his wedding?

7 A Certainly.

8 Q I'm sorry?

9 A Certainly.

10 Q When he called up once wanting a O/R for a Mr. Florio,

11 you granted that, didn't you?

12 A For Mr. Florio?

13 Q Right.

14 A Of course I granted that. It was a misdemeanor case on

15 New Year's Eve --

16 Q And Mr. Lombard --

17 A -- I was happy to let the guy out.

18 Q -- I didn't ask you to go into the explanation, Mr.

19 Bongiovanni --

20 A I'm sorry.

21 Q I'm merely trying --

22 MR. PITARO: Well, Your Honor, he can answer the

23 question.

24 MR. JOHNSON: I asked him, did he grant an O/R for

25 Mr. Lombard, and he said, yes.

1 THE COURT: Again, Mr. Bongiovanni, you will have an
2 opportunity for your attorney to address these additional
3 issues.

4 THE WITNESS: Okay.

5 THE COURT: Let's move on.

6 BY MR. JOHNSON:

7 Q And Mr. Lombard would bring you tickets to handle in the
8 court, didn't he?

9 A He may have brought a couple from his friends, I don't
10 recall specifically.

11 Q You don't have any recollection of Mr. Lombard ever
12 bringing you any type of ticket to --

13 A I know he did, but -- specific tickets, no, I don't know.
14 I didn't keep track of 'em.

15 Q How many tickets do you recall him bringing you?

16 A I didn't keep track of 'em. I have no way of -- for me
17 to answer that I'd just be speculating.

18 Q Well --

19 MR. PITARO: Your Honor, maybe if he has these
20 tickets, then he can show 'em and we can move on.

21 THE COURT: Counsel, he may make his own inquiry.
22 The question has been answered, let's move on.

23 BY MR. JOHNSON:

24 Q Now you were aware that Nevada Revised Statute 178.484
25 requires that a person arrested for domestic violence must not

1 be admitted to bail sooner than twelve hours after his arrest?

2 A I'm aware of that statute.

3 Q And you knew of that statute in May of 1994?

4 A I don't know when that statute came out.

5 Q Well, was it out by May of 1994?

6 A I don't know. If you pull out the statute it would say
7 on there, but I believe it may have been.

8 Q And you're aware that on May 10, 1994 Mr. Lombard was
9 arrested on a domestic violence charge, isn't that correct?

10 A That's correct.

11 Q And you interceded on his behalf to get him out before
12 twelve hours had run, didn't you?

13 A What happened was, I called the jail --

14 Q I'm asking you, did you intercede on his behalf to get
15 him out of the -- out of jail before the twelve hours had run?

16 A I called the jail --

17 MR. PITARO: Your Honor, I think he can answer the
18 question.

19 THE COURT: The question is clear enough. Did you
20 or did you not intercede, that's the question.

21 THE WITNESS: I interceded to give him an O/R.

22 THE COURT: Okay, that was the question.

23 THE WITNESS: Period.

24 THE COURT: Let's move on.

25 //

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1 BY MR. JOHNSON:

2 Q Now, if you would, Mr. Bongiovanni, would you look at
3 Government Exhibit 30, please? And in particular, this is a
4 conversation on May 10, 1994. And look at page 2 at the
5 bottom where Mr. Dottore said, "They said they were going to
6 hold him for twelve hours. Do you have to hold him for" --
7 "do they have to hold him for twelve hours?" Do you see that?
8 Look at the bottom of page 2 --

9 A Okay.

10 Q -- about three phrases from the bottom. Do you see where
11 Dottore said, "They said they were going to have to hold him
12 for twelve hours. Do they have to hold him for twelve hours?"

13 A Yes.

14 Q And you said, "Well, usually. Where is he going to go?"
15 So you knew about the twelve-hour rule in domestic violence
16 cases on May 10, 1994, didn't you?

17 A I probably did, certainly.

18 (Pause in proceedings)

19 Q Mr. Bongiovanni, I believe you testified yesterday that
20 you would -- if Mr. Peter Flangas called you up you would
21 grant any O/R that he requested because you had complete
22 confidence in Mr. Flangas, is that correct?

23 A No, I don't believe those were my words.

24 Q But it was a fact that you would grant any O/R that Peter
25 Flangas requested, isn't that correct?

1 A No, I've refused him O/Rs on occasion.

2 Q Well, there were a number of --

3 A I've granted a lot of O/Rs and I've refused O/Rs.

4 Q Well, we're talk --

5 A You've paid -- you've played a few tapes that you wanted

6 to play with Mr. Flangas.

7 Q And -- and you have the same group of tapes.

8 A Pardon me?

9 Q And I said, you have the same group of tapes.

10 A And you don't have tapes of other conversations --

11 Q All right.

12 A -- that weren't taped.

13 Q Now.

14 MR. PITARO: Well, you know, could I have a sidebar

15 on that?

16 THE COURT: No, let's move on.

17 BY MR. JOHNSON:

18 Q Now --

19 MR. PITARO: I'm gonna -- I want one afterwards then.

20 BY MR. JOHNSON:

21 Q Mr. Flangas would call you up on occasions and ask you to

22 O/R someone and wouldn't even tell you what the person was

23 charged with, isn't that correct?

24 A That may -- that may have happened.

25 Q Well, you've listened to the tapes that we did play,

1 didn't that happen in a number of those occasions?

2 A In a number of 'em? I don't know that there were a
3 number of 'em, I know there were -- I remember one
4 specifically.

5 Q All right. Well, would you look at Government Exhibit
6 47, please?

7 THE COURT: While we're waiting just a moment,
8 ladies and gentlemen, I think you understand, but in case
9 there's any question, and the instructions will be very clear,
10 though a defendant has an opportunity to present evidence a
11 defendant has no obligation to present evidence, and I'm sure
12 you understand that.

13 BY MR. JOHNSON:

14 Q Are you on Government Exhibit 47?

15 A 47, yes, sir.

16 Q Now on page 2 of that transcript at the top you state to
17 -- Mr. Flangas call is -- is calling up asking for an O/R.
18 You state, "What's he charged with?" And Mr. Flangas states,
19 "Well, on this one I don't know. A bunch of shit." And Mr.
20 -- you ask his name, "Fernando Hernandez?" And he said
21 "Fernando." And you said, "That's what I said, Fernando."
22 And then a couple lines down you said, "Yeah, right. All
23 right, it's done."

24 Now the only information you had as to the charges
25 against Mr. Hernandez at this point in time was that he was

1 charged with a bunch of shit, isn't that correct?

2 A Yes, but I think it also said there that I had O/R'd him
3 the week before, so I probably remembered about the guy.

4 Q Well, if you remembered why'd you say what's he charged
5 with?

6 A I don't know why I said that.

7 Q And you granted an O/R on the basis of Mr. --

8 A I can't tell you here why I said something in --

9 Q -- Flangas's request, isn't that true?

10 A Say that again, please?

11 Q And you granted an O/R on the basis of Mr. Flangas's
12 request, isn't that true?

13 A If that's what it says in the -- these tapes that's true.

14 Q And it wasn't until you contacted the --

15 A I contacted the jail and they told me what he was in
16 there for.

17 Q And that was in regard to trafficking in a controlled
18 substance, isn't that correct?

19 A I believe possession with intent to sell and under the
20 influence. It says here on page 2.

21 Q Now if you would look at Exhibit 67, please? At page 2
22 of 67, which is a conversation intercepted on August 7th, 1994
23 at 9:50 a.m., Mr. Flangas states to you "And uh -- uh -- I
24 don't know why they say. It's an old warrant and I -- he
25 shows up and I got everything current on him, and they -- they

1 busted him in a car and they took him back to an apartment
2 that didn't even belong to him, and they arrested him for what
3 was in the apartment, so it was all bullshit."

4 Now at this point, Mr. Bongiovanni, Mr. Flangas hasn't
5 said anything to you about what the charge was that Mr.
6 Quintanilla was in on, has he?

7 A No, he just says it was an old warrant and he had always
8 showed up. And I have everything current on him. It must
9 have been something that got lost in the system.

10 Q I'm sorry, I didn't hear you.

11 A It might have been something that got lost in the system.

12 Q All right, that's a might have been. Did you ever ask or
13 did he ever tell you what the charge was?

14 A It doesn't appear to be in this transcript.

15 Q All right. And you went ahead in that transcript and you
16 agreed to O/R Mr. Jose Quintanilla, is that correct?

17 A He was a client of Peter's. I O/R'd him on something the
18 week before, and the way I understood it this one was left out
19 and he had been making his court appearances. So I had no
20 problem with that.

21 Q Well, let me refer you back to Government Exhibit 47 and
22 looking at page 1 about a third of the way down. You state,
23 "I got a guy that you took out last week, but they didn't" --
24 or Peter Flangas states to you that "I got a guy that you took
25 out last week, but they didn't -- they didn't have all -- they

1 had him in another court, you see. He's Fernando Hernandez."
2 Wasn't this the O/R in which you had released the guy only
3 previously the week before?

4 A I don't know. What was that other exhibit?

5 Q I'm sorry, what?

6 A What was that other exhibit? Wasn't it Quintanilla?

7 Q 47 concerns Hernandez.

8 A Hernandez, no --

9 Q 67 concerns Quintanilla.

10 A Okay, 67. Are they both the same people? I don't
11 believe so.

12 Q No.

13 A Is that what you want to know?

14 Q Why don't we go on to Government Exhibit 56, Your Honor
15 -- I mean, Mr. Bongiovanni?

16 THE COURT: 56?

17 THE WITNESS: Now, we're on to 56, all right.

18 BY MR. JOHNSON:

19 Q Now this was a conversation between you and a Mr.
20 O'Neill, is that correct?

21 A That's correct.

22 MR. JOHNSON: And this, Your Honor, was an admitted
23 tape on August 3rd, 1994 at approximately 10:36 a.m.

24 BY MR. JOHNSON:

25 Q If you would look at page 1 to page 2, Mr. O'Neill states

1 about in the middle, "Not too much. I talked to you last
2 week." You reply, "Yeah." And Mr. O'Neill says, "The same
3 proposal, but can you cut that thing in half instead of the
4 original way?" And you say, "What do you mean, cut it in
5 half?" "Well --" And you ask, "The amount of bail?" And Mr.
6 O'Neill says, "Yeah." You state, "I forgot what it was." And
7 Mr. O'Neill says, "I think he's on a thirty."

8 Now what was -- Mr. O'Neill was asking here, Mr.
9 Bongiovanni, is for you to cut the bail of somebody -- a
10 thirty thousand dollar bail on somebody in half, isn't that
11 correct?

12 A That's what it sounds like if that's what it says.

13 Q Do you know who Mr. O'Neill was talking about?

14 A I believe his son and his son's friend got in trouble.

15 And I reduced --

16 Q And --

17 A -- I reduced the bail for his son.

18 Q Now let me -- let's just go on a little bit.

19 A Okay.

20 Q And we'll get down to that.

21 A All right.

22 Q Now, at the bottom of page 2 Mr. O'Neill asked you, "But
23 I mean -- I mean, without any heat on you. Can that be
24 possible?" You see that comment by Mr. O'Neill?

25 A No.

1 THE COURT: What page are we on?

2 MR. JOHNSON: Page 2 of the transcript, Your Honor.

3 BY MR. JOHNSON:

4 Q And by this statement wasn't Mr. O'Neill asking you if it
5 was possible for you --

6 A I can't find the statement.

7 THE COURT: It's a third from the bottom, Mr.
8 Bongiovanni.

9 MR. JOHNSON: Right, third from the bottom.

10 THE WITNESS: He needs attorney --

11 BY MR. JOHNSON:

12 Q And by this statement Mr. O'Neill was asking you if it
13 was possible for you to cut the bail in half without bringing
14 any heat on you for doing that, isn't that correct?

15 A Well, I don't see where it says heat.

16 THE COURT: It's the second sentence.

17 THE WITNESS: Up top?

18 THE COURT: No, third from the bottom.

19 MR. JOHNSON: Third phrase from the bottom.

20 THE COURT: Following "O'Neill."

21 THE WITNESS: Oh, okay.

22 BY MR. JOHNSON:

23 Q Where Mr. O'Neill says, "But I -- I mean, without any
24 heat on you, can that be possible?" And what I'm asking you
25 is when Mr. O'Neill said that, was he saying to you, is it

1 possible to reduce the bail without you getting any heat?
 2 Isn't that correct?
 3 A You'd have to ask him what he meant.
 4 Q What did you understand him to mean?
 5 A I don't know what I understood it to mean at that time.
 6 Q Well, let's look over at page 3, at the top of the page.
 7 A Okay.
 8 Q You respond, "It's tough, it -- it --" And Mr. O'Neill
 9 says, "Is it?" And you say, "What I might do is see if he can
 10 retain Flangas." And Mr. O'Neill says. "Uh, is that right?
 11 Then you might be able to do something?" "Well, you know, if
 12 he's got an attorney or something, then I'd feel more
 13 comfortable --" "O'Neill: "I --" You state, "-- reducing
 14 the bail."
 15 A That is correct.
 16 Q So didn't you when you said at the top, "it's tough"
 17 indicate to Mr. O'Neill that you were anticipating getting
 18 some heat if you reduced the bail?
 19 A No, that's what he said to me.
 20 Q Well, he said, "I mean" -- on page 2, "I mean, without
 21 any heat on you, can that be possible?" And you said, "No, I
 22 don't want to do it, you know." And O'Neill said, "No." And
 23 you said, "It's tough." Weren't you saying to Mr. O'Neill
 24 that it would be difficult for you to reduce the bail without
 25 you feeling some heat for doing that?

1 A Well, I wouldn't entertain it under the circumstances for
2 some reason. I don't have all the facts of what it was in my
3 mind now. But there was some hang-up there that I wasn't
4 comfortable with. But I was -- I am always more comfortable
5 in reducing somebody's bail if he is represented by an
6 attorney because most people who retain attorneys are more apt
7 to show up for court than if they don't have an attorney.

8 Q Well, this -- Mr. O'Neill was a friend of yours, wasn't
9 he?

10 A Yeah.

11 Q And you knew his son?

12 A I knew his son.

13 Q And Mr. O'Neill was a long-time friend of yours, isn't
14 that correct?

15 A A long-time friend I met him in -- when I worked at the
16 Royal Las Vegas in 1980, I think. But --

17 Q He's a friend like Ben Spano was a friend, right?

18 A -- but we weren't -- no, no. I knew Ben Spano a little
19 better than Mr. O'Neill, but --

20 Q Okay. Now --

21 A -- but Mr. O'Neill --

22 Q Your Honor, if I -- go on to the next question.

23 THE WITNESS: I'm sorry.

24 THE COURT: Well, I think he's still responding.

25 You --

1 MR. JOHNSON: Okay.

2 THE COURT: Go ahead. Anything further?

3 THE WITNESS: Mr. O'Neill had his son that was

4 involved. He vouched for his son, that if I lowered the bail

5 he would show up for court. Now we're talking about his son's

6 friend who he indicated, I don't know, if I remember

7 correctly. I can't vouch for him that he'll be -- show up for

8 court, so I says, I'd feel better if he was able to retain an

9 attorney. Then I would consider reducing the bail. And he

10 had --

11 BY MR. JOHNSON:

12 Q Weren't -- I'm sorry, let me --

13 A -- and he had asked me to recommend --

14 MR. JOHNSON: Your Honor, I do think we've gone --

15 THE WITNESS: -- someone and I recommended Flangas.

16 MR. JOHNSON: -- now before -- beyond response to

17 this question.

18 THE COURT: Okay. Let's move on.

19 THE WITNESS: Okay, I'm sorry.

20 THE COURT: You say that he asked you to recommend

21 an attorney, Mr. Bongiovanni?

22 THE WITNESS: It's not in the transcripts, Your

23 Honor, but he -- I think I talked to him in person, if I

24 remember right. I don't believe it's in the transcript.

25 THE COURT: Let's -- okay.

1 THE WITNESS: That's what confuses me.

2 THE COURT: Let's move on.

3 BY MR. JOHNSON:

4 Q Now, if you would, go to Exhibit 176, please?

5 THE COURT: 176?

6 MR. JOHNSON: Yes, Your Honor. No, I'm sorry. Let
7 me take that back and ask you to go to Exhibit 70.

8 (Pause in proceedings)

9 BY MR. JOHNSON:

10 Q Now, Mr. -- this is a conversation recorded on August 10,
11 1994 at approximately 9:49 p.m. between Paul Dottore and Jack
12 O'Neill. You see that, Mr. Bongiovanni?

13 A Yes, I do.

14 Q And Mr. Dottore states at the beginning, "Yeah, you know
15 that judge you reached out for for somebody?" And O'Neill
16 says, "Say -- say that again." And Dottore says, "The judge

17 you reached out for for somebody?" And Dottore says, "You
18 know, he's a good friend of mine." And you state, "Yeah, I
19 know." These men were talking about you, wasn't that correct,
20 Mr. Bongiovanni?

21 A Seems that way.

22 Q Now, looking at page 2 of the transcript, approximately
23 the middle of the page, Mr. O'Neill says --

24 MR. PITARO: Your Honor, the transcript is in
25 evidence. It's not his call, it's two independent people, and

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1 I don't think it's -- that it's proper for him to be asking
2 him what these two people are meaning. And if he's just going
3 to read the transcript, it's already in evidence.

4 THE COURT: I don't know if he's going to ask that
5 or not, counsel, but it's proper cross-examination.

6 MR. JOHNSON: Thank you, Your Honor.

7 BY MR. JOHNSON:

8 Q Mr. O'Neill says to you, at the middle of the page,
9 "Yeah, no, no, no, no, no" -- or excuse me.

10 A No, he didn't say nothing to me --

11 Q "Yeah" --

12 A -- I'm not involved in this conversation.

13 Q Or excuse me. O'Neill says to Dottore here, at the
14 middle of the page, "Yeah, no, I -- I -- I -- I go to him
15 myself." Had Mr. O'Neill gone to you for other favors
16 concerning legal matters before the court?

17 A Not that I recall as I sit here today. He may have.

18 Q Now, Mr. Flangas was a close friend of yours, isn't that
19 correct?

20 A He was a good friend of mine, that's correct.

21 Q And you'd frequently go to lunch together on work days?

22 A That's true.

23 Q He had your home telephone number?

24 A Yes, he did.

25 Q And he was a significant contributor to your 1990

1 campaign for judge?

2 A I don't know if you'd call it significant, but he was a
3 contributor, he helped me out a lot in the campaign.

4 Q Well, of all the individual contributions to your
5 campaign for the 1990 election, Mr. Flangas's contribution was
6 the only one that was in excess of five hundred dollars,
7 wasn't it?

8 A I don't recall, I haven't looked at my campaign --

9 MR. JOHNSON: May I approach the witness, Your
10 Honor?

11 THE WITNESS: -- what do you call it, reports and --

12 THE COURT: You may.

13 THE WITNESS: -- since they were filed.

14 BY MR. JOHNSON:

15 Q I'm going to show you a page and it's for reporting
16 period number 3, tabulations of contributions in excess of
17 five hundred dollars.

18 A Okay.

19 Q This is part of exhibit -- let me make sure I've got the
20 record clear, Exhibit 223. Now, looking at that in terms of
21 personal contributions by someone other than a business --

22 A Well, Peter --

23 Q -- and other than yourself --

24 A -- Peter Flangas is a business, is a law office.

25 Q It's not listed there as a business, is it, it's listed

1 as a contribution from Peter L. Flangas, isn't that correct?

2 A Column three, I'd have to read through this and figure
3 out what each column means.

4 Q This report here is a report of all those contributors
5 who contributed in excess of five hundred dollars --

6 A That's correct.

7 Q -- during your 1990 campaign.

8 A Right.

9 Q And Pete Flangas is there.

10 A "Contributor" -- [Witness reading to himself]

11 Q And it shows -- I'm sorry, I think --

12 A I think the contributors are listed in this one column.

13 Q And Pete Flangas is listed as a contributor, is that
14 correct?

15 A That's correct.

16 Q And he's listed as a contributor over five hundred
17 dollars?

18 A That's correct.

19 Q And that was for an amount of eighteen hundred and
20 twenty-two dollars (\$1822)?

21 A Eighteen hundred twenty-two dollars (\$1822), you're
22 right.

23 Q Thank you.

24 (Pause in the proceedings)

25 //

1 BY MR. JOHNSON:

2 Q Did you ever provide or have your staff provide Dottore
3 with any criminal history printouts for anybody?

4 A Not to my knowledge.

5 Q You know what I'm talking about, don't you, by criminal
6 history printouts?

7 A A SCOPE printout?

8 Q SCOPE.

9 A Not to my knowledge.

10 Q You never provided any of those to Mr. Dottore?

11 A No.

12 Q Mr. Bongiovanni, in this period of around 1994, 1995 you
13 regularly went out and gambled, didn't you?

14 A I went out once during the week and maybe once or twice
15 on the weekends for couple hours each time.

16 Q So that could mean anywhere from one to three times a
17 week you'd go out gambling?

18 A That was usual, just to get out of the house. That was
19 my outlet.

20 Q And when you were out on your gambling you would
21 frequently lose money, isn't that correct?

22 A Oh, I think I lost a lot more than the times that I won.

23 Q That's -- did you have any type of problem controlling
24 your gambling?

25 A Did I have problem controlling my gambling?

1 Q Yes.

2 A Not really. I'd lose money, whatever I had on me I'd
3 lose and it was time to go home. Sometimes it was fifty
4 bucks, sometimes it was a hundred, sometimes it was two
5 hundred.

6 Q Would you look please at Government Exhibit 158?

7 A What?

8 Q Could you look please at Government Exhibit 158?

9 A 158. "Paul Dottore" -- [witness reading to himself]

10 Q If you'd go to page 4 of the transcript?

11 A Okay.

12 Q Actually if you'd look back at page 3 and let's start
13 there. Page 3 at the bottom third of the page you state,
14 "Now, I got fifty bucks or something from some guy for the
15 painting, tells me I'll be at the Gold Coast. I said, well,
16 you'll be there by yourself." Dottore laughs. You respond,
17 "I ain't going." Going over to page 4. Dottore says, "All
18 right." You said, "I can't do it. I said, it's all right for
19 him to gamble because he ain't got much to lose." "Dottore:
20 Yeah." "Jerry: Yeah." "Bongiovanni: Yeah." "Dottore: No,
21 I know." Then you state, "He goes bankrupt on fifty bucks,
22 that's all, he can't get hurt. "Dottore: Yeah." You state,
23 "Even though he's got to stay home the rest of the month."
24 Then you say, "I go to three hundred, two hundred. "Dottore:
25 Yeah, well, I did the same thing when I was making money."

1 And you respond, "I can't control myself."

2 Now, in this conversation when you say to Dottore, "I go
3 to three hundred, two hundred," weren't you telling him that
4 you regularly lost two hundred or three hundred dollars when
5 you'd go out gambling?

6 A No, that would happen once in awhile. Things would
7 get --

8 Q And then at the bottom you state, "I can't control
9 myself." Weren't you indicating --

10 A That means -- like I just told --

11 Q -- you had problem controlling your gambling?

12 A Oh, I'm sorry, finish your question.

13 Q That's all right. Then at the bottom you state, "I can't
14 control myself." Weren't you indicating to him that you had
15 trouble controlling your gambling?

16 MR. PITARO: Your Honor, I think if you just turn
17 the page you'll see, "so I just lay off." So it's misleading
18 what he's saying.

19 MR. JOHNSON: And I don't think I was misleading at
20 all, I'm asking, isn't he saying I have trouble controlling my
21 gambling.

22 THE COURT: Counsel, he's entitled to conduct his
23 own examination.

24 BY MR. JOHNSON:

25 Q When you said to Mr. Dottore I can't control --

1 A What I'm saying, at -- it depends on the time you're out.
2 Sometimes you have control and sometimes you don't have
3 control.

4 Q So there are --

5 A Once in awhile I would lose more than I anticipated I
6 wanted to lose, and I was aggravated with myself, but I never
7 lost a penny I couldn't afford to lose. My bills were always
8 paid at home before I went out.

9 Q If you'd go now to the bottom of page 5?

10 A Okay.

11 Q Looking about actually at the middle. All right. You
12 state, "It's easier not to play than to abuse yourself
13 playing." "Dottore: Yeah, well, I just took a shot, that's
14 all." You respond, "Yeah, well, that's all right with twenty
15 bucks. "Dottore: Yeah." You state, "I can't do that, if I
16 go twenty, I go everything in my pocket."

17 A Right.

18 Q Aren't you saying to Mr. Dottore that when you start
19 gambling you gamble everything in your pocket?

20 A Everything is up for grabs. If I got fifty dollars on me
21 I'll go -- that's why I got to control myself before I leave
22 the house. But like I says --

23 MR. JOHNSON: Your Honor, I don't have a question in
24 front of the witness.

25 THE WITNESS: -- my house was paid, and all my bills

1 are paid before I --

2 THE COURT: There's no question --

3 THE WITNESS: -- I had the money to do it.

4 THE COURT: There's no question, Mr. Bongiovanni.

5 THE WITNESS: Okay.

6 BY MR. JOHNSON:

7 Q When you would go out gambling would Mr. Dottore
8 frequently go with you? When you would go out gambling
9 wouldn't Mr. Dottore frequently go with you?

10 A Many times.

11 Q So on the one to three times a week you'd go out gambling
12 Mr. Dottore would be there most, if not all, the times?

13 A Well, I would say, at least -- if I went out three times
14 he would at least be there twice.

15 Q I'd like to turn your attention now to the search of your
16 residence.

17 A Okay. Is there a tape on there?

18 Q No --

19 A I wish there was.

20 Q -- we'll not deal with a tape on that, 'cause there is --
21 I think this was the search when the agents came into your
22 residence.

23 A Right. I wish there was a tape.

24 THE COURT: That'll be stricken.

25 //

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1 BY MR. JOHNSON:

2 Q Mr. Bongiovanni, you heard Detective Nicholson testify,
3 didn't you?

4 A Certainly did.

5 Q And do you recall Detective Nicholson testifying, "I
6 don't recall searching the cupboards, and myself and Special
7 Agent Byers were the only ones in the kitchenette area and we
8 were standing there watching the defendant while he was
9 reading the papers he was presented with"? Remember that
10 testimony by Mr. Nicholson?

11 A If that's what he said, I don't remember it.

12 Q Do you remember Mr. Nicholson saying that there was no
13 search done of the cupboards in the kitchen?

14 A If that's what he said, that's what he said.

15 Q Do you recall him saying that?

16 A I believe I do.

17 Q And your testimony is that the agents came in and
18 searched through all the cupboards in the kitchen?

19 A There weren't two in the kitchen, there were three. One
20 was searching the cupboards and one -- Nicholson was behind me
21 and there was another agents leaning right in front of me --

22 Q And your testimony --

23 A -- while I was attempting to read the documents.

24 MR. JOHNSON: Your Honor, if -- Your Honor, if --

25 THE COURT: Let him finish.

1 BY MR. JOHNSON:

2 Q And your testimony is that the agents, while they were
3 there, searched the cupboards of the kitchen?

4 A That's correct.

5 Q And so you're stating that Mr. Nicholson was lying when
6 he testified here in this courtroom?

7 A I'm not stating that he was lying, maybe he recalls it
8 different than me. I'm telling you what I recall.

9 Q You heard Special Agent Hanford testify, didn't you?

10 A Yes, I did.

11 Q And you heard Special Agent Hanford testify that the
12 kitchen area was not searched. Do you recall that testimony?

13 A Well, I don't know how he could testify to that if he was
14 outside, but I -- if that's what he said, that's what he said.

15 Q All right. And your testimony here today is that Agent
16 Hanford was lying when he said that the kitchen area was not
17 searched?

18 A Well, I think people have a different memory of what
19 transpired, and I -- what they are saying is not what I recall
20 the incident how it occurred.

21 Q You heard Detective Nicholson testify that he reached
22 into your pocket and removed the five one-hundred-dollar
23 bills, is that correct?

24 A I specifically remember me reaching into my pocket --

25 MR. JOHNSON: I -- Your Honor, that's not responsive

1 to the --

2 THE WITNESS: -- and giving 'em to him.

3 THE COURT: Listen to the question again, Mr.
4 Bongiovanni. The question is, do you remember --

5 THE WITNESS: No, I don't believe that's correct.

6 BY MR. JOHNSON:

7 Q I didn't ask you if that's correct, I asked you do you
8 recall Detective Nicholson testifying that he reached into
9 your pocket and removed the --

10 A Yes, I do.

11 Q -- five hundred-dollar bills?

12 A Yes, I do.

13 Q And your testimony is that you took 'em out of your
14 pocket and handed them to Detective Nicholson?

15 A That's correct.

16 Q And so are you testifying today that Detective Nicholson
17 was lying when he said he reached into your pocket and pulled
18 out the five one-hundred-dollar bills?

19 MR. PITARO: Judge, we both -- that's not a proper
20 way of formulating questions concerning lying back to lying,
21 it's asking what this guy's perception is and the other man's
22 perception.

23 THE COURT: The objection is overruled, let's move
24 on.

25 MR. JOHNSON: Thank you, Your Honor.

1 BY MR. JOHNSON;

2 Q Are you testifying here today that Detective Nicholson
3 was lying when he said that he reached into your pocket and
4 pulled out the five one-hundred-dollar bills?

5 A Well, if I had to choose between my recollection and his
6 and one of us had to be lying, it would be Detective
7 Nicholson, let me put it that way, if you're going to make me
8 choose.

9 Q Now, you heard Detective Hanford -- or Agent Hanford
10 testify that he came into your residence and talked with you
11 before the discovery of the five one-hundred-dollar bills,
12 isn't that correct?

13 A I've heard that testimony.

14 Q And your testimony is that Agent Hanford did not come
15 into the residence until after the five one-hundred-dollar
16 bills was discovered?

17 A That's how I recall it.

18 Q Is it your testimony here today that Agent Hanford was
19 lying when he said that he came into the residence prior to
20 the discovery of the five one-hundred-dollar bills?

21 A I think Agent Hanford was mistaken. I don't like to call
22 anybody liars, but if you're going to make me choose an (a) or
23 (b) we'll go that way.

24 Q How long were the agents there in your residence?

25 A A total?

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1 Q Well --

2 A From the time they entered to the time they left?

3 Q Right.

4 A I'd have to estimate, maybe twenty minutes. Fifteen,
5 twenty minutes, I don't know.

6 MR. JOHNSON: Could I have one second, Your Honor?

7 THE COURT: Yes.

8 MR. JOHNSON: No other questions at this time, Your
9 Honor.

10 THE COURT: Redirect, counsel?

11 MR. PITARO: Yes, Judge, a few questions.

12 THE COURT: Let me meet with you for a moment.

13 (Discussion at sidebar)

14 THE COURT: I'm going to ask that unless it's
15 extraordinary that we save our sidebar questions until we're
16 in recess. You were concerned about something --

17 MR. PITARO: Your Honor, I'd move for a mistrial.
18 What we -- what you did is -- what happened was Mr. Johnson
19 asked -- made the comment that there's other tapes that you've
20 listened to, and the Court had previously ruled that on these
21 other tapes that --

22 THE COURT: I don't know that he said other tapes.

23 MR. PITARO: Yes, he did.

24 THE COURT: I think he said you have the tapes,
25 don't you.

1 MR. JOHNSON: Mr. Bongiovanni said --

2 MR. PITARO: Can I finish my motion?

3 MR. JOHNSON: -- I have all these tapes where I --
4 that people go and, you know, deny they're ours and all this.
5 And I said, you have those tapes, too.

6 MR. PITARO: And I -- and you had previously told me
7 I couldn't get into any other tapes that weren't in here, that
8 I couldn't bring in those tapes. So now saying -- by that
9 coming out we've never then had the opportunity to play tapes
10 like with the -- with the Marshal, with the probation officers
11 and those sort of people. And now it implies that he was.
12 There was no need to go into that.

13 THE COURT: Well, I don't remember --

14 MR. PITARO: That's why I move for a mistrial.

15 THE COURT: -- that I denied you -- well, the motion
16 will be denied. I don't remember that I denied you an
17 opportunity to play relevant tapes.

18 MR. PITARO: Well, you ruled they weren't relevant.
19 You ruled that --

20 THE COURT: Well, that's --

21 MR. PITARO: -- other conduct that he did wasn't
22 relevant, and now they've implied that they were there and you
23 could have played 'em if you wanted to, and the Court had said
24 that we couldn't get into those.

25 THE COURT: Well, I don't think he said you could

1 play 'em if you wanted to.

2 MR. JOHNSON: I didn't say that.

3 MR. PITARO: I think that was the implication.

4 THE COURT: And --

5 MR. PITARO: Well, that was the implication and
6 that's the reason for my motion.

7 THE COURT: Well, in any event it wasn't an
8 implication to me and the motion is denied.

9 (End of discussion at sidebar)

10 THE COURT: Redirect, Mr. Pitaro.

11 MR. PITARO: Thank you, Judge.

12 MR. JOHNSON: Could I just have one second, Your
13 Honor, to pack up?

14 THE COURT: Yes.

15 (Pause in proceedings)

16 THE COURT: Mr. Pitaro.

17 MR. PITARO: Ready?

18 THE COURT: Go ahead.

19 REDIRECT EXAMINATION

20 BY MR. PITARO:

21 Q Mr. Bongiovanni, let me go to an area that we didn't get
22 into very much and the Government did, and that is your
23 finances. By 1994, '95, the time frame that we're talking
24 about, could you -- did you own your own house?

25 A Yes, my house was paid for in 1991.

- 1 Q So you didn't have a mortgage in your house?
- 2 A No.
- 3 Q And your automobile?
- 4 A My automobile was paid for.
- 5 Q Okay. So you didn't have a car payment either?
- 6 A No.
- 7 Q Now, in addition to your salary did you have savings?
- 8 A Yes, I had savings.
- 9 Q Okay. And did you have profit sharing?
- 10 A Yes, I did.
- 11 Q Okay. Now, in addition to your salary, your profit
- 12 sharing, your savings, your house being paid for, car being
- 13 paid for, did you also receive money for Medicare for the care
- 14 of your wife who was disabled with Multiple Sclerosis?
- 15 A Yes, I did.
- 16 Q Okay. And what did you use that money for?
- 17 A To -- mostly to take care of her.
- 18 Q Okay. And did you also then receive money on behalf of
- 19 your two children because your wife was -- Marilyn was
- 20 disabled?
- 21 A That's correct.
- 22 Q Okay. So what did you do with that money?
- 23 A I put that in accounts for them.
- 24 Q For what?
- 25 A For their college education.

1 Q Okay. Now, we heard of that tape where the Government
2 insisted someone by the name of Pat, you were claiming you
3 were going bankrupt, who was the person on that tape?

4 A That was my sister-in-law, Rose.

5 Q And what were you guys talking about?

6 A I was just kidding around with her.

7 Q And were you talking about in a few months you were going
8 to have to get G.B. a car and he'd never be home?

9 A Right. Right.

10 Q Is that what it was?

11 A Yeah, it was just kidding around like that.

12 Q Okay.

13 A That was my personality to, how do you say, give her the
14 business, you know what I mean, that's why we were laughing on
15 the tape.

16 Q Okay. So it wasn't you making dire predictions --

17 MR. JOHNSON: Objection, leading.

18 MR. PITARO: -- of your bankruptcy, was it?

19 THE WITNESS: No.

20 MR. JOHNSON: Objection, leading, Your Honor.

21 THE COURT: He's responded, let's move on.

22 THE WITNESS: If I went out gambling and I --

23 MR. JOHNSON: Objection, Your Honor.

24 THE WITNESS: Okay.

25 THE COURT: There's no question now, Mr.

1 Bongiiovanni.

2 THE WITNESS: I'm sorry.

3 BY MR. PITARO:

4 Q Did you ever go out gambling with money that wasn't extra
5 money, if you would?

6 A No, it was always extra money and --

7 Q Okay. Now, let me --

8 A -- any money I lost I could have went out with forty
9 dollars and my saying would be I went bankrupt.

10 Q Okay. Let me ask you this, were you happy if you lost?

11 A No, I wasn't happy.

12 Q Okay. Now, during the time you're making these comments
13 about -- with Mr. Dottore about that, obviously you don't know
14 that the Government is listening to everything you say?

15 A Obviously.

16 Q Okay. And people when they're talking in the phone talk,
17 don't they?

18 A Right.

19 MR. JOHNSON: Objection, Your Honor, leading.

20 THE COURT: You are. This is your witness, counsel.

21 BY MR. PITARO:

22 Q If you had -- if -- let me just ask this. If you'd known
23 that the Government was listening to you while you're having
24 these personal calls and then two or three years later they
25 were going to play 'em, would you maybe have chosen your words

1 any better?

2 A I would probably torn my phones out of the wall and not
3 talked on the phone.

4 Q All right. Now, we heard this tape, Exhibit 30, which
5 was the Kenny Lombard getting out of jail?

6 A Yes, sir.

7 Q Okay. What was your belief at the time that you let Mr.
8 Lombard out of jail in this domestic violence?

9 A My belief was that they -- when he was released he was
10 gonna go to Mr. Dottore [sic] house and stay there until
11 everything got resolved in the courts.

12 Q And as a matter of fact, right after the sentence, right
13 after the one the Government --

14 MR. JOHNSON: Objection, Your Honor, leading.

15 MR. PITARO: I'm trying to direct him to a portion
16 of the conversation.

17 THE COURT: Well, direct him to a portion and then
18 ask him.

19 MR. PITARO: All right.

20 BY MR. PITARO:

21 Q On Exhibit 30 on page 3.

22 THE COURT: 30, 3?

23 MR. PITARO: Yeah.

24 THE WITNESS: Where am I? 30?

25 //

1 BY MR. PITARO:

2 Q Do you remember the -- didn't you in fact ask Mr. Dottore
3 where he was going to go or where he was going to get out of
4 jail?

5 A Yes, I did.

6 Q And what'd he tell you?

7 A To his house.

8 Q All right. And then you were asked about Mr. Florio?

9 A Mr. Florio, yes.

10 THE COURT: You talking about the same tape,
11 counsel?

12 THE WITNESS: That's a -- that's a traffic --

13 MR. PITARO: No, a different -- a different
14 individual.

15 BY MR. PITARO:

16 Q Mr. Lombard had asked you about a Mr. Florio?

17 A Yes.

18 Q And what was the day that you'd let him out of jail?

19 A I believe that was Christmas Eve.

20 Q Do you have any problem with doing that?

21 A No, I had no problem letting him out, it was a
22 misdemeanor case and Christmas Eve, and I come to find out
23 that no charges were ever filed after that on that.

24 Q Okay.

25 A I had no problem at all. And that was a good friend of

1 mine's brother.

2 THE COURT: There's no --

3 THE WITNESS: Okay. I'm sorry.

4 THE COURT: There's no question.

5 BY MR. PITARO:

6 Q You were asked about Mr. Flangas and O/Rs or requests
7 with Mr. Flangas, okay?

8 A That's correct.

9 Q Were there times that you turned Mr. Flangas down in
10 request?

11 A Yes, there were.

12 Q Were there times when you didn't give him what he wanted,
13 but you gave him something?

14 A There were.

15 Q Was Mr. Flangas the only attorney that ever asked you for
16 bail considerations?

17 A No, he was not, many attorneys asked me for bail
18 considerations.

19 Q Did police officers ask you?

20 A Police officers, probation officers, like I said
21 yesterday even the U.S. Marshal.

22 Q Okay.

23 A And I was happy to do it for him.

24 Q And some of the people that --

25 A If he couldn't get his son to court I don't think --

1 MR. JOHNSON: Objection, Your Honor, there's no
2 question pending.

3 THE COURT: There's no --

4 THE WITNESS: -- and me feel good about that, I have
5 no --

6 THE COURT: Let's move on, counsel. And that's
7 already been asked and answered, let's move on, Mr. ---

8 THE WITNESS: I got it.

9 BY MR. PITARO:

10 Q Well, did you -- did you let people out of jail at the
11 request for attorneys that didn't support you?

12 A Of course.

13 Q Okay. Now, we heard this talk about a Mr. Argeno
14 [phonetic], this conversation with Mr. Argeno this person by
15 the name of Sonny?

16 A Yes.

17 Q Did you ever go play golf with Sonny?

18 A No, I didn't.

19 Q Did you ever see him again?

20 A At my wife's funeral, he came to my wife's funeral.

21 Q And that was the only time you saw him?

22 A That was the last time I seen him.

23 Q Okay.

24 A Yeah.

25 Q And so you never -- you never took him up in this what

1 this offer was to play golf?

2 A No.

3 Q You were asked about Massbo. Was the money that you
4 received a -- the repayment of the last Massbo loan?

5 A Yes.

6 Q Okay. And you heard the same way that they're asking
7 about Mr. Hanford and these other people, you heard Mr.
8 Dottore say that he had swore under oath that that was the
9 repayment of a loan, didn't you?

10 A Yes.

11 Q That was one time he was telling the truth, wasn't it?

12 A Yes, it was.

13 Q Now, on this Mr. O'Neill, what you were telling us is
14 that you had reduced bail for his son and that this
15 conversation is talking about someone else?

16 THE COURT: Counsel, let the -- let the witness
17 testify, what you're telling us is --

18 BY MR. PITARO:

19 Q Well, let me direct you to the O'Neill.

20 A Okay.

21 Q Okay. Would you explain to the jury the differences of
22 what you were saying in that conversation?

23 A Mr. O'Neill had called me or came down, or both, I forgot
24 which because I had two or three conversations with him, his
25 son was in trouble, I forgot right now what it was for, and he

1 asked me if he couldn't afford to bail him out for so much,
2 was it possible that I could lower his bail. I says, well I
3 will as long as you assure -- I'm assured that he'll make his
4 court appearances. I've known them since 1980, him and his
5 wife, and he assured me he would have his --

6 MR. JOHNSON: Your Honor, I'm going to ask for some
7 foundation for this conversation.

8 THE COURT: You do need foundation, counsel.

9 MR. PITARO: Your Honor, I'm following up in the
10 conversation that they talked about, the O'Neill conversation.

11 MR. JOHNSON: Well, wait, there's not -- this
12 conversation isn't occurring on this tape.

13 THE WITNESS: What exhibit number are we talking --
14 referring to?

15 THE COURT: Just -- Mr. Bongiovanni, you do need to
16 lay some foundation.

17 THE WITNESS: Okay.

18 THE COURT: You talking about the tape, you talking
19 about another time?

20 BY MR. PITARO:

21 Q The tape where the Government --

22 A Right.

23 Q -- just cross-examined you about.

24 A Right.

25 Q Where you're talking to Mr. O'Neill about this other

1 individual that been arrested with his son?

2 A Okay.

3 THE COURT: Well, I think counsel's concern is that
4 he testified that I asked him these questions, is that in the
5 tape?

6 MR. PITARO: I'm -- I've -- I'm lost, I don't know
7 what objection you're making.

8 THE COURT: Well, you asked him something and he
9 responded, I checked with 'em on this, that and the other.
10 Are you just talking about the tape?

11 MR. PITARO: I'm talking about the tape.

12 THE COURT: Okay. And I suppose that's what you
13 wanted to know and --

14 MR. JOHNSON: That's what I wanted to know, 'cause I
15 don't see any of these questions being asked in this tape --

16 BY MR. PITARO:

17 Q Did you have other conversations with --

18 MR. JOHNSON: -- so I wanted to make sure we were on
19 the same conversation.

20 BY MR. PITARO:

21 Q -- with Mr. O'Neill?

22 A Other than what was on these tapes?

23 Q Yes.

24 A I think I did.

25 Q Okay. And you testified to that, isn't that correct?

1 A Right.

2 Q Okay. Now, the Government on cross asked you about
3 tickets again, will you tell the jury if you received any
4 money on tickets to influence -- to fix tickets?

5 A I've never received a penny to influence or help anyone
6 with a traffic citation.

7 Q And you were asked about Mr. Milano and the suits. Why
8 don't you tell the jury about the suits with Mr. Milano that
9 Mr. Johnson was asking you about?

10 A As I -- as I recall it the suits came after I helped him
11 with the traffic citation. We went to -- my son had a dance
12 or something. I brought him and about four or five of his
13 friends to Mr. Milano's shop, they rented tuxedos from him,
14 one of my friends' fathers bought a suit or two. I was
15 looking at suits and he had one that was way too big for me,
16 he says, oh, I could alter it. I said, no, order me some, but
17 he insisted on altering the one suit.

18 Q And so what happened?

19 A So what happened when I went back to pick up the suit
20 that I was buying he -- I tried this other one on and I didn't
21 like the way it fit, he says, well, geez, I can't -- I can't
22 sell it so he gave me a discount or whatever for that, but I
23 paid for the other suits. I don't know if you want to call it
24 a discount, he said, well, just give me this -- so much for
25 both suits. So I said, fine.

1 Q Now, once again, there was --

2 A He was appreciative that I brought him business.

3 THE COURT: Just a moment, wait for the question --

4 THE WITNESS: Okay. I'm sorry.

5 THE COURT: -- please, Mr. Bongiovanni.

6 MR. PITARO: There was --

7 THE COURT: Mr. Pitaro.

8 BY MR. PITARO:

9 Q There were -- there were tapes there that the Government
10 has constantly referred to where you'd be in laying down or
11 watching TV, is that correct?

12 A That's correct, yes.

13 Q Okay. Can you tell the Court -- I mean the jury, what
14 laying down and watching TV was with you?

15 A That means every --

16 MR. JOHNSON: Objection, Your Honor.

17 THE COURT: You may respond.

18 THE WITNESS: Every night I would put my wife to
19 bed, I would lay there near her in my bed in case she awakened
20 so she would know somebody was there with her, she wasn't all
21 alone. So I used to watch TV in the room with her.

22 BY MR. PITARO:

23 Q Okay. And did you take any bribes?

24 A I never took any bribes from anyone.

25 Q Thank you.

1 A I would never do such a thing.

2 THE COURT: Anything further, Mr. Johnson?

3 MR. JOHNSON: Nothing further at this time, Your
4 Honor.

5 THE COURT: Okay.

6 You're excused, Mr. Bongiovanni.

7 Call your next witness.

8 MR. PITARO: Could I have the Court's indulgence one
9 minute?

10 THE COURT: Surely.

11 (Pause in the proceedings)

12 MR. PITARO: We rest, Your Honor.

13 THE COURT: Okay.

14 DEFENDANT RESTS

15 THE COURT: You have any rebuttal evidence?

16 MS. SHOEMAKER: Your Honor, can we have a five

17 minute break so we can decide who, if anyone, we want to call
18 on rebuttal?

19 THE COURT: We'll take a very brief break, it'll be
20 ten minutes, and then we'll reconvene.

21 (Court recessed at 11:11 a.m. until 11:23 a.m.)

22 (Jury is present)

23 THE COURT: Please be seated.

24 Do you have anything further to present, counsel?

25 MS. SHOEMAKER: Yes, you do -- yes, we do, Your

1 Honor, we call Christopher Byers.

2 (Pause in the proceedings)

3 CHRISTOPHER BYERS, PLAINTIFF'S REBUTTAL WITNESS, IS SWORN

4 THE CLERK: Please be seated. Please state your
5 name and spell your last name for the record.

6 THE WITNESS: Christopher Byers, B-Y-E-R-S.

7 THE CLERK: And what city and state do you reside
8 in?

9 THE WITNESS: Las Vegas, Nevada.

10 DIRECT EXAMINATION

11 BY MS. SHOEMAKER:

12 Q Agent Byers, will you please tell the jury how you're
13 employed?

14 A I'm a special agent with the FBI here in Las Vegas?

15 Q How long have you been with the FBI?

16 A Since 1990.

17 Q I'm going to direct your attention to the evening of
18 October 17th, 1995. Did you participate in d search of
19 Defendant Gerard Bongiovanni and his residence?

20 A Yes, I did.

21 Q All right. Would you please describe for the jury the
22 circumstances surrounding, first of all, the entry into Mr.
23 Bongiovanni's house?

24 A At approximately 9:45 that night Detective Nicholson
25 knocked on the door of the judge's residence, his daughter

1 answered, Detective Nicholson asked to speak to her father.
 2 When the judge came to the door he told the judge that he had
 3 a warrant. Judge told us to come on in. We entered into the
 4 house. I was in possession of the warrants and I advised the
 5 judge that we had a warrant for, not for him to sign, but for
 6 to search the residence and to search his person.

7 Q All right. Let me just stop you right there for just a
 8 moment. Was anyone else there besides you, Detective
 9 Nicholson and Gerard Bongiovanni?

10 A Yes, besides Detective Nicholson and myself were Special
 11 Agents Joe Degnan and Geir Magnesen and Mike Abbott from the
 12 Nevada Department of Investigation.

13 Q Okay. Was Agent Hanford at the residence when you and
 14 Detective Nicholson went up to the door to execute the
 15 warrants?

16 A Yes, I believe so.

17 Q Did he go inside with you initially?

18 A Not initially.

19 Q Did Agent Degnan go in with you as well?

20 A Yes.

21 Q Did he go in initially?

22 A Yes.

23 Q What about Agent Magnesen?

24 A Yes.

25 Q And what about Investigator Abbott?

1 A Yes.

2 Q All right. When you entered into the presence -- into
3 the residence then, are you indicating that nobody went into
4 the residence until Gerard Bongiovanni came to the door?

5 A That's correct.

6 Q All right. And when you entered into the residence where
7 did everybody go, can you just say in as much detail as you
8 can recall, where did everybody go when you entered the
9 residence while you were telling Gerard Bongiovanni that you
10 had a warrant for his person and his residence?

11 A Initially everybody was standing around in the foyer
12 area, we walked with the judge -- right adjacent to that is a
13 small kitchenette area, and we talked to him in the
14 kitchenette.

15 Q Who's we?

16 A Detective Nicholson and myself.

17 Q And what about the other agents, where did they go or
18 what did they do?

19 A They just remained in the foyer area.

20 Q Okay. Now, when you went into the kitchen with Detective
21 Nicholson and Gerard Bongiovanni, was that when you told him
22 that you had a warrant for his person and the residence?

23 A That's correct.

24 Q Did you make any statements to the defendant concerning
25 whether or not he was under arrest?

1 A He was advised that this was just a search warrant, that
2 he was not under arrest at this time.

3 MR. PITARO: Well, could I have who did what?

4 THE COURT: I'm sorry?

5 MR. PITARO: Foundation.

6 BY MS. SHOEMAKER:

7 Q All right. This is October 17th, 1995, is that correct?

8 A That's correct.

9 Q You're in the kitchen with Gerard Bongiovanni and
10 Detective Nicholson and no one else, is that correct?

11 A That's correct.

12 Q I take it that this conversation was in person and not
13 over the telephone, is that correct?

14 A Correct.

15 MS. SHOEMAKER: I believe the foundation has been
16 laid, Your Honor.

17 THE COURT: I think the foundation has been laid.

18 MR. PITARO: Well, is who is saying what.

19 BY MS. SHOEMAKER:

20 Q Did you -- who --

21 MR. PITARO: He kept saying "we" were saying.

22 THE COURT: I thought he indicated "I said," but --

23 BY MS. SHOEMAKER:

24 Q Who told -- who told the defendant he was not under
25 arrest?

1 A I told the defendant he was not under arrest.

2 Q Did the defendant seem to understand you?

3 A I believe that he did, yes.

4 Q Now, the other agents you said were standing in the foyer

5 or entry area at that time, is that correct?

6 A Correct.

7 Q What happened after you told Mr. Bongiovanni that you

8 were there -- first of all, did you tell him what you were

9 there to search for?

10 A I told him that we were there to execute a search

11 warrant; we were searching for one-hundred-dollar bills that

12 were given to him by Paul Dottore.

13 Q Did Mr. Bongiovanni say anything in response?

14 A He had asked what this was all about initially and then

15 again after we had advised him of that, so I believe he asked

16 twice what it was all about.

17 Q Did he make any statements concerning the hundred-dollar

18 bills you were looking for?

19 MR. PITARO: Objection, Your Honor, lack of

20 foundation.

21 THE COURT: Did he make any statements -- you

22 talking about the defendant?

23 MS. SHOEMAKER: Yes, Your Honor.

24 MR. PITARO: I'll object --

25 THE COURT: This is in that same time frame, isn't

1 it?

2 THE WITNESS: At that same time frame, yes.

3 BY MS. SHOEMAKER:

4 Q At the same time frame, after you told him what you were
5 there to look for, did he make any statements concerning the
6 hundred-dollar bills?

7 A Yes, he did.

8 Q What did he say?

9 A He --

10 MR. PITARO: I'm going to object.

11 THE COURT: Overruled. You may respond.

12 THE WITNESS: He said that the Dottore had just
13 been over for coffee and he didn't know anything about any
14 money.

15 BY MS. SHOEMAKER:

16 Q All right. Now, you indicated that Mr. Bongiovanni asked
17 what is this all about, is that correct?

18 A Correct.

19 Q Did you tell him anything further about what the search
20 was about?

21 MR. PITARO: Which time, Your Honor, he said twice
22 he asked him.

23 BY MS. SHOEMAKER:

24 Q All right. Let me ask you this, how many minutes after
25 you entered the house did you have the discussion with Mr.

1 Bongiovanni, first of all, where you told him that you had a
2 warrant for the house and for his person and that you were
3 looking for the hundred-dollar bills from Paul Dottore?

4 A This was all in the first minute or two of being in the
5 residence.

6 Q All right. And approximately when was it that Mr.
7 Bongiovanni made the statements that the Dottores had just
8 been there for coffee and that they didn't -- he didn't know
9 anything about any money?

10 A Within the first two minutes.

11 Q All right. When did Mr. Bongiovanni, in relation to
12 making those statements, say what is this all about?

13 A In that same time frame.

14 Q All right.

15 A The second time that he asked I went and got Agent
16 Hanford to come in to determine if he wanted to say more to

17 the judge at that time since he was the case agent.

18 Q All right. And how long did it take between the time Mr.
19 Bongiovanni said "What is this all about," and the time you
20 went out and got Agent Hanford, and Agent Hanford came back
21 into the house?

22 A Just a few seconds.

23 Q All right.

24 A He was already coming in at the same time.

25 Q What happened when you went out and got Agent Hanford to

1 come back into the house?

2 THE COURT: He being Agent Hanford.

3 THE WITNESS: Agent Hanford was on his way in at the
4 same time, yes.

5 Agent Hanford came in and he said basically the same
6 thing to the judge, that we were looking for one-hundred-
7 dollar bills given to him by Paul Dottore.

8 BY MS. SHOEMAKER:

9 Q All right. So Agent Hanford went into the kitchen area
10 then as well --

11 A Mm-hmm.

12 Q -- is that correct?

13 A Mm-hmm.

14 Q You need to say yes or no for the record.

15 A Yes.

16 Q Okay. Did Mr. Bongiovanni say anything when Agent

17 Hanford said we're looking for the hundred-dollar bills from
18 Paul Dottore?

19 MR. PITARO: Your Honor, I'm going to have the same
20 objection I've had.

21 THE COURT: The objection is sustained. Let's move
22 on.

23 BY MS. SHOEMAKER:

24 Q What happened after Agent Hanford went in and spoke to --
25 first of all, how long was Agent Hanford --

1 (Pause in proceedings)

2 After Agent Hanford -- first of all, when Agent Hanford
3 went into the kitchen and told Mr. Bongiovanni, repeated again
4 that --

5 A Mm-hmm.

6 Q -- you were there looking for the hundred-dollar bills,
7 how long did Mr. Hanford -- or Agent Hanford stay in the
8 kitchen with Mr. Bongiovanni?

9 A Just a few seconds.

10 Q All right. What happened after that?

11 A Agent Hanford left, to my understanding, to instruct the
12 other agents to initiate --

13 MR. PITARO: Well, unless Agent Hanford -- unless he
14 has --

15 THE COURT: The objection is sustained.

16 BY MS. SHOEMAKER:

17 Q All right. Do you -- first of all, you indicated earlier
18 that the other agents, Magnesen and Degnan and Investigator
19 Abbott, that they all stood in the entryway while you and
20 Detective Nicholson went into the kitchen with Mr.
21 Bongiovanni. Were they still standing in the entryway when
22 Mr. Hanford came in and spoke to Detective Nicholson?

23 A I'm not sure exactly where they were standing at that
24 point, no.

25 Q Okay. Do you know whether the search had begun at that

1 point?

2 A No.

3 MR. PITARO: Was that, no, he doesn't know, or, no,
4 it wasn't done.

5 THE WITNESS: No, the search had not started at that
6 point.

7 BY MS. SHOEMAKER:

8 Q Now, have you participated in other searches besides the
9 search of Mr. Bongiovanni's residence?

10 A Yes.

11 Q Do you have procedures that are supposed to be followed
12 when people go to help with an execution of a search warrant?

13 A Yes.

14 Q Do you have procedures specifically regarding when you're
15 supposed to start searching or where you're supposed to
16 search?

17 A It can vary from search to search, it depends on the
18 nature of what you are searching at that time, any sensitive
19 aspects to it.

20 Q Do you generally have a meeting prior to doing the search
21 concerning any sensitive considerations?

22 A Correct.

23 Q Did you have a meeting prior to this search about any
24 sensitive considerations?

25 A Yes.

1 MR. PITARO: Well, I'm going to object, Your Honor,
2 that's calling for hearsay in raising some aura of secret
3 stuff.

4 MS. SHOEMAKER: No, it's not, Your Honor, I'm --

5 MR. PITARO: Yes, it is.

6 MS. SHOEMAKER: -- I'm not asking him what was said
7 at that point to show any truth of anything, I'm only offering
8 to show why this agent would know and can explain why the
9 other agents were standing in the entryway and hadn't begun to
10 search at that point.

11 THE COURT: The objection is overruled.

12 BY MS. SHOEMAKER:

13 Q Had you had discussions prior to the search of the
14 defendant's residence concerning any sensitive considerations
15 when you were going to search Gerard Bongiovanni's residence?

16 A Yes.

17 Q Based on those discussions -- well, first of all, what
18 was said during those discussions concerning any sensitive
19 considerations?

20 MR. PITARO: That's hearsay, Judge.

21 THE COURT: And you object to that and I'll sustain
22 the objection.

23 BY MS. SHOEMAKER:

24 Q Based on what was discussed prior to the search of the
25 residence, do you have reason to believe whether the other

1 agents would have started the search prior to being instructed
2 to do so?

3 MR. PITARO: Objection, speculation.

4 THE COURT: Question -- the question is do you have,
5 the objection is overruled, and that's all the question is.

6 THE WITNESS: Could you --

7 THE COURT: Why don't you repeat the --

8 THE WITNESS: Could you repeat it?

9 BY MS. SHOEMAKER:

10 Q Based on your meeting that you had prior to executing the
11 search concerning sensitive considerations of this particular
12 search, do you have reason to believe or to know why other
13 agents -- whether they would have started searching before
14 being instructed to do so?

15 A Yes.

16 Q And were the agents instructed not to begin searching
17 until told to do so?

18 MR. PITARO: I would object, Your Honor.

19 THE COURT: Sustained.

20 MR. PITARO: Ask it be stricken.

21 MS. SHOEMAKER: When --

22 THE COURT: You can ask this agent if he was told.

23 BY MS. SHOEMAKER:

24 Q Were you given any instructions concerning when to begin
25 searching?

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- 1 A Me specifically, no.
- 2 Q Were you supposed to be participating in the search of
- 3 the residence, the actual searching?
- 4 A My initial responsibility was to conduct the search of
- 5 the person of the judge, and then at the conclusion of that to
- 6 then assist in the search of the residence.
- 7 Q Okay. You had not been given any instruction though in
- 8 terms of when to begin searching or when not to begin
- 9 searching?
- 10 A Not specifically to me, no.
- 11 Q All right. After Agent Hanford came in and spoke with
- 12 the defendant, you indicated that he left the kitchen area, is
- 13 that correct?
- 14 A Yes.
- 15 Q Where were you from that point forward?
- 16 A I remained in the kitchen area.
- 17 Q And who else was in the kitchen area?
- 18 A Detective Nicholson and the judge.
- 19 Q Did anybody -- well, did you remain in the kitchen until
- 20 the end of the search?
- 21 A Yes.
- 22 Q Did anybody ever come into the kitchen and search the
- 23 cabinets?
- 24 A No.
- 25 Q At some point did Defendant Bongiovanni ask to go see his

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1 wife?

2 A Yes.

3 Q Approximately how long was this after Agent Hanford left
4 the kitchen?

5 A It was approximately two minutes after, say, Agent
6 Hanford left.

7 Q And when he asked to be able to check on his wife, was he
8 permitted to do that?

9 A Yes, initially.

10 Q Okay. Let me ask you, first of all, did Mr. Bongiovanni
11 ever asked if he could leave the kitchen for any other purpose
12 or any other time?

13 A No.

14 Q Now, when you say that he asked to go see his wife and
15 initially he was permitted to do that, can you explain what
16 happened from that point?

17 A He was seated at the kitchen table, he asked if he could
18 check on his wife, I said yes, he got up to walk towards the
19 hallway which led to the bedroom. As he started to walk
20 Detective Nicholson was walking behind him, at some point I
21 noticed a hole in his back pocket. Detective --

22 THE COURT: Whose -- in whose back pocket?

23 THE WITNESS: In the judge's back pocket of his
24 shorts. About midway towards the bedroom in the hallway
25 Detective Nicholson asked him to stop.

1 BY MS. SHOEMAKER:

2 Q Could you hear Detective Nicholson ask him to stop?

3 A Yes.

4 Q All right. And what happened after that?

5 A The judge stopped. Detective Nicholson asked him if he
6 had anything in his pockets, I did not hear the judge's
7 response, Detective Nicholson reached in and pulled currency
8 out of his back pocket.

9 Q Did you observe Detective Nicholson reach in and pull the
10 currency out of the back pocket?

11 A Yes, I did.

12 Q What happened after Detective Nicholson pulled the
13 currency out of the defendant's rear pocket?

14 A Detective Nicholson and the judge returned back to the
15 kitchenette area, the judge sat down. The money was given to
16 me; I compared it with the serial numbers that we had and they
17 matched the serial numbers.

18 Q All right. After the currency was found in the
19 defendant's pocket and you went back into the kitchen area and
20 you were matching up the serial numbers, do you recall Agent
21 Hanford coming back into the kitchen at any point?

22 A Yes.

23 Q Do you recall whether Agent Hanford made any statements
24 to the defendant about what the money was believed to be for?

25 A Yes, Agent Hanford told the judge that this was money --

1 MR. PITARO: Your Honor, this is --

2 THE COURT: Sustained.

3 MS. SHOEMAKER: Your Honor, at this point it's only
4 being offered to show what was said to the defendant so that
5 this Agent can explain what the defendant's reaction was to
6 that money.

7 THE COURT: For that limited purpose you may
8 respond.

9 THE WITNESS: Agent Hanford told the judge that this
10 was money that was paid to him regarding a case that was
11 presently before him.

12 BY MS. SHOEMAKER:

13 Q And what was Mr. Bongiovanni's reaction when Agent
14 Hanford said that?

15 A There was no reaction.

16 Q Now, were you in the house then from the time you entered
17 the house with a warrant when Mr. Bongiovanni came to the door
18 and the time that the money was recovered and matched up with
19 serial numbers on the warrant, other than the few seconds you
20 said you went out to get Agent Hanford?

21 A Yes, and I don't think -- I didn't actually leave the
22 residence to go get Agent Hanford.

23 Q How did you --

24 A We met around the entryway.

25 Q Okay. At any point during that time, from when you

1 entered his house and the time you left his house, did you
2 ever yell?

3 A No.

4 Q Did you ever hear Agent Hanford yell?

5 A No.

6 Q Did you ever hear Detective Nicholson yell?

7 A No.

8 Q Did you ever hear Agent Magnesen yell?

9 A No.

10 Q What about Agent Degnan?

11 A No.

12 Q What about Investigator Abbott?

13 A No.

14 Q Can you describe what the attitude was there between the
15 agents and the defendant during this entire period of time?

16 A Generally subdued and compliant on the part of the judge,
17 when we asked him to come back to the kitchen, he came back.
18 There was never any disagreement about anything.

19 Q When -- did you ever see the defendant's daughter there?

20 A Briefly.

21 Q Did you ever see the defendant's son?

22 A Briefly, also, yes.

23 Q Where do you recall seeing the defendant's daughter?

24 A In around the area of the foyer, in the family room area,
25 it's not a very big house, it's all kind of one big room

1 there.

2 Q Did you ever see or hear any confrontation with the
3 daughter?

4 A No, I didn't.

5 Q Where did you see the son?

6 A In that same family room area.

7 Q Did you ever see or hear any confrontation with the
8 defendant's son?

9 A No.

10 MS. SHOEMAKER: Your Honor, may we have a sidebar
11 real briefly. There's a legal argument that needs to be made
12 concerning a question that I wanted to be able to ask the
13 agent.

14 (Discussion at sidebar)

15 MS. SHOEMAKER: I would be -- I would ask that we be
16 permitted to go in with this agent again the question -- the
17 defendant's response when the Agent Hanford told him, first of
18 all, that what they were looking for, and then when he came
19 back and said you can save everyone a lot of time, we've got a
20 warrant to search your whole house, but if you'll tell us
21 where the money is. And I say this, Mr. Pitaro had raised
22 during Agent Hanford's testimony the issue of lack of Miranda
23 warnings, and I would submit there are two reasons why the
24 Agent should be able to testify to that on top of the reasons
25 we previously argue that the Court has rejected. One, is

1 that, first of all, Agent Byers has now testified that the
2 defendant was also told that he was not under arrest and that
3 he never requested to leave anywhere else and --

4 THE COURT: I would have to discount what the
5 detective said and I've already ruled that what the detective
6 asked him was tantamount to the question, I don't think that
7 the circumstance was any different.

8 MS. SHOEMAKER: Your Honor, however, the standard
9 for testing whether or not Miranda has to even be given is,
10 first of all, whether a reasonable person given their
11 situation, which be taking into account his education as well,
12 whether they would have understood that they weren't free to
13 leave. Second of all, Mr. Bongiovanni has now put these
14 things into issue by coming in and making the statements as to
15 what was said and what wasn't said.

16 THE COURT: Well, if you want to make a record
17 sometime, you can do that out of the presence of the jury, I'm
18 not going to allow these questions to be asked in the presence
19 of the jury.

20 MR. JOHNSON: If I could just have one second, Your
21 Honor. In terms of the Miranda, once the defendant got up on
22 the stand and said, Agent Hanford wasn't even in the house
23 until after the discovery of the money, and Agent Hanford only
24 said this to me, the defendant at that point in time has
25 specifically put into issue what Agent Hanford said to him and

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1 what he didn't say. And if you look at the law regarding
2 Miranda it's quite clear that we have a right to come back
3 with the defendant's statements, even in -- even assuming
4 there's a Miranda violation here, we have a right to come back
5 with the defendant's statements.

6 THE COURT: Well, what statement is it that you want
7 to get in that you haven't gotten in?

8 MS. SHOEMAKER: Well, it came -- it initially came
9 in through Detective Nicholson, but it was the statement that
10 the defendant made in response to the -- to the statement that
11 we've got a warrant to search your house, you can save
12 everybody a lot of trouble if you tell us where it is, and he
13 said go ahead and search, you won't find anything.

14 THE COURT: Well, that's in.

15 MS. SHOEMAKER: But it came in through Detective
16 Nicholson and the defendant is claiming everything happened
17 differently, and our position would be that we should be able
18 to have some other agent testify as to that as well.

19 THE COURT: Well, the only reason that you want to
20 get this in is to protect your record, depending upon what
21 happens. I don't know what's going to occur out of the
22 presence of the jury. We should have had this hearing a long
23 time ago. I'll allow you to make inquiry, but not in the
24 presence of the jury.

25 MS. SHOEMAKER: It's --

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1 MR. JOHNSON: Your Honor, just even assuming, okay,
2 just for the purpose of argument that there is a Miranda
3 violation here, and assuming that it hasn't been waived
4 because other agents have testified to these statements here
5 during the trial without objection, even assuming that there's
6 been a Miranda violation, once the defendant takes the stand
7 under Miranda and puts into issue what occurred at a certain
8 incident, he waives the Miranda protection, he can't stand
9 behind the shield of Miranda and say, Jerry Hanford didn't
10 show up until after the five hundred dollars was discovered
11 in --

12 THE COURT: What do you have to say to that Mr.
13 Pitaro? He has taken the stand now and he has taken a
14 different position.

15 MR. PITARO: His position has never changed, it's
16 only what they've told you their position was that is -- that
17 is changed.

18 THE COURT: Well, he was questioned about this.

19 MR. PITARO: Well, but --

20 THE COURT: If you want to put it before the jury --

21 MS. SHOEMAKER: Your Honor --

22 THE COURT: -- if you want to protect your record --

23 MS. SHOEMAKER: Your Honor, it wasn't for purposes
24 of protecting the record, because I believe that the record is
25 already sufficiently established to protect it if there's ever

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1 an issue on appeal. However, it -- the purpose that we wanted
2 to put it in now is for the jury, because the defendant takes
3 the stand and says [unintelligible - papers shuffling] just a
4 difference in memory, his version is so different than what
5 the agents testified to and Detective Nicholson was the only
6 one able to say it and not Detective -- or Agent Hanford. And
7 we feel that it's important to come in through another agent
8 so that it's not just the defendant's word versus Nicholson's
9 word.

10 THE COURT: As to what was said or the --

11 MS. SHOEMAKER: As to what was --

12 THE COURT: -- you've gotten all of that in. Now,
13 tell me, focus specifically, what is it that you want?

14 MR. JOHNSON: Defendant Bongiovanni says Jerry
15 Hanford didn't come in and talk to me until after the five
16 hundred dollars was discovered and that the agents were out

17 rummaging around the house and in my wife's bedroom. And what
18 we want to bring in --

19 THE COURT: But you already covered that.

20 MR. JOHNSON: But what we want to bring in is that
21 Agent Hanford specifically came up and talked to him and said,
22 you can save us all a lot of trouble with this search if you
23 just tell us where the five hundred -- or where the hundred-
24 dollar bills are, and we'll be done. And the defendant at
25 that time says, go ahead and search, you won't find anything.

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1 That's directly contradicting what Defendant Bongiovanni says
2 happened during the search, and that's relevant here because
3 our position is, he's lying. And we have such a direct
4 contradiction in what he says happened and what we say
5 happened that that's very relevant in terms of judging his
6 credibility and in terms of evaluating his testimony. And
7 it's also important in terms of our agents 'cause he's put
8 their credibility on issue that we be allowed to show support
9 for their positions during this trial.

10 THE COURT: Well, I certainly don't think it's
11 pivotal. The fact that it's post-Miranda, post-testimony by
12 this defendant I suppose makes a difference. Pursue it, but
13 pursue it very briefly.

14 MS. SHOEMAKER: Thank you, Your Honor.

15 (End of discussion at sidebar)

16 BY MS. SHOEMAKER:

17 Q Agent Byers, I want to direct your attention to a
18 particular statement that Agent Hanford may have made during
19 the search. You indicated that he came in, he spoke to the
20 defendant briefly, telling him again what you were there to
21 search for, he left the room. Do you recall Agent Hanford
22 prior to finding the money on the defendant coming back into
23 the kitchen and making another statement to Defendant
24 Bongiovanni?

25 A Yes.

1 Q What did he say?

2 A He told the judge that he --

3 MR. PITARO: I -- I have an objection to this line
4 of questioning.

5 THE COURT: Okay. The objection's overruled.

6 BY MS. SHOEMAKER:

7 Q What did Agent Hanford say to Defendant Bongiovanni when
8 he came back into the kitchen?

9 A Agent Hanford said that he could save everybody a lot of
10 time if he just -- if the judge would just tell us where the
11 money was.

12 Q And what did Gerard Bongiovanni say in response?

13 A He said, go ahead and look, you won't find anything.

14 Q Just a couple other questions, Agent Byers. Do you
15 recall during this entire time from when you entered the house
16 and the time you left the house, do you recall anyone ever

17 telling the defendant that, if he didn't give you the money
18 you were gonna tear apart his house and tear apart his car?

19 A No.

20 MS. SHOEMAKER: No further questions, Your Honor.

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION

23 BY MR. PITARO:

24 Q Agent Byers, you were the one who was supposed to be in
25 charge of the search?

1 A No, just in charge of the -- I had the paperwork, the
2 warrants, the receipt forms, and I was gonna conduct the
3 search of the person.

4 Q You were gonna conduct the search of his person?

5 A Yes.

6 Q Is that what your job was?

7 A Yes.

8 Q Okay. And you came in the house with a search warrant,
9 you said?

10 A Yes.

11 Q Now, you then said that you then -- he was in -- you took
12 him into the kitchen area?

13 A Correct.

14 Q Okay. And how many people were in the kitchen area, how
15 many other agents?

16 A In that kitchen area itself?

17 Q Yeah.

18 A Just Detective Nicholson and myself.

19 Q Where were the other three, or four?

20 A In that area right next to it, the --

21 Q And what were they doing?

22 A To my recollection, just standing there.

23 Q Just standing there? Well, you then had Mr. Bongiovanni
24 in the kitchen area, right?

25 A Correct.

- 1 Q Your job is to search him?
- 2 A Correct.
- 3 Q You didn't search him, did you?
- 4 A Hadn't yet, no, sir.
- 5 Q Okay. As a matter of fact, you and Nicholson were in the
- 6 house and Hanford wasn't in the house, was he?
- 7 A Initially, yes.
- 8 Q Hanford was someplace else, wasn't he?
- 9 A Uhh --
- 10 Q Hanford didn't come in with you, did he?
- 11 A When we -- when we walked into the house?
- 12 Q Right.
- 13 A No, he didn't.
- 14 Q Now, how many agents were with you at the front door when
- 15 you rang the bell or knocked on the door?
- 16 A Three agents, one detective and one investigator.
- 17 Q So five people are at the front door, right?
- 18 A Correct.
- 19 Q Okay. And this little fourteen-year-old girl answers the
- 20 door, right?
- 21 A Yes.
- 22 Q And you had -- you had a big jacket on that said FBI?
- 23 A I don't think I did, no, sir.
- 24 Q Okay. Did you have a badge?
- 25 A No.

1 Q You didn't have any badge with you?

2 A I had it with me, yes.

3 Q Okay. Now, who said, "FBI"?

4 A I'm sorry, what was the question?

5 Q Who identified everybody?

6 A Detective Nicholson identified himself --

7 Q Did he say who you were?

8 A And then he told the judge that he had some FBI guys with

9 him.

10 Q But we're still at the front door with the --

11 A Correct.

12 Q -- with his daughter.

13 A Correct. Oh, to him. He just asked to see her father.

14 Q Now, when you came in, once again then you said that your

15 job was to search the judge. Was there any mention that the

16 entire house was gonna be searched?

17 A Yes.

18 Q Huh?

19 A Yes.

20 Q Who said that?

21 A I told the judge that we had warrants to search the house

22 and his person.

23 Q And you said the entire house, right?

24 A I don't know if I used the word "entire."

25 MR. PITARO: Can I approach the witness?

1 THE COURT: Yes.

2 BY MR. PITARO:

3 Q Why don't we look at the -- your 302 in this matter.

4 A Okay.

5 Q And look on the bottom of the first paragraph.

6 A Yes, it says "entire house."

7 Q Well, you said "entire house," right?

8 A Correct. I just said I didn't know if I used the word

9 "entire" or not.

10 Q So when you told him, you didn't say, we just have a

11 search warrant for your house, we have a search warrant for

12 your entire house unless you give us what we want, right?

13 A I said "entire house," yes.

14 Q Mm-hmm. And then immediately while you were in the

15 kitchen area, Gerry Bongiovanni asked to check on his wife, to

16 go see his wife, didn't he?

17 A Within the first few minutes, yes.

18 Q Yeah, he was concerned about his wife, wasn't he?

19 A He asked to check on her, yes.

20 Q Well, he appeared concerned, right?

21 A I guess, yes.

22 Q You guess?

23 A He asked to check on her.

24 Q Okay. And was he allowed to go?

25 A Yes.

1 Q Well, he was actually escorted, wasn't he?

2 A Yes.

3 Q "Escorted" means that there were agents with him as he
4 tried to go check on his wife, correct?

5 A Detective Nicholson was with him, yes.

6 Q So he wasn't really free to just walk down his own
7 hallway to see how his critically ill wife was, he had to be
8 escorted, right?

9 MS. SHOEMAKER: Objection, Your Honor, it calls for
10 a legal conclusion from Agent Byers. He can't say what the
11 situation was if he's not the one there.

12 MR. PITARO: He was there, he said.

13 THE COURT: Well, you may respond.

14 BY MR. PITARO:

15 Q Right?

16 A Repeat the question for me, please.

17 Q Well, he wasn't free to walk down his own hallway in his
18 own house to check on his critically ill wife, was he?

19 MS. SHOEMAKER: Objection, argumentative.

20 THE COURT: You're talking about walk down alone?

21 MR. PITARO: Yes.

22 THE COURT: Okay.

23 THE WITNESS: He wasn't free to walk alone.

24 BY MR. PITARO:

25 Q No, he had to be "escorted," you put in there, right?

1 MS. SHOEMAKER: Objection, argumentative, and asked
2 and answered.

3 THE COURT: It -- he's answered the question --

4 MR. PITARO: Mm-hmm.

5 THE COURT: -- counsel, let's move on.

6 BY MR. PITARO:

7 Q And then you said that when he was walking -- when -- he
8 was not actually allowed to go and see his wife, was he?

9 A At that point, no, sir.

10 Q No. As a matter of fact, you and the other agents
11 escorted him away from his wife back to the kitchen, right?

12 A He was escorted back to the kitchen, yes.

13 Q At your request?

14 A I don't know if there was a request, or he was just sort
15 of brought back to the kitchen.

16 Q All right. So he's going down, walking down, wants to
17 see his wife, he's escorted, he's stopped, it's now -- now
18 he's gotta -- he's escorted back, right?

19 A Correct.

20 Q Okay. So he wasn't free to go in and see his wife, was
21 he?

22 MS. SHOEMAKER: Objection again, Your Honor,
23 argumentative.

24 THE COURT: Sustained.

25 //

1 BY MR. PITARO:

2 Q Well, you didn't allow him to go in and see his wife at
3 that time, did you?

4 MS. SHOEMAKER: Objection, argumentative.

5 MR. PITARO: It's not argumentative, I'm asking him
6 a question, did he or didn't he.

7 MS. SHOEMAKER: He's asked --

8 THE COURT: Was this --

9 MS. SHOEMAKER: -- and answered it.

10 THE COURT: -- was this after the money was
11 discovered?

12 THE WITNESS: Yes.

13 BY MR. PITARO:

14 Q Now the search of his house had already started by that
15 time, hadn't it?

16 A Yes.

17 Q Okay. And who was searching?

18 A At that moment, Agents Degnan and Magnesen.

19 Q Where were they searching?

20 A In the bedroom.

21 Q Whose bedroom?

22 A The judge's bedroom.

23 Q Where was his wife?

24 A In that room.

25 Q Did you ever think maybe that's why he wanted to go see

1 how his wife was, 'cause there's a couple FBI agents in his
2 wife's bedroom?

3 MS. SHOEMAKER: Objection, argumentative and
4 speculative.

5 THE COURT: Counsel, it's --

6 MR. PITARO: It may be loud, but I don't think it's
7 argumentative.

8 THE COURT: -- counsel, it's clear, let's -- let's
9 move on. And the testimony has been educed. Let's move on.

10 BY MR. PITARO:

11 Q So you -- so actually you could see from where you were
12 then searching, couldn't you?

13 A No, I couldn't.

14 Q They told you afterwards they were searching?

15 A I knew when the search was initiated.

16 Q Now, Mr. Bongiovanni, when you first showed up, you told
17 us, asked you not -- asked you, what is this about, correct?

18 A Yes.

19 Q As a matter of fact, you said when you first started that
20 you -- that you told the prosecutor that you weren't here, for
21 him to sign a warrant?

22 A Correct.

23 Q Okay. Well, he asked you about that, didn't he?

24 A I don't recall if he asked me specifically or not.

25 Q Well, he asked someone in your presence, didn't he?

1 A I don't recall, sir.

2 Q You don't recall what he said?

3 A No.

4 Q You were so specific before.

5 MS. SHOEMAKER: Objection.

6 THE COURT: He's answered, counsel. Let's move on.

7 BY MR. PITARO:

8 Q So someone said something, and then you said, no, we're
9 not here for you to sign a warrant, we're here for a warrant
10 for you?

11 A I don't know --

12 Q Correct.

13 A -- if I said the word "no" first. I recall, when I
14 entered I went up to the judge and I explained to him what the
15 circumstances were.

16 Q Okay. And then he said, he wanted to know more, didn't
17 he? He asked you, what is this about?

18 A Yes.

19 Q And then you say that you told him what it was about?

20 A Yes.

21 Q And then he asked you again, what is this all about,
22 didn't he?

23 A Right.

24 Q It was obvious he wasn't understanding what it is you
25 were saying, wasn't it?

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1 MS. SHOEMAKER: Objection, calls for speculation.

2 BY MR. PITARO:

3 Q Well, did you believe he was understanding you, that he
4 asked you a second time?

5 MS. SHOEMAKER: Objection, irrelevant.

6 MR. PITARO: It's not irrelevant, it's his search.

7 THE COURT: Did you -- you may respond.

8 THE WITNESS: I thought he understood, but I thought
9 he wanted more information. And that's why at that point I
10 went to get Agent Hanford to make that decision is if he was
11 gonna tell him more of the circumstances of the case.

12 BY MR. PITARO:

13 Q Well, you were there, to have Agent Hanford tell him that
14 he -- that he had a search?

15 A No, he didn't have to tell him that.

16 Q Well, had Gerry Bongiovanni said anything about this
17 money at this time to you when you were telling him what you
18 were looking for?

19 A Initially, he said he didn't know anything about any
20 money, that they had just been over for coffee.

21 Q And then what happened? What's the next thing that
22 happened after he said, they'd just been over for coffee?

23 MS. SHOEMAKER: Objection, Your Honor, this calls
24 for hearsay.

25 MR. PITARO: Do you remember the next thing that

1 happened.

2 MS. SHOEMAKER: Your Honor, this is the area --

3 THE COURT: He may respond. The question is, do you
4 remember what happened.

5 THE WITNESS: If he asked -- I believe he asked
6 again what this was all about. I don't know if he asked it
7 directly --

8 BY MR. PITARO:

9 Q No, I'm asking you, when you made this statement that --

10 THE COURT: Just a moment, Mr. --

11 BY MR. PITARO:

12 Q -- that Dottore had just been over for coffee?

13 THE COURT: -- Mr. Pitaro, go back to your original
14 question, and -- listen --

15 MR. PITARO: Okay.

16 BY MR. PITARO:

17 Q What --

18 THE COURT: -- listen to me, please. And listen to
19 the question and then respond very specifically to the
20 question.

21 BY MR. PITARO:

22 Q What was the next thing -- the next thing that happened
23 after you said --

24 THE COURT: That wasn't your question, Mr. Pitaro.
25 You withdraw the earlier question?

1 MR. PITARO: Well, let me try and rephrase it so I
2 can get to where I'm attempting to get to.

3 BY MR. PITARO:

4 Q What was the next thing that happened after Gerry
5 Bongiovanni said he had no knowledge of any money and Dottore
6 had just come over for coffee, according to your testimony,
7 what's the next thing that happened?

8 A Trying to remember the sequence of -- I don't recall if
9 it's at that point that he asked again what this was all
10 about, or not.

11 Q Well, I'll tell you what, why don't you look at your 302.
12 And right after, right after your 302 says that he had no
13 knowledge of money and that Dottores had just --

14 MS. SHOEMAKER: Objection, Your Honor --

15 BY MR. PITARO:

16 Q -- come over for a cup of coffee --

17 THE COURT: Just --

18 MS. SHOEMAKER: -- to Mr. Pitaro --

19 THE COURT: -- just a moment, counsel. I don't want
20 you testifying.

21 BY MR. PITARO:

22 Q What is the next thing?

23 THE COURT: You let him read it if you want to --

24 BY MR. PITARO:

25 Q Read it --

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1 THE COURT: -- if you're trying to refresh his
2 memory.

3 BY MR. PITARO:

4 Q -- and tell us what the next thing is.

5 A The next sentence is, "the search of Bongiovanni's" --

6 MS. SHOEMAKER: Objection, Your Honor, not to have
7 the agent reading what's in the 302 report.

8 THE COURT: The purpose of --

9 MR. PITARO: I'm impeaching him with a prior
10 inconsistent statement, Judge.

11 MS. SHOEMAKER: Your Honor, he can look at it to
12 refresh his recollection, if it refreshes his recollection,
13 but --

14 THE COURT: This is his statement, and he's read the
15 statement, now what's your question?

16 BY MR. PITARO:

17 Q What's the next thing your statement says happened after
18 he said they were over for coffee?

19 A That the search was initiated.

20 Q Oh. And in fact, the search was initiated, wasn't it?

21 A Correct.

22 Q Now let me just ask you, you've been with the FBI for how
23 long?

24 A I was initially hired in 1982, I --

25 Q So you've been there about fifteen years?

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

MICHAEL RIPPO,
Appellant,
-vs-
E.K. McDANIEL, et al.,
Respondent.

No. 53626

OCT 19 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

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668009-800099

1 Q April 9th, 1996.

2 A Yes.

3 Q Isn't that what you told the grand jury under oath?

4 A Well, you have the transcript. I assume that's what I
5 said. I haven't seen it myself.

6 Q Okay.

7 MR. PITARO: Could I approach the witness?

8 THE COURT: No. He's indicated that's what he said.
9 Let's move on.

10 BY MR. PITARO:

11 Q Do you have any doubt?

12 A No, I don't have any doubt, if -- you know, I'm sure you
13 wouldn't lie to me.

14 Q God forbid.

15 Agent Hanford, isn't it true that you're aware that

16 Dottore and Jerdan suspected as early as the summer of '93

17 that Quintana had taken more money than the people were aware
18 of?

19 A Yes.

20 Q Okay.

21 Q So that was something that was known, at least under your
22 investigation way back in '93, that these two fellows believed
23 that Quintana had actually taken more money than the hundred
24 and eight thousand (108,000)?

25 A Yes.

1 Q Okay. Now, Agent Hanford, I want to play, if I could,
2 one more tape.

3 MR. PITARO: And Your Honor, that would be tape 555.

4 THE COURT: Has this one been received?

5 MR. PITARO: I'm going to move for it to be
6 received. Which is -- which is the complete call of
7 Government tape 172.

8 THE COURT: 5-5-5?

9 MR. PITARO: Yes, Judge.

10 MS. SHOEMAKER: No objection.

11 THE COURT: 555 will be received.

12 (Defendant's Exhibit No. 555 admitted)

13 THE COURT: Now this one has a companion tape. What
14 is the number of the --

15 MR. PITARO: The companion tape --

16 MS. SHOEMAKER: It's 172, Your Honor.

17 THE COURT: 172?

18 MR. PITARO: Right. Their 172 has already been
19 admitted, Judge. And what I would like to do is play this,
20 which is basically the introduction to it.

21 And if you could play that, please.

22 (Defendant's Exhibit No. 555 played)

23 MR. PITARO: Okay. Stop it right here. Could you
24 stop it right there? Okay, let me go back --

25 MS. SHOEMAKER: Well, Your Honor --

1 MR. PITARO: -- just one second.

2 MS. SHOEMAKER: -- Mr. Pitaro --

3 MR. PITARO: -- because I'm going to ask --

4 MS. SHOEMAKER: -- wanted to play the complete tape,
5 let's play the complete tape.

6 MR. PITARO: We're going to, I'm just -- want to
7 stop it for a moment, so I could ask a question.

8 THE COURT: Go ahead.

9 MR. PITARO: Could you just move it back a little
10 where he says, "I'll see you later." Just a second.

11 BY MR. PITARO:

12 Q Now it's clear, is it not, and it's been -- was
13 stipulated under 172 that that was a call from Paul Dottore to
14 Gerard Bongiovanni, is that correct?

15 A That's correct.

16 (Off-record colloquy)

17 BY MR. PITARO:

18 Q Now, this transcript that we have in here is a little
19 rough. If we could go to 172, which is the government's
20 transcript, and it's a better transcript, and if you -- as
21 soon as everyone's ready. Give them a minute.

22 Are you ready, Agent Hanford?

23 A Yes.

24 Q Again, and I'd ask you to follow this very carefully as
25 we go through it.

1 MR. PITARO: Could you -- could you --

2 THE COURT: Well, now, just a minute, why don't you
3 tell us where we are on the -- in the transcript.

4 MR. PITARO: We'll now start at the top of 172.

5 THE COURT: At the beginning of --

6 MR. PITARO: Yes.

7 THE COURT: -- 172?

8 MR. PITARO: Yeah.

9 THE COURT: And now we're playing the tape of --

10 MR. PITARO: It's still --

11 THE COURT: -- 172?

12 MR. PITARO: -- the same tape. It's just the
13 transcript, it's the government's transcript.

14 THE COURT: Go ahead.

15 (Playing of Exhibit No. 555 resumed)

16 THE COURT: Stop for a minute, because I -- I'm not
17 reading the -- is this 172?

18 THE CLERK: I don't know whether --

19 THE COURT: I don't know where you are, counsel.

20 MR. PITARO: Okay. All right. Why don't we put 172
21 in then, which is where -- I was playing the introduction to
22 get in who called who. Okay, now let's play 172.

23 And 172 has previously been admitted; this is the
24 conversation at 0935, which is where the government tape
25 starts.

(Plaintiff's Exhibit No. 172 played)

BY MR. PITARO:

Q Agent Hanford, you listed to that tape?

A Yes.

Q And you followed along with the transcript?

A Yes.

Q Okay. And the transcript accurately reflects the -- what was said, doesn't it?

A Yes.

Q And that's the tape that I guess starts the Kutash matter, doesn't it?

A Well, there's one tape before that, I believe, but that's right at the beginning.

Q What's that?

A I believe there's one tape before that, but that's right near the beginning.

Q Well, isn't it true there's -- isn't it true that you testified in front of the grand jury in December 5th, 1995?

A Yes, I did, yeah.

Q And isn't it true in response to that tape, that conversation --

MS. SHOEMAKER: May I have a page, please?

MR. PITARO: 32, I'm sorry. I'm sorry, 31 and 32, starting at lines 25 -- I'm sorry, starting at lines 21, on page 31 and going over to line 4 on page 32.

1 BY MR. PITARO:

2 Q Now you were under oath at the time you did this --

3 A Yes.

4 Q -- isn't that correct?

5 A That's right.

6 Q Correct? You were seeking to have the grand jury to
7 indict Gerard Bongiovanni, weren't you?

8 A Yes, that was the initial appearance in the grand jury.

9 Q And is -- that's -- that's what you were starting with,
10 isn't that correct?

11 A Yes.

12 Q And isn't it true while under oath you told the grand
13 jury, "however" -- and I'm quoting:

14 "On October 15, which was a Sunday, Judge
15 Bongiovanni called Dottore at Dottore's home. And
16 at that time Dottore had taken a job at the Riviera
17 working as an usher in the Splash production. And
18 Judge Bongiovanni said to Paul Dottore" --

19 And if you could open the transcript and follow on 172:

20 "And Judge Bongiovanni said to Paul Dottore, 'Your
21 boss, who would be Jeff Kutash, has a case in front
22 of me tomorrow.' And Dottore said, 'Well, I wish I
23 had known earlier. Maybe we could have done
24 something.' And the judge said, 'Well, well, you
25 know.'"

1 Now, isn't it true that's what you told the grand jury
2 under oath on December 5th, 1995?

3 A That's correct.

4 Q And isn't it true that that tape 172, which is
5 referencing the call from -- the referencing the call where
6 Dottore and Gerard Bongiovanni are talking about the Kutash
7 case and the Riklis case, that's what you're referencing?

8 A Yes.

9 Q Okay. And isn't it true that in that conversation that
10 you told the grand jury about that Paul Dottore never said, "I
11 wish I would have known earlier. Maybe we could have done
12 something."

13 A No, I --

14 Q Isn't that true?

15 A -- I summarized it incorrectly, you're quite right.

16 Q Well, you were under oath when you summarized it
17 incorrectly, weren't you?

18 A I didn't remember it correctly. We then played the tape
19 at a later appearance.

20 Q May -- wait a minute, let me finish. And then you said,
21 "And the judge said, 'well, well, you now know.'" That wasn't
22 true either, was it?

23 A It wasn't correct.

24 MR. PITARO: I have nothing further.

25 THE COURT: Any redirect?

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1 MS. SHOEMAKER: Yes, Your Honor. If I could just
2 have a minute?

3 THE COURT: Yes.

4 (Pause in the proceedings)

5 THE COURT: Stand up, if you'd like to, for a
6 moment.

7 (Pause in the proceedings)

8 THE COURT: Counsel, if you're going to take a few
9 minutes, we'll take a ten-minute recess.

10 MS. SHOEMAKER: All right. Thank you, Your Honor.

11 (At 2:25 p.m., Court recessed until 2:40 p.m.)

12 (Jury is present)

13 THE COURT: Please be seated.

14 Will counsel stipulate to the presence of the jury?

15 MR. PITARO: Yes, Your Honor.

16 MS. SHOEMAKER: Yes, Your Honor.

17 THE COURT: Thank you. Ms. Shoemaker?

18 MS. SHOEMAKER: Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. SHOEMAKER:

21 Q Agent Hanford, during your cross-examination, you
22 testified that the investigation began back in July of 1993
23 and therefore it's been four years and five months since you
24 started investigating this case. Can you be more specific for
25 the jury and clarify what it was that you were actually

1 investigating back in July of 1993?

2 A Initially, it was the bank fraud.

3 Q And when did the investigation's focus turn from bank
4 fraud to the charges that are in this indictment?

5 A After the wiretaps started.

6 Q When did the first wiretap go up on one of the
7 defendant's telephones, do you recall?

8 A February of 1994.

9 Q Now February of 1994, wasn't that when you got the first
10 wiretap in the overall investigation of the bank fraud and
11 this case?

12 A Yes.

13 Q And you had a wiretap on Gerard Bongiovanni's home
14 telephone at that time?

15 A No. Paul Dottore's.

16 Q Okay. When did you get -- when was the first time you
17 went up on Gerard Bongiovanni's home telephone or his chambers
18 telephone?

19 A It was either late May or early June of 1994.

20 Q Okay. Now you also mentioned during your cross-
21 examination that Terry Salem hasn't paid one cent of
22 restitution yet, is that correct?

23 A That's correct.

24 Q As part of his plea agreement, can the Court still order
25 him to pay restitution?

1 A Yes.

2 MR. PITARO: Your Honor, I would object. That's
3 going to call for a legal conclusion.

4 MS. SHOEMAKER: It's not a legal conclusion.

5 MR. PITARO: Of course it is.

6 THE COURT: She said, can the court order?

7 MR. PITARO: She's asking this agent?

8 MS. SHOEMAKER: Under the terms of the plea
9 agreement.

10 THE COURT: Has the plea agreement been received?

11 MS. SHOEMAKER: No, it hasn't, Your Honor.

12 MR. PITARO: It's not admissible, Judge.

13 THE COURT: Of course it's admissible if you agree
14 to it.

15 Let's move on.

16 BY MS. SHOEMAKER:

17 Q When is Terry Salem supposed to be sentenced?

18 A I believe January 16th, 1998.

19 Q Now you indicated during your cross-examination that you
20 and the FBI didn't participate in the promises that were given
21 to Terry Salem, and that the FBI wasn't the people -- or the
22 agency with the authorization to give a pass to Terry Salem on
23 criminal conduct he'd been engaged in, is that correct?

24 A That's correct.

25 Q And that those promises were made pursuant to the plea

1 agreement with the United States Attorney's office instead, is
2 that right?

3 A That's right.

4 Q Okay. Now Mr. Pitaro brought out that Terry Salem didn't
5 enter his guilty plea in this case until January of 1996, I
6 believe it was, is that correct?

7 A That's correct.

8 Q And yet Mr. Salem had been cooperating with the FBI since
9 September of 1994, and by the time he had entered his plea
10 agreement, he was no longer actively cooperating with the FBI
11 or being paid for his services, is that right?

12 A Well, he was no longer being paid for his services at
13 that point; he was still furnishing some cooperation in other
14 cases other than this one.

15 Q Okay. But he wasn't actively cooperating in the case any
16 more?

17 A No.

18 Q Okay. Now if Mr. Salem had not -- he agreed to cooperate
19 with you back in September of 1994, is that correct?

20 A That's correct.

21 Q And if the United States Attorney's office did not make
22 the promises formally to him until he entered his guilty plea
23 in January of 1996, what promises had been made to Mr. Salem
24 from the time of September of 1994 when he was -- began
25 cooperating up until the time he actually entered his plea and

1 the promises from the United States Attorney's office were
2 formally made?

3 A The only thing that I ever promised him was to just make
4 his cooperation known to the United States Attorney's office.
5 Now what discussions his attorney had with your office, I'm
6 not aware of.

7 MR. PITARO: Well, Your Honor, with all due respect
8 to Agent Hanford, they also were paying forty-five thousand
9 dollars (\$45,000) during this period of time. So it was more
10 than just I thought to make cooperation known. This is during
11 the period of time that he's paid him forty-five thousand
12 dollars (\$45,000), or the FBI has paid him.

13 THE COURT: And the evidence is clear. That is so.
14 BY MS. SHOEMAKER:

15 Q Mr. Hanford, you testified during cross-examination that
16 a pen register records the numbers that are going out from a
17 person's telephone, is that correct?

18 A That's correct.

19 Q Okay. Does a pen register also reflect when there's an
20 income call, but just not identify what phone is calling in?

21 A That's right. It doesn't identify what phone is calling
22 in unless the phone that's calling in also has a pen register
23 on it.

24 Q Okay. All right, Mr. Pitaro made a big point during
25 cross-examination that --

1 MR. PITARO: Your Honor, I don't believe that the
2 counsel for the government has to editorialize about what my
3 good points. I can --

4 THE COURT: That's so.

5 MS. SHOEMAKER: I don't mean "good" in that respect,
6 Your Honor.

7 MR. PITARO: Well, if you want to say good, that's
8 okay.

9 MS. SHOEMAKER: Mr. --

10 THE COURT: Well, you're objecting to it.

11 BY MS. SHOEMAKER:

12 Q Mr. Pitaro made a big point by asking you many, many,
13 many, many questions --

14 MR. PITARO: Well, Your Honor, that's -- that's
15 improper questioning.

16 THE COURT: Let's move on.

17 BY MS. SHOEMAKER:

18 Q Mr. Pitaro asked you a number of questions during cross-
19 examination about what you didn't do with respect to finding
20 out what had happened with a number of traffic tickets in this
21 investigation, is that correct?

22 A That's correct.

23 Q All right. Now, had you gone and pulled the tickets for
24 these various individuals, would the ticket have shown whether
25 Gerard Bongiovanni or his staff as a favor for friends or

1 family arranged for these tickets to be reduced without the
2 person having to appear in court?

3 A No.

4 MR. PITARO: Objection, Your Honor. I don't think
5 he can testify to that because he never pulled anything.

6 THE COURT: The objection is sustained. It'll be
7 stricken. He testified that he hadn't seen the documents.

8 BY MS. SHOEMAKER:

9 Q Well, Agent Hanford, if you had pulled the ticket, would
10 the ticket indicate if somebody did something as a favor for
11 somebody?

12 MR. PITARO: Your Honor --

13 THE COURT: You'll need foundation.

14 MR. PITARO: -- if wishes were horses, we'd all be
15 riders. I object.

16 THE COURT: The objection is sustained.

17 BY MS. SHOEMAKER:

18 Q Would you have been able to tell whether Gerard
19 Bongiovanni took any money to handle that ticket --

20 MR. PITARO: Your Honor, the --

21 BY MS. SHOEMAKER:

22 Q -- by pulling the ticket?

23 MR. PITARO: -- the question was sustained. You
24 can't just then follow on with the same question.

25 THE COURT: I've sustained the question, counsel --

1 sustained the objection.

2 BY MS. SHOEMAKER:

3 Q What was it that you were investigating, Mr. Hanford, in
4 connection with those tickets?

5 MR. PITARO: Your Honor, I think this has been asked
6 and answered.

7 MS. SHOEMAKER: Your Honor --

8 MR. PITARO: I mean, I hope we're not going to go
9 through the investigation again.

10 THE COURT: The objection is overruled.
11 You may respond.

12 THE WITNESS: I was investigating whether the
13 tickets had been either dismissed or reduced in return for
14 either a cash payment or a favor.

15 BY MS. SHOEMAKER:

16 Q Now in your review of the wiretap evidence in this case,
17 do you know that Gerard Bongiovanni did, in fact, assist Paul
18 Dottore and his friends with tickets?

19 A Yes.

20 MR. PITARO: I would object, Your Honor.

21 THE COURT: What is the question again?

22 MS. SHOEMAKER: The question was if, based on Agent
23 Hanford's review of the wiretap evidence in this case, he
24 knows for a fact that Gerard Bongiovanni did assist Paul
25 Dottore and his friends with tickets.

1 MR. PITARO: Your Honor, I mean --

2 THE COURT: That really is a jury question, counsel.
3 That'll be left to argue. I would sustain the objection.

4 BY MS. SHOEMAKER:

5 Q Your Honor -- or, excuse me, Agent Hanford, from your
6 review of the wiretaps, were there conversations that were
7 intercepted where the defendant's staff called Judge Bixler's
8 secretary to have tickets --

9 MR. PITARO: Your Honor, I would have to object.
10 The evidence is before the jury.

11 THE COURT: She hasn't finished the question.
12 Go ahead.

13 BY MS. SHOEMAKER:

14 Q Did the wiretap evidence reveal conversations where the
15 defendant's staff called Judge Bixler's secretary to have
16 tickets reduced without the people having to go to court?

17 A Yes.

18 MR. PITARO: Objection, Your Honor. Those tickets
19 -- those -- what --

20 THE COURT: Just a minute. I think you'll need some
21 foundation. You're talking about tapes again?

22 MS. SHOEMAKER: Yes, Your Honor.

23 THE COURT: Well, have the tapes been received?

24 MS. SHOEMAKER: These particular tapes haven't, but
25 I'd be happy to offer some tapes if the Court wants to have

1 some tapes played of the defendant's staff doing that.

2 MR. PITARO: Well, it's not what the Court wants.

3 THE COURT: No, just a --

4 MR. PITARO: I --

5 THE COURT: -- just a --

6 MR. PITARO: -- I objected, Your Honor, and --

7 MS. SHOEMAKER: The --

8 MR. PITARO: -- she's trying to talk about tapes
9 that aren't there. If she wants to play, she can play what
10 she wants, but it's not the Court that's asking, and it's an
11 improper question.

12 THE COURT: I'll sustain the objection, counsel.

13 BY MS. SHOEMAKER:

14 Q Agent Hanford, Paul Dottore in his initial proffer to the
15 government on April 17th, 1997, denied getting any money from
16 the bank fraud, is that correct?

17 A Yes.

18 Q Did he later change his statement with respect to getting
19 money from the bank fraud?

20 A Yes, on April 22nd.

21 Q And why don't you go ahead and tell the jury how you came
22 to find out that Paul Dottore was going to change his
23 statement in that regard.

24 MR. PITARO: Your Honor, I'm going to object. It's
25 going to call for hearsay.

1 THE COURT: Well, I don't know what it is.

2 MR. PITARO: But I do, and it's going to be hearsay.

3 THE COURT: Okay.

4 MS. SHOEMAKER: Your Honor, Mr. Pitaro established
5 in cross-examination that Paul Dottore lied at one time about
6 receiving the nine hundred dollars (\$900), and I think Agent
7 Hanford's entitled to tell the jury how it is that Paul
8 Dottore changed his statement to show that it was a voluntary
9 change of statement by Paul Dottore a few days later.

10 MR. PITARO: Your Honor, with all -- with all due
11 respect, what Mr. Pitaro established was that Mr. Hanford's --

12 THE COURT: Well, just a -- just a minute.

13 MR. PITARO: But the question --

14 THE COURT: Just -- just a minute, Mr. Pitaro. If
15 you can lay a foundation without going into a hearsay
16 statement, that's what I would require before -- Mr. Dottore
17 can certainly explain that. I presume you intend to call him.

18 MS. SHOEMAKER: Yes, I do, Your Honor, and I'm not
19 asking Agent Hanford for the truth of the matter that he got
20 nine hundred dollars (\$900) from the bank fraud, but just to
21 show that he did change his story and that he did it on his
22 own volition, and when he did it.

23 THE COURT: Well, he's indicated that he's changed
24 his story, and -- I think -- I think it is appropriate
25 testimony and it doesn't require hearsay. You simply want to

1 ask him if he indicated to the contrary sometime later on his
2 own?

3 MS. SHOEMAKER: Yes, Your Honor.

4 THE COURT: Okay. Ask that.

5 BY MS. SHOEMAKER:

6 Q Did Paul Dottore later change his story with respect to
7 getting any money from the bank fraud?

8 A Yes, he did.

9 Q And did he do that of his volition?

10 A Yes.

11 Q And that was on April 22nd?

12 A Yes.

13 THE COURT: And that was personally with you, is
14 that correct?

15 THE WITNESS: Yes, it was, Your Honor.

16 BY MS. SHOEMAKER:

17 Q Now, Mr. Pitaro brought out in cross-examination that
18 prior to each withdrawal of the bank fraud Paul Dottore would
19 call Terry Salem and tell him to come over for another
20 withdrawal, is that correct?

21 A That's correct.

22 Q Has Terry Salem ever said that Paul Dottore got more than
23 nine hundred dollars (\$900) for the bank fraud?

24 MR. PITARO: Objection, Your Honor, hat's calling
25 for impermissible hearsay. We cross-examined Salem about it.

1 THE COURT: You may respond.

2 THE WITNESS: Would you ask the question again,
3 please?

4 BY MS. SHOEMAKER:

5 Q Has Terry Salem ever told you that he knows that Paul
6 Dottore got more than nine hundred dollars (\$900)?

7 A No.

8 MR. PITARO: Well, I don't have a foundation. Did
9 you -- did you ask him and what were the facts and
10 circumstances were? 'Cause it surely isn't in any 302?

11 THE COURT: The question is, did -- was this ever
12 said to his knowledge, and the answer is no.

13 MR. PITARO: Don't we have to lay the foundation if
14 they asked him?

15 THE COURT: Let's move on.

16 BY MS. SHOEMAKER:

17 Q Mr. Pitaro brought out during his cross-examination that
18 on one occasion Terry Salem tried to arrange through Paul
19 Dottore to have dinner with Gerard Bongiovanni, and on another
20 occasion he tried to arrange through Paul Dottore to play golf
21 with Gerard Bongiovanni and that in both of those instances
22 Bongiovanni would not agree to meet with Terry Salem.

23 MR. PITARO: Your Honor --

24 BY MS. SHOEMAKER:

25 Q Do you recall that?

1 MR. PITARO: -- Your Honor, I'm going to object.
2 That isn't what it is. It was in the same conversation of the
3 newly- elicited tape. It was both dinner and golf on that
4 tape, and that's what we elicited under pages 111, 112 --

5 THE COURT: Why don't you rephrase the question?

6 MS. SHOEMAKER: I apologize. I didn't recall the
7 reference to golf in the first transcript.

8 BY MS. SHOEMAKER:

9 Q If that's in fact what was referenced in there, were
10 there any other occasions that Terry Salem tried to, through
11 Paul Dottore, to meet directly with Gerard Bongiovanni?

12 A They discussed it on the phone later.

13 Q Did -- were there other attempts for -- by Terry Salem to
14 meet with Gerard Bongiovanni?

15 A Yes, they attempted to arrange a golf meet.

16 Q Other than the golf meeting that Mr. Pitaro brought up
17 that was in a conversation a few days after the tape he played
18 for you?

19 A Well, the other occasion was later. But they never
20 played golf.

21 Q Okay, but other than the two tapes that the jury has
22 heard where Terry Salem tried to set up golf with Gerard
23 Bongiovanni, did Terry Salem continue to try to set up
24 meetings with Gerard Bongiovanni?

25 A That's the only two occasions I'm aware of.

1 Q You testified during cross-examination that you knew that
2 Mr. Olejack's criminal cases were assigned to Judge Maupin and
3 not Judge Bongiovanni, is that correct?

4 A That's correct.

5 Q Why did you continue to pursue the alleged solicitation
6 of Mr. Olejack if you knew that the cases were assigned to
7 Judge Maupin and not Judge Bongiovanni?

8 A Mr. Dottore was still under investigation at this point;
9 he kept insisting vehemently that it was going to be in front
10 of Judge Bongiovanni. We continued the investigation to see
11 how it would turn out. We didn't know whether or not it would
12 -- there was any means that it could be reassigned. And we
13 certainly had no means of telling Mr. Dottore to stop talking
14 about it.

15 Q I believe you stated during cross-examination, and if you
16 didn't state this, just correct me. But I believe you stated
17 that you knew Peter Flangas didn't know anything about the
18 bribe situation, is that correct?

19 A We didn't tell him about it.

20 MR. PITARO: Your Honor, wait a minute, that wasn't
21 the question. She asked him, isn't that what he testified to
22 earlier in the day. Now, if she wants to impeach her own
23 witness, that's fine with me, but at least ask the question --
24 let him answer the question she asks, isn't that what he said
25 earlier today. I know we want to --

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1 THE COURT: Well --

2 MR. PITARO: -- try to get out from underneath that,
3 but she has to ask the question.

4 THE COURT: -- it'll be stricken.

5 Why don't you rephrase your question.

6 BY MS. SHOEMAKER:

7 Q Mr. Hanford, can you please tell me, did you or did you
8 not, I don't know, did you or did you not state that Peter
9 Flangas was not aware of the bribe in Terry Salem's case?

10 A As far as I know he was not aware of the bribe.

11 Q Okay. But you don't know whether he knew, do you?

12 A I don't know what he knows, no.

13 Q Okay. Now, Mr. Pitaro brought out that you told the
14 grand jury on one occasion that Paul Dottore said Gerard
15 Bongiovanni was going to dismiss Terry Salem's case for five
16 thousand dollars (\$5,000), is that correct?

17 A I'm sorry, would say it again, please?

18 Q You told the grand jury that Paul Dottore had said Gerard
19 Bongiovanni was going to dismiss Terry Salem's case for five
20 thousand dollars (\$5,000), is that correct?

21 A That's correct.

22 Q Did Paul Dottore make that statement on at least one
23 occasion?

24 A Yes.

25 Q Were there other --

1 MR. PITARO: Could we have foundation?

2 THE COURT: Provide some foundation.

3 BY MS. SHOEMAKER:

4 Q Do you recall how many times Paul Dottore stated that?

5 A Up -- I'm sorry, up until -- you're talking about
6 personally to me, or over the --

7 Q Oh. No, I guess I should clarify there. Before Paul
8 Dottore began cooperating with the government, do you recall
9 how many times Paul Dottore said that -- how many times he
10 told Terry Salem that Gerard Bongiovanni was going to dismiss
11 the case for five thousand dollars (\$5,000)?

12 A Well, I know at least once.

13 MR. PITARO: Could I have the foundation of when?

14 THE COURT: Yes.

15 BY MS. SHOEMAKER:

16 Q Do you recall when that was?

17 A It was soon after the arrest of Mr. Salem.

18 Q But you don't remember a specific date?

19 A No.

20 MR. PITARO: Can I ask it be stricken?

21 MS. SHOEMAKER: No, Your Honor, there are tapes that
22 have been produced in evidence where that's discussed.

23 MR. PITARO: Well, refer him to the tape.

24 MS. SHOEMAKER: Your Honor, just because we're not
25 pointing to a specific instance --

1 THE COURT: Let's --

2 MS. SHOEMAKER: -- where it said --

3 THE COURT: -- let's move on. Yeah.

4 BY MS. SHOEMAKER:

5 Q Now, you indicated as well that there was a time that
6 Paul Dottore told Terry Salem that Peter Flangas needed money
7 for attorney fees, is that also true?

8 A That's correct.

9 Q Was the money that Terry Salem paid to Peter Flangas paid
10 to him directly?

11 A Yes.

12 Q Was there one occasion over the wires where you
13 intercepted Peter Flangas asking --

14 MR. PITARO: Your Honor, these questions are
15 leading.

16 BY MS. SHOEMAKER:

17 Q -- Paul Dottore to --

18 THE COURT: Just a moment. I'm sorry?

19 MR. PITARO: Leading. And there not foundational.
20 They're just leading questions. And that's a leading
21 question.

22 THE COURT: Well, why don't you state the question,
23 was there a time when?

24 BY MS. SHOEMAKER:

25 Q Was there a time when you intercepted a conversation over

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1 the wiretap where Peter Flangas requested Paul Dottore to get
2 money for him?

3 A Yes.

4 THE COURT: That's a leading question, counsel.

5 THE WITNESS: Excuse me.

6 BY MS. SHOEMAKER:

7 Q You testified during cross-examination that Agent Howey
8 told you on October 15th, 1995 about the one call where
9 Starrlee Leavitt was talking to Paul Dottore about somebody
10 coming in from Los Angeles and bringing something with him,
11 and that Agent Howey believed that was a drug call possibly,
12 is that correct?

13 A That's correct.

14 Q All right. And you indicated that you didn't do any
15 physical surveillance because you weren't investigating that,
16 is that correct?

17 A That's correct.

18 Q Did you have any other concerns about setting up a
19 surveillance that night?

20 A I didn't hear your last part of the question.

21 Q Did you have any other concerns about setting up a
22 surveillance that night?

23 A Yes, I had -- I was concerned that if we set up a
24 surveillance Mr. Dottore or one of the other individuals would
25 detect the surveillance.

1 Q And was there a particular reason why didn't want them to
2 detect surveillance at that time?

3 A They were going to be making the next payment on the
4 bribe two days later, I didn't want to have Mr. Dottore
5 alerted right before that happened.

6 Q Was Agent Howey the person who monitored all the calls
7 that day?

8 A No.

9 Q Was he the person who'd been monitoring the calls earlier
10 that morning between Starrlee Leavitt and Paul Dottore where
11 she indicated that she was going to call Mr. Kutash and then
12 got back to Mr. Dottore about that?

13 A No, he wasn't.

14 Q Now you indicated on cross-examination that you got
15 approval to go up on the wiretaps again shortly before the
16 search on October 17th and that part of your purpose for that
17 was to generate conversations relating to that search, is that
18 correct?

19 A That's correct.

20 Q And you indicated that you did not review the tapes of
21 the conversations on the 15th until after the search, is that
22 correct?

23 A That's correct.

24 Q Can you -- first of all, did you need, in order to apply
25 for those search warrants, did you need to get further

1 conversations from those wiretaps, or were you using the
2 wiretaps to get conversations that would occur after Terry
3 Salem passed the money to Paul Dottore and setting up that
4 payment?

5 A Well, the latter is true. We needed the wiretaps to get
6 the conversation surrounding the payment.

7 (Pause in the proceedings)

8 Q Now you indicated that the night the search warrants were
9 executed at the defendant's residence you knew the defendant's
10 wife was bedridden, is that correct?

11 A That's correct.

12 Q And you indicated that one of the agents was searching in
13 Mrs. Bongiovanni's bedroom, is that correct?

14 A That's correct.

15 Q Did you try to avoid having to do that?

16 MR. PITARO: Well, Your Honor, he said he wasn't the
17 -- he said an agent was in the bedroom.

18 THE COURT: Yes.

19 MR. PITARO: And so now she's having him -- did he
20 try to avoid being in the bedroom. He said he wasn't in the
21 bedroom.

22 MS. SHOEMAKER: No.

23 THE COURT: No, she said an agent -- he said an
24 agent was in the bedroom, I think, Mr. Pitaro.

25 //

1 BY MS. SHOEMAKER:

2 Q Did you do anything that night while you were there to
3 execute the search warrants to try to avoid having to go
4 search Mrs. Bongiovanni's bedroom?

5 A Yes, I did.

6 Q And what was that?

7 A I asked Mr. Bongiovanni if he --

8 MR. PITARO: Your Honor, I'm going to object. Lack
9 of foundation.

10 BY MS. SHOEMAKER:

11 Q You asked Mr. Bongiovanni something --

12 MR. PITARO: I mean, they're trying to get into --

13 THE COURT: Who was present?

14 MR. PITARO: -- those questions that --

15 THE COURT: Pardon?

16 MR. PITARO: -- that were sustained before.

17 BY MS. SHOEMAKER:

18 Q Did you tell Mr. Bongiovanni that you were going to be
19 searching there until you found it?

20 A Yes.

21 Q Did you tell him that you knew Paul Dottore had delivered
22 the money to him?

23 A Yes.

24 MR. PITARO: Your Honor --

25 THE COURT: I think all this evidence has come in,

1 counsel. Let's move on.

2 BY MS. SHOEMAKER:

3 Q During cross-examination Mr. Pitaro played the tape where
4 Mr. Bongiovanni says, either I got a mortgage payment out of
5 here, or you got a mortgage payment out of here. Do you
6 recall that January 3rd, 1995 call?

7 A Yes.

8 Q And you indicated that you have always heard it as I got
9 a mortgage payment out of here, is that correct?

10 A Yes.

11 Q And originally that's how the transcript was drafted, is
12 that correct?

13 A That's correct.

14 Q Do you know the reason the government changed the
15 transcript to say --

16 MR. PITARO: Your Honor --

17 BY MS. SHOEMAKER:

18 Q -- you got a mortgage payment out of there?

19 MR. PITARO: -- Your Honor, that calls for
20 impermissible hearsay and it's not something that he can
21 testify to.

22 THE COURT: Well, I don't know. The question is,
23 does he know the reason.

24 MR. PITARO: Well, the government -- how --

25 THE COURT: Does he know --

1 MR. PITARO: -- why'd the government do something?

2 THE COURT: -- the reason, and it can be answered
3 yes or no. And that's all that's called for.

4 THE WITNESS: Yes, I know the reason.

5 BY MS. SHOEMAKER:

6 Q Did the government change that because of something a
7 witness said?

8 A Yes.

9 MR. PITARO: With all -- with all due respect, Your
10 Honor. That's --

11 MS. SHOEMAKER: It's not hearsay. We're not
12 offering it to show whether Paul Dottore or Gerard Bongiovanni
13 was getting the mortgage payment out of the money from Terry
14 Salem --

15 MR. PITARO: Well, wait a minute, wait a minute.

16 MS. SHOEMAKER: -- it's being offered to show why we
17 changed the transcript from what Mr. Hanford thought it was.

18 MR. PITARO: You're asking this agent why the
19 government did something based upon some other hearsay? Is
20 that -- is that what the question is? I object.

21 MS. SHOEMAKER: No, it's not.

22 THE COURT: Well, I think it's for the truth of it.
23 Let's move on. It'll be stricken.

24 BY MS. SHOEMAKER:

25 Q Agent Hanford, Mr. Pitaro pointed out during cross-

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1 examination that you made a mistake when you were summarizing
2 the conversation to the grand jury, that conversation being
3 the conversation between Gerard Bongiovanni and Paul Dottore
4 on the morning of October 15th, 1995. Do you recall that?

5 A Yes.

6 Q Was the tape of that conversation played for the grand
7 jury at a later time?

8 A Yes, it was.

9 Q You testified during cross-examination that this is not
10 the biggest case of your career, is that correct?

11 A I don't mean to minimize the case, but, no, it's not.

12 Q What was the biggest case of your career?

13 A I was in the New York office before coming here, and I
14 headed the investigation into the infiltration of the private
15 carding industry by the La Cosa Nostra.

16 Q And how long did that investigation last?

17 A My part of it lasted nine years. It's still going on.

18 Q Was this the second biggest case of your career?

19 A No.

20 MS. SHOEMAKER: No further questions, Your Honor.

21 THE COURT: Anything further, Mr. Pitaro?

22 MR. PITARO: Yeah.

23 RECROSS EXAMINATION

24 BY MR. PITARO:

25 Q Let -- you said the only thing, and I just wanted to

1 clarify this, or reiterate it I guess, that the only thing
2 that the -- the only promise the FBI made was that you'd make
3 the cooperation known to the government, and you said that was
4 from September of '94 until January of '96.

5 A The only promise, yes.

6 Q Yeah, okay. Okay, but you also promised to pay him
7 forty-five thousand dollars (\$45,000) and you delivered on
8 that promise, too, didn't you?

9 A It wasn't a promise, we just paid it.

10 Q Okay. And you said that the Salem sentencing is now set
11 for January 1998?

12 A I believe so, yes.

13 Q Okay. How many times has it been continued?

14 A I don't know. It's several times.

15 Q Several times?

16 A Yes.

17 Q And so this guy has pled guilty to something he did in
18 March of 1993?

19 A Yes.

20 Q He started working for you in '94, right?

21 A Yes.

22 Q He doesn't -- he gets paid all this money we've talked
23 about, and then he pleads in 1996, right?

24 A Yes.

25 Q And now we're waiting until sometime at the beginning of

1 next year to sentence him?

2 A That's correct.

3 Q Well, if Mr. Salem was such a trustworthy man, why didn't
4 you just sentence him back in '96 or '95 or '94?

5 A Mr. Pitaro, I don't sentence anybody. I'm the FBI, not
6 the judge.

7 Q I understand. But you work in cooperation with the
8 prosecution.

9 A And that's their area, not mine.

10 MR. PITARO: Thank you.

11 THE COURT: Anything further, Ms. Shoemaker?

12 MS. SHOEMAKER: No further questions, Your Honor.

13 THE COURT: You may step down.

14 THE WITNESS: Thank you, Your Honor. Thank you.

15 THE COURT: Call your next witness, please.

16 MR. JOHNSON: The government calls Tina Lombard.

17 (Off-record colloquy)

18 THE CLERK: Step right up here, please.

19 TINA MARIE LOMBARD, PLAINTIFF'S WITNESS, IS SWORN

20 THE CLERK: Please be seated. Push the microphone
21 up.

22 THE WITNESS: Thank you.

23 THE CLERK: Please state you're name and spell your
24 last name for the record.

25 THE WITNESS: My name is Tina Marie Lombard,

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1 THE WITNESS: Thank you.

2 THE CLERK: Please state your name and spell your
3 last name.

4 THE WITNESS: Excuse me. Paul Richard Dottore,
5 D-O-T-T-O-R-E.

6 THE CLERK: And what city and state do you reside
7 in?

8 THE WITNESS: Las Vegas.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MS. SHOEMAKER:

12 Q Mr. Dottore, how long have you lived in Las Vegas?

13 A Approximately twenty-two years.

14 Q What year was it that you actually moved here?

15 A 1976.

16 Q How old were you at that time?

17 A Thirty, thirty-one.

18 Q Where did you live prior to moving to Las Vegas?

19 A Cleveland, Ohio.

20 Q Were you born and raised there?

21 A Yes.

22 Q What sort of work were you engaged in while you lived in
23 Ohio?

24 A In Ohio?

25 Q Yes.

- 1 Q In Ohio?
- 2 Q Yes.
- 3 A Restaurant business.
- 4 Q Why did you decide to move to Las Vegas?
- 5 A I had an opportunity to get a job at a casino industry.
- 6 Q And where was that?
- 7 A At the Royal Casino.
- 8 Q So when you moved here did you start working at the Royal
- 9 Casino?
- 10 A Yes.
- 11 Q And what job did you have when you first started there?
- 12 A I started out as a maitre de in a showroom. They had a
- 13 little show there and I was a maitre de at night and I --
- 14 during the day I run the casino games.
- 15 Q All right. So you worked there during the day and the
- 16 night?
- 17 A Yes.
- 18 Q Did you ultimately get a position in gaming at the Royal
- 19 Casino?
- 20 A Yes, I did.
- 21 Q When was that approximately?
- 22 A I'm sorry?
- 23 Q When was that approximately when you got a game in -- a
- 24 job in gaming at the Royal?
- 25 A About a year or so later.

1 Q How long did you wind up working at the Royal Casino?

2 A Nine years.

3 Q Was there a period of time that you left for a while?

4 A Yes, I left for a little while, I went down to the Golden
5 Nugget and dealt craps.

6 Q Okay. Did you ultimately come back to the Royal Casino?

7 A Yes.

8 Q All right. So if you moved here in 1976 and you worked
9 at the Royal Casino for about nine years, then was it about
10 1985 when you left the Royal?

11 A Yes.

12 Q What did you do after that?

13 A I worked for Shetakis Wholesales.

14 Q Just for anyone who might not know what Shetakis
15 Wholesales is, could you please tell the jury what kind of
16 work that involved?

17 A It's a food distributor.

18 Q And how long did you work there?

19 A One year.

20 Q Was there any particular reason that you left that
21 employment?

22 A It was a father and son operation and I didn't want to
23 get in the middle of it and it was a physical job and I just
24 quit.

25 Q All right. What happened when you left Shetakis? Did

1 you get a job somewhere?

2 A At Vegas World.

3 Q All right. What was your position when you started at
4 Vegas World?

5 A I started as a bellman, then I got the position as a bell
6 captain and then when they opened the showroom I worked a show
7 in the evenings and I was a bell captain during the day.

8 Q How long did you wind up working at Vegas World?

9 A Seven years.

10 Q All right. So then what year would that -- when did you
11 leave Vegas World?

12 A July '94.

13 Q And why did you leave your employment at Vegas World?

14 A Position was eliminated.

15 Q Did you get a job right after you -- your position at
16 Vegas World was eliminated?

17 A Right after?

18 Q Yes.

19 A No.

20 Q When was the next time you got a job?

21 A About -- a little over a year later at the Riviera. I
22 worked for -- in the "Splash" show.

23 Q Okay. Do you recall approximately when it was that you
24 started working for the "Splash" show at the Riviera?

25 A August -- August '95.

1 Q How did you get your job at "Splash"?

2 A Through a former supervisor of mine, Starr Leavitt was a
3 -- worked for "Splash" and she hired me on at the "Splash"
4 show.

5 Q Okay. You said she was a former supervisor of yours?

6 A She was a hotel manager at Vegas World.

7 Q Okay. And she was now working at the "Splash" show?

8 A Yes.

9 Q What was her position at "Splash"?

10 A She ran the showroom and she handled ticket -- group
11 ticket sales and I -- and I was hired on to relieve her.

12 Q All right. Were you friends with Ms. Leavitt as well?

13 A Yes.

14 Q How often were you working at the "Splash" show when you
15 started working there?

16 A I'm sorry?

17 Q How often were you working -- did you work full time or
18 what was the arrangement when you started at "Splash"?

19 A The "Splash" show and the Riviera are two different
20 entities so I wound up working for "Splash" relief from -- to
21 relieve the maitre de job a couple nights a week and I worked
22 during the day for group sales for the Riviera for the
23 "Splash" show.

24 Q Okay. I guess just to clarify for anyone who may not
25 know, can you explain -- "Splash" is a show, is that correct?

- 1 A It's a production show at the Riviera, yeah.
- 2 Q All right. How many hours a week were you working when
- 3 you worked for both "Splash" and the Riviera?
- 4 A Close to fifty.
- 5 Q How long did you wind up working for the "Splash"
- 6 production and/or the Riviera Hotel?
- 7 A Just a couple a months.
- 8 Q And why did you stop working there?
- 9 A October.
- 10 Q October of 1995?
- 11 A October '95.
- 12 Q All right. Why did you stop working there?
- 13 A I was terminated.
- 14 Q Were you told why you were terminated?
- 15 A I just -- I was terminated after I was questioned by the
- 16 FBI and I walked into work and Mrs. Leavitt says, you've got
- 17 to get out of here. They want you out of here, you got to get
- 18 out of here. So I said, well, let me straighten this stuff
- 19 up, let me get this work done for you, and I'll leave. She
- 20 says, no, you gotta go now, so I left.
- 21 Q Okay. We'll get into that in more detail in a little
- 22 while, but for clarification purposes, in terms of the date
- 23 that you were fired, do you recall if there was a time in
- 24 October of 1995 when you were stopped by the FBI?
- 25 A Yes.

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1 Q Are you aware that the FBI searched Defendant Gerard
2 Bongiovanni's home that night as well?

3 A I'm sorry? I --

4 Q First of all, do you have a hearing problem, Mr. Dottore?

5 A Yes, and I think my battery went dead today, so.

6 Q Okay. Well, I'll --

7 A Yes.

8 Q -- try to speak up for you. If you don't hear my
9 question just let me know.

10 A Okay.

11 Q Are you aware that the FBI searched Gerard Bongiovanni's
12 residence the same night that they stopped you?

13 A Yes.

14 Q Do you recall if there was publicity in the newspapers
15 shortly after that search -- concerning the search?

16 A Yes.

17 Q And are you stating that you were fired because of the
18 publicity surrounding that?

19 MR. PITARO: Objection, Your Honor, that's not what
20 he said. He said that he walked in and Lynn Leavitt told him
21 -- Starr Leavitt told him he had to leave. That's what he
22 said.

23 THE COURT: Well, apparently -- when the FBI talked
24 to him that -- that's --

25 MR. PITARO: No, he said after the FBI talked to me

1 I walked in and they told me to leave. And she [sic] said,
2 I'll fix it up and she said, no, you got to leave now. That's
3 what his testimony was.

4 MS. SHOEMAKER: Well, maybe I can get some
5 clarification, Your Honor.

6 MR. PITARO: There's no clarification needed.
7 That's what it was.

8 THE COURT: Well, who knows whether there's
9 clarification needed, counsel. Go ahead.

10 BY MS. SHOEMAKER:

11 Q Had there been any publicity in the papers about the
12 investigation and the search of Gerard Bongiovanni's house by
13 the time you were fired?

14 A Yes.

15 Q And approximately how many days after the search were you
16 fired, if you recall?

17 A A day or so.

18 Q Okay.

19 A The next day or the day after that.

20 Q All right. Now after you were fired from your job at
21 "Splash" and the Riviera, were you able to get a job?

22 A Not 'til -- no, December I started a job. I got a job
23 through a friend of mine in December.

24 Q Of 1995?

25 A Of '95.

1 Q All right. And where was that?

2 A It was an auto pawn shop on Boulder Highway.

3 Q What is the name of that auto pawn shop?

4 A Well, it's not anymore. It was US -- US Auto Pawn.

5 Q Okay. Are you still working for that auto shop?

6 A I'm working at the same address, different name, yes.

7 Q Okay.

8 A Different company.

9 Q Do you know Gerard Bongiovanni?

10 A I'm sorry?

11 Q Do you know Gerard Bongiovanni?

12 A Yes.

13 Q Do you see him in the courtroom today?

14 A Yes, I do.

15 Q Can you please identify him for the record?

16 A Sitting between the two gentlemen over there.

17 THE COURT: Record will --

18 MS. SHOEMAKER: May the record reflect the

19 defendant's been identified.

20 THE COURT: -- reflect the identification of the

21 defendant.

22 BY MS. SHOEMAKER:

23 Q Where did you meet Mr. Bongiovanni?

24 A At the Royal Casino.

25 Q And approximately when was that?

1 A 1980, 1981.

2 Q All right. When you say you met him at the Royal Casino,
3 was he a customer or did he work there as well?

4 A No, he had interviewed for a job and we put him to work
5 as a boxman, part time.

6 Q Okay. Can you explain what a boxman is?

7 A He's a gentleman who sits at the dice table between the
8 two dealers. Runs the game.

9 Q And you indicated he was working there part time?

10 A Yes, couple nights a week.

11 Q Did you get to know Mr. Bongiovanni during that time?

12 A Yes.

13 Q Did you get to know him very well?

14 A Fairly well then.

15 Q And was this through just by working with him or did you
16 start socializing with him at that time?

17 A Well, him and I went out a few nights that I had time to
18 get off work to -- and go out and then his family came to my
19 house for dinner a couple times.

20 Q Okay. I don't recall whether I asked you this already or
21 not, but approximately when was it that Mr. Bongiovanni
22 started working at the Royal Casino when you met him?

23 A Started working?

24 Q Yes.

25 A Around '80 or '81.

1 Q Okay. All right. So you said that there were a few
2 times then where Mr. Bongiovanni would come to your house for
3 dinner, is that correct?

4 A Yes.

5 Q Okay. Did you do anything else -- socialize at all in
6 the beginning when he was working at the Royal Casino?

7 A Just to -- him and I would go out.

8 Q And when you would go out, what would you do?

9 A Just went gambling a couple -- few times.

10 Q All right. How often would -- were you going out with
11 Mr. Bongiovanni socially back when he first started working at
12 the Royal Casino?

13 A Well, not often back at the Royal Casino.

14 Q All right.

15 A A few times.

16 Q How long did Mr. Bongiovanni continue to work at the
17 Royal?

18 A You want a length of time?

19 Q Approximately.

20 A Four to six months.

21 Q Now when Mr. Bongiovanni left the Royal Casino, do you
22 know what sort of employment he had from there?

23 A He had a law practice.

24 Q Did you continue to see Mr. Bongiovanni after he left his
25 employment with the Royal Casino?

- 1 A Every so often, yes.
- 2 Q All right. And when you say every so often, can you be
- 3 more specific when you would see him or how often?
- 4 A I was working a lot of hours back then so we'd have lunch
- 5 once in a -- I can't give you an exact number.
- 6 Q Infrequently?
- 7 A Pardon me?
- 8 Q Not very frequently?
- 9 A No. No.
- 10 Q Okay. Did there come a time where you ultimately became
- 11 close friends with Mr. Bongiovanni?
- 12 A Yes.
- 13 Q Approximately when was that?
- 14 A 1991, around -- his -- started to campaign for his
- 15 judgeship.
- 16 Q All right. When you say when he started his campaign for
- 17 the judgeship, you mean before he first became a judge?
- 18 A Yes.
- 19 Q And how is that you became close friends with Mr.
- 20 Bongiovanni at that time?
- 21 A I had a campaign party for him at the Riviera and we just
- 22 started doing things.
- 23 Q Okay. Did you continue to be friends with Mr.
- 24 Bongiovanni after he was elected a judge?
- 25 A Yes.

1 Q First of all, do you know where he was elected a judge?
2 I don't mean Las Vegas, but do you know what court or
3 department of anything?

4 A It was Department Four, District Court.

5 Q And when you say the District Court, are you referring to
6 the Eighth Judicial District Court here in Las Vegas?

7 A Yes. Yes.

8 Q When Mr. Bongiovanni first became a judge, approximately
9 how often would you say that you went out socializing with
10 him?

11 A When he first became a judge?

12 Q Yes.

13 A We started like meeting on Friday nights and -- a couple
14 times.

15 Q Couple times what?

16 A A couple times a week.

17 Q And what sort of things would you do when you would go
18 out these couple times a week when he first became a judge?

19 A We'd go to a casino or something.

20 Q Can you think of anything else you did?

21 A We went golfing a few times, we bowled -- no, not in '91,
22 we didn't bowl. Just go to a casino and then hang out a
23 little bit.

24 Q All right. Did you also talk to Mr. Bongiovanni on the
25 telephone during that period of time?

1 A Yes.

2 Q How often would you say that when he first became a judge
3 back in 1991 that you were talking to him on the telephone?

4 A Back in '91?

5 Q Back in 1991 or the early time that he was a judge.

6 A One, two, three times a week.

7 Q All right. Did you begin to see the judge more
8 frequently or speak to him over the telephone more frequently
9 as time passed and while he was a judge?

10 A Yes.

11 Q I'm going to direct your attention now to the period of
12 the end of 1993 and up into -- say through the end of 1995.
13 Were you seeing Mr. Bongiovanni with any more frequency at
14 that time?

15 A Yes.

16 Q And were you speaking with him over the phone more
17 frequently at that time?

18 A Yes.

19 Q Approximately how often would you socialize with or see
20 Mr. Bongiovanni between late and '93 and the end of 1995?

21 A Quite often.

22 Q And can you be more specific?

23 A We bowled, we golfed, we gambled, we ate. I talked to
24 him just about every day, but maybe I'd see him three times a
25 week, have lunch --

- 1 Q All right.
- 2 A -- go out. Three to five times.
- 3 Q Three to five times a week?
- 4 A Yeah. Yes.
- 5 Q Okay. And how often would you talk to him?
- 6 A Just about every day.
- 7 Q Okay. You indicated that you would bowl together, is
- 8 that correct?
- 9 A Yes.
- 10 Q How often would you bowl?
- 11 A We bowled on Mondays and Wednesdays and he dropped out of
- 12 Wednesdays. Then we bowled on Monday and Tuesdays, then I
- 13 dropped out of Tuesdays, so.
- 14 Q All right. And was this during this entire period of
- 15 time from 1993 to 1995?
- 16 A Yes.
- 17 Q All right. What about golf, you said you would also golf
- 18 with Mr. Bongiovanni --
- 19 A Yes.
- 20 Q -- during this time? How often would you golf with him?
- 21 Approximately.
- 22 A Three, four times a month possibly --
- 23 Q All right. And --
- 24 A -- and we joined the Hilton --
- 25 Q Hilton.

1 A -- Hilton -- Hilton Country Club.

2 Q Did you have a membership there?

3 A Yes.

4 Q Did Mr. Bongiovanni have a membership there as well?

5 A Yes. Yes.

6 Q You indicated that you also would go out gambling
7 together, is that correct?

8 A Yes.

9 Q How often would you go out gambling?

10 A Whenever we could, once or twice a week.

11 Q What places -- where would you go to gamble?

12 A The Skyline, Nevada Palace, Continental, Tommy's Sunset
13 Casino, just the little places. I didn't like to go on the
14 strip.

15 Q All right. And when you and Mr. Bongiovanni would go out
16 gambling together, first of all, what did you like to gamble?

17 A Myself?

18 Q Yes.

19 A Keno.

20 Q And what did Mr. Bongiovanni like to gamble?

21 A Poker.

22 Q Did you ever gamble together or did you always split up?

23 A No, we'd start off and then we'd split up.

24 Q Did you ever have conversations with one another about
25 your winnings or your losses?

1 A Yes.

2 Q Do you know approximately, if you can average,
3 approximately how much Mr. Bongiovanni would gamble a night
4 when you gambled?

5 MR. PITARO: Your Honor, I suppose I'm going to have
6 to object if he said they split up.

7 MS. SHOEMAKER: Your Honor, he also said they
8 gambled together for a while and they discussed their winnings
9 and losses. It would be an admission of the defendant.

10 THE COURT: I think that's foundation enough to --
11 would go to weight. You may respond.

12 THE WITNESS: I'm sorry?

13 THE COURT: You may respond.

14 THE WITNESS: Sixty to eighty bucks.

15 BY MS. SHOEMAKER:

16 Q A night?

17 A When we played, yeah.

18 Q All right. Now you also mentioned that you would go out
19 to eat together. Would you have lunch together?

20 A Yes.

21 Q How frequently?

22 A Oh, wound up almost three times a week.

23 Q All right. When you were unemployed did you have lunch
24 with Mr. Bongiovanni more often?

25 A Yes, that's what I'm speaking about. Almost three times

1 a week.

2 Q What about getting together for dinner, did you do that

3 as well?

4 A Dinner?

5 Q Yes.

6 A Oh, dinner -- after dinner we'd have coffee and stuff at

7 each other's house with --

8 Q Did you ever have Mr. Bongiovanni to your house for

9 dinner?

10 A Oh, yes.

11 Q And did you go to his house for dinner?

12 A Not dinner. We'd go to his house for coffee and stuff.

13 Q All right. Did you consider yourself to be a close

14 friend of Mr. Bongiovanni's?

15 A I'm sorry?

16 Q Did you consider yourself to be -- you and Mr.

17 Bongiovanni to be close friends?

18 A I did, yes.

19 Q Would it be fair to state that you considered him to be

20 your best friend?

21 A At one point, yes.

22 Q Did you consider him to be your best friend through the

23 end of 1995?

24 A Yes.

25 Q What sort of nicknames did you have for Mr. Bongiovanni,

1 and by that let me clarify. I don't necessarily mean names
2 that you would call him to his face but if you were talking
3 about him to somebody else.

4 A Slim, Slimbo. Someone referred me to -- as The Robe, Fat
5 Ass -- excuse me.

6 Q Did you ever -- did you ever refer to him as The Fat Guy?

7 A Who?

8 Q As The Fat Guy?

9 A Oh, yes. Yes.

10 Q Did you know any other judges here in Las Vegas?

11 A Personally?

12 Q Yes.

13 A No.

14 Q So, if you were intercepted in conversations referring to
15 your judge friend, would you have always been referring to
16 Judge Bongiovanni?

17 A Yes.

18 Q Were you and Mr. Bongiovanni also members of a social
19 club together?

20 A The Elks Club.

21 Q Did you ever go on any trips together?

22 A We went to Mesquite a couple times, yes.

23 Q Do you recall approximately when it was that you would go
24 to Mesquite with Mr. Bongiovanni?

25 A It was hot -- that's all -- I know we golfed.

1 Q Okay. Was it when he was already a judge?

2 A Oh, yes.

3 Q All right. Mr. Dottore, when Gerard Bongiovanni was a
4 district judge with the Eighth Judicial District Court, did
5 you ever approach him to find out whether he would be willing
6 to help anyone in a criminal or civil case that was pending in
7 the Eighth Judicial District Court in exchange for money?

8 A Yes.

9 Q How many times did you do this?

10 A Three times.

11 Q When was the first time?

12 A Fall of '93.

13 Q And was this respect to a civil case or a criminal case?

14 A A criminal case.

15 Q And whose criminal case did it involve?

16 A Louis Olejack.

17 Q Did you know Mr. Olejack at the time you approached the
18 defendant about helping him -- helping Mr. Olejack with his
19 criminal case?

20 A No, I did not.

21 Q What caused you to approach Gerard Bongiovanni to see if
22 he might be interested in helping Mr. Olejack with a criminal
23 case -- if you didn't know Mr. Olejack?

24 A A friend of mine called and asked me if I can reach out
25 for some help for his friend.

1 Q And who was that friend?

2 A Terry Salem.

3 Q Do you recall approximately how much time passed between
4 the time Mr. Salem asked you to do this and the time that you
5 went and spoke to Mr. Bongiovanni?

6 A Day or so.

7 Q Do you recall what it was that Mr. Salem said to you when
8 he first approached you about the subject?

9 A To see if you could reach out -- to see if you could get
10 some help with this guy, we can make some money with this.

11 Q All right. Did Mr. Salem, when he first contacted you,
12 did he -- he explained explain to you, I take it, that Mr.
13 Olejack had a criminal case pending in the Eighth Judicial
14 District Court?

15 A Yes.

16 MR. PITARO: Your Honor, I'm going to object to
17 that. I think the question's leading and I think the evidence
18 -- as the court has pointed out --

19 THE COURT: It's clearly a leading question.

20 MR. PITARO: What's that?

21 THE COURT: It's a leading question.

22 MR. PITARO: All right.

23 THE COURT: Rephrase the question.

24 BY MS. SHOEMAKER:

25 Q What did Mr. Salem -- what did Mr. Salem tell you about

1 Mr. Olejack's situation in your initial conversation with Mr.
2 Salem?

3 A He got caught in a gaming beef --

4 Q All right.

5 A -- in a Caribbean Stud Game. He was taking off a
6 Caribbean Stud Game, he got caught.

7 Q Okay. Did you or Mr. Salem know what judge Mr. Olejack
8 was supposed to be appearing before in connection with that
9 case when you had your initial discussion?

10 A Did I know before I went downtown or --

11 Q Yes.

12 A No.

13 Q When Mr. Salem first asked you if you could try to help
14 Mr. Olejack -- first of all, why was Mr. Salem coming to you
15 and asking you? Was there some reason that he would have
16 thought you could do something?

17 MR. PITARO: Well, I'm going to object. I'd like
18 some foundation.

19 THE COURT: Sustained. You're asking him --

20 MR. PITARO: And it's leading --

21 THE COURT: -- why somebody else did something.

22 MR. PITARO: -- and it's quite -- hearsay.

23 BY MS. SHOEMAKER:

24 Q Did Mr. Salem know that you were friends with Gerard
25 Bongiovanni?

1 A Yes.

2 Q Did you understand Mr. Salem to be asking you to see if
3 Judge Bongiovanni might be able to help Mr. Olejack?

4 A Yes.

5 Q All right. What did you do after you had your
6 conversation with Mr. Salem?

7 A I took the information, Olejack's name and Social
8 Security number and whatever else and I went down to see the
9 judge and I asked his law clerk to run Olejack up on the
10 computer --

11 Q Okay.

12 A -- to see if he was in -- what department he was in.

13 Q All right. When you say to ask his law clerk to run this
14 up on the computer, who were you referring to?

15 A Del Potter.

16 Q Okay. Did Mr. Potter agree to check in the computer and
17 see if he could --

18 A Yes.

19 Q -- find a case against Mr. Olejack? And what did Mr.
20 Potter tell you?

21 A That he was in District Four.

22 Q And what did you understand District Four to mean?

23 A Gerard's courtroom.

24 Q When you say Gerard are you referring to Mr. Bongiovanni?

25 A Yes.

1 Q Are there any other judges assigned to District Four or
2 Department Four?

3 A Not to my knowledge.

4 Q Okay. When you say District Four do you mean Department
5 Four?

6 A Department Four.

7 Q All right. When Mr. Potter told you that Mr. Olejack's
8 case was assigned to Department Four --

9 MR. PITARO: Your Honor, I'm going to have -- I'm
10 going to have to object to that as impermissible hearsay. And
11 we know as a matter of fact it wasn't --

12 MS. SHOEMAKER: It's not being offered for the truth
13 as we all know that it wasn't ultimately assigned to Gerard
14 Bongiovanni.

15 MR. PITARO: No, it wasn't ultimately, it never was.

16 MS. SHOEMAKER: Or that it wasn't assigned to him

17 then. We're offering it to show what Mr. Dottore's state of
18 mind was at the time and how -- why he reacted -- what he did
19 after that.

20 THE COURT: It's not hearsay if it's not for the
21 truth of, counsel, and it clearly is not for the truth of.

22 BY MS. SHOEMAKER:

23 Q All right.

24 MR. PITARO: Potter's statements?

25 THE COURT: Yes.

1 MR. PITARO: I think it's hearsay and I object.

2 BY MS. SHOEMAKER:

3 Q After Mr. Potter told you that the case was assigned to
4 Department Four, what did you do?

5 A I had a slip of paper in my hand with Olejack's
6 information on it, I just leaned over his desk and I said, we
7 can -- we can do something with this guy.

8 Q When you say you leaned over his desk, who are you
9 referring to?

10 A Judge Bongiovanni's.

11 Q Was anyone else present?

12 A No.

13 Q How soon after Mr. Potter told you that Olejack's case
14 was assigned to Department 4 did you have this conversation
15 with Mr. Bongiovanni?

16 A A few minutes after Potter walked out of his -- out of
17 the chambers, went on an errand somewhere.

18 Q Okay. So you're saying this occurred almost at the same
19 time and it was at the defendant's chambers?

20 A Yes.

21 Q Okay. And what did Mr. Bongiovanni say when you said --
22 you showed him the information about Olejack and said you
23 might be able to do something with it?

24 A We'll talk about it later.

25 Q Did you have a later discussion with Mr. Bongiovanni

1 about Mr. Olejack's case?

2 A Yes.

3 Q When did that conversation take place?

4 A We went to lunch at the Horseshoe and just briefly
5 mentioned it 'cause we were -- we're going out tonight, we'll
6 talk about it tonight. And we just talked about it at the
7 Skyline that night -- Skyline Casino.

8 MR. PITARO: Your Honor, could I have some
9 foundation when this supposedly happened?

10 THE COURT: Just a moment. Yes.

11 BY MS. SHOEMAKER:

12 Q All right. Mr. Dottore, you indicated that Terry Salem
13 first approached you in the fall of '93, is that correct?

14 A Fall of '93?

15 Q Yes.

16 A Yes.

17 Q All right.

18 MR. PITARO: Your Honor, could we have -- what fall
19 of '93 means?

20 BY MS. SHOEMAKER:

21 Q Can you be more specific about it?

22 A No, I can't.

23 Q Okay. And you --

24 MR. PITARO: Could we have the months, I mean?

25 THE WITNESS: You're looking for a date from me?

1 THE COURT: No, he's indicated the fall and he's
2 been asked if he can be anymore specific, he said no.

3 BY MS. SHOEMAKER:

4 Q All right. I believe you also indicated that it was
5 either later the same day or within a day or two of your
6 conversation with Mr. Salem that you spoke to Mr. Potter to
7 find out where Olejack's case was assigned, is that correct?

8 A Yes.

9 Q And you indicated that it was just right after you found
10 out it was assigned to Department Four or you were told that,
11 that you spoke to Mr. Bongiovanni about it in his chambers, is
12 that correct?

13 A Yes.

14 Q And then you indicated that you were -- he said he would
15 speak to you about it later?

16 A Yes.

17 Q All right. When did you next speak to Mr. Bongiovanni
18 about Louis Olejack's case?

19 A On the way to lunch that same day.

20 Q Are you sure about that?

21 A Yes. On the way to lunch, then we talked about it -- we
22 -- briefly, then we talked about it that night. We met -- we
23 were going out that night. He said we'll talk about it
24 tonight, we're going out tonight, I'll see you tonight. And
25 that was the end of it 'til that night.

1 Q When you went out that night, where did you go?

2 A We went to the Skyline Casino.

3 Q Was anyone else present?

4 A Was anyone with us?

5 Q Yes.

6 A Yes.

7 Q Was anyone with you when you discussed Mr. --

8 A No.

9 Q -- Olejack's situation?

10 A No.

11 Q Were you inside the casino or outside the casino?

12 A We were outside.

13 Q And what was stated when you had a conversation with Mr.

14 Bongiovanni outside the Skyline Casino that night?

15 A That Olejack had this gaming beef and if it's going to be

16 in his courtroom, we could pick up -- we could pick up some

17 money with this and we can make some money on this case.

18 Q All right. And was it under -- did you say anything

19 during your conversation or did Mr. Bongiovanni say anything

20 during the conversation that would indicate to you that the

21 defendant understood this was supposed to be a bribe for help

22 on Mr. Olejack's case?

23 A Yes.

24 Q And did Mr. Bongiovanni agree to do that?

25 A Yes.

- 1 Q Did he -- did you discuss a price?
- 2 A Yes.
- 3 Q And what was the figure that was arrived at?
- 4 A Five thousand (5,000).
- 5 Q All right. After Mr. Bongiovanni told you that night
- 6 that he would assist Mr. Olejack in his case for five thousand
- 7 dollars (\$5,000), what did you do?
- 8 A I'm sorry.
- 9 Q After Gerard Bongiovanni told you that night that he
- 10 would assist Louis Olejack in his case for five thousand
- 11 dollars (\$5,000), what did you do?
- 12 A I notified Terry Salem.
- 13 Q Approximately when did you notify Terry Salem in relation
- 14 to the time that Gerard Bongiovanni said he would do it for
- 15 five thousand dollars (\$5,000)?
- 16 A The next day or so.
- 17 Q Okay. And did you notify him by phone or in person?
- 18 A By phone.
- 19 Q And when you called Mr. Salem and told him that Gerard
- 20 Bongiovanni was willing to help Mr. Olejack, how much did you
- 21 tell him it was going to cost?
- 22 A Ten thousand (10,000).
- 23 Q And why did you tell him ten thousand dollars (\$10,000),
- 24 when Mr. Bongiovanni had agreed to five?
- 25 A 'Cause I added five for myself.

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1 Q All right. What did Mr. Salem say when you told him that
2 Gerard Bongiovanni would be willing to help Olejack for ten
3 thousand dollars (\$10,000)?

4 A Said, oh, good. We'll make it twenty.

5 Q All right. And what was supposed to happen with the
6 extra ten thousand (10,000) from what he believed the bribe
7 was going to be?

8 A He was going to make five and I was going to make five.

9 Q All right. So if Mr. Olejack had been willing to pay
10 twenty thousand dollars (\$20,000) then Mr. Salem would have
11 made five thousand (\$5,000), you would have made ten thousand
12 (10,000), and Gerard Bongiovanni would have made five thousand
13 (5,000)?

14 A That's correct.

15 Q Do you know whether Terry Salem ever passed that
16 information on to Louis Olejack?

17 A Yes.

18 Q And how do you know that?

19 A Because Olejack had a meeting with me and -- Terry
20 arranged the meeting -- Terry Salem arranged the meeting for
21 Olejack and I to meet.

22 Q All right. Approximately how long after your discussion
23 with Mr. Salem, where you and Mr. Salem decided that Salem
24 would tell Olejack it was going to cost twenty thousand
25 dollars (\$20,000), approximately how long after that

1 conversation did you have a meeting with Mr. Olejack?

2 A How -- you want a time frame?

3 Q Yes.

4 A A week or so I'd say.

5 Q All right. Where did the meeting take place?

6 A He came down to Vegas World, met me at the bell desk.

7 Q Now, had you ever met Mr. Olejack before?

8 A No.

9 Q Was he introduced to you or how did you wind up meeting
10 him?

11 A No, I was in uniform behind the bell desk with my sign
12 and he just come up and said, Louie, and shook hands. And I
13 had somebody watch the bell desk and we went off to the -- off
14 to the side.

15 Q All right. Was anyone else present when you had your
16 conversation with Mr. Olejack --

17 A No.

18 Q -- off to the side?

19 A No.

20 Q What was said in that conversation?

21 A He wanted to me -- he wanted me to arrange for a meeting
22 with Judge Bongiovanni in the middle of the desert, he would
23 go buck naked to prove that he wasn't wired or anything to
24 just -- just to get a personal guarantee that he would --
25 could talk to the judge and see if everything's going to be

1 okay.

2 Q And what did you tell Mr. Olejack?

3 A I told him it was impossible.

4 Q And why did you tell him that was impossible?

5 A Because I thought it would be impossible. I wouldn't --

6 I wouldn't do that -- I wouldn't -- I didn't want to -- I

7 didn't want to do that.

8 Q All right.

9 A I didn't want to ask the judge to do that.

10 Q Did you believe that Gerard Bongiovanni would have met
11 with Mr. Olejack?

12 A Do I believe that?

13 Q Did you at the time believe that?

14 A Say again.

15 MR. PITARO: Objection, Your Honor.

16 THE COURT: You're asking --

17 MR. PITARO: Him? If he --

18 THE COURT: -- whether he thought --

19 MS. SHOEMAKER: Yes, Your Honor.

20 THE COURT: -- he would. You may respond.

21 BY MS. SHOEMAKER:

22 Q At the time you told Mr. Olejack that Gerard Bongiovanni
23 would not meet with him out in the desert or under any other
24 circumstances, did you believe in your mind that Gerard
25 Bongiovanni would have refused to meet with Mr. Olejack --

1 A Oh, yes.

2 Q -- face to face? All right. When your meeting with Mr.
3 Olejack at Vegas World ended that day, what was the status of
4 the situation in terms of whether or not he was going to do
5 this?

6 A It went back and forth, back -- it just kept going --
7 bouncing back and forth. Yes, he's going to do it. No, he's
8 not going to do it. I'd tell Terry to get him to do it,
9 Terry'd call me, I can't. We had a mutual friend that was
10 Louie's cousin, I tried to get him involved to get Louie to
11 say yes to do it. It just went on and on and on.

12 Q All right. And how long did this go back and forth, on
13 and off -- approximately?

14 A A few months.

15 Q Did there come a time where --

16 MR. PITARO: I'm -- did he say a few months?

17 THE COURT: A few months.

18 BY MS. SHOEMAKER:

19 Q Did there come --

20 THE COURT: Is that what you said, a few months?

21 THE WITNESS: Yes, sir.

22 BY MS. SHOEMAKER:

23 Q Did there come a time that Louis Olejack or Mr. Salem
24 told you that Olejack's case was not assigned to Bongiovanni?

25 A Is it -- I'm sorry, can you repeat it?

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1 Q Do you recall a time -- did there come a time where Terry
2 Salem or Louis Olejack told you that the case was not assigned
3 to Gerard Bongiovanni?

4 A Terry Salem told me that and I'd never talked to Louis
5 Olejack after the meeting.

6 Q Okay. But Terry Salem at some point told you that the
7 case was not assigned to Gerard Bongiovanni?

8 A Yes.

9 Q All right. When he told you that did you still think the
10 case was assigned to Gerard Bongiovanni?

11 A Yes, I did.

12 Q Did there come a time where you learned that the case in
13 fact was not assigned to Gerard Bongiovanni?

14 A Yes.

15 MR. PITARO: Could I have some foundation on that?

16 THE COURT: Yes.

17 BY MS. SHOEMAKER:

18 Q When did you learn for real that the case was not
19 assigned to Gerard Bongiovanni?

20 MR. PITARO: Well, I would -- I would object to the
21 characterization of "for real." I asked for foundation of
22 when it happened and I don't think anything's for real.

23 THE COURT: Well, I think she's trying to identify
24 the particular circumstance, counsel.

25 //

1 BY MS. SHOEMAKER:

2 Q How long did you believe that the case was really
3 assigned to Gerard Bongiovanni?

4 A Quite a while.

5 Q All right. Do you recall when it was that you learned
6 for sure that the case was not assigned to Gerard Bongiovanni?

7 A A time frame again?

8 Q Yes. As best as you can recall.

9 A Eight, nine months down the road.

10 Q Okay. Had Louis Olejack entered a guilty plea in this
11 case by that time?

12 A I don't -- did Louis Olejack enter a guilty plea?

13 Q Do you recall having discussions with Terry Salem about
14 Louis Olejack that he was going to enter a guilty plea in
15 front of another judge?

16 A Oh, yes. Yes.

17 Q When you found out that the case was not really assigned
18 to Gerard Bongiovanni, was that before or after Mr. Olejack
19 entered his guilty plea?

20 A You lost me. I'm sorry.

21 Q All right. You indicated a minute ago that there were
22 times where Terry Salem would tell you that Olejack's case was
23 not assigned to Bongiovanni --

24 A Right.

25 Q -- is that correct?

1 A Right.

2 Q And you indicated that you still believed that it was
3 assigned to Bongiovanni --

4 A Yes.

5 Q -- at that time.

6 A Yes.

7 Q Then you indicated that you later learned the case really
8 wasn't assigned to Bongiovanni --

9 A Yes.

10 Q -- is that correct? When, in relation to the time that
11 Louis Olejack pled guilty in front of the judge who was really
12 assigned the case, when did you learn that the case wasn't
13 really assigned to Bongiovanni?

14 A Terry Salem told me that Louie copped out -- copped a
15 plea.

16 Q All right. So it was after he pled guilty?

17 A Yes.

18 Q Okay. Did Louis Olejack ever give you any money directly
19 or through Terry Salem or anyone else in connection with that
20 solicitation?

21 A No.

22 Q Now you indicated there were a total of three times that
23 you approached Gerard Bongiovanni to help people in a criminal
24 or civil case in exchange for money, is that correct?

25 A Yes.

1 Q When was --

2 THE COURT: Let me ask, is this a good time for us
3 to break for the evening?

4 MS. SHOEMAKER: It is, Your Honor.

5 THE COURT: Carol isn't here? Do you know what my
6 calendar is tomorrow?

7 (Off-record colloquy)

8 THE COURT: Okay. I've got two matters at 8:00
9 o'clock. We'll reconvene. We will not be able to start until
10 8:30. I would ask the jury to arrive no later than 8:15 and I
11 won't keep you waiting like I did this morning. I'm confident
12 we can start very close to 8:30.

13 Once again you're reminded that you must follow all
14 of the instructions that the Court has given you. Is there
15 anyone who has not followed the instructions? Are there any
16 of you who have violated those instructions? For the record,
17 the record should indicate that no one indicates that they
18 have violated the Court's orders.

19 We'll be in recess until 8:30 tomorrow morning.

20 THE COURT: This need not be on the record. Let me
21 just talk to you about time frames a minute.

22 (Jury recessed at 4:46 p.m. to reconvene Thursday,

23 December 11, 1997, at 8:30 a.m.)

24 * * * * *

25

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United States District Court
District of Nevada
Las Vegas, Nevada
CLERK
DEPUTY

UNITED STATES OF AMERICA

Plaintiff

vs.

GERARD J. BONGIOVANNI

Defendant

Docket No. CR-S-96-098-LDG(RJJ)

Las Vegas, Nevada
December 15, 1997
8:34 a.m.

PORTION OF JURY TRIAL - DAY 8
(READING OF TESTIMONY OF JEFFREY ALLEN KUTASH
NOT TRANSCRIBED)

THE HONORABLE LLOYD D. GEORGE PRESIDING
UNITED STATES DISTRICT COURT JUDGE

COURT RECORDER:

JUDY WATSON
U.S. District Court

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NO
#

1 MR. PITARO: Yes.

2 THE COURT: Okay.

3 (End of discussion at sidebar)

4 MR. PITARO: If I could just have a moment, Judge.

5 THE COURT: Yes.

6 GERARD BONGIOVANNI, DEFENDANT, IS SWORN

7 THE CLERK: Thank you. Please be seated.

8 Please state your name and please spell your last
9 name for the record.

10 THE WITNESS: Gerard Bongiovanni,

11 B-O-N-G-I-O-V-A-N-N-I.

12 THE CLERK: And what city and state do you reside
13 in?

14 THE WITNESS: Las Vegas, Nevada.

15 THE CLERK: Thank you.

16 DIRECT EXAMINATION

17 BY MR. PITARO:

18 Q Mr. Bongiovanni, could you give the jury a little bit of
19 your background?

20 A Yes. I'm fifty-one years old, I was born in Kenmore, New
21 York, a small village adjacent to Buffalo, New York. I went
22 to -- through my elementary school and high school in Kenmore,
23 New York. Thereupon I went to the Gannon College in Erie,
24 Pennsylvania where I obtained a degree in business management
25 and then thereafter I was accepted into the University of

1 Toledo, School of Law, where I graduated in 1969 with a Juris
2 Doctorate Degree.

3 Q Okay. Did there come a time when you came to Las Vegas?

4 A Yes, in 1974, I -- '73 or '74 I moved to Las Vegas,
5 Nevada.

6 Q Okay. And what did you do when you came to Las Vegas?

7 A I needed to set up a year residency to take the state bar
8 for the State of Nevada and I was lucky enough to get a job
9 with Judge Pavlikowski who was one of our district court state
10 judges and I worked for his law clerk during that year.

11 Thereafter I passed the bar exam and I was -- became
12 employed in the City of North Las Vegas.

13 Q What did you do there?

14 A I was a city attorney there and I handled all their
15 criminal prosecutions, for misdemeanor violations.

16 Q They only did misdemeanors, is that correct?

17 A That's correct.

18 Q Okay.

19 A It was handled through the municipal court in North Las
20 Vegas.

21 Q Okay. And then what happened?

22 A After that I wanted to go into private practice, I worked
23 a couple of years with -- shared -- sharing office space with
24 a couple of attorneys, then I wanted to open my own office in
25 1980, I think. And I remained in private practice until I

1 become district court judge in 1991.

2 Q Okay. Now, during this period of time, before you became
3 a district court judge, what was your family background?
4 Could you tell the jury a little about that?

5 A Before I became?

6 Q Yes.

7 A Okay.

8 Q About when you met your wife and -- did you meet her
9 here?

10 A Yes, I met my wife Marilyn in 1975, I believe it was in
11 February and we just hit it off fantastically and a year later
12 we were married on January 24th, 1996 [sic].

13 We both loved children, we wanted to have kids but she
14 had juvenile diabetes, we weren't sure whether it would --
15 what our chances were of successfully having children. We
16 interviewed with Dr. Ravenholt over at the mental health
17 center, and after many discussions with him we tried to

18 attempt to have children but we had two attempts and they both
19 failed, so we thereupon decided to adopt our children.

20 And in 1979, we adopted my son who bears my same name,
21 but he goes by the initials G.B. He's now eighteen years old,
22 he was born May 1st, 1979, and we took him home when he was
23 nine days old.

24 My daughter, Angela, she's now sixteen years of age. She
25 was born on February 21st, 1981, and we were lucky enough to

1 bring her home a day after she was born.

2 Q Okay. Now, at this same time you -- was the time frame
3 that you were going out and starting your own practice?

4 A Yes, it was.

5 Q Okay. Now this is because you had a new family?

6 A That's correct. I had a new family, I just began my own
7 practice with my own office and the financial situation was a
8 little tough so I decided to try and supplement my income by
9 working in a casino on a part time basis, and that's when I
10 first met Mr. Dottore at the Royal Casino.

11 Q Okay. So you were working during the day in your law
12 office and then working part time in the casino?

13 A That's correct, three nights a week.

14 Q Okay. And what casino was this? Where did you meet him?

15 A The Royal Casino.

16 Q Okay. And what were you doing there?

17 A Initially I was sitting box on the craps tables and I
18 were -- I learned all the other games, 21 and the roulette and
19 eventually I was -- I had both worked box and was a floor
20 person in the 21 and roulette.

21 Q And did you feel this helped you in your practice at all?

22 A It did. I obtained -- I met people while I was working
23 there and I wound up getting a few clients, meeting people,
24 and I did this for about a year, year and a half, and finally
25 I felt that, besides being so tired doing this, my financial

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1 situation was such with my law practice then that I no longer
2 needed to work both jobs.

3 Q Could you just carry us up a little with the time that
4 you met with Mr. Dottore up until the time that you ran for
5 office? I mean what was your relationship with Paul Dottore?

6 A Okay. Paul Dottore, during that time period, while I was
7 working with him, we'd become pretty close. We went on the --
8 a couple -- we went out to dinner a couple times with our
9 wives and that was about it during the period I worked with
10 him. After I left there, I barely saw him anymore although he
11 would call occasionally and occasionally send me a couple of
12 clients, but on every holiday there would be a phone call from
13 Paul Dottore wishing me Merry Christmas, Happy New Year, say
14 that.

15 Q Now, in 1991 you ran for office?

16 A In 1990 --

17 Q 1990.

18 A -- I ran for office.

19 Q Okay. And then you were elected?

20 A Yes, I was elected district court judge, I began my term
21 on -- I believe it was January 4th or 7th of 1991.

22 Q Well, how did your relationship with Mr. Dottore change
23 at the time of running for office?

24 A Well, he had contacted me and he says he wanted to help
25 me with the campaign, that he and his wife wanted to throw a

1 party for me at the Riviera Hotel where his wife had been
2 working and that he could get me a decent rate on throwing a
3 party.

4 Q Was anything else happening in your life during this
5 period of time, the time you ran for office?

6 A Well, during this period of time my wife was becoming
7 very ill, in fact --

8 Q Can you explain to the jury what was happening?

9 A Okay, besides her diabetes, I believe in 1980 or -- no,
10 not 1980 -- '82 she began getting dizzy spells, she was
11 falling, and I brought her to many doctors here --
12 neurologists, and they couldn't find out what exactly was
13 wrong with her. So we decided to go to Scripps Clinic in
14 California where she was diagnosed with having multiple
15 sclerosis.

16 Q Now, how was her illness progressing towards the latter
17 part of the '80's and the '90's when you --

18 A Okay.

19 Q -- ran for judge?

20 A By the latter part of -- by 1998 [sic], I would say she
21 was walking with a cane and by the end of that year she was --
22 went through a stage with walking with a walker and by the end
23 of that year she was in wheelchair.

24 Q Okay. And how did her condition continue in that?

25 A From there it just kind of completely deteriorated.

1 Every few months she was in the hospital and out of the
2 hospital. I'd say she was in and out of the hospital from
3 that point on until she died, at least three or four times per
4 year.

5 Q Okay. Now, how friendly did you become with Mr. Dottore
6 during this period of time?

7 A Okay. During the --

8 Q Starting at the time of your --

9 A -- during --

10 Q -- starting about the time of when you were elected.
11 What are some of the factors went in for you running for
12 office?

13 MR. JOHNSON: Objection, Your Honor, relevance.

14 THE COURT: Why is it relevant, counsel?

15 MR. PITARO: It's the background, Your Honor, for
16 leading up to where we're going.

17 MR. JOHNSON: We've gone through a lot of
18 background, Your Honor.

19 THE COURT: Okay. Let's move on, Mr. Pitaro.

20 MR. PITARO: Okay.

21 BY MR. PITARO:

22 Q What was your relationship with Mr. Dottore during the
23 period of time from the time you were elected?

24 A Okay. Paul and I became very close. At that time he
25 would call me every evening at 8:00 o'clock, just like clock

1 work. There were very few times that he didn't call me at
2 8:00 o'clock. He was always asking what he could for me, do
3 -- because of my situation. He would --

4 Q What do you mean your situation?

5 A My situation with my wife. He always wanted to help out
6 in anyway he can. When my wife would be in the hospital he
7 would send over food for me and the -- my children. Send over
8 soup, he'd send over cake when his wife made cake. He was --
9 he was always constantly calling me and asking what he could
10 do to help. He was somebody I could talk to and it seemed
11 like he always was worried about me. And we got so close it
12 was like he was a brother to me.

13 Q And you'd have daily contact with him?

14 A Daily contact. He called sometimes at the office and
15 naturally almost every evening.

16 Q Okay. Now during this period of time, I -- you said your
17 wife was getting worse, but Paul was there calling every day?

18 A He was always there. If my wife went to the hospital,
19 he'd be right there at the hospital --

20 Q Okay.

21 A -- being with me. Trying to comfort me. Can I do
22 anything for you or the kids? This is -- this is the Paul
23 Dottore I knew.

24 Q Well, you've heard these tapes now after you -- after
25 this case has come down. Did you know that Paul Dottore?

1 A I never knew that Paul Dottore until the day after the --
2 they searched my house. I always thought Paul Dottore was
3 there for me and on that day they broke my heart when I
4 realized that Paul Dottore was really there for him. He took
5 advantage of me all those years.

6 Q Okay. You've heard testimony about traffic tickets,
7 okay? And you heard a lot of testimony on traffic tickets.

8 A Yes, I did.

9 Q Did you ever take any money for traffic tickets?

10 A I never took a penny for -- from anyone for traffic
11 tickets.

12 Q Could you explain to the jury this -- the way in which
13 traffic tickets would be handled?

14 A If anybody gave me a traffic ticket I would just merely
15 give it to my secretary or my law clerk and they would put it
16 on the appropriate judge's calendar. I never called any judge
17 to tell him what I wanted done with the ticket, I would merely
18 wait for the ticket to come back and written on the traffic
19 citation would be the disposition, the amount of the fine,
20 does this person have to go to traffic school, and when the
21 payment had to be made. And I would then give the ticket back
22 to whoever gave it to me.

23 Q Okay. Did you consider anything unusual about these
24 tickets?

25 A No. I've been doing those tickets like that since I was

1 practicing law and I never accepted a penny for doing these
2 things because they're courtesies. Even when I was an
3 attorney I could have charged people. I never charged them.
4 And I did it for Paul and friends of his from way back when --
5 since I knew him in the 1980's.

6 Q Okay. You heard about own recognizance releases.

7 A Yes, sir.

8 Q Okay. Can you explain to me what your function was as a
9 judge as you understood it concerning own recognizance
10 releases or bail requests?

11 A As a district court judge I felt it was one of my
12 functions to entertain requests to -- bound [sic] bail
13 reductions and O/R releases and I would get many calls from
14 many people --

15 Q Can you tell the jury some of the people that have called
16 you and asked for bail requests, be they O/R or --

17 A I've got calls from police officers, probation officers,
18 district attorneys, attorneys, citizens. I even got a got a
19 call from a federal marshal here were I O/R'd his son who was
20 charged.

21 Q So was there anything unusual in the way that these were
22 handled?

23 A There was nothing unusual --

24 Q Okay. Now, the ones with --

25 A -- it was part of my function.

1 Q The ones with Mr. Flangas, okay.

2 A I didn't hear that.

3 Q We've heard a number of tapes with Pete Flangas calling
4 you.

5 A Mr. Flangas.

6 Q Could you explain to the jury what the situation was with
7 Mr. Flangas?

8 A Okay. I've known Mr. Flangas for 20 or 25 years, he's
9 been an attorney in Clark -- Clark County, I think for well
10 over 40 years. I've got to know him so well. He's a good
11 attorney and these O/R releases that you've heard on tapes
12 with him, I gave him O/R releases 'cause I thought the person
13 deserved a O/R release. I had -- I had complete trust in
14 Peter Flangas. He vouched for these people and I knew that he
15 wouldn't turn me around. I knew these people would show up
16 for court and I checked those matters out, and as far as I
17 know they all showed up for their court.

18 Q What about these one with acquaintances like Kenny
19 Lombard.

20 A Kenny Lombard? I've known him about ten, 12 years. I
21 know he's going to show up for court 'cause he's a friend of
22 mine. Why wouldn't he show up for court? That was my main
23 concern is this person going to flee the jurisdiction or is he
24 going to show up for court.

25 Q Okay. Now with Kenny Lombard you heard about the

1 domestic violence. Were you aware of his marital situation?

2 A Yes, I was. It was a very volatile situation. He met
3 his wife, I believe, as he stated on New Year's Eve --

4 MR. JOHNSON: Objection, Your Honor, lack of
5 foundation.

6 MR. PITARO: Well, it goes to his state of mind,
7 Judge. Goes to his state of mind as to why he did it.

8 THE COURT: You may continue. Go ahead.

9 THE WITNESS: He met his wife on New Year's Eve and
10 she moved in with him the next day, and it was a very volatile
11 situation. In fact, where he worked at the -- with Paul at
12 the Vegas World they had a pool set --

13 MR. JOHNSON: Objection, Your Honor.

14 THE WITNESS: -- up when they -- when they --

15 THE COURT: Sustained.

16 THE WITNESS: -- were going to get divorced.

17 THE COURT: Sustained. Just a moment.

18 MR. JOHNSON: Objection, Your Honor.

19 MR. PITARO: All right.

20 THE COURT: Sustained.

21 THE WITNESS: Okay.

22 MR. JOHNSON: I motion to strike.

23 BY MR. PITARO:

24 Q With -- with --

25 MR. JOHNSON: Your Honor -- I'm sorry.

1 THE COURT: It'll be stricken.

2 BY MR. PITARO:

3 Q With Mr. Lombard the conversations that we heard in that,
4 you felt in your mind that he was gonna show up?

5 A Oh, I knew Ken would show up.

6 Q Okay. And what about with Mr. Spano or Mr. Dottore, Jr.
7 -- Paul Dottore, Jr.?

8 A I knew they would show up, I knew Paul Senior would make
9 sure his kid got to court.

10 Q Okay. Let me ask you this. From the own recognizance
11 and those things, let's go to Louis Olejack. Okay?

12 A Yes, sir.

13 Q Do you know Louis Olejack?

14 A The first time I heard of Louis Olejack was when I was
15 handed the -- a copy of my indictment and I saw his name
16 written in there.

17 Q Was his -- was either of his criminal cases in your
18 court?

19 A No, they weren't.

20 Q Will you tell the jury if you ever solicited a bribe
21 through Paul Dottore for Louis Olejack?

22 A No, I never did solicit a bribe through Paul Dottore for
23 Louis Olejack.

24 Q Okay. Now, let's go to a Mr. Salem.

25 A Mr. Salem.

1 Q Okay. Now, with Mr. Salem, can you -- can you tell the
2 jury when you first heard about Mr. Salem?

3 A I first heard about Mr. Salem after my review of the
4 tapes -- anywhere from between the 13th of December '95 to
5 the --

6 Q You mean '94?

7 A I mean '94 until -- between the 13th and I would say the
8 17th.

9 Q Okay. And where did you first hear about him?

10 A Okay. I remember because when my wife was hospitalized
11 at the time and I was at Desert Springs Hospital with her and
12 Mr. Dottore came to the hospital. Mr. Dottore and I went to
13 the cafeteria and he told me, well, I have a client for Mr.
14 Flangas. I says, well, that's fine. And then during the
15 conversation he indicated that this person, Mr. Salem, he --
16 that he owed him money. I said, Paul, how could this guy owe

17 you money? You've been out of work almost a year and a half.
18 He says --

19 Q Let me just stop you there. Had Mr. Dottore had lost his
20 job prior to this?

21 A Well, I think sometime in 19 -- when was it --

22 Q June or July 1994?

23 A '94.

24 Q And that was when he was at Vegas World?

25 A He had been out of work about a year, I think -- or he

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1 wasn't getting his unemployment. It's all hazy with me. I
2 says, you've been out of work for all these months and you're
3 telling me that this guy owes you money. I said -- he says,
4 well, he's -- he owes -- first of all he owed me a lot more
5 money than that and that's the balance on it. He owed me two
6 thousand dollars (\$2,000) and he said his family's got a lot
7 of money, he'll pay me and I'm not worried about it, he says.

8 Q Did he -- when did you become aware that Mr. Salem had
9 been arrested and was going to come in your court?

10 A To the best of my knowledge that was either the 19th or
11 20th of that same month.

12 Q Okay. Now we heard a tape where Mr. Potter called you
13 and explained this matter to you.

14 A That's correct.

15 Q Okay. Now, with Mr. Salem you heard -- the government
16 played a tape concerning a conversation you had with him in

17 early January of 1995. Were you soliciting a bribe from
18 Mr. Dottore for Mr. Salem?

19 A No, I wasn't. We were talking about the money that Salem
20 owed Dottore.

21 Q Okay. Now hadn't Mr. Dottore, in that conversation,
22 actually told you that he didn't have enough money to go
23 golfing?

24 A That's correct.

25 Q You were taking him golfing?

1 A I was happy to take him golfing. I took him golfing a
2 lot of times.

3 Q Was this something that you did on a very frequent basis
4 with Mr. Dottore?

5 A Why certainly.

6 Q And why was that?

7 A He was out of work and he was my best friend.

8 Q Okay.

9 A I had no problem taking him golfing.

10 Q Okay. Now you heard Mr. Dottore testify that he had paid
11 you seventeen hundred and fifty dollars (\$1750) in January of
12 1995, did he?

13 A No, he never paid me a penny.

14 Q Did he ever have any discussion with you that he was
15 taking -- getting money from Salem to pay you for you to do
16 anything in court?

17 A No such discussions.

18 Q Okay. Did he have any discussions about money that he
19 was getting?

20 A Like I says, he told me that Mr. Salem had owed him money
21 and I told him -- I said, well, if I were you I wouldn't count
22 on getting it.

23 MR. JOHNSON: Objection, I'd -- Your Honor, I'd like
24 foundation for this conversation.

25 //

1 BY MR. PITARO:

2 Q When was this conversation to the best of your
3 recollection?

4 A I believe -- January 1st. We golfed every January 1st, a
5 lawyer friend of mine, Bren Haggie [phonetic], he threw a
6 tournament at the Las Vegas Hilton and I had -- would bring
7 Paul there the last couple of years. My law clerk would go,
8 and I think he took his brother-in-law -- his son-in-law or
9 his son-in-law's father with him. And Paul then brought up
10 this thing with Salem that he was bringing him to Pete's
11 office the following week and he was going -- he was worried
12 about having -- paying his mortgage in January. And he says,
13 if Mr. Salem pays me the money that he owed Mr. Dottore, he
14 planned on paying his mortgage for January, February, and
15 March. I said, Paul, do not count on it. He's got to have
16 that money for his attorney. And he says, well, his parents
17 are wealthy, I know he'll pay me this money. I've known him
18 so many years, I know he's good for it. So, I just let it go
19 at that. I said, well, I'm not going to argue with him.

20 Q Did Mr. Dottore also tell you that he was going to be
21 borrowing money elsewhere?

22 A He says well, if that doesn't come through -- I don't
23 know whether I brought that up or him. I says, you better
24 have another avenue. I wouldn't count on getting money from
25 Salem. And he said, well, I got life insurance policies. I

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1 said, well, I've borrowed against my policies before. I says
2 that might be something to look into, but it takes -- it took
3 me, I think, 15, 16 days to get the money from my life
4 insurance policies when I've borrowed on them.

5 Q Did he, in fact, to your knowledge, borrow money off his
6 life insurance policies in January?

7 A Well, he told me that he borrowed from his policies and
8 paid some mortgage payments with them.

9 Q And that was in January of 1995?

10 A Right.

11 Q Now, I want to direct your attention and just carry this
12 -- now, Mr. Dottore was having some problems in '94 and '95,
13 wasn't he? Some marital problems.

14 MR. JOHNSON: Objection, Your Honor.

15 MR. PITARO: If I may? They brought -- they brought
16 this area up in terms of Mr. Dottore -- in terms of his -- the
17 child he had with his girlfriend and some of his needs for
18 money in what he was doing.

19 THE COURT: Go ahead.

20 BY MR. PITARO:

21 Q Okay. Were you aware of his marital problems during this
22 period of time?

23 A Yes, I was.

24 Q Could you tell the jury what was happening?

25 A Well, as already stated he had a --

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1 MR. JOHNSON: Your Honor, I'm going to object on
2 hearsay.

3 MR. PITARO: It's going to his --

4 THE COURT: Let me -- let me meet with you for a
5 moment.

6 (Discussion at sidebar)

7 MR. PITARO: Sometimes the result of the objection
8 take longer than the question. Would have been done.

9 THE COURT: Well, what -- you just want to show that
10 Dottore was short of money, is that what?

11 MR. PITARO: Right. What actually happened was
12 during this period of time Dottore's on -- gets a -- with the
13 kid, that he gets a paternity suit and then he gets a welfare
14 when -- and he's initially complaining about money because he
15 doesn't have it and that's specifically the area --

16 MR. JOHNSON: That's hearsay, Your Honor.

17 THE COURT: It is hearsay.

18 MR. JOHNSON: Thank you.

19 (End of discussion at sidebar)

20 THE COURT: Go ahead, Mr. --

21 (Off-record colloquy)

22 BY MR. PITARO:

23 Q All right. Mr. Bongiovanni, I want to direct your
24 attention towards the latter part of October of 1995 --

25 A Yes.

1 Q -- or October of 1995. I want to jump ahead a little.
2 And we've heard talk and testimony from Mr. Dottore concerning
3 this Kutash matter and the Salem matter in October, okay?

4 A Okay.

5 Q First, did you ever solicit any money from Jeff Kutash
6 through Paul Dottore or anyone else?

7 A No, I did not.

8 Q Okay. Did you ever receive any money, smelly or
9 otherwise, from Mr. Dottore from Mr. Kutash?

10 A No, I did not.

11 Q Okay. You heard the call of October 15th. Who called
12 whom in the morning?

13 A Are you referring to the call that --

14 Q The first call where Paul called. Who brought --

15 A Paul called -- it was on that Sunday, October 15th?

16 Q Yeah.

17 A Paul Dottore called my house.

18 Q And did he call about the Kutash matter or anything like
19 that?

20 A No, he was calling, he was worried about where my son
21 was. I think there was a homecoming or something the night
22 before and he was supposed to go to a show somewhere where
23 Paul had made arrangements for him to go for me.

24 Q And this is your son?

25 A Yes.

1 Q And he didn't show up. Evidently my son met up with some
2 of his friends and they decided to go somewhere else and word
3 got back to Paul that my son, G.B., did not show up at the
4 show and he was worried that something might -- might have
5 happened to him. So he called me up, he was concerned about
6 that and he asked, did G.B. get home all right? I said, yeah,
7 he's all right.

8 Q And is that when the conversation of Mr. Kutash came up?

9 A Right. That was just at -- I think we were almost ready
10 to hang up and it just popped into my head that I -- when I
11 said, guess what, I have a case in my court with your boss.
12 And he didn't even know who I was referring to, I think he
13 said, Mr. Stupak.

14 Q Okay. Was this unusual for you to talk to Mr. Dottore
15 about what was happening down at work?

16 A No, we got so close. He -- we talked -- I talked to him
17 a lot about work. He come down for lunch, he might come at --
18 for lunch at 10:30, sometime.

19 MR. JOHNSON: Objection, Your Honor. Objection,
20 non-responsive.

21 THE COURT: It is non-responsive.

22 BY MR. PITARO:

23 Q Well --

24 A Okay.

25 A -- would Mr. Dottore come down to the courthouse?

1 A Yes, he would.

2 Q And would he hang around down there?

3 A He'd hand around, watch cases that were going on.

4 Q Would you discuss them with him?

5 A Later on if he came over to my house for coffee or

6 something that night, we'd discuss them a little bit.

7 Q Okay. Did he ever solicit -- did you ever ask him in

8 these calls to solicit any money from Kutash or anyone on

9 behalf of Mr. --

10 A Never.

11 Q -- Kutash.

12 A Never. And I wouldn't do such a thing. I would not.

13 Q Now what about -- and that's on the 15th.

14 A That was on the 15th.

15 Q Now the next day you had this hearing?

16 A That's correct.

17 Q Okay. Now, I want to direct you to the 17th, okay?

18 A Okay.

19 Q And that's the night that the FBI came to your house?

20 A That's right.

21 Q Okay. Could you -- first, tell the jury about this

22 Massbo.

23 THE COURT: About what, counsel?

24 MR. PITARO: Massbo. That's that corporation

25 that --

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1 THE WITNESS: Okay. Massbo was a corporation that
2 was formed, I believe my brother, Carl, was in it; myself;
3 Pete Flangas, Delwin Potter; a man that worked at the
4 Horseshoe, I think, Dominic Glackasono [phonetic]; and a
5 Mickey Gresser.

6 BY MR. PITARO:

7 Q Okay. What was this corporation about and how did you
8 get involved in it?

9 A Okay. Paul came to me, he says a friend of his --

10 MR. JOHNSON: Objection, hearsay.

11 MR. PITARO: Well, if I may, Your Honor, it goes to
12 his state of mind because Mr. Dottore's already testified
13 about Massbo and I think it goes to his state of mind so we
14 can lead to the foundation to get down to the five hundred
15 dollars (\$500) and --

16 MR. JOHNSON: What --

17 MR. PITARO: -- Mr. Dottore already testified
18 concerning it.

19 MR. JOHNSON: -- what Mr. Dottore came up and said
20 to him in terms of starting up Massbo doesn't relate to any
21 state of mind when he talks about the five hundred dollars
22 (\$500).

23 THE COURT: The objection's sustained. Let's move
24 on.

25 THE WITNESS: All right.

1 BY MR. PITARO:

2 Q Can you tell --

3 A Paul came to me and asked if we would --

4 MR. JOHNSON: Objection, hearsay.

5 BY MR. PITARO:

6 Q All right. Can you -- can you tell me why you got
7 involved in Massbo without telling us what anyone might have
8 said to get you involved?

9 A I thought it was a pretty good proposition. It was -- as
10 Massbo --

11 Q What was Mr. Dottore supposed to do?

12 A -- represented some opportunity. It was a franchise
13 whereupon different people could buy a franchise in a state
14 where they were supposedly setting up a multi-state lottery.
15 It's somewhat like the Powerball if any of you ever heard of
16 that. It was existing states who had lotteries where you
17 could buy a lottery ticket in that state --

18 MR. JOHNSON: Objection, now, Your Honor, it's non-
19 responsive.

20 THE WITNESS: I thought he --

21 MR. JOHNSON: The question was the reasons --

22 MR. PITARO: Don't worry about it.

23 THE WITNESS: Okay.

24 MR. JOHNSON: -- why he got involved in Massbo.

25 //

1 BY MR. PITARO:

2 Q What was Mr. Dottore's involvement with Massbo?

3 A Okay. He was going to do all the work involving Massbo
4 because everybody else in the corporation already had their
5 own jobs. He was going to go to Boston, Massachusetts and run
6 the business for us.

7 Q And what time -- what time frame are we talking on
8 Massbo?

9 A That must have been around March of '95, February '95,
10 through the summer.

11 Q And did you invest money in it?

12 A Yes, I did.

13 Q Did Mr. Dottore?

14 A No, we were trying to help Mr. Dottore and he didn't have
15 to put up any investment, he was going to be a equal owner
16 because he was going to do all the work and go to Boston --

17 Q And did he in fact go?

18 A -- and conduct the business. He went -- he went to
19 Boston and he leased a business there. He leased an office
20 where we were going to put the -- get the business started.

21 Q And what happened with Massbo?

22 A And Massbo about June of that year we realized that it
23 was a scam and we had lost about twenty-five hundred dollars
24 (\$2500) a piece -- all the investors, so we closed the account
25 up.

- 1 Q Did any -- did Mr. Dottore get anything out of this?
- 2 A Yes. When he knew we were going to close the account he
- 3 approached me and asked me could the guys loan me a hundred
- 4 (100) apiece -- a hundred dollars (\$100) apiece out of the
- 5 monies. And I said, well, I'll ask them. And I went to my
- 6 brother, I went to Pete Flangas, Delwin Potter, Dominic
- 7 Glackasono, and myself, and they all agreed that he could --
- 8 to give him a hundred dollars (\$100). So I got the -- when we
- 9 divided the money up they each gave me a hundred dollars
- 10 (\$100) and I gave it to Paul as a loan.
- 11 Q Now, Mr. Dottore was out of work at this time?
- 12 A Yes, he was.
- 13 Q Okay. Did there come a time in the latter part of '95
- 14 that he became employed again?
- 15 A Yes, he became employed at the Riviera Hotel as a maitre
- 16 de in the showroom for Splash.
- 17 Q Okay. And you were aware of that?
- 18 A Yes.
- 19 Q All right. Now, I want to direct your attention to the
- 20 17th --
- 21 A Okay.
- 22 Q -- of October 1995. There's been testimony that the FBI
- 23 and police came to your house that night. Did they?
- 24 A Yes, they did.
- 25 Q Okay. Could you explain to the jury what happened when

1 they came.

2 A When they came or before when Paul came?

3 Q All right. Why don't you just start -- okay. Start at
4 the beginning with Paul coming over.

5 A I got a call, Paul says they're going to stop over for a
6 minute, I got something for you. I thought he was referring
7 to some cake or something like that because he was always
8 bringing pastries over. I said, come on over, I'll put the
9 coffee on. When he got -- when he arrived at my house we sat
10 in the kitchen, we were talking. Then he pulled out of his
11 pocket five hundred dollars (\$500). He says, I want --

12 MR. JOHNSON: Objection, Your Honor, hearsay.

13 MR. PITARO: Not when he -- pulling out of his
14 pocket isn't.

15 THE COURT: Well, he witnessed --

16 MR. JOHNSON: He started to say what he was going to
17 say and that's where I raised the objection.

18 THE COURT: Okay. Certainly the testimony to this
19 point is appropriate.

20 BY MR. PITARO:

21 Q Okay. Tell us what Mr. Dottore did?

22 A Paul pulled out five hundred dollars, he says I want --

23 MR. JOHNSON: Objection, Your Honor, hearsay.

24 THE COURT: Sustained.

25 //

1 BY MR. PITARO:

2 Q Okay. What happened?

3 A I asked what this was for.

4 MR. JOHNSON: Objection, Your Honor, hearsay.

5 MR. PITARO: He can -- he can say what he asked.

6 MR. JOHNSON: No, Your Honor, that's --

7 MR. PITARO: Goes to his state of mind. It most
8 certainly doesn't.

9 MR. JOHNSON: -- that's his --

10 MR. PITARO: He's not moot at this -- at this time,
11 Judge, he can testify as to what he did and what he said.

12 THE COURT: He can testify as to what he did,
13 counsel. The objection is sustained.

14 MR. JOHNSON: Thank you, Your Honor.

15 BY MR. PITARO:

16 Q Then what happened?

17 A He pulled five hundred dollars and I asked him what it
18 was for.

19 MR. JOHNSON: Objection, Your Honor, hearsay.

20 THE COURT: I've sustained the objection, counsel.

21 MR. JOHNSON: Thank you.

22 BY MR. PITARO:

23 Q What did you -- what did you do --

24 A It was my understanding --

25 Q Thank you.

1 A -- after he pulled out the five hundred dollars that it
2 was the repayment of the loan for the people who loaned him
3 the hundred dollars from the Massbo Corporation.

4 Q And --

5 A And if you don't want -- you don't want me to discuss
6 what we said, I guess I can't discuss it.

7 Q Now, let me just ask you this, you heard testimony
8 concerning the search and you heard --

9 A Yes, sir.

10 Q -- testimony, Detective Nicholson, that they were very
11 calm and polite when they came into your house, is that
12 correct?

13 A Absolutely not.

14 Q Why don't you tell the jury the way it really happened?

15 A About twenty minutes after -- well, after Paul and Rose
16 left my house I gave my wife her medication and her insulin,

17 took her blood test, gave her her insulin medication, and by
18 this time she was being fed through tubes in her stomach, and
19 I fed her, the whole procedure takes about twenty minutes. So
20 I -- I had just laid down with her, I have a bed next to her
21 hospital bed, and I watch TV there each night this way,
22 because she -- with her medication she would be in and out of
23 sleep --

24 MR. JOHNSON: Objection, Your Honor, this is not
25 being responsive.

1 MR. PITARO: Well, he's leading up to the search,
2 Judge, what he's doing.

3 THE COURT: Go ahead.

4 BY MR. PITARO:

5 Q Go ahead.

6 A And if she wakes up I want to be there for her so she
7 knows she's not alone. So I heard the doorbell ring and I
8 believe I heard my daughter out there, and there was -- you
9 could hear a commotion going on like there's a lot of men in
10 the house. So I walked down the hallway and I believe the
11 first person I saw was Detective Nicholson, and like they
12 stated they were all in their F.B.I. garbs and Metro had his
13 raincoat on with the letters, and as I turned the corner there
14 was Nicholson, he says I have a warrant here. I thought they
15 were coming to my house for me to sign a warrant for them. So
16 I said come on, let's go into the kitchen. And they're all

17 talking and making noise, and one walked into the dining room,
18 one walked into the family room and three of them walked into
19 the kitchen with me, because that's where I had my reading
20 glasses. So now I -- Nichols [sic] said you don't -- you
21 don't understand this warrant is for this house. I said what
22 do you mean for this house. Said, did Dottore just leave here
23 -- or do you know Paul Dottore, something to that effect, I
24 says yes, I know Paul Dottore.

25 MR. JOHNSON: Objection, Your Honor, hearsay.

1 MR. PITARO: Your Honor, he's entitled to --

2 THE COURT: You may continue, let's move on.

3 MR. PITARO: Thank you.

4 THE WITNESS: Okay. I'm just trying to get through
5 this, Your Honor.

6 BY MR. PITARO:

7 Q Go ahead.

8 A I says yes, I know Paul Dottore, he and his wife were
9 just here for coffee. What is this all about, I asked. Never
10 mind what this is all about. Did he give you any money. I
11 said what is this all about, I'm trying to think, what in the
12 world did Paul do. And they -- and I'm trying to read the
13 warrant, I got Officer -- or Detective Nicholson is right over
14 my back, another officer is standing right in front of me, I
15 could see my children, who had come, one was in the family
16 room, one near the dining room and I could see the fear of God
17 on their faces. These people were going through my kitchen
18 cupboards by then and looking in other cupboards in the family
19 room and another one was looking in the dining room. And I'm
20 saying what is this all about, bring in -- who's in charge.
21 He said Agent Hanford is in charge. I said well get him in
22 here and we can resolve this real fast. Never mind, he'll
23 come in here when he's good and ready. And I'm -- and I'm
24 wondering, my children are frightened, I was frightened and
25 I'm wondering what my wife is thinking hearing this. So --

1 and they kept yelling at me, where's the money, where's the
2 money. I said there is no money. Well, we'll tear this house
3 apart and then we'll tear your car apart and then we'll search
4 you, and they kept yelling that out. And I said kids, please
5 go to your rooms. So I think my children started walking down
6 the hallway to their rooms, and I said I want to go check on
7 my wife and I started to get up. And Nicholson followed me.

8 Q Was anyone in your wife's room?

9 MR. JOHNSON: Objection, foundation.

10 THE WITNESS: Okay.

11 THE COURT: If you know.

12 BY MR. PITARO:

13 Q When you were walking down the hallway, was anyone in
14 your wife's room?

15 A Okay. Before that happened, before I said I wanted to
16 check it -- out on my wife, they were still screaming at me, I
17 think one of the officers was trying to radio Agent Hanford,
18 because I said please get him in here and we could resolve
19 this in one minute.

20 Q So you didn't know where Agent Hanford was?

21 A And I said never mind, he'll come in when he's darn good
22 and ready, just tell us where the money is. I says why, is it
23 counterfeit. He said just tell us where the money is. So
24 then he says -- I says I got to go check on my wife. So he
25 was right behind me and he looked down, he says what's that

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1 sticking out of the hole in your pocket. I had a T-shirt and
2 a pair of shorts on, and I reached in the pocket and I pulled
3 out the money, I says here, this is the money that Paul --

4 MR. JOHNSON: Objection, Your Honor, hearsay.

5 MR. PITARO: He's entitled to give a consistent
6 statement.

7 THE COURT: He's already testified to it, let's move
8 on.

9 THE WITNESS: I said this is the money that Paul
10 owed me.

11 MR. JOHNSON: Objection, Your Honor, again I would
12 motion to strike.

13 BY MR. PITARO:

14 Q Okay. Now, was anyone searching in --

15 A Oh, I thought he said it was all right, I'm sorry.

16 THE COURT: Let's move on. Let's move on.

17 BY MR. PITARO:

18 Q Was anyone in your wife's bedroom at this time?

19 A Yes, there was an officer headed that way.

20 MR. JOHNSON: Foundation. Objection, foundation,
21 Your Honor.

22 THE WITNESS: You mean before I'm walking up the
23 hall.

24 THE COURT: Just a moment. You do need some
25 foundation.

1 THE WITNESS: Okay.

2 BY MR. PITARO:

3 Q At the time you just told us that you were walking down
4 the hallway?

5 A Okay. Just prior to that Nicholson says, start
6 searching, I said what do you mean start searching, you
7 already been searching. And that was that. Some guy started
8 walking down the hallway and then as I walked up the hallway
9 Nicholson was behind me, I handed him the money and I says now
10 could I go and see my wife. No, get back to the kitchen. So
11 he ordered me back to the kitchen, he wouldn't let me check on
12 my wife, and about two or three minutes later I saw the
13 officer that was in the bedroom come down the hallway and join
14 us in the kitchen.

15 Q So there was someone in your wife's bedroom --

16 A Yes.

17 Q -- searching?

18 A And my son was watching him.

19 Q All right. Now --

20 A Then Officer Hanford came in the residence.

21 THE COURT: There's -- just -- just a moment.

22 MR. PITARO: Okay. All right.

23 THE COURT: There's no question.

24 THE WITNESS: Yes, sir. Okay.

25 //

1 BY MR. PITARO:

2 Q Then after that what happened?

3 A Then Officer Hanford come in the residence and introduced
4 himself to me and I believe he says you're a target to a case.
5 I says you mean I'm a witness. He said no, you're a target,
6 we believe this money represents money you accepted to affect
7 the outcome of a case. Then they kept me there for another
8 ten minutes or so while they're copying down the serial
9 numbers on the money and then they left.

10 Q This money that you -- this five hundred dollars you got
11 from Mr. Dottore, was that for a bribe of any sort?

12 A No.

13 Q Did you ever --

14 A I would never take a bribe from anyone.

15 Q And had you?

16 A Never.

17 Q Okay. ~~Your relationship with Mr. Dottore~~, how do you
18 feel about that after you've listened to these tapes and heard
19 about them?

20 A I feel so betrayed, like I -- like I told you before, he
21 was always there for me, he -- that really was for me I
22 thought.

23 Q And what do you know now?

24 A And then when I -- when I found out the next day I knew
25 he wasn't there for me, he was there for him. Everything --

1 he just took advantage of my name and my reputation.

2 Q Mr. Bongiovanni, we've listened to a couple weeks here
3 now, what is it you want the jury to know about you?

4 MR. JOHNSON: Objection, Your Honor.

5 THE COURT: Sustained.

6 BY MR. PITARO:

7 Q Can you tell the jury how you feel about the incidences
8 that have lead up to you being here?

9 MR. JOHNSON: Objection, Your Honor.

10 THE COURT: Sustained.

11 BY MR. PITARO:

12 Q Gerry, did you take any money?

13 A I've never took any money in my life from anyone.

14 Q Did you violate your trust?

15 A I've never violated a trust. I've had three major
16 agreements in my life. One agreement was my marriage contract
17 with my wife --

18 MR. JOHNSON: Objection, Your Honor, non-responsive.

19 MR. PITARO: I think he can testify, Judge.

20 THE COURT: I'm going to sustain. We've gone into
21 this in great --

22 MR. PITARO: Judge, it is his trial.

23 THE COURT: -- we've gone into it in great detail,
24 counsel, let's move on.

25 //

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1 BY MR. PITARO:

2 Q Did you take any money on any of these situations where
3 Mr. Dottore said that he was paying you off?

4 A Never took a penny. I wouldn't do such a thing. My God
5 I had a sick wife and --

6 MR. JOHNSON: Objection, Your Honor, non-responsive.

7 THE WITNESS: -- two minor children, I wouldn't
8 jeopardize that for anything in the world.

9 THE COURT: It'll be stricken, let's move on.

10 MR. JOHNSON: Thank you, Your Honor.

11 THE WITNESS: Strike all you want.

12 MR. PITARO: I have nothing further.

13 THE COURT: Cross-examination.

14 MR. JOHNSON: Yes, Your Honor.

15 (Pause in the proceedings)

16 THE COURT: How long is your cross-examination going
17 to take?

18 MR. JOHNSON: My guess half hour to an hour.

19 THE COURT: Go ahead.

20 (Pause in the proceedings)

21 CROSS-EXAMINATION

22 BY MR. JOHNSON:

23 Q Mr. Bongiovanni, you testified that it was your belief
24 that Paul Dottore was always there for you?

25 A That is correct.

1 Q And you testified, if I'm correct, that you didn't know
2 the type of person Paul Dottore was until after you had a
3 chance to listen to the tape recordings in this case and the
4 search was done at your residence, is that correct?

5 A That's correct.

6 Q But you did know that Paul Dottore was involved, at
7 least, in criminal activity while you knew him as a friend,
8 didn't you?

9 A Not to my knowledge.

10 Q Well, Paul Dottore arranged for you to have a black box
11 to unlawfully intercept cable signals, didn't he?

12 MR. PITARO: Your Honor, I'm going to object to the
13 -- that line of questioning. I thought we --

14 THE COURT: The objection is overruled. You may
15 respond.

16 MR. PITARO: It assumes a fact not in evidence.

17 MR. JOHNSON: Well, Your Honor, I would move for the
18 admission then of Government Exhibit -- what's the next
19 number?

20 THE CLERK: 225.

21 MR. JOHNSON: 225, Government Exhibit 226 --
22 Government Exhibit 226, Government Exhibit 227 and Government
23 Exhibit 228.

24 Government Exhibit 225 is a recording between
25 Dottore and Bongiovanni on February 19, 1995.

1 Government Exhibit 226 is a recording between
2 Bongiovanni and Dottore on February 20th, 1995 at 9:42 a.m.

3 Government Exhibit 227 is a recording between
4 Dottore and Bongiovanni on 2/26/95 at 3:45 in the afternoon.

5 And Government Exhibit 228 is an exhibit of a tape
6 on 2/26 1995 at 2139 hours, which would be 9:39 p.m. between
7 Dottore and Bongiovanni.

8 I'd move for their admission at this point in time.

9 MR. PITARO: Your Honor, I'd object on the 404(b)
10 and 403.

11 THE COURT: You mean the -- let me meet with you at
12 sidebar. You're talking about --

13 (Discussion at sidebar)

14 THE COURT: -- other wrongs, is that -- and
15 allowance?

16 MR. PITARO: I don't know I've never --

17 MR. JOHNSON: We provided these to you this morning.

18 MR. PITARO: Well, when -- I obviously didn't play
19 them right this morning.

20 MR. JOHNSON: And they were provided initially in
21 the tapes that was --

22 MR. PITARO: In the thousand and fifteen tapes.

23 THE COURT: What are the tapes about?

24 MR. JOHNSON: Essentially it's tapes of Paul Dottore
25 and Gerard Bongiovanni talking about Dottore arranging a black

1 box for Bongiovanni so he can cut back on his cable service.

2 THE COURT: Well, you're entitled to impeach your
3 witnesses, just like you were entitled to impeach theirs.

4 MR. PITARO: Well, that --

5 THE COURT: Pardon?

6 MR. PITARO: Nothing. I've made -- I've made my
7 objections in this case.

8 THE COURT: Okay. Well, I think it's appropriate.

9 (End of discussion at sidebar)

10 THE COURT: Are there transcripts to these tapes?

11 MR. JOHNSON: I'm sorry, what?

12 THE COURT: Are there transcripts to these tapes?

13 MR. JOHNSON: There are no transcripts to these
14 tapes, Your Honor, we pulled them out this weekend, and we
15 pulled out those portions of the conversations which are
16 relevant to the black box issue. Complete copies of the tapes
17 were provided to Mr. Pitaro.

18 MR. PITARO: Well, then I -- obviously they were
19 given to me this morning, so under 106 I can't look at them.

20 THE COURT: Well, and you may be able, when you
21 examine again, to get any balance in, counsel.

22 THE WITNESS: What are these? I don't --

23 COURT RECORDER: Could you come forward to the
24 microphone, thank you.

25 (Off-record colloquy)

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1 (Pause in the proceedings)

2 MR. JOHNSON: Your Honor, I would move to play at
3 this time Exhibit 225.

4 THE COURT: You may play the tape.

5 MR. JOHNSON: We do not have transcripts for these
6 conversations, Your Honor, however, I think the voices of Mr.
7 Dottore and Mr. Bongiovanni have been played a number of times
8 here at trial.

9 THE COURT: Go ahead and play the tape.

10 (Plaintiff's Exhibit No. 225, played)

11 MR. JOHNSON: Your Honor, I'd move now to play
12 Exhibit 226.

13 (Plaintiff's Exhibit No. 226, played)

14 MR. JOHNSON: Just so the record is clear on that,
15 Your Honor, Exhibit 225 was the tape on February 19, 1995 at
16 1950 hours, which would be 7:50 p.m.; 226 was the tape on
17 2/20/95 at 9:42 a.m. At this time I'd ask that we play
18 Exhibit 227.

19 THE COURT: You may play 227.

20 MR. PITARO: Your Honor, I have an objection to
21 these -- all these tapes.

22 THE COURT: I'm sorry.

23 MR. PITARO: I say I have an objection to all these
24 tapes.

25 THE COURT: I'm sorry.

1 MR. PITARO: I said I have an objection to all these
2 tapes under --

3 THE COURT: Oh, I understand.

4 MR. PITARO: -- 404(b).

5 THE COURT: You object to all of them under --

6 MR. PITARO: And there was no --

7 THE COURT: -- they're playing them under 404(b) --

8 MR. PITARO: There was no notice provided.

9 THE COURT: -- and you're saying that the balance is
10 more prejudicial and probative. I understand and I've
11 indicated to you what -- that the ruling will be that they'll
12 be received.

13 (Plaintiff's Exhibit No. 225, 226, 227, 228 admitted)

14 MR. JOHNSON: Go ahead.

15 (Plaintiff's Exhibit No. 227, played)

16 THE COURT: Let me caution the jury with respect to
17 the evidence that you're now hearing. Evidence of other
18 wrongs or acts is not admissible to prove the character of a
19 person in order to show that he acted in conformity therewith.
20 It may, however, be admissible for other purposes, such as
21 proof of motive, opportunity, intent, preparation, plan,
22 knowledge, identity or absence of mistake or accident, for
23 those limited purposes only.

24 MR. JOHNSON: Your Honor, that last tape, 227, was a
25 recording on February 26, '95 at 1545, which would be about

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1 3:45 p.m.

2 The last tape in this series is Exhibit 228, it's
3 recorded on February 26, 1995 at 2139 hours, which would be
4 about 9:39 p.m.

5 (Plaintiff's Exhibit No. 227, played)

6 BY MR. JOHNSON:

7 Q Mr. Bongiovanni, on February 19, 1995 at 1950, or 7:50
8 p.m., when Mr. Dottore says to you in the telephone
9 conversation that he has your box, Mr. Dottore is referring to
10 a black box or an illegal converter of cable signals, is he
11 not?

12 A I'm not sure if he was, because there was conversation at
13 one time that he wanted to put -- that he had a box, and I
14 know, I even heard a tape where I told him I don't want it.
15 Are those all the tapes?

16 Q No, I think you're talking about an instance that
17 occurred a year earlier when Mr. Dottore contacted you and
18 asked you about programming for illegal video.

19 A Well, I know he wanted -- a what?

20 MR. PITARO: Your Honor, I think that's
21 argumentative.

22 THE COURT: I'm sorry.

23 MR. PITARO: I said it's argumentative.

24 MR. JOHNSON: Focusing --

25 THE WITNESS: There was a -- there was an instance

1 when he --

2 THE COURT: Well, just a moment --

3 THE WITNESS: Oh.

4 THE COURT: -- there's -- start over, counsel.

5 MR. JOHNSON: All right.

6 BY MR. JOHNSON:

7 Q Focusing on this conversation that we've just heard on
8 February 19, 1995 at 7:50 p.m., Mr. Dottore says to you, "I
9 have your box," Mr. Dottore, in that conversation, is
10 referring to a black box or an illegal converter of video
11 signals -- cable signals, is that correct?

12 A He may have been at that time, but there was -- and I'm
13 not sure what he was referring to, you'd have to ask him,
14 but --

15 Q Well, let me stop you there. When --

16 THE COURT: You've answered the question.

17 THE WITNESS: I --

18 THE COURT: Just a moment.

19 THE WITNESS: Can I explain?

20 THE COURT: You'll get that opportunity.

21 Let's move on.

22 BY MR. JOHNSON:

23 Q When -- you then responded to Mr. Dottore when he said
24 you had -- when he said he had your box, when you responded to
25 him, well once I get that in I can cut my cable service back,

1 you were referring to the fact that once you had the illegal
2 cable converter box in you wouldn't have to be paying for the
3 pay TV channels, were you not?

4 A Okay. If that was when he was talking about maybe
5 getting a black box, that must have been it. The tapes say
6 what they say. But in the final outcome I declined to get it.

7 Q But Mr. Dottore was talking to you about getting a black
8 box, was he not?

9 A Right.

10 Q And that meant he had a supply of black boxes?

11 A You'd have to ask him if he had a supply. The way I
12 understand it is he had a friend that he was going to get one
13 and he wanted to know if I wanted to get one.

14 Q And this friend was Dominic Strano, was it not?

15 A I don't recall.

16 Q You don't have any recollection?

17 A No.

18 Q Now, you were going to purchase one of these black boxes,
19 were you not?

20 A I was thinking of it, yes.

21 Q And Mr. Dottore said he'd ordered one for you?

22 A Well, the tapes speak for themselves.

23 Q And --

24 A But I don't think I heard a tape where I declined, why
25 don't you play that tape.

1 Q Because again, I think you're talking about a different
2 situation than this one --

3 A Well, it's --

4 Q -- which we'll get to in a second. Now --

5 A Have you checked my cable bill, I've -- that's never
6 changed.

7 Q Well, in fact you increased your cable service to pay
8 channels in October of 1994, didn't you?

9 A I don't recall. I know I've always been paying.

10 Q So in February of 1995 you were paying for pay TV
11 channels, is that correct?

12 A What do you mean, home box?

13 Q Well, you were paying for pay cable in February 1995?

14 A Yes.

15 MR. PITARO: Judge, are we really here, because of
16 his pay TV? I mean I wonder about the relevancy of that, I
17 mean --

18 THE COURT: Well, it's relevant, but I think it's
19 been explored.

20 THE WITNESS: It's relevant. I've never -- I never
21 did it, Judge.

22 THE COURT: Just -- just a moment. Let's move on.

23 BY MR. JOHNSON:

24 Q Now, do you recall a conversation with Mr. Dottore, this
25 time a year earlier, on March 23rd, 1994 when Mr. Dottore

1 indicated to you that he could reprogram the TV sets for a
2 hundred dollars and get all the channels that cable offered?

3 A No, show me -- show me a transcript.

4 Q Do you recall that conversation?

5 A No, I don't.

6 Q Do you recall a conversation with Mr. Dottore in -- on
7 April 13 of 1994 when you complained to Mr. Dottore that you
8 weren't able to get channels 47 and 52 because they were
9 scrambled?

10 A I remember some talk about channels being scrambled at
11 one point.

12 Q And was that because you had had Mr. Dottore arrange for
13 your television to get cable illegally?

14 A No.

15 Q In that conversation on May -- April 13, 1994, do you
16 remember telling Mr. Dottore that you were still getting the

17 Movie Channel?

18 A I remember a conversation where I was getting some of the
19 movies and some of the movies I was not getting and --

20 Q In March and April of 1994 you weren't getting any of the
21 pay -- you weren't paying for any of the pay TV channels on
22 your cable service, were you?

23 A When?

24 Q March and April 1994.

25 A I do not know, I'd have to check my bills. Do you have

1 my bills with you?

2 (Pause in the proceedings)

3 MR. JOHNSON: Could I have the witness get a hold of
4 the government's group of transcripts.

5 THE COURT: Counsel, it would appear to me that
6 you're going to be with this witness much longer than --

7 MR. JOHNSON: It's looking like it's going to go
8 longer than I anticipated, Your Honor.

9 THE COURT: Is this an appropriate place to break?

10 MR. JOHNSON: If you want to break today at 5:00,
11 yeah, or I can go on a little bit further, if you'd like.

12 THE COURT: Well, I'm going to recess for the night.
13 What do I have on in the morning?

14 (Off-record colloquy)

15 THE COURT: We'll be in recess until tomorrow
16 morning at 8:30. In the meantime the jury is instructed to
17 follow all of the instructions that the Court has given you.
18 We'll be in recess until 8:30, I would ask all of you to be
19 here no later than 8:15.

20 (Jury is not present)

21 THE COURT: You may sit down.

22 MR. PITARO: Judge, can ask before you leave, make
23 an inquiry?

24 THE COURT: Sure.

25 MR. PITARO: I'm assuming that we're going to be

1 done tomorrow.

2 THE COURT: Well, I had assumed we were going to be
3 done last week, but --

4 MR. PITARO: Well, so did I.

5 THE COURT: -- I hope we're done tomorrow, we'll
6 be --

7 MR. JOHNSON: Are we going to be doing closings
8 tomorrow?

9 MR. PITARO: Well, I was going to say are we going
10 to -- that's what I was going to -- are we going to work on
11 instructions tomorrow and then close on Wednesday?

12 THE COURT: Well, we probably ought to work on
13 instructions right now. Have you done what I asked you to do?

14 MR. PITARO: Yeah, I've reviewed them, I --

15 THE COURT: Have you --

16 MR. JOHNSON: The government would prefer to do
17 closings tomorrow, because, Your Honor, my guess is, you know,
18 we'll be done with the evidence in this case by mid morning.

19 THE COURT: Well, then we'll try to --

20 MR. PITARO: Well, I'm not --

21 THE COURT: -- you're not going to have -- go ahead
22 and be seated.

23 MR. JOHNSON: We're going to have probably some
24 rebuttal now, we plan to probably bring in all the agent who
25 were at the search to talk about the search, but that's not

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United States District Court
District of Nevada
Las Vegas, Nevada

LANE R. WILSON

BY

DEPUTY

UNITED STATES OF AMERICA

Plaintiff

vs.

GERARD J. BONGIOVANNI

Defendant

Docket No. CR-S-96-098-LDG(RJJ)

Las Vegas, Nevada

December 16, 1997

8:32 a.m.

JURY TRIAL - DAY 9

THE HONORABLE LLOYD D. GEORGE PRESIDING
UNITED STATES DISTRICT COURT JUDGE

COURT RECORDER:

JUDY WATSON
U.S. District Court

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NO #
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PROCEEDINGS BEGIN AT 8:32 A.M.

(Court is called to order)

(Jury is not present)

THE COURT: Please be seated.

THE CLERK: This is the --

THE COURT: Before we -- go ahead and call the case.

THE CLERK: -- time set for day 9 in the jury trial
in Criminal S-96-098-LDG(RJJ), United States of America versus
Gerard Bongiovanni. Counsel, please note your appearance.

MR. PITARO: Tom Pitaro with Gerard Bongiovanni.

MR. SHOEMAKER: Jane Shoemaker and Eric Johnson for
the United States.

THE COURT: Thank you. Let me mention just a couple
of things. The court recorder has asked specifically, Mr.
Pitaro, for you to exercise some caution in speaking over
other people. That distorts the whole process when that
happens. So, if everyone would remember one at a time, I
would appreciate it.

I'm going to talk to you for a moment. I'm not
going to do for you what I want you to do for yourselves. The
major -- one of the major instructions of the Government, the
right to honest services defined, I think is going to have to
be modified to some significant degree. It appears to me that
one of the things being said in the instruction, particularly
at page 54, is exactly what you've been telling me you haven't

1 been saying. That at least is set forth in the cited canon,
2 3(b)(7), that talks about a judge shall accord to every person
3 who has a legal interest in a proceeding that person's right
4 to be heard according to the law. "A judge shall not
5 initiate, permit or consider ex parte communications."

6 The evidence seems clear to me that there are
7 legitimate exceptions to that, and I think it should not be
8 included. So, I want the Government to take a look at that,
9 and I want Mr. Pitaro to take a look at it as well.

10 You received, Mr. Pitaro, and I received the written
11 -- and that should be lodged with the Court, though it's in
12 handwriting, the observations of the Government relative to
13 your instruction as to a theory of defense. I think there are
14 problems with this instruction as well, and I think it invites
15 the Court to tell you that in my judgment you need probably
16 two instructions. The one instruction should address, and I

17 think properly so, the law concerning a defense of good faith.
18 For the most part, Devitt & Blackmar and the instruction that
19 you've used part of is an appropriate instruction. There will
20 need to be certain modifications to accommodate the facts in
21 this case.

22 One seeming very important part of that instruction,
23 however, was left out by you, Mr. Pitaro. And I'm talking
24 about the following language: "A defendant does not act in
25 good faith if, even though he/she honestly holds a certain