

1 what -- what his record was.

2 Q And Mr. Dottore then says to you, "Did he pounce on the  
3 guy?" And you respond, "Yeah, I don't know, I haven't talked  
4 to him." Is Mr. Dottore at this point in time -- are you and  
5 Mr. Dottore at this point in time referring to -- well, let me  
6 ask you, what are you referring to there?

7 A I have no idea from reading this.

8 MR. PITARO: Well, could I -- Your Honor, could I  
9 object to the relevancy?

10 THE COURT: Well, where you going with it, counsel?

11 MR. JOHNSON: Your Honor, I'm going to go into the  
12 issue that he's -- improper favoritism for his friends on  
13 another --

14 THE COURT: The objection is overruled.

15 THE WITNESS: I have no idea what he's referring to.

16 BY MR. JOHNSON:

17 Q Well, you state then --

18 A I rarely --

19 Q -- "Yeah, I don't know, I haven't talked to him." Who  
20 were you referring to "I haven't talked to him?"

21 A Probably Dominic, Dominic Lacasano, I don't know.

22 Q And so when Dottore says to you, "Did he pounce on that  
23 guy," is Dottore asking you if Dominic Lacasano used the  
24 information that you got for him about the host?

25 MR. PITARO: Your Honor, that's not what it says.

1 THE WITNESS: I do --

2 MR. PITARO: And I --

3 THE COURT: Well, let the witness respond.

4 THE WITNESS: I can't understand what he's saying  
5 here. This conversation happened so long ago, I don't  
6 remember it.

7 BY MR. JOHNSON:

8 Q Now, Mr. Bongiovanni, Nevada statute precludes you from  
9 giving out criminal histories of people, doesn't it?

10 A I believe it precludes me from giving out printouts,  
11 SCOPE printouts.

12 Q So you don't believe that as long as you get a printout  
13 and just read off of it that there's anything wrong with that?

14 A If I look up someone's record, if I had a friend or  
15 somebody that was going to go in business or had a  
16 relationship with somebody and he wanted to know anything --  
17 if this guy was a good person or not, I, why, certainly I  
18 would tell him, don't mess with this guy, he has a prior  
19 record, don't trust him.

20 Q Well, let me ask you, Mr. Bongiovanni, are you aware that  
21 under Nevada --

22 A I mean, this is a rare occasion. I had no intent of --

23 MR. JOHNSON: Your Honor, I don't believe --

24 THE WITNESS: -- breaking any law.

25 MR. JOHNSON: -- a question is before the witness.

1 THE COURT: Well, go ahead with your next question.

2 BY MR. JOHNSON:

3 Q Mr. Bongiovanni, are you aware that Nevada Revised  
4 Statute 179A.300 precludes any person -- or it essentially  
5 states, any person who willfully communicates or seeks to  
6 communicate records of criminal history to any agency or  
7 person, except pursuant to this chapter, is guilty of an  
8 offense. Are you aware of that?

9 A Well, I am now. I mean, I didn't have every statute  
10 memorized.

11 Q So are you saying that you freely handed out criminal  
12 history information to your friends as they ever requested it?

13 MR. PITARO: I would object, Your Honor. He didn't  
14 say that, the tape doesn't say it.

15 THE COURT: Well, that's the question, and he can  
16 respond to it.

17 THE WITNESS: I'm saying that I may have looked up  
18 the guy's record, like I would do, and told him the -- this  
19 guy was a bad person, don't get involved with him.

20 BY MR. JOHNSON:

21 Q Is this the only occasion that you've ever looked up  
22 somebody's record for a friend?

23 A As far as I could recall.

24 Q You never did it in any of the other years?

25 MR. PITARO: Asked and answered.

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1 THE WITNESS: I may have, I don't recall.

2 THE COURT: It has -- he --

3 MR. JOHNSON: Thank you, Your Honor.

4 THE COURT: He has answered, let's move on.

5 THE WITNESS: I had no criminal intent.

6 THE COURT: There's no question.

7 MR. JOHNSON: Your Honor, there isn't a question in  
8 front of the witness.

9 THE WITNESS: I'm sorry. I'm sorry.

10 (Pause in the proceedings)

11 BY MR. JOHNSON:

12 Q Mr. Bongiovanni, you participated in a corporation known  
13 as Massbo?

14 A Yes.

15 Q And this was a corporation that was set up essentially to  
16 run a lottery business?

17 A Well, that was the initial thing.

18 Q You were part owner of the corporation?

19 A I was an investor. We were all going to buy stock.

20 Q All right. And in a corporation -- and in a corporation  
21 an investor is a shareholder, right?

22 A Shareholder.

23 Q And a shareholder is an owner of a corporation?

24 A I don't believe we even issued the stock, it never got  
25 off the ground.



1 Q And there were approximately six people involved in the  
2 corporation?

3 A That's correct.

4 Q You were one?

5 A Yes.

6 Q Del Potter was one?

7 A Yes.

8 Q Mickey Gresser and Paul Dottore, they were involved?

9 A Yes.

10 Q And then Dominic Lacasano, the host at the Horseshoe was  
11 involved?

12 A Yes. And my brother.

13 Q And then Peter Flangas was also a part owner?

14 A Right. Peter Flangas and my brother.

15 Q This corporation was set up by the end of February of  
16 1995, is that correct?

17 A I'm not sure when we incorporated. I'll take your word  
18 for it. It was about that time frame, yes.

19 MR. JOHNSON: Can I approach the witness, Your  
20 Honor.

21 THE COURT: You may.

22 MR. PITARO: Could I see that, Eric?

23 BY MR. JOHNSON:

24 Q Mr. Bongiovanni, would you look at this document briefly,  
25 and I think you can do it probably by the front page.

1 A Right.

2 Q Do you see the --

3 A February '95, yes. 23rd.

4 Q Does that refresh your recollection of when Massbo was  
5 incorporated by?

6 A Not really, but -- yes, that's what it says. I have an  
7 idea it was in that timeframe.

8 Q You would agree it was incorporated by February 23rd,  
9 1995?

10 A Yes. That's what the document indicates.

11 Q Now you did not list yourself on any of the corporate  
12 documents as an officer or a director or incorporator of the  
13 business, is that correct?

14 A That's --

15 MR. PITARO: Your Honor, I would object. That  
16 implies that the -- that the articles of incorporation or the  
17 documents incorporation don't --

18 THE COURT: Well, he's only asking him if he did or  
19 did not list himself. The objection is overruled, you may  
20 respond.

21 THE WITNESS: I didn't make the document.

22 BY MR. JOHNSON:

23 Q Do you recall having a conversation on March 3rd --

24 THE COURT: Just a moment --

25 MR. JOHNSON: I'm sorry.

1 THE COURT: -- counsel. Did you respond to the  
2 question?

3 THE WITNESS: Well, I didn't finish.

4 I didn't make the document, but I -- my intention  
5 was to be an investor, not an officer. I didn't want to do  
6 anything but invest money in it. I had no time to handle any  
7 business.

8 MR. JOHNSON: All right. The question, I think,  
9 Your Honor, was did you list yourself as a officer, director,  
10 incorporator of the business.

11 THE WITNESS: I was not on the list. I did not make  
12 the list, okay.

13 BY MR. JOHNSON:

14 Q And the answer then is, no.

15 A Okay.

16 Q Do you --

17 THE COURT: Is the answer no?

18 MR. PITARO: Well --

19 THE WITNESS: Yes.

20 BY MR. JOHNSON:

21 Q Do you recall --

22 THE WITNESS: I'm not on the list, that's how I  
23 could answer it.

24 MR. PITARO: Excuse me, excuse me. I don't want the  
25 jury -- the misimpression that he did it. You have to -- did

1 he file the articles of incorporation or did someone else do  
2 it who does the --

3 MR. JOHNSON: Your Honor --

4 MR. PITARO: -- listing.

5 MR. JOHNSON: -- Mr. Pitaro, if he feels that  
6 there's a need can deal --

7 MR. PITARO: But you're asking --

8 MR. JOHNSON: -- with this on --

9 MR. PITARO: -- him a different question, did he do  
10 it, and he said he wasn't on the list. That's saying, well,  
11 so you didn't do it.

12 THE COURT: Well, and then there was follow-up  
13 question, counsel, and you'll get the witness back.

14 MR. PITARO: Okay.

15 THE COURT: Go ahead, Mr. Johnson.

16 MR. JOHNSON: Thank you, Your Honor.

17 BY MR. JOHNSON:

18 Q Do you recall --

19 THE COURT: Just for the benefit of me, was the  
20 answer, no?

21 THE WITNESS: To which question. I'm not sure now.

22 THE COURT: Well, ask the question again.

23 BY MR. JOHNSON:

24 Q You were not listed on any of the corporate documents as  
25 an officer or director or an incorporator of the business?

1 A I was not listed, that's correct.

2 Q Do you recall having a conversation on March 3rd, 1995  
3 with your brother in which you stated that you hoped that  
4 Massbo deal was not illegal, but everything was in Gresser's  
5 name just in case it was?

6 A Yes, I had a conversation with my brother.

7 Q And do you recall saying to him that you hoped that the  
8 Massbo deal was not illegal, but everything was in Gresser's  
9 name just in case it was?

10 A Well, I don't know if I exactly said that.

11 Q But is that approximately what you said?

12 A I may have said that, yes.

13 Q Did you tell your brother -- or let me ask you, was one  
14 of the reasons that you kept your name off any of the  
15 corporate documents was because you were worried about taxes?

16 A No.

17 Q I'm sorry, did you answer?

18 A I wouldn't be worried about taxes unless we made some  
19 money.

20 THE COURT: The answer was, no.

21 THE WITNESS: No.

22 (Pause in the proceedings)

23 MR. JOHNSON: May I approach the witness, Your  
24 Honor?

25 THE COURT: You may.

1 BY MR. JOHNSON:

2 Q Mr. Bongiovanni, I'm going to show you a transcript, page  
3 17, from your prior testimony --

4 A Okay.

5 Q -- in a separate proceeding. If you would look at --  
6 starting at line 9 down to line 20. Read that to yourself.

7 (Pause in the proceeding)

8 A Okay.

9 Q Thank you.

10 Mr. Bongiovanni, when you were previously asked that "was  
11 one of the reasons that you kept your name off of the  
12 documents of the corporation, was that you were worried about  
13 taxes?" I'm -- and then -- let me change -- let me rephrase  
14 that.

15 Where -- previously, were you asked in a prior  
16 proceeding, "Now, was one of the reasons that you kept cash or  
17 kept your name off any of the documents for the corporation  
18 was that you were worried about taxes?" And didn't you  
19 respond, "I don't know, it may have been; I don't remember. I  
20 just wanted to be an investor, I didn't want to run the  
21 business." Is that correct?

22 A That was my answer.

23 Q So previously you indicated that it's possible you were  
24 concerned about taxes at the time that you --

25 A No, it says I didn't remember.

1 Q -- your name was left off of the corporate documents.

2 A I says I didn't remember. It may have been. It may have  
3 been, I don't know.

4 Q Now, was one of the reasons that you kept your name off  
5 any of the corporate documents was because Peter Flangas was  
6 involved in Massbo and your joint business involvement would  
7 present a conflict of interest when Flangas appeared in your  
8 court?

9 MR. PITARO: I would object, Your Honor. It's  
10 irrelevant.

11 THE COURT: Overruled.

12 THE WITNESS: No, it wasn't.

13 BY MR. JOHNSON:

14 Q Wouldn't your joint business involvement with Mr. Flangas  
15 present a conflict of interest when Mr. Flangas appeared in  
16 your court?

17 A I don't believe so. I believe if two people own stock in  
18 a corporation that certainly that's not a conflict with me and  
19 Mr. Flangas to own stock in IT&T. Why --

20 Q Now --

21 A -- would that be a conflict?

22 Q Now this wasn't IT&T though, this was an S corporation,  
23 is that correct?

24 A Well, we were hoping it was gonna be. Okay.

25 Q But at the time we're talking here, in 1995, this was an

1 S corporation, right?

2 A That's correct.

3 Q And there were only six investors in the corporation, is  
4 that correct?

5 A There were six -- there were seven people involved, six  
6 who invested. Mr. Dottore didn't have to put any money in.

7 Q So we aren't talking about IT&T, right?

8 A Not at that -- no.

9 THE COURT: He's answered the question. Let's move  
10 on, counsel.

11 THE WITNESS: No.

12 BY MR. JOHNSON:

13 Q Now you're aware that the Nevada Code of Judicial  
14 Conduct, Canon 4(d)(1)(B) provides that:

15 "A judge shall not engage in financial and business  
16 dealings that involve the judge and frequent transactions  
17 or a continuing business relationship with those lawyers  
18 or persons likely to come before the court on which the  
19 judge serves."

20 A Yes.

21 Q And you were -- were you aware of that in February of  
22 1995?

23 A Yes.

24 Q And did Mr. Flangas continue to appear in front of you  
25 from February of '95 until the corporation was dissolved in



1 June of 1995?

2 A Yes, but no business activity ever occurred. The company  
3 never got -- even got off the ground, so.

4 Q Well, you indicated that --

5 A I don't even think that --

6 Q -- everybody invested money --

7 A -- came into our minds at that time.

8 Q -- is that correct?

9 A That was it. That was --

10 Q And --

11 A -- the only action that was taken.

12 Q -- Mr. Dottore went to Boston --

13 A Right.

14 Q -- and started to try to find a place for the business,  
15 is that correct?

16 A That was the only thing that happened. Then were the  
17 only two things that happened.

18 Q And everyone, I think you indicated, invested about four  
19 thousand dollars (\$4,000)?

20 A As I recall, yes.

21 Q All right. So the business was capitalized then with  
22 approximately twenty to thirty thousand dollars (\$20-30,000)?

23 A Well, four times six -- it should have -- I don't know  
24 what Mr. Gresser put in. I think he paid for the trip when  
25 they went down to look at the -- rent the -- rent an office.

1 So I really don't --

2 Q Now --

3 A -- know what Mr. Gresser did. So I know there was five

4 times four, it'd be twenty thousand (20,000) there. We gave

5 the money to --

6 Q That's --

7 A -- Mr. Gresser.

8 Q Now, you testified yesterday in regard to Mr. Milano.

9 A Yes.

10 Q You did at one time help Mr. Milano with a traffic

11 citation --

12 A It appears --

13 Q -- is that correct?

14 A -- that I did, yes. I believe I --

15 Q You don't have any recollection?

16 A I believe I remember that I went down there and helped

17 him with a citation, yes.

18 Q You went down to his business?

19 A Yes. The tapes indicate that we were supposed to go

20 there the -- the next day so I believe that I did. I don't

21 know.

22 Q You don't have any recollection though of going down

23 to --

24 A Specifically going down there?

25 Q -- Mr. Milano's business?

1 A No, not on that occasion with the citation. I know I've  
2 been there a few times.

3 Q You don't recall though ever receiving or discussing a  
4 citation at the business?

5 A Well, I recall that I helped him with a citation, yes.

6 Q Now, after helping with the citation, did you receive  
7 anything from Mr. Milano in terms of a free suit or a discount  
8 on any suits?

9 A No, I did not.

10 Q Didn't Mr. Milano give you -- didn't you previously  
11 testify that Mr. Milano gave you a deal on a suit that you  
12 said was altered but not to your liking?

13 A Yes, I previously testified to that and he named a price  
14 he wanted and I gave him the money. I don't think I ever paid  
15 the full price for a suit. They always have 10 percent off,  
16 25 percent off; suits are always marked down. So I paid the

17 man what --

18 Q Do you recall --

19 A -- he requested.

20 Q -- testifying on --

21 A Oh, there was --

22 Q -- December -- I mean, in December at a previous  
23 proceeding, do you recall testifying, "So what happened, I  
24 went back to pick up the suit that I was buying, he -- I  
25 tried" --

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1 MR. PITARO: Well, I think you have to have him look  
2 at it first.

3 THE COURT: Well, that isn't necessary under the --  
4 the rules changed.

5 THE WITNESS: All right.

6 BY MR. JOHNSON:

7 Q Do you recall testifying in December of '97, "I was  
8 looking at suits and he had one that was way too big for me,  
9 he says, oh, I could alter it. I said, no, order me some, but  
10 he insisted on altering the one suit." Do you remember  
11 testifying about that?

12 A Yes.

13 Q Do you also remember testifying,  
14 "So what happened when I went back to pick up the suit  
15 that I was buying, he -- I tried this other one on and I  
16 didn't like the way it fit. He says, well, geez, I can't  
17 -- I can't sell it so he gave me a discount or whatever  
18 for that. But I paid for the other suits. I don't know  
19 if you want to call it a discount. He said, well, just  
20 give me this -- so much for both suits. I said, fine."

21 Is that your testimony?

22 A Yes.

23 Q And is that what --

24 A And it's still my --

25 Q -- happened?

1 A -- that's still my testimony.

2 (Pause in the proceeding)

3 Q Now around this period in 1994 and 1995, you regularly  
4 went out gambling, is that correct?

5 A Yes.

6 Q And you would go out gambling one to three times a week?

7 A That's correct.

8 MR. PITARO: Asked and answered.

9 BY MR. JOHNSON:

10 Q And when you went out gambling, didn't you frequently  
11 lose money?

12 A If people don't lose money I don't think there'd be all  
13 these casinos.

14 Q I'm asking you about --

15 A Yes.

16 Q -- your --

17 A Yes, I did.

18 Q And would you say you lost a lot more than you won?

19 A Of course. I considered it entertainment.

20 Q Did you have any problem controlling your gambling?

21 A Not really.

22 Q Well, you said "not really."

23 A I know I've said that on a tape, joking around.

24 Q How much would you typically lose when you would go out?

25 A I would lose whatever I had on me. If I had sixty

1 dollars (\$60), I'd lose sixty (60). If I had a hundred (100),  
 2 I could possibly lose a hundred (100). If I had two hundred  
 3 (200) -- that was my entertainment, that was the only  
 4 entertainment I ever had. I couldn't take my wife to dinner.  
 5 I couldn't take her anywhere.

6 Q Now --

7 MR. JOHNSON: I don't believe a question's in front  
 8 of the witness.

9 THE COURT: There isn't any question.

10 THE WITNESS: I'm sorry.

11 THE COURT: Let's move on.

12 BY MR. JOHNSON:

13 Q Now, if you'd look at Government Exhibit 518, please.

14 (Pause in the proceedings)

15 And if you'd look at the bottom of page 3, where you say,

16 "Now I got fifty bucks or something from the guy for the

17 painting. He tells me he'll be on -- be at the Gold

18 Coast. I said, well, you'll be there by yourself.

19 "Dottore: (Laughs).

20 "Bongiovanni," you state: "I ain't going."

21 Dottore says: "All right."

22 And you state: "I can't do it. I said, it's all right

23 for him to gamble because he ain't got much to lose."

24 Dottore says: "Gerry, yeah."

25 And you reply: "Yeah."

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1 Dottore then says: "No, I know."

2 And you reply: "He goes bankrupt on fifty bucks, that's  
3 all. He can't get hurt."

4 Dottore says: "Yeah."

5 And you respond: "Even though he's got to stay home the  
6 rest of the month. I got three hundred (300), two  
7 hundred (200)."

8 Dottore: "Yeah, well, I did the same thing when I was  
9 making money."

10 You then respond: "(Unintelligible) I can't control  
11 myself."

12 Now in that conversation, Mr. Bongiovanni, are you saying  
13 that you can't control yourself at gambling?

14 MR. PITARO: Your Honor, I'd ask that under the rule  
15 of completeness he look at the next two sentences.

16 THE COURT: Go to the next --

17 BY MR. JOHNSON:

18 Q And Mr. Bongiovanni -- Dottore says: "Yeah."

19 And Mr. Bongiovanni says, "So I just lay off."

20 Dottore says: "None of us can."

21 "Bongiovanni: Huh?"

22 Dottore says: "None of us can."

23 And Bongiovanni says: "I know it."

24 Mr. Bongiovanni, focusing back to the sentence that I was  
25 asking you about, you state, "I can't control myself." By

1 that statement are you saying that you cannot control yourself  
2 at gambling?

3 A Not exactly.

4 Q What are you saying?

5 A I was saying that some -- that depending on how I felt  
6 that evening -- I needed an outlet for -- to get out of the  
7 house. That's the only thing I could do to get my mind off my  
8 problems.

9 MR. JOHNSON: Your Honor, I don't think the witness  
10 is being responsive.

11 THE WITNESS: I'm trying to explain to you, sir.

12 THE COURT: It isn't. It isn't responsive.

13 THE WITNESS: Well, I wasn't telling him -- when I  
14 went out --

15 THE COURT: There's no question, Mr. Bongiovanni.  
16 Next question.

17 MR. JOHNSON: Thank you.

18 BY MR. JOHNSON:

19 Q Were there times that you went out gambling and you would  
20 lose more than you anticipated that you wanted to lose?

21 A Why certainly.

22 Q I'm sorry?

23 A Yes. It wasn't that I couldn't afford it.

24 MR. JOHNSON: Your Honor, there's no question --

25 THE WITNESS: All right.



1 MR. JOHNSON: -- in front of the --

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

3 THE WITNESS: Okay.

4 (Pause in the proceeding)

5 BY MR. JOHNSON:

6 Q Mr. Bongiovanni, I'd like to turn to the search of your  
7 house on October 17, 1995. I believe your testimony was that  
8 at some point during the search you asked "who's in charge."  
9 Do you remember that testimony?

10 A Yes.

11 Q And I believe you testified that it was Agent Hanford who  
12 said that it was -- I mean, Agent Byers who said it was  
13 Hanford, is that correct?

14 A I think so, yes.

15 Q And I believe your testimony was that at this point you  
16 asked Agent Byers, where is Hanford?

17 A Right.

18 Q And I think you also said that you told Byers, "get  
19 Hanford over here and we can get this straightened out," is  
20 that correct?

21 A Yes.

22 Q And in your testimony you indicated that you believed  
23 Byers had a radio and radioed Hanford, is that correct?

24 A Yes. I don't believe I remember him leaving the room. I  
25 know he said he did, but I don't recall that.

1 Q Did you ever see a radio on Byers?

2 A In my mind, I -- that's what I believe he had.

3 Q So you -- I'm not asking what's in your mind, I'm asking

4 you do you remember Mr. Byers had a radio on his person?

5 A Well, that's what's in my mind, yes.

6 Q And do you recall him, after you asked to get Hanford in

7 here, Byers using the radio?

8 A That's how I recall the event, yes.

9 Q And now, what kind of hand radio was this?

10 A I have no idea.

11 Q How big was it?

12 A I believe he called him on a radio, that's all. I don't

13 know what size it was.

14 Q Well --

15 A This whole thing --

16 Q -- could you use your --

17 A -- this whole --

18 Q -- hands and give us an estimate of how big this radio

19 was?

20 A A small hand-held radio.

21 Q All right. Now, you're --

22 A Like a cellular. Maybe --

23 Q -- short [sic] of cupping your hands, are you saying --

24 A -- it was a cellular phone. I don't know what it was.

25 That's what I recall.

1 Q So you're saying it's about the --

2 A Maybe he didn't have a radio, but that's how I recall it.

3 Q So you're saying that the radio you believed you saw him  
4 use was about the size of a small cellular phone.

5 MR. PITARO: Objection, Your Honor, he didn't say  
6 that and it's argumentative.

7 THE COURT: Well, I think it's a legitimate  
8 questions -- is that a --

9 THE WITNESS: All's I'm saying is, I know he had a  
10 radio. I don't how big it was. I thought he radioed to  
11 Mr. --

12 THE COURT: Okay. I think he's answered the  
13 question.

14 THE WITNESS: -- Hanford.

15 THE COURT: Let's move on.

16 THE WITNESS: I have no idea what size.

17 BY MR. JOHNSON:

18 Q And then after Mr. Byers used the radio, I believe your  
19 testimony yesterday was that Mr. Byers said to you that  
20 Hanford was coming to answer your questions. Is that correct?

21 A That's correct. I asked him questions, whether the  
22 money --

23 MR. JOHNSON: Your Honor, I don't believe a  
24 question's --

25 THE WITNESS: -- was counterfeit.

1 MR. JOHNSON: -- in front of the witness.

2 THE COURT: There -- there's --

3 THE WITNESS: Oh.

4 THE COURT: -- no other question. Let's move on.

5 (Pause in the proceedings)

6 MR. JOHNSON: May I approach the witness, Your  
7 Honor?

8 THE COURT: You may.

9 BY MR. JOHNSON:

10 Q Would you look at page 243 of your prior testimony,  
11 focusing on lines 19 to 23.

12 A I'm looking at it.

13 Okay.

14 Q Mr. Bongiovanni, when you previously testified in  
15 December of 1997, did you state at that time, after you were  
16 told Agent Hanford is in charge, "I said, well, get him here

17 and we can resolve this real fast."

18 "Never mind, he'll come in here when he's good and  
19 ready."

20 Was that your testimony then?

21 A Yes.

22 Q And that's different now than your testimony where you  
23 say Byers said that Agent Hanford was going to come in and  
24 answer your questions, is that correct?

25 A No. Nicholson says, no, he'll -- after Byers told me

1 that, Nicholson says, no, he'll come in when he's good and  
2 ready.

3 Q So Nicholson is the one who then said, he'll come in  
4 after he's good and ready?

5 A As far as I could remember, Nicholson was the one that  
6 was very, very loud. I'm not saying it was like a drug bust,  
7 but he was very loud and he put the fear of God in my kids,  
8 I'll tell you.

9 Q Well, wait. When you say it's not like a drug bust, who  
10 all was loud during this search?

11 A Mostly Nicholson's, and there was loudness at times from  
12 other agents that were in there.

13 Q Did Agent Byers ever get loud?

14 A I believe that at one or two points in time he got a  
15 little loud.

16 Q All right. And what points in times were those?

17 A Well, when they were interrogating me, asking me  
18 questions.

19 Q And what point in time was this during the search?

20 A Right in the beginning. The search only took a few  
21 minutes.

22 Q And so that was when they were asking you --

23 A Right.

24 Q -- where the money was, is that correct?

25 A And -- yes, and I was relating to them --

1 Q And -- let me --  
2 A -- my thoughts.  
3 MR. PITARO: Let him finish.  
4 THE COURT: Just a moment. You've responded.  
5 MR. JOHNSON: He's responded. Thank you, Your  
6 Honor.  
7 BY MR. JOHNSON:  
8 Q Now, Agent Byers was loud at that point in time?  
9 MR. PITARO: At what point, I'm lost, Your Honor.  
10 THE WITNESS: I'm not sure I --  
11 BY MR. JOHNSON:  
12 Q Agent Byers was loud at that point in time, in the  
13 beginning --  
14 A What --  
15 Q -- when they were asking you where the money was.  
16 A Initially, yes.  
17 Q And who else was loud?  
18 A Nicholson.  
19 Q I think we've -- you've said that. Who else besides  
20 Nicholson and now you've identified --  
21 A Well, I don't know their --  
22 Q -- as Byers?  
23 A -- I don't know their other names.  
24 Q All right. Well, tell me what other -- where the agent  
25 was who was loud.

1 A Well -- what?

2 Q There were other agents. Where -- what --

3 A Yes.

4 Q -- you mentioned one agent went into the family room.

5 A There was another person in the kitchen.

6 Q There was another person in the kitchen?

7 A And he was going through the cupboards.

8 Q And was he loud?

9 A He was talking to them while they were asking me  
10 questions. So, I mean --

11 Q And what was he saying to them?

12 A -- the whole thing was loud. It wasn't just --

13 Q And what was the person searching through the cupboards  
14 saying to them?

15 A I don't recall what he was saying.

16 Q But he was being loud when he was saying it?

17 A Well, he was loud --

18 Q Well, how loud?

19 A -- at one point in time.

20 MR. PITARO: Your Honor, this is -- this is getting  
21 argumentative.

22 BY MR. JOHNSON:

23 Q Why don't you demonstrate for me how loud that person was  
24 who was searching the cupboards.

25 MR. PITARO: Go ahead.

1 THE WITNESS: Give me something to say and I'll say  
2 it.

3 BY MR. JOHNSON:

4 Q Well, why don't you use something that the person  
5 searching the cupboard said.

6 A I'm trying -- most of the conversations I remember are  
7 from Nicholson and Byers. All's I know is Nicholson says,  
8 "Give me the money. Give me the money." And the other person  
9 was saying, "Yes, give us the money and we won't have to do  
10 this." It was probably a little louder than that, but  
11 that's --

12 Q All right. Now, you at one point in time testified that  
13 the agents were screaming at you. Do you recall them doing --  
14 saying that?

15 A Well, Nicholson was right in my ear, I mean -- and he  
16 could talk loud and it seemed like screaming to me, shouting.

17 Q All right. So he really wasn't screaming --

18 A Well --

19 Q -- he was just talking close to your ear. Is that --

20 A -- probably --

21 Q -- your testimony now?

22 A I would consider women scream, but men shout, I don't  
23 know. That was the word I used, I'm sorry.

24 Q The person that you indicated immediately went into the  
25 family room, was he being loud?



1 A Right. No, 'cause all's I could hear was Nicholson  
2 shouting in my ear.

3 Q All right.

4 A And other people that were right around me, Nicholson,  
5 Byers, and whoever else was in the kitchen.

6 Q All right. So Byers was loud sometimes, as you've  
7 demonstrated, right?

8 A Yes.

9 Q Nicholson was loud sometimes, as you've demonstrated,  
10 right?

11 A That's correct.

12 Q And he was louder, it seemed to you, because he was  
13 supposedly yelling in your ear?

14 A Nicholson? Yes.

15 Q How close was he -- his mouth to your ear when he was  
16 shouting at you?

17 A Well, he was hanging right over my shoulder from behind  
18 and his head was right here.

19 Q So his head was right --

20 A Well, I don't know maybe --

21 Q -- his mouth was like one inch from your ear, is that  
22 what you're testimony is?

23 A Not one inch. I don't know. If I would have turned to  
24 look I probably would have bumped heads with him --

25 Q And he's --

1 A -- at times.

2 Q -- he positioned his head there and talked loudly to you,  
3 is that your testimony?

4 A It sure is.

5 Q Where was Agent Byers?

6 A He was on the other side of me.

7 Q And was his head right there next to your ear?

8 A No, I believe Mr. -- Agent Byers was standing there and  
9 that's it. He wasn't over me like Nicholson.

10 (Pause in the proceedings)

11 Q At any time during this search before the money was  
12 discovered, did you tell the agents there that Dottore had not  
13 left any money there?

14 A No, I told them -- they were insisting that he gave me  
15 money. In my mind, I was thinking what could this be, and the  
16 only thing I could think of was counterfeit money and I didn't  
17 want them to get the impression that he -- Dottore gave me  
18 money to pass out --

19 Q I don't think that --

20 A -- and I told that --

21 Q -- that was my question. What I'm asking you --

22 A -- that's why I --

23 THE COURT: Just a moment. Just a moment. That  
24 isn't the question. The question simply was -- repeat the  
25 question, counsel.

1 MR. JOHNSON: Just one second, Your Honor.

2 BY MR. JOHNSON:

3 Q The question is, at any time did you tell the agents that  
4 there was no money that was left by Paul Dottore?

5 A No. I told them he didn't give me money, it was a  
6 repayment of a loan.

7 Q When did you tell the agents that?

8 A I told them that in the kitchen before Byers said he was  
9 gonna get Hanford inside. And I said, fine, there's no reason  
10 to do a search. Get him in here and we'll resolve this.

11 Q All right. So is your testimony now that you told the  
12 agents that Dottore had given you money for a loan prior to  
13 the money being discovered in your pocket?

14 A Yes, I told them that. But every time I would try and  
15 tell them that, never mind, he gave you the money, he gave you  
16 the money. And I tried to get that across to them because I

17 thought it was counterfeit --

18 Q Now after you --

19 A -- and I told them that.

20 Q -- told the agents that Mr. Dottore had given you money  
21 in repayment of a loan, did any of them ask you to give them  
22 the money that Mr. Dottore had given you?

23 A No. They -- that was at the period of time when they  
24 were yelling at me, and I said, well, get -- who's in charge  
25 here? And he said, Hanford. I said, well, what's he doing

1 outside? They told me he was outside. I said, why is a  
2 person who's in charge of this --

3 MR. JOHNSON: Your Honor --

4 THE WITNESS: -- doing outside?

5 MR. JOHNSON: -- I don't think a question's before  
6 the witness.

7 THE COURT: It's not responsive.

8 THE WITNESS: Get him in here and we'll resolve  
9 this.

10 THE COURT: It's not responsive. Let's move on.

11 BY MR. JOHNSON:

12 Q Is it your testimony then that after you told the agents  
13 that Mr. Dottore had been there and left you money for  
14 repayment of a loan, that the agents then said, we'll tear  
15 this house apart and we'll tear your car apart, and we'll  
16 search you, and kept yelling that?

17 A That's right. Nicholson kept saying, give me the money,  
18 forget about Hanford. I have Byers telling me he's coming  
19 in --

20 MR. JOHNSON: There's no question in front of the  
21 witness, Your Honor.

22 THE COURT: There's no question --

23 THE WITNESS: Oh, I'm sorry.

24 THE COURT: -- Mr. Bongiovanni.

25 //

1 BY MR. JOHNSON:

2 Q Mr. Bongiovanni, in your previous testimony, do you  
3 recall saying at -- in your testimony:

4 "And I'm saying what is this all about? Bring in --  
5 who's in charge. He said Agent Hanford is in  
6 charge. I said, well, get him in here and we can  
7 resolve this real fast. Never mind, he'll come in  
8 here when he's good and ready. And I'm -- I'm  
9 wondering -- my children are frightened, I was  
10 frightened, and I was wondering what my wife was  
11 thinking hearing this. So -- and they kept yelling  
12 at me, where's the money, where's the money? I  
13 said, there is no money. Well, well, tear this  
14 house apart, then we'll tear your car apart, and  
15 then we'll search you. And they kept yelling that  
16 out."

17 Do you recall giving that testimony?

18 A Yes.

19 Q So at some point during this conversation or during this  
20 search with the agents, did you tell them there is no money?

21 A Yes, I told them that.

22 Q Yes, you told them --

23 A I --

24 Q -- there is no money.

25 A Did I tell them what?

1 Q At some point during this search with the agents did you  
2 tell them there is no money?

3 A Yes.

4 Q And when did you tell them --

5 A Not during the --

6 Q -- there is no money?

7 A After they told me -- after they started -- said "start  
8 searching." I says -- I was disgusted because they knew I had  
9 the money in my possession. And I said, sure, there is no  
10 money. You're not going to find anything, go search, 'cause I  
11 had it in my pocket. And I told them that there was no need  
12 for a search. I felt that they were playing games because  
13 they told me Hanford was coming in to explain to me what was  
14 going on.

15 Q So your testimony is that --

16 A And 30 seconds --

17 Q Let me stop you.

18 A -- later --

19 MR. JOHNSON: Your Honor, can I --

20 THE WITNESS: If I could keep explaining.

21 THE COURT: There's no --

22 MR. JOHNSON: There's --

23 THE COURT: Stand by.

24 THE WITNESS: I was -- I was answering --

25 THE COURT: Just a minute.

1 THE WITNESS: -- the last question, see.

2 BY MR. JOHNSON:

3 Q So your testimony is that from the very beginning you  
4 told the agents that you had the money that Dottore had repaid  
5 a loan to you, in your pocket?

6 A From our conversation, which would be clear to them that  
7 I had the money 'cause I was asking them whether it was  
8 counterfeit. I told them he didn't give me the money, it was  
9 a repayment of a loan. They told me that they were going to  
10 bring Hanford in --

11 MR. JOHNSON: Your Honor, I don't believe I have a  
12 further question.

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

14 THE WITNESS: Well.

15 (Pause in the proceedings)

16 BY MR. JOHNSON:

17 Q Now yesterday you testified, if I'm correct, that when  
18 you saw an agent walking toward your master bedroom that you  
19 wanted to go into the bedroom and check on your wife and give  
20 the agent in the bedroom the money so that he would get out of  
21 there, is that correct?

22 A That's what was in my mind, yes.

23 Q Do you recall when you previously testified in December  
24 of 1997, giving the following testimony:

25 "And I said, never mind. He'll -- he'll come in

1 when he's darn good and ready. Just tell us where  
2 the money is. And I said, why? Is it counterfeit?  
3 He said, just tell us where the money is. So then  
4 he says -- I says, I got to go check on my wife. So  
5 he was right behind me and he looked down and he  
6 says, what's that sticking out of the hole in your  
7 pocket? I had a T-shirt and a pair of shorts on and  
8 I reached in the pocket and I pulled out the money  
9 and I says, here. This is the money that Paul -- I  
10 said, this is the money that Paul owed me."

11 Do you recall that testimony?

12 A Right. Yes.

13 Q Now at no time during your testimony did you state that  
14 it was your intent to go to the room and give the money to the  
15 person in the room so that they would get out of the bedroom,  
16 away from your wife, did you?

17 A I was not asked that.

18 Q You didn't state that when you testified in December?

19 A I left out -- every time -- if you asked me this story  
20 ten times of what happened at the search, you'd get probably  
21 -- I'd leave things out each time and add things. There are  
22 some many incidentals that --

23 THE COURT: Mr. Bongiovanni --

24 THE WITNESS: I just say it how I remember it.

25 THE COURT: -- if you'll focus on the question -- on



1 the question that's asked and respond to it.

2 THE WITNESS: Yes, sir.

3 BY MR. JOHNSON:

4 Q All right. Now, Mr. Bongiovanni, you heard Agent  
5 Nicholson testify, is that correct?

6 A Yes.

7 Q And you heard Agent Nicholson say that no one ever  
8 searched the kitchen, is that correct?

9 MR. PITARO: You mean Detective Nicholson?

10 MR. JOHNSON: I'm sorry.

11 BY MR. JOHNSON:

12 Q Detective Nicholson say that no one ever searched the  
13 kitchen, is that correct?

14 A Yes.

15 Q It would be your testimony then that Agent Nicholson was  
16 lying?

17 A No, it would be my testimony that everyone recalls  
18 something different.

19 THE COURT: Speak up some. I think people are  
20 having a hard time hearing you.

21 THE WITNESS: I'm sorry. My testimony is that  
22 anyone who views an incident will have a different -- would  
23 testify differently as to all the details of what they saw.

24 BY MR. JOHNSON:

25 Q Well, your testimony is that as soon as the agents came

1 into the house they started searching through the cupboards of  
2 the kitchen, is that correct?

3 A The one person did.

4 Q And Agent Nicholson's testimony is that no one ever  
5 opened a cupboard or searched the kitchen, is that correct?

6 MR. PITARO: Your Honor, it's for the jury to  
7 determine the -- what happened.

8 THE COURT: Well, I think he can make inquiries.

9 THE WITNESS: Yes.

10 THE COURT: They decide it --

11 MR. PITARO: Well --

12 THE COURT: -- from the testimony.

13 THE WITNESS: Yes, that's what he said.

14 BY MR. JOHNSON:

15 Q Was Agent Nicholson lying when he said no one searched  
16 any of the cupboards in the kitchen?

17 A I think you'd have to ask Agent Nicholson that. Only he  
18 knows whether he doesn't recall it -- that's how he recalls it  
19 or --

20 Q Now --

21 A -- whether he's lying.

22 Q -- you heard Agent --

23 A You have to ask him.

24 Q -- Hanford state that when he came into the house prior  
25 to the discovery of the money that no one was searching the

1 kitchen or opening the cupboards, is that correct?

2 A The first time I saw Hanford was when --

3 Q I'm not asking the first time you saw Hanford.

4 A Okay.

5 Q I'm asking do you recall Hanford's testimony that when he  
6 came into the house, which he testified was prior to the  
7 discovery of the money, that no one had started searching the  
8 kitchen and the kitchen cupboards. Do you recall that  
9 testimony?

10 A Yes, I do.

11 Q All right. Would it be your testimony here today that  
12 Agent Hanford was lying when he said that?

13 A Again --

14 MR. PITARO: Your Honor, this is improper  
15 questioning --

16 THE COURT: Overruled.

17 MR. PITARO: -- to ask one witness --

18 THE COURT: Your may respond.

19 MR. PITARO: -- to do that. If he wants to call him  
20 a liar, call him one.

21 THE WITNESS: Okay. You'd have to ask Agent Hanford  
22 if he's lying or not or that's the way he recalls it. I can't  
23 answer for Agent Hanford.

24 BY MR. JOHNSON:

25 Q Now, it's your testimony that you were the one who

1 reached into your own pant pocket and pulled out the five  
2 hundred-dollar bills, is that correct?

3 A That's correct.

4 Q And you heard Detective Nicholson testify that he was the  
5 one who reached in your pocket and pulled out the five one-  
6 hundred-dollar bills. Do you remember that testimony?

7 A Yes.

8 Q Would it be your testimony here today that Detective  
9 Nicholson was lying when he said he was the one who reached in  
10 the pocket and pulled out the five one-hundred-dollar bills?

11 A I would say he did -- if that's the way he recalls it,  
12 that's what he testified to, if he was lying you'd have to ask  
13 him that. If you want my opinion, I'd be happy to --

14 Q Now it's your --

15 A -- give you that.

16 Q Well, I'm asking you is that your opinion.

17 A If you'll let me explain.

18 THE COURT: He's asking --

19 MR. JOHNSON: I don't have --

20 THE COURT: -- simply what your opinion is as to  
21 that --

22 THE WITNESS: Well, I would have to give reasons to  
23 -- for my opinion.

24 MR. JOHNSON: I'll go on, Your Honor.

25 THE COURT: Well, you'll have an opportunity to do

1 that, but the proceeding will progress in an orderly fashion.  
2 If you'll listen to the questions --

3 THE WITNESS: Okay.

4 THE COURT: -- respond to them, and Mr. Pitaro can  
5 then come back to you if he chooses. And if it seems  
6 appropriate, I'll allow an explanation.

7 MR. JOHNSON: Your Honor, I'll withdraw the question  
8 and go on.

9 BY MR. JOHNSON:

10 Q Now it's your testimony that Agent Hanford did not come  
11 into your house until after the discovery of the five one-  
12 hundred-dollar bills --

13 A Well --

14 Q -- is that correct?

15 A -- if he was in the house, but he didn't come into the  
16 kitchen and introduce himself to me like they said he was

17 going to do and answer my questions.

18 Q Now, you heard Agent Hanford testify that he came into  
19 the house and asked you to tell where the five hundred-dollar  
20 bills were before the bills were discovered?

21 A Yes.

22 Q And would it be your testimony that Agent Hanford was  
23 lying when he said that?

24 A He may recall it different than me. If you --

25 Q And how long were the agents in your --

1 A Again, if you want me to give an opinion, I will.

2 Q I don't believe --

3 THE COURT: Let him finish, counsel.

4 MR. JOHNSON: I'm sorry.

5 THE WITNESS: Okay.

6 THE COURT: Get a little closer --

7 THE WITNESS: I get --

8 THE COURT: -- we're having a hard time hearing, Mr.

9 Bongiovanni.

10 THE WITNESS: I'm -- I hate to crouch over this.

11 Okay.

12 Again, I said if you let me give an explanation to

13 why I form an opinion, I'll be happy to tell you.

14 BY MR. JOHNSON:

15 Q How long were the agents in your residence?

16 A Probably 20 minutes.

17 Q Mr. Bongiovanni, when did you take office as a district

18 court judge?

19 A January 1991.

20 Q And after you became a judge, were you responsible for

21 both criminal and civil trials?

22 A Yes, I was.

23 Q And did you actually hear some civil trials?

24 A Certainly.

25 Q And were any of those bench trials?

1 A Sometimes, yes.

2 Q And when it's a bench trial you're both the trier of fact  
3 and the judge, is that correct?

4 A That's correct.

5 Q And it's your responsibility as a judge in those  
6 situations to listen to witnesses and evaluate their  
7 credibility, is that correct?

8 A That's correct.

9 Q You're also, in criminal cases, the person who ultimately  
10 sentences an individual, is that correct? If they're found  
11 guilty?

12 A That's correct.

13 Q And in the state system, that's different than in the  
14 federal system. You don't have sentencing guidelines in the  
15 state system, do you?

16 A No.

17 Q Unless a statute provided for a specific mandatory  
18 minimum sentence, you pretty much had discretion to set a  
19 sentence wherever you felt was appropriate for a defendant, is  
20 that correct?

21 A Yes, we'd follow -- usually follow recommendations from  
22 the Department of Parole and Probation.

23 Q But those are recommendations --

24 A But I didn't have to.

25 Q You didn't have to.

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1 A On occasion I didn't. Okay?

2 (Pause in the proceedings)

3 MR. JOHNSON: No other questions at this time, Your  
4 Honor.

5 THE COURT: Do you wish to examine?

6 MR. PITARO: Yes, do it in five minutes.

7 REDIRECT EXAMINATION

8 BY MR. PITARO:

9 Q What was your explanation?

10 A Regarding --

11 Q On the search?

12 MR. JOHNSON: Your Honor, he never gave the opinion.

13 MR. PITARO: You wouldn't ask him. He said if you  
14 ask me I'll give it.

15 BY MR. PITARO:

16 Q What's your opinion?

17 MR. JOHNSON: Your Honor, he never entered an  
18 opinion.

19 THE COURT: Opinion about what?

20 MR. PITARO: The search and Hanford.

21 THE COURT: Whether or not Hanford was lying, is  
22 that the question?

23 MR. PITARO: Right. He said if you'll give me the  
24 opportunity to render opinion, and I'm giving it.

25 THE COURT: You may respond.



1 THE WITNESS: They also testified that besides  
2 everything being cordial that they were so concerned about my  
3 wife. When I was arrested on this matter, they were -- they  
4 were --

5 MR. JOHNSON: Objection, Your Honor --

6 THE WITNESS: -- took me out of the house --

7 MR. JOHNSON: -- we're going now to a collateral  
8 issue here.

9 MR. PITARO: He's giving his opinion.

10 THE WITNESS: Well, this is my opinion.

11 MR. JOHNSON: We're talking about whether or not  
12 he's --

13 THE COURT: A separate time, aren't you?

14 MR. JOHNSON: That's correct, Your Honor.

15 THE COURT: Okay.

16 MR. PITARO: Go ahead.

17 THE COURT: Well, make it clear that it's --

18 BY MR. PITARO:

19 Q Make it clear, it's a separate time.

20 A On a separate time in April, 1996, the same people came  
21 to arrest me.

22 MR. JOHNSON: Your Honor, I think we need to have a  
23 sidebar here.

24 (Discussion at sidebar)

25 MR. JOHNSON: Your Honor, he never offered an

1 opinion that they were lying.

2 MR. PITARO: He kept -- oh, I'm sorry, are you done?

3 MR. JOHNSON: Yes.

4 MR. PITARO: Okay. He kept saying if you let me  
5 answer my opinion, and you said you'll have an opportunity if  
6 your attorney thinks it's appropriate and he never asked him  
7 his opinion.

8 THE COURT: Now he said, I don't know, you'll have  
9 to ask him but he would explain. I think it's okay for him to  
10 explain.

11 MR. JOHNSON: Your Honor --

12 MR. PITARO: Okay.

13 THE COURT: But I don't know that it's okay to go to  
14 a different --

15 MR. JOHNSON: That's what I'm saying. It's --

16 THE COURT: -- circumstance to decide what his  
17 opinion --

18 MR. PITARO: But that is what his --

19 THE COURT: -- was at the --

20 MR. PITARO: -- but if that's what his opinion's  
21 based upon he's entitled to say it.

22 MR. JOHNSON: Your Honor, what you're -- we're  
23 talking about here is one person is saying something totally  
24 opposite of what the other person is saying. The point is  
25 that he's -- has to be saying that they're lying because his

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1 testimony is so far off the other side --

2 THE COURT: Well, you can argue that.

3 MR. JOHNSON: -- to let him get into -- but to let  
4 him -- wait, I have no idea what he's going to do, but to let  
5 him get into an event that occurs a year or two later where  
6 he's going to say that they said this or they said that, I  
7 think we're just going to be getting into collateral matters  
8 'cause whatever he's going to say isn't what happened 'cause  
9 the agents were very concerned. We're going to have to call  
10 back agents to testify then as to what occurred during the  
11 arrest.

12 THE COURT: Well, you may have to do that.

13 MR. PITARO: Thank you.

14 MR. JOHNSON: But --

15 MS. SHOEMAKER: He still hasn't given an opinion as  
16 to whether he thinks they were lying.

17 MR. PITARO: That's what he's doing.

18 MS. SHOEMAKER: He hasn't said, yes, he thought they  
19 were lying.

20 THE COURT: Well, why don't you ask him if --

21 MR. PITARO: Well, he said --

22 THE COURT: Just -- no, he didn't.

23 MR. JOHNSON: He said I think their recollection is  
24 different than mine, and that's why I'm saying -- that's all  
25 he testified to as --

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1 THE COURT: Ask him if he has an opinion as to  
2 whether or not they lying. If he says, yes, ask him why.

3 MR. PITARO: Okay. Thank you.

4 (End of discussion at sidebar)

5 BY MR. PITARO:

6 Q Do you have an opinion whether these people were not  
7 telling the truth?

8 A Yes, I do.

9 Q Why?

10 A Because --

11 MR. JOHNSON: Well, what is the opinion, Your Honor?

12 THE COURT: What is the opinion?

13 MR. PITARO: Well, Your Honor, I'm doing exactly the  
14 way you asked me to do it.

15 THE COURT: What is the opinion?

16 MR. PITARO: Okay.

17 BY MR. PITARO:

18 Q What's the opinion?

19 A My opinion is they are not.

20 Q Why?

21 THE COURT: They're what? Your opinion is --

22 THE WITNESS: They are not.

23 THE COURT: They're not what?

24 THE WITNESS: They are not telling -- not telling  
25 the truth.

1 BY MR. PITARO:

2 Q Why?

3 A Because they said they were being cordial. When they  
4 come and did the search they were not. They said they have  
5 great concerns about my wife's illness. They were not. And  
6 when I was arrested on -- in April 1996, these same people  
7 came to my house, dragged me out of the house 'cause they had  
8 the TV cameras out there, and left my -- were going to leave  
9 my wife alone until I protested. They were going to leave her  
10 all alone at the house until I protested and then they started  
11 making phone calls. They didn't know what to do.

12 MR. JOHNSON: Objection, Your Honor, non-responsive.

13 MR. PITARO: No.

14 BY MR. PITARO:

15 Q Is that why you think they're in here not telling it --  
16 the truth?

17 A I don't know why they would lie about --

18 MR. JOHNSON: Objection, Your Honor.

19 THE WITNESS: -- such trivial things like that, that  
20 they were cordial on all this.

21 MR. PITARO: Okay.

22 THE COURT: Go ahead, Mr. Pitaro.

23 MR. PITARO: All right. I just got one or two  
24 questions.

25 //

1 BY MR. PITARO:

2 Q When you were talking about a converter box, what were  
3 you talking about?

4 A I was talking about my Prime Cable. I had -- bought a  
5 converter box from -- I think the store was Union Premiums at  
6 that time. It's not -- now out of business. And I would get  
7 some -- get the stations on there. Instead of renting every  
8 box from the company, you could buy your own and get the  
9 stations.

10 Q And now the TVs come with them built in, don't they?  
11 They're cable ready?

12 A Right.

13 Q Okay. Did you ever play golf at the Spanish Trails with  
14 this Sonny?

15 A Not with Sonny, no.

16 Q Okay. Let me ask you this, just to sum it all up. Did  
17 you take any bribes?

18 A I never took a bribe from anyone.

19 MR. PITARO: I have nothing else.

20 THE COURT: Recross.

21 RECROSS EXAMINATION

22 BY MR. JOHNSON:

23 Q Mr. Bongiovanni, when the agents arrested you, did they  
24 allow you to get dressed?

25 A Yeah. Yes, they did.

1 Q So they didn't just drag you out of the house, did they?

2 A Nicholson allowed me to -- I went to the door in my  
3 shorts --

4 THE COURT: Mr. Bongiovanni, listen --

5 THE WITNESS: Oh.

6 THE COURT: -- to the question --

7 THE WITNESS: Okay.

8 THE COURT: -- and respond.

9 BY MR. JOHNSON:

10 Q And you were allowed to put on your clothes, right? Were  
11 you allowed to put on your clothes?

12 A Yes, I was.

13 Q And you were allowed to put on a suit?

14 A I think I had a sport coat on. Yeah.

15 Q Sport coat.

16 A Okay.

17 Q And you were -- you walked out of the house on your own  
18 power, isn't that correct?

19 A Of course, handcuffed.

20 Q Now, at the time that the agents were there, you had a  
21 housekeeper coming in during the day, isn't that correct?

22 A Yes, but she hadn't arrived.

23 Q And the housekeeper was supposed to -- was one of the  
24 people responsible for watching your wife, is that correct?

25 A Yes, but she hadn't arrived yet.

1 Q And when the agents were there and you said that she was  
2 supposed to be there, didn't the agents say that we'll wait  
3 until she arrives?

4 A Eventually, after we had a conversation about it.

5 Q And didn't you tell the agents that the housekeeper would  
6 be there soon and there was no need to wait?

7 A Well, they sat me out in the car outside for about 20  
8 minutes with the newspaper cameras on me until she arrived.

9 Q Did the -- you tell the agents that --

10 A And I guess one of them was watching my wife during that  
11 period.

12 THE COURT: Wait just a minute. Did you what? Go  
13 ahead.

14 BY MR. JOHNSON:

15 Q Did you tell the agents that you could go ahead and leave  
16 because the housekeeper or the nursemaid would be there soon  
17 to watch your wife?

18 A Did I tell them to go?

19 Q Yes.

20 A No. They made me leave. They put me into the car  
21 outside.

22 Q And after the -- you told the agents that -- didn't the  
23 agents insist that they wait until someone showed up to be  
24 sure there was someone with your wife?

25 A No, the agents panicked, they didn't know what to do.



1 They were on their phones and everything. They didn't know  
2 what to do when that come up.

3 Q And no one left your wife alone, did they?

4 A No, not after I told them about it.

5 MR. JOHNSON: Nothing further, Your Honor.

6 MR. PITARO: I have nothing further.

7 THE COURT: You're excused.

8 THE WITNESS: Thank you.

9 THE COURT: Call your next witness.

10 MR. PITARO: Your Honor, we rest.

11 DEFENDANT RESTS

12 THE COURT: Okay. Any rebuttal?

13 MR. JOHNSON: Your Honor, one thing I want to get in  
14 is a stipulation between government and Mr. Pitaro that the  
15 date that Mr. Kutash's testimony occurred was on September  
16 3rd, 1997.

17 THE COURT: Okay.

18 MR. PITARO: That's fine.

19 THE COURT: Is that stipulated to, counsel?

20 MR. PITARO: Yes.

21 THE COURT: Any other stipulation? I think there's  
22 a stipulation relative to the date of the indictment that you  
23 had --

24 MR. JOHNSON: Yeah, I was --

25 MR. PITARO: Oh, yes. All right.

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

-000-

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CR-S-96-98-LDG-(RJJ)
	)	
v.	)	EMERGENCY MOTION TO
	)	DISQUALIFY JOHN FADGEN, ESQ.
GERARD BONGIOVANNI, et al.,	)	FROM REPRESENTING DEFENDANT
	)	BONGIOVANNI AT TRIAL
Defendants.	)	

COMES NOW the United States of America, by and through its attorneys, Kathryn E. Landreth, United States Attorney for the District of Nevada, Kurt P. Schulke, Chief of the Criminal Division, and Jane H. Shoemaker and Eric Johnson, Assistant United States Attorneys, Organized Crime Strike Force, and moves to disqualify John Fadgen, Esq. from representing defendant Bongiovanni at trial.

Introduction

In late June, 1997, the government learned of a number of serious, actual and potential conflicts of interest that will inevitably arise if Mr. Fadgen is permitted to continue representing

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1 Bongiovanni in this matter. These conflicts would infect the entire  
 2 trial process and: (1) deprive either Bongiovanni or the government  
 3 of a fair trial; (2) possibly render the verdicts unreliable; (3) risk  
 4 a reversal if the defendant is convicted; and (4) potentially  
 5 undermine the public's confidence in our adversarial judicial system  
 6 and the integrity of the bar. Many of these conflicts arise from the  
 7 recent discovery that Fadgen had an actual or constructive attorney-  
 8 client relationship with Paul Dottore, a former co-defendant and now  
 9 key government witness in the case, from as early as October 18, 1995  
 10 through the conclusion of Mr. Dottore's recent bank fraud trial in  
 11 March 1997. Other conflicts would inevitably arise from the same  
 12 facts, even if Fadgen's and Dottore's relationship were not  
 13 characterized as an attorney-client relationship.

14 The government has exhaustively researched the various issues  
 15 involved and firmly believes Fadgen should be disqualified in this  
 16 case. While some of the conflicts discussed in this motion could be  
 17 waived by Bongiovanni, the court is not required to accept a waiver,  
 18 and should not do so given the facts of this case. In any event,  
 19 other conflicts in this case cannot be waived or remedied except by  
 20 Fadgen's disqualification. Accordingly, the government is duty-bound  
 21 to move for Fadgen's disqualification from representing Bongiovanni  
 22 at trial. See Mannhalt v. Reed, 847 F.2d 576 (9th Cir. 1988) (when the  
 23 prosecution is aware that defense counsel has an actual or potential  
 24 conflict of interest, it has a duty to bring it to the trial court's  
 25 attention).

#### 26 STATEMENT OF FACTS

27 In or about October 1995, shortly after the FBI executed search  
 28

1 warrants at Bongiovanni's residence and Bongiovanni became aware of  
2 this investigation, Thomas (Tom) Pitaro, Esq., advised the government  
3 he was representing Bongiovanni in this matter. Thereafter, Mr.  
4 Pitaro spoke with government counsel about the case on at least one  
5 occasion prior to indictment. As seen below, Mr. Pitaro also took  
6 steps in beginning to prepare a defense for Bongiovanni prior to his  
7 indictment. Mr. Pitaro also represented Bongiovanni at his initial  
8 appearance in April 1996.

9       Shortly thereafter, Don Green, Esq., substituted in as counsel  
10 for Bongiovanni. Mr. Green continued to represent Bongiovanni through  
11 the discovery process and all pretrial litigation, and as far as the  
12 government is aware, was planning on representing Bongiovanni through  
13 the completion of this case.

14       On March 18, 1997, this court permitted Fadgen to substitute in  
15 as counsel for Bongiovanni. At the time, trial was set for April 7,  
16 1997. However, Fadgen had indicated in an affidavit he had been  
17 assisting in the preparation of Bongiovanni's defense since the return  
18 of the indictment and would not need to seek a continuance of the  
19 trial date. For various reasons unrelated to Fadgen's substitution,  
20 the trial was continued until August 25, 1997.

21       On May 1, 1997, co-defendant Paul Dottore entered a guilty plea  
22 in this case and agreed to testify for the government at trial.  
23 Dottore is the only witness with first hand knowledge who will testify  
24 at trial that Bongiovanni agreed to and did solicit and accept bribes  
25 from various individuals with the understanding they would influence  
26 his official actions in civil, criminal, and traffic matters pending  
27 in the Eighth Judicial District Court in Clark County, Nevada. Hence,  
28

1 Dottore is unquestionably the most important witness in the  
2 government's case.

3 On June 8, 1997, the Las Vegas Review-Journal reported an  
4 interview with Bongiovanni and Fadgen concerning this case. When  
5 Bongiovanni refused to comment about Dottore, Fadgen was quoted  
6 stating, "You'll hear all about Paul Dottore at the trial -- a couple  
7 days worth I'm sure." See Exhibit A, p.2. The government found the  
8 latter remark curious since Dottore's cross-examination lasted only  
9 two to three hours during his recent bank fraud trial. The government  
10 recognized Dottore could now be impeached with his conviction and his  
11 testimony from that case, and his plea agreement in this case, but  
12 still, it could not imagine the additional matters stretching  
13 Dottore's cross-examination into two or more days.

14 Then in mid-June 1997, the government received a copy of a sworn  
15 statement Dottore made concerning this case in Tom Pitaro's office on  
16 October 19, 1995, two days after the FBI first approached Dottore for  
17 his cooperation and then executed search warrants at Bongiovanni's  
18 residence. The "statement" was actually a 29 page exchange of  
19 questions and answers between Mr. Pitaro and Dottore. The  
20 government's attention was caught by reflections in the transcript  
21 that Fadgen was present and actually interrupted the proceeding for  
22 an off-the-record colloquy in the middle of one of Dottore's answers  
23 concerning an initial bribe payment of \$2,500 from Terry Salem. See  
24 Exhibit B at pp 1 and 11.

25 The combination of these two peculiarities -- Fadgen's statement  
26 to the press and his presence at and interruption of Dottore's sworn  
27 statement at Mr. Pitaro's office -- caused the government to reflect  
28

1 on another fact it learned in April or May 1997 when reviewing and  
2 correcting its transcripts for trial -- that Fadgen was intercepted  
3 over the telephone directly and in the background on various occasions  
4 at Peter Flangas' law office while the government was conducting  
5 electronic surveillance in this investigation in 1995. When that fact  
6 was learned in April or May 1997, it seemed innocuous. At that time,  
7 the government was aware that Fadgen worked for Flangas and the  
8 government had no information that Dottore and Fadgen had discussed  
9 the facts or legal strategies concerning the case.

10 After seeing Fadgen's participation at Dottore's sworn statement  
11 in October 1995, however, and his comment to the press implying that  
12 he had a wealth of impeachment material to use against Dottore of  
13 which the government was unaware, the government began to question  
14 what Fadgen's role has been in this case since October 1995.  
15 Specifically, the government started to investigate what relationship,  
16 if any, Fadgen has had with Dottore. The Government was particularly  
17 concerned that Fadgen was frequently at Peter Flangas' law office and  
18 Dottore had turned to Mr. Flangas for legal advice in this case on  
19 October 17, 1995, two days before Dottore gave his "sworn statement"  
20 at Mr. Pitaro's office accompanied by Fadgen, not Mr. Flangas.

21 Accordingly, the government requested the case agent to ask Mr.  
22 Dottore about: (1) Fadgen's presence and involvement at the sworn  
23 statement at Mr. Pitaro's office; (2) Fadgen's presence and  
24 involvement at Mr. Flangas' office; and (3) whether Fadgen had ever  
25 discussed the case with Dottore. The case agent spoke to Dottore on  
26 June 23 and again on June 25, 1997. A detailed report of Dottore's  
27 statements is attached hereto as Exhibit C. The essential facts are

28

1 summarized as follows:

2       On the night of October 17, 1995, after the FBI told Dottore that  
3 he and Bongiovanni were under investigation for judicial bribery and  
4 Dottore refused to cooperate, Dottore called Peter Flangas for legal  
5 advice. Flangas instructed Dottore to come over to his residence.  
6 Flangas and Dottore then drove to a "safe house" to talk. After  
7 Dottore explained what the FBI had told him, Flangas called  
8 Bongiovanni. When Flangas and Bongiovanni were through speaking (and  
9 Bongiovanni apparently had told Flangas that the FBI seized \$500 that  
10 Dottore had given him earlier that night), Flangas asked Dottore if  
11 the \$500 he had given Bongiovanni was a repayment of a corporate loan.  
12 Because the money was actually a partial payment of a bribe from Terry  
13 Salem and not a repayment of any loan, Dottore believed Flangas was  
14 suggesting a defense they could use and went along with it. Flangas  
15 then told Dottore to come by his office the next morning.

16       The following morning, October 18, 1995, Dottore met with Flangas  
17 at his law office. Fadgen was also present. Dottore believed Fadgen  
18 was a disbarred attorney, but knew he worked at Flangas' law office.

19 Flangas and Fadgen told Dottore they would get him an attorney and  
20 they called another unknown attorney who came to the office. That  
21 attorney told Dottore he would help him if he got arrested or  
22 indicted, gave him his business card, and left. Dottore never spoke  
23 to that attorney again. Fadgen then advised Dottore he should give  
24 a sworn statement the following day at attorney Tom Pitaro's office.  
25 Dottore said he respected Fadgen's and Flangas' advice. Accordingly,  
26 when Fadgen advised Dottore to give a sworn statement, Dottore  
27 believed it would be in his best interest to do so, and he agreed to

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1 it.

2 Dottore met with Fadgen at Flangas' office the next morning to  
3 discuss what Dottore should say before going over to Mr. Pitaro's  
4 office. Dottore said he felt he could speak in confidence to both  
5 Flangas and Fadgen. However, Fadgen never asked Dottore if he paid  
6 Bongiovanni a bribe and Dottore never told him the truth.<sup>1</sup> While  
7 discussing Dottore's story, Fadgen made various suggestions how  
8 Dottore should phrase his answers to Mr. Pitaro's questions.

9 Flangas did not attend the session at Pitaro's office. Instead,  
10 Fadgen accompanied Dottore to the "sworn statement." The only other  
11 persons present were Mr. Pitaro (who at that time represented  
12 Bongiovanni) and the stenographer. Pitaro asked all the questions and  
13 Dottore answered them as he and Fadgen had discussed. Dottore said  
14 at one point he interrupted Pitaro to ask Fadgen a question. Dottore  
15 said he asked Fadgen if it was all right to speak about the initial  
16 \$2,500 he had received from Salem and Fadgen said yes. They then  
17 resumed the "sworn statement."

18 Dottore said he and Fadgen continued to speak about the case on  
19 an almost daily basis from that day forward until he was convicted of  
20 bank fraud in March 1997. They usually met at least four times a week  
21 and when they could not meet they spoke over the telephone. They  
22 discussed various topics relating to the preparation of Dottore's and  
23 Bongiovanni's defense, including the status of the tape review, Mr.  
24 Green's representation of Bongiovanni, and Dottore's concerns about

25  
26 <sup>1</sup> It appears from the latter remark and Dottore's sworn statement  
27 that Dottore stuck to the story that Flangas had suggested two days  
earlier --that the \$500 he gave Bongiovanni was a repayment of a  
corporate loan, not a bribe payment.

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1 his defense. Dottore asked Fadgen various legal questions, including  
2 whether he should report the money he received from Salem on his tax  
3 return. Fadgen advised Dottore he had better do that. During one of  
4 their discussions, Dottore expressed concern to Fadgen regarding the  
5 confidentiality of their conversations if Fadgen were ever subpoenaed.  
6 Fadgen told Dottore he could not be called to testify against Dottore  
7 if Dottore retained him. Fadgen then advised Dottore to give him a  
8 dollar as a retainer. Dottore paid Fadgen a dollar right then as  
9 Fadgen advised.

10 Just before Dottore's indictment and arrest in this case and the  
11 bank fraud case, Fadgen told Dottore he would arrange an attorney for  
12 Dottore because Fadgen was still in a "disbarred" status at the time.<sup>2</sup>  
13 Fadgen set up a meeting between Dottore and John Momot, Esq. and Momot  
14 agreed to represent Dottore. Momot represented Dottore at his initial  
15 appearance on both indictments, but said he could not continue his  
16 representation because Dottore could not afford to pay him more than  
17 a \$1,000 retainer. Kevin Kelly, Esq. was then appointed to represent  
18 Dottore, but Mr. Kelly also could not continue representing Dottore.

19 Ultimately, James Erbeck, Esq. was appointed to represent Dottore.  
20 Mr. Erbeck represented Dottore at his bank fraud trial and still  
21 represents Dottore in this case.

22 Notwithstanding Mr. Erbeck's appointment to represent Dottore in  
23 this case and the bank fraud case, Fadgen continued to speak to  
24 Dottore on a daily basis about this case, and even his bank fraud  
25 case, without Mr. Erbeck's knowledge and consent, until Dottore was

26  
27 <sup>2</sup> Fadgen was actually on "disability / inactive status" from June  
28 through February 1997.

1 convicted of bank fraud. Dottore stated he trusted Fadgen's opinions  
 2 and advice and he had trouble contacting Mr. Erbeck, so he would rely  
 3 on Fadgen's advice even when it was contrary to Mr. Erbeck's advice.  
 4 For example, prior to and during the bank fraud trial, Dottore asked  
 5 Fadgen if Dottore should testify in that trial. Fadgen told Dottore  
 6 it would be a good idea so Dottore could give his side of the story.  
 7 Mr. Erbeck, on the other hand, advised Dottore to plead guilty and  
 8 make a deal with the government. When Dottore insisted on going to  
 9 trial, Mr. Erbeck advised him not to testify. However, Fadgen  
 10 continued to meet with Dottore during the bank fraud trial. During  
 11 these meetings Fadgen advised Dottore that he should testify and  
 12 discussed Dottore's proposed testimony. Fadgen would listen to  
 13 Dottore go over his proposed testimony and advise Dottore whether he  
 14 felt Dottore was properly phrasing his testimony or whether he felt  
 15 Dottore should phrase portions of his testimony another way.  
 16 Ultimately, Dottore testified over Mr. Erbeck's advice because Fadgen  
 17 advised him to testify.

18 Dottore said Fadgen told him on the first day of his bank fraud  
 19 trial that he (Fadgen) was going to replace Mr. Green as Bongiovanni's  
 20 lawyer in this case. Dottore also learned Fadgen had just opened his  
 21 own law office. Fadgen requested Dottore meet him at his office each  
 22 morning of the bank fraud trial. As indicated above, Dottore  
 23 continued to turn to Fadgen for legal advice since he trusted him and  
 24 had been able to speak to him about the case for a year and a half.  
 25 Consequently, Dottore met with Fadgen at his law office as requested  
 26 throughout his bank fraud trial.

27 Mr. Erbeck, when interviewed about this matter, said he thought  
 28

1 Dottore was reviewing tapes at Peter Flangas' law office prior to  
 2 trial and Mr. Flangas and Fadgen were present. Mr. Erbeck never gave  
 3 Fadgen permission to speak to Dottore about the pending cases and he  
 4 was not aware that Fadgen and Dottore were discussing Dottore's cases,  
 5 or that Fadgen was giving Dottore legal advice, much less advice  
 6 against that of Mr. Erbeck. Mr. Erbeck was not aware that Dottore met  
 7 with Fadgen outside of Mr. Flangas' office or that Dottore was meeting  
 8 with Fadgen during the bank fraud trial. Mr. Erbeck also confirmed  
 9 that he advised Dottore not to testify at his fraud trial. See  
 10 Exhibit D.

11 These facts not only raise a number of past and future ethical  
 12 violations which tarnish the integrity of the bar and our justice  
 13 system, but reveal numerous actual and serious potential conflicts of  
 14 interest which require or warrant Fadgen's disqualification.

15 ARGUMENT

16 A. General Principles of Law

17 The government recognizes a defendant who is financially able to  
 18 retain counsel generally has a right to counsel of his choice. See  
 19 e.g., Wheat v. United States, 486 U.S. 153, 164 (1988); United States  
 20 v. D'Amore, 56 F.3d 1202, 1204 (9th Cir. 1995); United States v.  
 21 Baker, 10 F.3d 1374, 1399 (9th Cir. 1993). However, that right is  
 22 qualified and may be overridden when the defendant's counsel of choice  
 23 has an actual conflict or even a serious potential conflict of  
 24 interest. Wheat, 486 U.S. at 164; Baker, 10 F.3d at 1399; United  
 25 States v. Kenney, 911 F.2d 315, 321 (9th Cir. 1990) (upholding district  
 26 court's rejection of waiver); accord United States v. Rewald, 889 F.2d  
 27 836 (9th Cir. 1989), cert. denied, 111 S. Ct. 64 (1990).

1 As the Supreme Court stated in Wheat, "while the right to select  
2 and be represented by one's preferred attorney is comprehended by the  
3 Sixth Amendment, the essential aim of the Amendment is to guarantee  
4 an effective advocate for each criminal defendant rather than to  
5 ensure that a defendant will inexorably be represented by the lawyer  
6 whom he prefers." Wheat, 486 U.S. at 159 (citations omitted). In  
7 addition, the courts have an interest in protecting the integrity of  
8 their proceedings and the public's perception of the system and the  
9 bar. Id. at 160-62. "Federal courts have an independent interest in  
10 ensuring that criminal trials are conducted within the ethical  
11 standards of the profession and that legal proceedings appear fair to  
12 all who observe them." Id. at 160. The courts also have an  
13 "institutional interest in the rendition of just verdicts," id., and  
14 a legitimate interest in having their judgments remain intact on  
15 appeal. Id. at 161. Thus, the right to counsel of choice is not  
16 absolute and must be weighed against these other legitimate interests.

17 The Supreme Court recognized in Wheat that it is notoriously  
18 difficult even for someone thoroughly familiar with criminal trials  
19 to predict the likelihood and dimensions of nascent conflicts of  
20 interest, id. at 162-63, and the Courts of Appeals will entertain  
21 ineffective assistance claims even when a defendant has waived his or  
22 her right to conflict-free counsel. Id. at 161-62. Accordingly, the  
23 Supreme Court held that a "district court must be allowed substantial  
24 latitude in refusing waivers of conflicts of interest not only in  
25 those rare cases where an actual conflict may be demonstrated before  
26 trial, but in the more common cases where a potential for conflict  
27 exists which may or may not burgeon into an actual conflict as the

28

1 trial progresses." Id. at 163.

2 Given the nature and number of the conflicts discussed below,  
3 this court has multiple reasons to disqualify Fadgen from further  
4 representing Bongiovanni in this case, even assuming Bongiovanni has  
5 a qualified right to counsel of his choice and is willing to waive his  
6 right to conflict-free counsel.<sup>3</sup>

7 B. Numerous Conflicts of Interest Arise From Fadgen's Prior  
8 Representation of Paul Dottore and Warrant His Disqualification

9 1. Fadgen had an attorney-client relationship  
10 with Dottore from October 1995 to March 1997<sup>4</sup>

11 Although Dottore never had a formal agreement setting forth his  
12 relationship with Fadgen; Fadgen was on inactive status with the bar  
13 and was not supposed to be representing clients; and Dottore  
14 eventually had another lawyer appointed to represent him in this and  
15 the bank fraud case, it is evident from the facts above Fadgen and  
16 Dottore had an attorney-client relationship under the law from as  
17 early as October 18, 1995 through March 1997.

18 Neither the Model Rules of Professional Conduct nor the law at  
19 large explicitly defines when an attorney-client relationship is  
20 formed in any given situation. Hazard & Hodes, The Law of Lawyering:  
21 A Handbook on the Model Rules of Professional Conduct, Vol. I (2d

22 <sup>3</sup> Since Fadgen is representing Bongiovanni on a pro bono basis,  
23 as was Mr. Green, and it is not known if Bongiovanni could afford to  
24 retain counsel, it is unclear whether Bongiovanni has a qualified  
25 right to counsel of his choice. A defendant who cannot afford to  
26 retain counsel only has a right to have counsel appointed, not counsel  
27 whom he would like to have appointed.

28 <sup>4</sup> The conflicts discussed in Argument B presuppose the existence  
of an attorney-client relationship between Fadgen and Paul Dottore.  
The conflicts discussed in Argument C are not dependent on an  
attorney-client relationship.

1 ed.), at 75 (1993 supp.). However, it is well-established an  
 2 attorney-client relationship is not dependent on the payment of a fee  
 3 or execution of a formal contract. See, e.g., United States v.  
 4 Costanzo, 625 F.2d 465, 468 (3d Cir. 1980); Westinghouse Elec. Corp.  
 5 v. Kerr-McGee Corp., 580 F.2d 1311, 1317 (7th Cir. 1978); Bennett  
 6 Silvershein Assoc. v. Furman, 776 F. Supp. 800, 803 (S.D.N.Y. 1991);  
 7 Pain Prevention Lab v. Electronic Waveform Labs, 657 F. Supp. 1486,  
 8 1495 (N.D. Ill. 1987). Whether an attorney-client relationship exists  
 9 is a question of fact and must be determined by looking at all the  
 10 circumstances. Hazard & Hodes, The Law of Lawyering: A Handbook on  
 11 the Model Rules of Professional Conduct, Vol. I (2d ed.), at 130 (1997  
 12 supp.) and 75 (1993 supp.).

13 The law looks primarily to the intentions of the parties, which  
 14 may be inferred from the circumstances, to determine whether the  
 15 parties have entered into an attorney-client relationship. Id. at  
 16 75 (1993 supp.) Courts have found an attorney-client relationship  
 17 present when the party divulging confidences and secrets to a lawyer  
 18 believed he was approaching the lawyer in his professional capacity  
 19 and he intended to seek his legal advice. See Costanzo, 625 F.2d at  
 20 469; Westinghouse Elec., 580 F.2d at 1319; Bennett Silvershein, 776  
 21 F. Supp. at 803; Pain Prevention Lab, 657 F. Supp. at 1495.

22 Courts generally give clients rather than lawyers the benefit of  
 23 the doubt on this threshold issue; to avoid being held to the duties  
 24 and professional standards of a lawyer, lawyers should be and often  
 25 are required to "clearly and affirmatively negate the existence of an  
 26 attorney-client relationship." See Hazard & Hodes, The Law of  
 27 Lawyering: A Handbook on the Model Rules of Professional Conduct, Vol.

1 I (2d ed.), at 76 n.1.1 (1993 supp.). The court should consider if  
 2 the lawyer stands to gain or lose by a finding that an attorney-client  
 3 relationship existed. Since the law generally puts the burden of  
 4 disclosure and clarification on the lawyer, it should work against the  
 5 attorney if he failed to clarify he was not representing an individual  
 6 who might have believed he was a client and the lawyer now wants to  
 7 deny an attorney-client relationship existed. See id. at 130 (1997  
 8 supp.). Similarly, courts using an estoppel theory may find an  
 9 attorney-client relationship implied by law where a lawyer has induced  
 10 expectations by his conduct. The rationale is that lawyers are  
 11 familiar with contractual principles and laymen are not, so lawyers  
 12 have a greater responsibility than laymen for determining whether an  
 13 attorney-client relationship has been established and act accordingly.  
 14 Id. at 76 (1993 supp.); see also Westinghouse Elec., 580 F.2d at 1319  
 15 n.14 (the deciding factor is what the prospective client thought when  
 16 he made the disclosure, not what the lawyer thought) (quoting R. Wise,  
 17 Legal Ethics (1970) at 284)).

18 The vast majority of the facts in this case weigh in favor of  
 19 finding an attorney-client relationship between Fadgen and Paul  
 20 Dottore. Dottore clearly turned to Peter Flangas in his professional  
 21 capacity for legal advice the night of October 17, 1995, after he had  
 22 been approached by the FBI and was advised he was a target of two  
 23 criminal investigations. Mr. Flangas, after speaking briefly with  
 24 Dottore and then Bongiovanni about the facts, told Dottore to come to  
 25 his office the first thing in the morning. Obviously when Dottore  
 26 went to Flangas' office on October 18, 1995 he was still looking to  
 27 Flangas in his professional capacity for legal advice and had every

1 reason to believe he had an attorney-client relationship with Flangas.

2 When Dottore met with Flangas that morning, Fadgen was also  
3 present and participated in their meeting. Fadgen worked for Peter  
4 Flangas in Flangas' law office at the time<sup>5</sup> and Dottore was aware of  
5 this relationship. Dottore was under the mistaken impression that  
6 Fadgen was a "disbarred" attorney; however, Dottore nevertheless knew  
7 Fadgen was an attorney. Dottore said he respected the legal advice  
8 of both Mr. Flangas and Fadgen, and for a year and a half thereafter  
9 he sought and followed Fadgen's legal advice in this and the related  
10 bank fraud case.

11 Fadgen began providing legal advice to Dottore concerning this  
12 case at the meeting between Dottore, Flangas and Fadgen on October 18,  
13 1995, when Fadgen advised Dottore to make a sworn statement at Tom  
14 Pitaro's office the following day. Fadgen then met with Dottore at  
15 Flangas' law office on October 19, 1995, to advise Dottore how he  
16 should answer questions during his sworn statement that day. Fadgen  
17 then accompanied Dottore to Mr. Pitaro's office where Mr. Pitaro, who  
18 was representing Bongiovanni, questioned Dottore about this case. At  
19 one point during the statement, Fadgen interrupted the proceeding and  
20 had an off-the-record discussion with Dottore where Dottore sought and  
21 Fadgen provided legal advice how Dottore should answer a particular  
22 question concerning this case.

23 Fadgen's actions on October 18 and 19, 1995, clearly manifest an  
24 attorney-client relationship with Dottore, whether he was improperly

25  
26 <sup>5</sup> During the hearing on his petition for reinstatement to active  
27 status in the Nevada Bar, Fadgen admitted that he was employed as a  
28 law clerk at Peter Flangas' office from 1994 through the time of the  
hearing in February 1997.



1 acting as a lawyer for Dottore, or acting as Flangas' law clerk/agent.  
 2 Fadgen's conduct would certainly give Dottore a reasonable basis to  
 3 believe he had an attorney-client relationship with Fadgen under  
 4 either or both of these theories.

5 From there, Fadgen continued to speak to Dottore about the case  
 6 on an almost daily basis for a year and a half, answering Dottore's  
 7 legal questions and concerns about his defense. At one point Dottore  
 8 wanted to confirm their discussions were confidential, and Fadgen  
 9 assured Dottore that as long as he (Fadgen) was retained, he could not  
 10 be called to testify against Dottore. Fadgen told Dottore to give him  
 11 a dollar as a retainer to assure Dottore their discussions were in  
 12 confidence. These facts confirm Fadgen and Dottore had an attorney-  
 13 client relationship, and that Dottore considered and both parties  
 14 treated their relationship as a professional and confidential one.

15 When Dottore was about to be indicted, Fadgen explained to  
 16 Dottore he could not represent him in court due to his status with the  
 17 Bar. However, even after Dottore was officially represented by other  
 18 counsel in the case, Dottore and Fadgen continued to discuss legal  
 19 strategies and the facts of this case, and Dottore's bank fraud case.  
 20 Dottore's counsel, Mr. Erbeck, did not give permission for these  
 21 discussions. Dottore continued to seek Fadgen's advise because he had  
 22 difficulty contacting his appointed counsel and because he had a long-  
 23 standing relationship with Fadgen and trusted his legal advice over  
 24 that of his appointed counsel. Fadgen and Dottore also discussed the  
 25 tape recorded evidence in the cases, and they discussed Mr. Green's  
 26 representation of Bongiovanni.

27 When Dottore's bank fraud trial began on March 17, 1997, Fadgen  
 28

1 told Dottore he was going to represent Bongiovanni in this trial  
 2 instead of Mr. Green. This was the first time Fadgen said anything  
 3 to Dottore that would even suggest he had someone else's interest at  
 4 heart or he was representing anyone else in this matter. But even  
 5 then, he did not tell Dottore he should stop talking to Dottore about  
 6 this case or the bank fraud case or that Dottore's interests and  
 7 Bongiovanni's interests might conflict. Fadgen never told Dottore he  
 8 should not be talking to Dottore about this case or the bank fraud  
 9 case without Mr. Erbeck's consent. See Nevada Supreme Court Rule 182  
 10 (prohibiting lawyers from contacting a represent party without their  
 11 lawyer's consent). On the contrary, Fadgen led Dottore to believe he  
 12 was still looking out for Dottore's best interest and he was willing  
 13 to continue advising Dottore in both cases. Indeed, Fadgen told  
 14 Dottore he had opened his own law office and Dottore should meet him  
 15 there each morning before he went to court on his bank fraud case and  
 16 continue discussing the progress of the trial. Accordingly, Dottore  
 17 continued to trust Fadgen and meet with him for legal advice until he  
 18 was convicted on March 22, 1997.

19 Fadgen's conduct, both in individual instances discussed above,  
 20 and certainly overall, clearly justified Dottore's belief he had a  
 21 confidential, professional relationship with Fadgen, and would readily  
 22 support a finding that Dottore and Fadgen had an attorney-client  
 23 relationship under the law. Indeed, the facts of the Costanzo case,  
 24 supra, are remarkably similar to the facts in this case and support  
 25 this conclusion. In Costanzo, the defendant was represented at trial  
 26 by one attorney, but he did not trust that attorney's advice. The  
 27 defendant had a long-standing relationship with another attorney,

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1 Paglianite, and decided to go to him for advice and assistance behind  
2 his trial attorney's back. The defendant alleged that he and  
3 Paglianite discussed trial strategy and tactics when he later asserted  
4 that they had an attorney-client relationship. The Third Circuit  
5 found, if proven, the allegations could establish an attorney-client  
6 relationship. Costanzo, 625 F.2d at 468-69.

7 The facts in this case are even more compelling since Fadgen was  
8 providing advice and assistance to Dottore in this case long before  
9 Mr. Erbeck or any other attorney was appointed to represent Dottore;  
10 he appeared on Dottore's behalf at the sworn statement at Mr. Pitaro's  
11 office; and he met with Dottore, discussed the case, and provided  
12 legal advice on an almost daily basis for a year and a half. There  
13 is no reason to believe Dottore would have discussed any of this with  
14 Fadgen or relied on his advice but for: (1) his knowledge that Fadgen  
15 was an attorney who worked in Peter Flangas' office; (2) Fadgen's  
16 conduct and assurances leading Dottore to believe they had a  
17 confidential relationship; and (3) Fadgen's apparent willingness to  
18 render him free legal advice and assistance.

19 Fadgen should not be able to avoid his legal duties and ethical  
20 obligations to Dottore on the grounds: (1) Dottore later had another  
21 lawyer; (2) Fadgen was not supposed to be practicing law, or (3) they  
22 did not have a formal, written contract.<sup>6</sup> The facts dictate a finding

23  
24 <sup>6</sup> Even if Fadgen considered himself to be assisting Bongiovanni  
25 from the outset, he should not be permitted to use that fact to negate  
26 an attorney-client relationship with Dottore. First, an attorney-  
27 client relationship with Bongiovanni does not, in itself, preclude  
28 Fadgen from representing Dottore as well. In addition, if Fadgen had  
considered Dottore to be unrepresented prior to his indictment, Nevada  
Supreme Court Rule 183 would impose an obligation on Fadgen to make  
his role clear to Dottore. That Rule states: "In dealing on behalf

1 they had an attorney-client relationship.

2 2. Numerous Conflicts Arise From Fadgen's Prior Representation  
 3 Now that Dottore is a Key Government Witness

4 Fadgen's former representation of Dottore will inevitably lead  
 5 to numerous, actual conflicts of interest if Fadgen is permitted to  
 6 represent Bongiovanni at trial. The fact that Fadgen no longer  
 7 represents Dottore clearly does not eviscerate his legal and ethical  
 8 responsibilities to his former client. If it did, clients would be  
 9 reluctant to confide completely in their attorneys and the public  
 10 would lose confidence in the integrity of the bar. See In re Corn  
 11 Derivatives Antitrust Litigation, 748 F.2d 157, 161 (3d Cir. 1984).  
 12 Fadgen still owes Dottore a duty of loyalty. He still has an  
 13 obligation to maintain Dottore's confidences and not use them against  
 14 Dottore. See Nevada Supreme Court Rules 156 and 159. However, now  
 15 that Fadgen represents Bongiovanni, he also owes Bongiovanni a duty  
 16 of loyalty. If he represents Bongiovanni at trial, Fadgen will have  
 17 a duty to present a vigorous defense on Bongiovanni's behalf.  
 18 Providing a vigorous defense and the effective assistance of counsel  
 19 Bongiovanni is entitled to under the Sixth Amendment will require  
 20 Fadgen to aggressively and thoroughly cross-examine Dottore,

21  
 22 of a client with a person who is not represented by counsel, a lawyer  
 23 shall not state or imply that the lawyer is disinterested. When the  
 24 lawyer knows or reasonably should know that the unrepresented person  
 25 misunderstands the lawyer's role in the matter, the lawyer shall make  
 26 reasonable efforts to correct the misunderstanding." Finally, even  
 27 if Fadgen were assisting with Bongiovanni's defense from the outset  
 28 but he exchanged information with and provided assistance to Dottore  
 as a co-defendant, e.g., as in a "joint defense" or "defense camp"  
 situation, Fadgen may still owe Dottore fiduciary duties that would  
 preclude him from disclosing or using the information against Dottore  
 even if Dottore were not his client. See Westinghouse Elec., 580 F.2d  
 at 1319-1320 and cases cited therein.

1 particularly since Dottore is a key government witness -- indeed, the  
2 most critical witness -- against Bongiovanni in this case. Fadgen's  
3 divided loyalties and duties between Dottore and Bongiovanni clash,  
4 because the information Fadgen gained from his representation of  
5 Dottore should but cannot be used against Dottore when Dottore  
6 testifies for the government.

7 These conflicts are inherent in successive representation of  
8 persons with adverse interests, and have repeatedly been cited as  
9 grounds for disqualifying defense counsel who formerly represented  
10 important government witnesses in the same or a substantially related  
11 matter. See, e.g., United States v. Baker, 10 F.3d 1374, 1399 (9th  
12 Cir. 1993) (attorney disqualified because he could not cross-examine  
13 former client without possibility of misusing confidential  
14 information); United States v. Vasquez, 995 F.2d 40, 42 (5th Cir.  
15 1993) (defense attorney disqualified in part because of potential for  
16 serious conflict created when cross-examining former client); United  
17 States v. Moscone, 927 F.2d 742, 747-50 (3d Cir.), cert. denied, 501  
18 U.S. 1211 (1991) (attorney disqualified because government witness  
19 could not be cross-examined without revealing confidential  
20 information); Thomas v. Municipal Court of Antelope Valley, 878 F.2d  
21 285, 289-90 (9th Cir. 1989) (potential for disclosure of confidential  
22 communications during cross-examination creates conflict of interest);  
23 United States v. Winkle, 722 F.2d 605, 610 (10th Cir. 1983) (conflict  
24 arises where defense counsel is unable to cross-examine government  
25 witness who was former client); United States v. Provenzano, 620 F.2d  
26 985, 1005 (3d Cir. 1980) (defense attorney disqualified because he  
27 "could not effectively cross-examine his former client ... now an  
28

1 important prosecution witness -- without intruding into matters  
 2 protected by the attorney-client privilege"). As one court flatly  
 3 put it, "[i]f the conflict could cause the defense attorney  
 4 improperly to use privileged communications in cross-examination, then  
 5 disqualification is appropriate." United States v. Ross, 33 F.3d  
 6 1507, 1523 (11th Cir. 1994) (disqualifying defense attorney whose law  
 7 firm formerly represented government witness).

8 In this case there are particularly compelling reasons to believe  
 9 Fadgen might use confidential information he learned from Dottore when  
 10 cross-examining him at trial. The mere fact they met and discussed  
 11 the case on a daily basis for a year and a half would make it  
 12 difficult or impossible to separate what Fadgen learned or heard from  
 13 Dottore in his confidential communications and what he learned about  
 14 the case elsewhere. In addition, Dottore stated he never told Fadgen  
 15 the truth about the bribe payments to Bongiovanni. Accordingly, when  
 16 Dottore testifies at trial that the money he gave Bongiovanni was a  
 17 bribe payment, contrary to whatever Dottore told Fadgen when they  
 18 discussed the case, Fadgen will have a duty to Bongiovanni to raise

19 Dottore's prior inconsistent statements. Perhaps most telling is  
 20 Fadgen's statement to the press that he is sure Dottore's cross-  
 21 examination will last at least two days, far longer than Dottore's  
 22 cross-examination lasted at his recent bank fraud trial. It is  
 23 obvious Fadgen plans to spend a great deal of time attacking Dottore  
 24 as a liar when defending Bongiovanni, and to do that, it will be  
 25 impossible to ensure that Fadgen does not use any of Dottore's  
 26 confidential statements to him.

27 In that respect, this case is remarkably similar to Thomas v.  
 28

1 Municipal Court, 878 F.2d 285 (9th Cir. 1989). In Thomas, the  
2 district court disqualified defense counsel when he revealed during  
3 his opening statement that he had previously represented the victim  
4 in the case. The lawyer admitted that his primary objective in the  
5 trial would be to "try and prove that [the victim] was a liar." Id.  
6 at 290. The lawyer suggested he could avoid any conflict of interest  
7 by curtailing his cross-examination of the victim. The district court  
8 disagreed, however, and declared a mistrial. In affirming the  
9 decision, the Ninth Circuit held that defense counsel's ethical  
10 dilemma would have jeopardized the defendant's right to counsel. In  
11 fact, the Ninth Circuit found that reversible error would have been  
12 built in because the defendant would not have had effective conflict-  
13 free representation had the lawyer been able to continue his  
14 representation of the defendant throughout the trial. Id. That case  
15 alone would warrant disqualification in this case.

16 Similarly, in United States v. Stites, 56 F.3d 1020 (9th Cir.  
17 1995), the Ninth Circuit rejected a lawyer's argument that she could  
18 avoid a conflict of interest in her successive representation of two  
19 clients with adverse interests by having another lawyer cross-examine  
20 the former client at her new client's trial. In Stites, the lawyer  
21 originally represented the main suspect in an investigation until he  
22 fled. Then the lawyer represented the main suspect's sister, who  
23 ultimately entered a guilty plea and agreed to testify against her  
24 brother, the lawyer's original client. During the plea proceeding,  
25 the lawyer characterized the woman's brother as the mastermind, a  
26 thief and a fraud, and one of the biggest con artists she had ever  
27 come across. Despite this, the brother re-sought the lawyer's

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1 representation after he was arrested, and the lawyer agreed to resume  
2 her representation of him. The district court found the lawyer's  
3 successive representation of the brother and sister created an actual  
4 conflict of interest that could not be waived or protected with a  
5 taint barrier, such as having another lawyer cross-examine the sister  
6 at trial. The Ninth Circuit agreed. *Id.* at 1022-26.

7 There is another, unique reason to believe that Fadgen might use  
8 or reveal Dottore's confidences when cross-examining him at trial.  
9 It cannot be overlooked that Fadgen is just returning to the  
10 authorized practice of law after many years out of the courtroom, and  
11 his representation of Bongiovanni in this trial would undoubtedly gain  
12 him a lot of publicity. Between his zeal to represent Bongiovanni,  
13 his admitted close friend, and his desire to make a strong comeback  
14 in the courtroom and regenerate his solo practice, it would be very  
15 tempting at the least to compromise his duties to Dottore to further  
16 Bongiovanni's and his own interests, even if unintentionally.

17 Fadgen's representation of Bongiovanni at trial would not only  
18 lead to the inevitable conflicts discussed above, but would also

19 violate Nevada Supreme Court Rule 159. That Rule provides:

20 **Conflict of interest: Former client.** A lawyer  
21 who has formerly represented a client in a matter  
shall not thereafter:

22 1. Represent another person in the same or a  
23 substantially related matter in which that  
24 person's interests are materially adverse to the  
interests of the former client unless the former  
client consents, preferably in writing, after  
consultation; or

25 2. Use information relating to the  
26 representation to the disadvantage of the former  
27 client except as Rule 156 would permit with  
respect to a client [not applicable here] or when

28



1 the information has become generally known.

2 The government notes the Nevada Supreme Court has relied on this Rule  
3 to order disqualification of defense counsel. Koza v. Eighth Judicial  
4 Dist. Court, 99 Nev. 535 (1983).

5 As implied in Rule 159 and discussed in the above cases and  
6 others, divided loyalty owed to a former client and a current client  
7 constitutes an actual conflict of interest. See Fitzpatrick v.  
8 McCormick, 869 F.2d 1247 (9th Cir. 1989). When an actual conflict of  
9 interest exists, prejudice is presumed and a defendant's conviction  
10 will be reversed. Id. Reversal will be required whether or not the  
11 defendant can show prejudice if he can show that an actual conflict  
12 "adversely affected" his lawyer's performance. United States v.  
13 Allen, 831 F.2d 1487 (9th Cir. 1987). Accordingly, the Supreme Court  
14 and Ninth Circuit have said "there can be no doubt that [the district  
15 court] may decline a proffer of waiver" where an actual conflict  
16 exists. Stites, 56 F.3d at 1025 (quoting Wheat, 486 U.S. at 162).

17 Other courts have said that when an attorney is faced with  
18 divided loyalties, disqualification is "clearly required" on that  
19 basis alone. See Brennan's, Inc. v. Brennan's Restaurants, Inc., 590  
20 F.2d 168, 171 n.3 (5th Cir. 1979). In addition, courts generally will  
21 disqualify counsel in such situations where confidences might be  
22 involved, to protect communications between attorneys and their  
23 clients. Richardson v. Hamilton Int'l Corp., 469 F.2d 1382, 1385 (3d  
24 Cir. 1972) (emphasis in original). Finally, some courts have noted  
25 that when an attorney represents an interest adverse to that of a  
26 former client in a matter substantially related to the subject of the  
27 prior representation, there is an appearance of impropriety which

1 violates Canon 9 of the ABA Code of Professional Responsibility and  
2 undermines public confidence in our legal system as well. See  
3 Brennan's, Inc., 590 F.2d at 172, 173.

4 Thus, there are numerous reasons for disqualifying counsel who  
5 attempt to represent clients with adverse interests to former clients  
6 in the same or a substantially related matter, and the reasons for  
7 disqualifying the lawyer are even greater when the former client is  
8 now going to be a key witness against the new client at trial, as  
9 here.' Fadgen's disqualification is clearly warranted here.

10 C. Whether or Not Fadgen and Dottore had an Attorney-  
11 Client Relationship, Fadgen Must be Disqualified  
Under the Advocate-Witness Prohibition

12 As indicated above, Fadgen owes Bongiovanni a duty of loyalty and  
13 zealous advocacy independent of his relationship with Paul Dottore.  
14 Those duties would not only require Fadgen to vigorously cross-examine  
15 Dottore with any permissible areas of impeachment known to him,  
16 including Dottore's prior inconsistent statements to him, but would  
17 also require Fadgen to attack Dottore in his opening statement and  
18 closing argument. To do so would not only violate Fadgen's duty not  
19 to reveal or use Dottore's confidences against him and his duty of  
20 loyalty to Dottore, assuming they had an attorney-client relationship,  
21

22 Theoretically, depending on what Fadgen knows or has to say,  
23 it is also possible Fadgen's defense of Bongiovanni could harm Dottore  
24 in other ways. For example, he could potentially expose Dottore to  
25 perjury charges, or cause the government to renege on the plea  
26 agreement with Dottore if the government felt Dottore had breached his  
27 agreement to be fully truthful and cooperative with the government,  
28 or cause the government to determine Dottore is not entitled to a  
motion for a downward departure under 5K1.1 of the Sentencing  
Guidelines. See, e.g., Moscony, 927 F.2d at 750 (disqualifying  
attorney after noting danger of cross-examining former client who is  
under immunity agreement).

1 but would force Fadgen, if he provided effective assistance of counsel  
2 and a zealous, vigorous defense to Bongiovanni, to reveal or suggest  
3 his personal knowledge of the same by virtue of his relationship with  
4 Dottore from October 18, 1995 through March 1997. In that sense,  
5 Fadgen would become an unsworn witness for Bongiovanni which would  
6 violate Nevada Supreme Court Rule 178, prohibiting lawyers from  
7 serving as advocate and witness in the same proceeding except in  
8 limited circumstances. Fadgen's role as an unsworn witness would also  
9 harm the government, the integrity and vitality of the verdict, and  
10 the public's perception of the fairness of the proceeding and the  
11 integrity of the system and the bar, as discussed further below.

12 In addition, since Fadgen has personal knowledge of Dottore's  
13 statements, was present at his "sworn statement" at Mr. Pitaro's  
14 office, advised Dottore to testify not only there but in his bank  
15 fraud trial, and suggested how Dottore should or should not testify,  
16 Fadgen's duties to Bongiovanni could very well require him to take the  
17 stand in Bongiovanni's defense to establish Dottore's prior  
18 inconsistent statements and dispel any impression left upon the jury  
19 that Fadgen was responsible for Dottore's testimony at Mr. Pitaro's  
20 office and his bank fraud trial.<sup>8</sup> See, e.g., United States v.  
21 Iorizzo, 786 F.2d 52, 57 (2d Cir. 1986). However, as indicated above,

22  
23 <sup>8</sup> As the court will recall, Dottore's testimony at the bank  
24 fraud trial was not limited to the bank fraud itself, but also  
25 involved allegations in this indictment concerning the Terry Salem  
26 bribe. For instance, Dottore testified he was only ripping Salem off  
27 when he told him that Bongiovanni would fix his state case, and that  
28 he never really discussed any bribe with Bongiovanni. He also  
attempted to give innocent explanations to electronic surveillance  
evidence Dottore will now say was evidence of the bribe payments.  
Dottore's sworn statement at Pitaro's office also denies that  
Bongiovanni was aware of any bribe.

1 Fadgen would be precluded from testifying at the trial under Nevada  
2 Supreme Court Rule 178 if he is representing Bongiovanni as an  
3 advocate, even if he did not have an attorney-client relationship with  
4 Dottore and would otherwise be permitted to be a witness for  
5 Bongiovanni.<sup>9</sup>

6 These issues have been addressed in numerous cases and the courts  
7 have consistently held that disqualification is not only appropriate  
8 but generally required where the lawyer is personally involved with  
9 the facts of the case and should or will be a sworn or unsworn witness  
10 for the defense. United States v. Gotti, 771 F. Supp. 552 (E.D.N.Y.  
11 1991), aff'd United States v. Locascio, 6 F.3d 924 (2d Cir. 1993).

12 In Locascio, the Second Circuit found that the district court's  
13

14 " Nevada Supreme Court Rule 178 provides "[a] lawyer shall not  
15 act as advocate at a trial in which the lawyer is likely to be a  
16 necessary witness" except in three situations, only one of which could  
17 even arguably apply in this context -- where disqualification could  
18 work a substantial hardship on the client. The court should not find  
19 the latter exception applicable here for several reasons. First,  
20 Fadgen has only been counsel of record for the past four months.  
21 Bongiovanni was previously represented by two other counsel in the  
22 case, each of whom represented Bongiovanni far longer. Second, this  
23 is not the typical case where the client has exhausted all of his  
24 funds on the services of the lawyer being disqualified. Fadgen has  
25 been representing Bongiovanni on a pro bono basis, as did Mr. Green,  
26 and possibly Mr. Pitaro. If Bongiovanni cannot afford new counsel,  
27 or no one else is willing to represent him pro bono, counsel can be  
28 appointed for him. Finally, trial is still over a month away, the  
government has already identified all of the tapes it will be using  
at trial and provided final transcripts of the same, and new counsel  
could still prepare adequately before trial is currently set to  
commence, particularly if the defendant's counsel and former counsel  
brought new counsel up to speed on the case. (Of course Fadgen could  
not reveal confidences or adverse information about Dottore if an  
attorney client relationship between them is found.) Finally,  
considering the prejudice to the government and the court and the  
appearances of impropriety if Fadgen were permitted to represent  
Bongiovanni at trial, discussed infra, the court should find any  
prejudice to Bongiovanni, even if a continuance is necessary, to be  
outweighed in this case.

1 disqualification of John Gotti's counsel of choice was particularly  
 2 warranted since there was a "possibility that Cutler [Gotti's chosen  
 3 lawyer] would function in his representational capacity as an unsworn  
 4 witness for Gotti." Locascio, 6 F.3d at 933. The court noted that  
 5 "[a]n attorney acts as an unsworn witness when his relationship to his  
 6 client results in his having first-hand knowledge of the events  
 7 presented at trial." Id. The court recognized that a lawyer in that  
 8 position can give his client an unfair advantage since the attorney  
 9 can subtly impart to the jury his first-hand knowledge of the events  
 10 without having to swear an oath or be subject to cross-examination.  
 11 Id. The court then noted the important distinction between this type  
 12 of conflict and conflicts that are detrimental to the accused and can  
 13 therefore be waived by the accused, conceivably alleviating the  
 14 constitutional defect. "[H]ere, the detriment is to the government,  
 15 since the defendant gains an unfair advantage, and to the court, since  
 16 the fact finding process is impaired." Id. At 933-34. "Waiver by the  
 17 defendant is ineffective in curing the impropriety in such situations,  
 18 since he is not the party prejudiced." Id. at 934; accord Iorizzo, 786  
 19 F.2d at 57; United States v. McKeon, 738 F.2d 26, 35 (2d Cir. 1984);  
 20 United States v. Falzone, 766 F. Supp. 1265, 1275-76.

21 Since: (1) Fadgen was personally involved in Dottore's decision  
 22 to provide a sworn statement at Mr. Pitaro's office and to testify at  
 23 his bank fraud trial; (2) Fadgen may have been partially responsible  
 24 for the content of Dottore's statement and testimony; and (3) Fadgen  
 25 has first-hand knowledge of Dottore's statements concerning this case  
 26 from October 18, 1995 through mid-March 1997, an actual conflict will  
 27 still arise, or at a minimum there is a serious potential the conflict

1 will arise, whether or not Fadgen and Dottore had an attorney-client  
 2 relationship. Clearly, if Fadgen continues as Bongiovanni's advocate,  
 3 he cannot take the stand on Bongiovanni's behalf, whether or not he  
 4 had an attorney-client relationship with Dottore. However, Fadgen's  
 5 duties to Bongiovanni under the Sixth Amendment and other ethical  
 6 rules may require him to testify at trial. Moreover, and of  
 7 particular concern to the government, Fadgen's relationship with  
 8 Dottore and his personal knowledge of and involvement with the facts  
 9 discussed above will be conveyed to the jury, even if subtly, during  
 10 Fadgen's cross-examination of Dottore and his opening statement and  
 11 closing argument. This is what is referred to as "unsworn testimony."  
 12 If the jury views Fadgen as possessing special knowledge of Dottore's  
 13 credibility or the case, the jury may accord Fadgen's arguments and  
 14 impeachment undue weight. This would give Bongiovanni an unfair  
 15 advantage, prejudice the government, and potentially render the  
 16 verdicts unreliable.

17 As seen in the cases above, the advocate-witness conflict cannot  
 18 be waived by Bongiovanni. Moreover, the court should not accept a  
 19 waiver of the other conflicts discussed in this motion on the facts  
 20 present in this case. If Fadgen is permitted to represent Bongiovanni  
 21 at trial, the government's case may be irreparably harmed, and if  
 22 Bongiovanni is convicted, he will surely raise these conflicts and

23 . . .  
 24 . . .  
 25 . . .  
 26 . . .  
 27 . . .

28

1 ineffective assistance of counsel on appeal and/or in habeas  
2 proceedings, threatening the verdict indefinitely.

3 Fadgen should be disqualified in these proceedings.

4 DATED this 23rd day of July, 1997.

5 Respectfully submitted,

6 KATHRYN E. LANDRETH  
7 United States Attorney

8 *Jane Shoemaker*  
9 JANE H. SHOEMAKER  
10 Assistant U.S. Attorney  
11 Organized Crime Strike Force

12 *Eric Johnson*  
13 ERIC JOHNSON  
14 Assistant U.S. Attorney  
15 Organized Crime Strike Force

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

-oOo-

UNITED STATES OF AMERICA, ) CR-S-96-98-LDG-(RJJ)  
 )  
Plaintiff, )  
 )  
v. )  
 )  
GERARD BONGIOVANNI, et al., )  
 )  
Defendants. )

CERTIFICATE OF SERVICE

I, Kris Dykes, hereby certify that I am an employee of the Organized Crime Strike Force, United States Department of Justice, and that on this day I served a copy of the following:

GOVERNMENT'S EMERGENCY MOTION TO DISQUALIFY  
JOHN FADGEN, ESQ., FROM REPRESENTING DEFENDANT  
BONGIOVANNI AT TRIAL

upon the following:

John Fadgen, Esq.  
616 So. Third Street  
Las Vegas, Nevada 89101

Oscar Goodman, Esq.  
520 So. 4th Street  
Las Vegas, Nevada 89101

by placing said Emergency Motion in the United States Mail, envelope clearly addressed and postage prepaid.

DATED: July 24, 1997

*Kris S. Dykes*  
KRIS DYKES



FD-350 (Rev 5-8-81)

(Mount Clipping in Space Below)

## From 1B

Fadgen took over the case about three months ago from attorney Donald Groen, who also provided his services for free.

Bongiovanni said other lawyers wanted to charge him \$150,000 to \$200,000 for the job, but he could not afford those fees.

"I haven't made any money since January," he said.

Bongiovanni lost his reelection bid in the September primary, which pitted him against four challengers. He said he handled a few cases as a lawyer after that but decided in January to focus all his spare time on his own case.

A federal grand jury indicted Bongiovanni in April 1986 on several charges, including racketeering and wire fraud. Prosecutors claim he accepted bribes in exchange for judicial favors.

The indictment also named Las Vegas show producer Jeff Kutash and Bongiovanni's long-time friend Paul Dottore. Dottore, 53, pleaded guilty last month to a racketeering charge and agreed to testify for the government at Bongiovanni's trial.

As part of the plea bargain, Dottore admitted he solicited bribes for Bongiovanni beginning as early as 1981. Dottore was convicted in March of conspiracy and bank fraud charges in a related case.

Dottore's sentencing in both cases is scheduled for July 25. The trial for Bongiovanni and Kutash, which is expected to last several weeks, is scheduled to begin Aug. 25 in U.S. District Judge Lloyd George's courtroom.

Bongiovanni declined to answer questions about Dottore, his former golfing buddy. Fadgen responded to the inquiries by saying, "You'll hear all about Paul Dottore at the trial — a couple days' worth I'm sure."

As part of Dottore's plea bargain, he admitted receiving \$1,000 on Oct. 17, 1985, from Terry Salem, who participated with him in the bank fraud and later became a government informant. Dottore admitted he gave \$500 of that money to Bongiovanni on Salem's behalf as payment toward a bribe.

According to an FBI affidavit, Salem had paid Dottore in marked bills. Five of the marked bills were found in the judge's back pocket during the search of his home, according to the affidavit.

The indictment accuses Kutash, 52, of conspiring to funnel money to Bongiovanni in a civil case.

Much of the evidence in Bongiovanni's corruption case came from wiretaps placed on phones in his chambers and home, and in Dottore's home. The recorded conversations fill 1,018 cassette tapes.

Bongiovanni said he spent about eight months listening to each of the 90-minute tapes. Prosecutors since have narrowed the number of tapes they plan to present at trial to about 200.

"We made notes on all the tapes, and we concentrate now on the tapes the government says they're going to use," Bongiovanni said.

He said he and Fadgen are "trying to figure out who's talking and what they're talking about."

"We didn't know half the people in the conversations," Bongiovanni said.

The former judge said he spends each weekday in his lawyer's office at Casino Center Boulevard and Garces Avenue. The tapes and documents from his case fill space in several rooms there.

"On the weekends I bring stuff home, and I work there," Bongiovanni said.

He said he continues to attend St. Viator Catholic Church every Sunday.

The former judge, who has not spoken publicly during the past year, granted a request for an interview after Fadgen urged him to share his story. He agreed to discuss personal matters, including his wife's illness, but said he would not talk about specific evidence related to his criminal

(Indicate page, name of newspaper, city and state)

Page 1B, 8B  
Las Vegas Review Journal

Las Vegas, Nevada

Date: 06/08/87  
Edition: xFinal

Title: EX-JUDGE READY  
TO START OVER

Character:

or

Classification: 281A-LV-23545

Submitting Office:

LAS VEGAS

Indexing:

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Bongiovanni, who has maintained his innocence from the beginning, said his legal troubles have created hardships for his 18-year-old son, Gerard Jr., and 16-year-old daughter, Angela.

"They coped a lot with my wife while she was sick and now this," he said. "But they're good kids. They don't get into any trouble."

Bongiovanni said he has been the sole caretaker for his children since his wife, Marilyn, became bedridden in the late 1980s. She had suffered from juvenile diabetes since the age of 11 and later in her life was diagnosed with multiple sclerosis.

"Between the two of them, she had a rough life," he said.

The couple met in Las Vegas and were married in January 1976. Bongiovanni said his wife was diagnosed with multiple

FD-350 (Rev 5-8-81)

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# Ex-judge ready to start over

□ As he prepares for his trial, Gerard Bongiovanni maintains his innocence and remembers his wife.

By Carl Gear  
Review Journal

Everything changed for District Judge Gerard Bongiovanni on Oct. 17, 1995 — the night FBI agents and Las Vegas police showed up at his home with a search warrant.

Since then, Bongiovanni says his life has been a "total nightmare."

During the months that followed the search of his home, Bongiovanni was indicted on federal corruption charges and voted out of office, his wife succumbed to a terminal illness, and a friend agreed to testify against him.

Nowadays, the 51-year-old spends his time raising two teen-age children and preparing for his upcoming trial.

"I want to get this over, start my life up again," he said during a recent interview. "My life's been on hold for a year and a half."

Bongiovanni gave the interview at the office of his attorney, John Fodgen, who has agreed to represent the former judge free of charge.

"He's been a friend of mine for 25 years," Fodgen said. "It's time to give back to a friend."

Please see JUDGE



BONGIOVANNI

(Indicate page, name of newspaper, city and state)

Page 1B, 8B  
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FBI - LAS VEGAS	

Ex A

08003-BONG0524

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FD-350 (Rev 5-8-81)

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From 1B

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"I haven't made any money since January," he said.

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Las Vegas, Nevada

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The couple met in Las Vegas and were married in January 1976. Bongiovanni said his wife was diagnosed with multiple

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(Mo)



Review-Journal file photo.  
Judge Gerard Bongiovanni leaves the Federal Building with attorney Tom Pitaro on April 17, 1996.

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Page 1B, 8B  
Las Vegas Review Journal

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TO START OVER**

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LAS VEGAS

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sclerosis a few years later.

"She was just losing her balance sometimes," he said.

Bongiovanni said his wife had two miscarriages early in their marriage. He recalled finding his wife sleepwalking in the back yard, "looking for the baby she lost."

"That really hit me," he said.

Bongiovanni said the couple eventually decided to adopt and brought home both children shortly after they were born. He remembered receiving only an hour's notice when it came time to add Angela to the family.

Fadgen chuckled at that memory, saying, "I'll never forget that day."

Bongiovanni said his wife's condition gradually worsened over the years.

"Every few months it was something different — in the hospital, out of the hospital," he said.

When she could no longer care for herself, Bongiovanni hired nurses to come to their home.

"I was the night shift and the weekend shift," he said.

Even with that pressure, Bongiovanni decided to run for office in 1990, narrowly defeating District Judge Earle White.

"All I did is when I went to work, I concentrated on work, but once I left there, I'd go home and take care of my wife and

everything."

When his wife could no longer swallow, Bongiovanni said, he fed her liquid through a tube that led to her stomach. He took her blood tests and gave her shots.

"I kept her hospital bed right in our bedroom, and I had a little twin bed right next to her," he said.

Bongiovanni said doctors convinced him that he was helping his wife live longer by caring for her himself, rather than placing her in a nursing home. He said he considered it his "duty."

"You get married, you're supposed to take care of your partner," he said. "That's how I was brought up."

Bongiovanni said his wife had many close calls during the two years before her death, but each time she improved enough to return home from the hospital.

He was alone with her when she died at a local hospital in July at the age of 48.

"I was in shock," Bongiovanni thought she was coming out of it again," he said.

To this day, Bongiovanni is not sure whether his wife knew about the accusations against him. He was arrested at home after being indicted in the case and was released later that day on his own recognizance.

Bongiovanni said his wife could not communicate much

life, but one of her caretakers once told him she reacted to television news about his case.

"When it would come on the news, she'd get tears in her eyes," he said.

Bongiovanni said he developed high blood pressure two weeks after his wife's death and now takes medication to control it. He occasionally smoked during the interview and said he would like to stop — but not until after his trial.

A man of few words, he said he usually keeps his personal life to himself.

"That's the most I ever told anybody about my life, right there," he said toward the end of the interview. "Nobody wants to hear about your problems."

Bongiovanni said he worries about the possibility of a criminal conviction and prison time, but he did not elaborate on his feelings.

He said prosecutors have not offered him any plea bargain, and he has no interest in accepting one.

"I didn't do anything, so why should I negotiate?" he said.

Bongiovanni said he hopes to practice law again in Las Vegas after putting his criminal case behind him.

He also wants the community to know this: "I'm not the type of person that would do what I'm charged with."

08003-BONG0526

JA008190

MR1PFO-88003-BONG0526

STATEMENT UNDER OATH

OF

PAUL RICHARD ANTHONY DOTTORE

On Thursday, the 19th day of October, 1995, beginning at the hour of 10:25 o'clock, a.m., the Statement Under Oath of Paul Richard Anthony Dottore was taken before me STELLA BUTTERFIELD, Notary Public in and for the County of Clark, State of Nevada, at the law office of Thomas F. Pitaro, Esq., 815 South Third Street, Las Vegas, Nevada, the said witness Dottore having been first duly sworn by me to testify to the truth, the whole truth and nothing but the truth in the testimony he was to give, based upon oral interrogatories propounded by Thomas F. Pitaro, John P. Fadgen being present, and the following proceedings were had:

EXAMINATION BY

BY THOMAS F. PITARO:

Q Paul, okay if you would, would you just state your name and where you live?

A. Paul Richard Anthony Dottore. I live at 2263 Roundup Avenue "one word", Las Vegas, Nevada 89119.

Q Mr. Dottore how long have you lived in the Las Vegas

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Ex B

area?

A Approximately twenty years.

Q And could you just describe for me a little background on yourself?

A As far as employment?

Q Yes.

A I was in the Casino Business for a number of years; and mostly casino-hotel business.

Q And are you employed now?

A Yeah.

A Yeah. I just got a job. I was out of work for fourteen months. And I just got a job about a month ago.

Q If you would, could you tell me how that came about.

A How what came about?

Q The period of unemployment.

A I worked for Vegas World for six months before Vegas World closed. My job was eliminated towards the end.

Q And you were what?

A Bell Captain and Showroom Maitre d'.

Q And then with the changes going on in Vegas World your position was eliminated and you were let go?

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A Yes sir.

Q And then a few month after that the casino closed, is that correct?

A Yes.

Q So you have been unemployed for about fourteen months?

A Fourteen months.

Q Now you know Judge Jerry Bongiovanni?

A Very well.

Q Could you just tell us how that relationship came about?

A When Jerry was an attorney -- I'd have to say fourteen -- fifteen years ago, we, he was looking for a part-time job at the time and I was Casino Manager at the Royal Casino and he interviewed for a part-time position and I put him to work. Ever since then we became, over the years, very good friends.

Q So your relationship changed from a business relations to a social and personal relationship?

A Yes, it has. Yes it has. I am closer to him that I am my own family -- my brothers and sisters.

Q And does that relationship also include your family?

A Yes it does.

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1 Q. And his family?

2 A Yes.

3 Q And your wife's name is what?

4 A Rosemarie, one word -- known as Rosie.

5 Q Now during this period of time then you became aware of  
6 some of the family situation with Judge Bongiovanni?

7 A I'm sorry.

8 Q The family situation with Judge Bongiovanni?

9 A Oh yes.

10 Q And could you just explain to us what that is?

11 Q Well his wife came down with a terrible disease and I  
12 just watched her deteriorate over the number of years. And  
13 it's just a sad situation.  
14

15 His wife was bedridden ninety-nine percent of  
16 the time. He has two adopted wonderful children that  
17 he takes care of, and he's just in a terrible family  
18 situation, something I couldn't handle personally.  
19

20 Q So Judge Bongiovanni takes care of his invalid wife, is  
21 that correct?

22 A Yes, sir.

23 Q So she is at home with him?  
24  
25

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1 A Yes, sir.

2 Q She's not in a home?

3 A She's in her bedroom.

4 Q So he takes care of her on full-time basis?

5 A Yes, sir.

6 Q She is bedridden?

7 A Yes, sir, day and night.

8 Q And he's taking care of the children?

9 A Yes, he does.

10 Q So he does the washing, cleaning -- as well as being a

11 Judge?

12 A Yes, he does.

13 Q I want to ask you if you would tell me how the

14 situation with a person by the name of Terry Salem came about,

15 and first if you would tell me who he is and your relationship

16 with him?

17 A My relationship with Jerry?

18 Q No, Terry.

19 A Terry worked with me at the Hotel also and I have known

20 him for a number of years, just on a social basis also. He

21 lived in the same area I did years ago in Green Valley and my

22

23

24

25

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1 son went to grade school in Green Valley at Nate Mack and  
2 Terry lived a couple of blocks from Nate Mack.

3 I used to drive my son to school every day and  
4 every morning I saw Terry out in his yard and I used to  
5 stop to chat and you know, just jibber jabber sports,  
6 what's happening on the job -- and I got to know him  
7 on a social basis. We never visited on a friendly  
8 basis. And he got in some trouble with some bank deals  
9 right at the last, -- in '94. And he had called me to  
10 ask me or tell me his problem and things.  
11

12 I just started thinking after the conversation;  
13 a few days later I called him and asked him if he had  
14 counsel. I suggested an attorney for him and I met  
15 with him and took him to the attorney and after meeting  
16 with the attorney I said to myself I have an  
17 opportunity to make some money here.  
18

19  
20 Q How is that?

21 A Well knowing Jerry --

22 Q So what your telling me is Mr. Salem's case ended up in  
23 Department Four of District Court?

24 A Yes. I found out through Terry it wound up in District  
25

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1 Court 4 and I figured, "well, what an opportunity for me to  
2 make some money."

3 Q How is that?

4 A Well I told Mr. Salem I had a Judge friend and I could  
5 get this case taken care of for him. And I said "Give me some  
6 money and I'll get this taken care of ." And he gave me some,  
7 without Jerry knowing anything about it.  
8

9 All I did was use a friend. If it was another  
10 friend and another guy I would have done that. I just  
11 happened to do that.  
12

13 Q Could you give me a little more detail on these  
14 conversations you had with Mr. Salem?

15 A Well it started out I told him I had a Judge --

16 Q What did you imply by that "you had a Judge"? I mean  
17 what were trying to convey to Mr. Salem?  
18

19 A Well I could get his case taken care of, reduced or  
20 maybe dismissed -- something like that. And during the  
21 conversation -- everyone knowing that Jerry and I are close he  
22 said "Jerry Bongiovanni" and I said yes.  
23

24 Q He had already known you were a friend of Judge  
25 Bongiovanni?

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1 A Yes he did.

2 Q And he was aware of your friendship with Judge  
3 Bongiovanni?

4 A Yes.

5 Q Did he ask you at any time to see if you could help him  
6 out with Judge Bongiovanni?

7 A Oh yes.

8 Q Is that how this came about?

9 A That started the ball rolling in my head, yes.

10 Q Could you tell me what caused -- I guess what I'm  
11 trying to get at is Mr. Salem knows he's in trouble. He knows  
12 the case has been assigned to Judge Bongiovanni and he knows  
13 that you know Judge Bongiovanni?

14 I'm trying to get at, is he the one brought up  
15 the issue of your going to Judge Bongiovanni or even  
16 bringing up your relationship with him? That's what  
17 I'm trying to ask you?

18 A In our conversation I said, "isn't your case in  
19 District Four?". He said, "yes." He said, "do you think we  
20 could do something there?" I said, "I don't know. I could  
21 ask."

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1 He had asked me how much. I said, "how do I  
2 know? I have to talk to the guy first." And after we  
3 hung up I started thinking, thinking, thinking and I  
4 gave it a couple of days to make it look like I had  
5 seen Judge Bongiovanni.

6 Q Did you in fact go to see Judge Bongiovanni?

7 A No.

8 Q Did you in fact discuss it with Judge Bongiovanni?

9 A Never. Never. Never.

10 Q So you never told Judge Bongiovanni you had a  
11 discussion with Mr. Salem?

12 A Never. I don't get into his duties ever and because  
13 its none of my business and I don't look to him as a Judge.  
14 I look to him as a friend.

15 Q What did you tell Mr. Salem?

16 A I told him I went to see the man, my man.

17 Q "Your man" being Judge Bongiovanni?

18 A Being Judge Bongiovanni; and five thousand would take  
19 care of that.

20 Q Now when you told Mr. Salem you had seen Judge  
21 Bongiovanni that was not true, is that what you are telling  
22

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me?

A That was not true. That was a lie.

Q And where did the five thousand dollars come from?

A Pardon me.

Q Where did the five thousand dollar figure come from?

A The figure came from just something I thought I could get on, I thought I could get on, with the money.

Q All right. And then what happened?

A And then these -- I don't know if he agreed on that conversation, or he called me a couple of days later and he agreed, but he agreed to the figure and by this time I think he had moved to California or wherever. I don't remember where he actually moved to.

He said "I'll be in town" on whatever day. I know he calls and says his son -- something about his son and weekends.

So he says, "I'll call you when I get to town" and I said ok. So he came to Vegas, called me, said "Meet me at the Trop -- I'm staying at room -- " He gave me his number under the name of Amy Fisher. That's his girlfriend.

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Q Amy Fisher the singer?

A No. So I went to the room. I went up to his room --

MR. FADGEN: Wait a minute --

(Off the record colloquy.)

A So I went up to his room at the Trop -- excuse me. Let me back up a second.

Some where along the conversation before I went up to his room at the Trop he had told me he couldn't get it all at one time, and I said "well how much are your going to bring ". He said "\$2,500 -- \$2,500". I said, " well put it in an envelope because I don't have to count it or nothing. I don't even want to see it: I just want you to put it in an envelope."

So I went up to the room at the Trop -- just, you know -- "How you doing, how is the family?" He gives me the envelope and I put it in my back pocket.

In a conversation he had asked me, "are you sure this is going to be alright?" I said, "sure, you are going to be fine. Don't worry about it."

And I went out and I went out to my car, tore open the envelope and stuffed the money in my pocket

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and I was a happy man.

Q How much was there?

A \$2,500.

Q When about was this? Let me ask you, was it about January '95 when you proposed with this phoney scheme?

A I would have to say yes.

Q Because my understanding is the case came down in December '94?

A Yeah, he got indicted in December '94.

Q And then you referred him to an attorney in January '95?

A Yes.

Q How soon after that was this \$2,500 transaction at the Tropicana?

A I am not positive.

Q Can you give me an estimate?

A I'd say a month.

Q So still in the winter of '95 he gave you \$2,500?

A Yes.

Q Is that correct?

A Yes.

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1 Q Now with this \$2,500 that you got, that was only half  
2 of what you had asked him for, is that right?

3 A Yes.

4 Q What happened to the \$2,500?

5 A It went bye-bye.

6 Q By that you mean --

7 A I went and I gambled with it and paid bills with it.

8 Q Did you give any of this money to Judge Bongiovanni?

9 A No.

10 Q Did he have any knowledge you had received any money  
11 from Mr. Salem?

12 A No.

13 Q And did you ever discuss doing this with Judge  
14 Bongiovanni?

15 A Never.

16 Q So this first \$2,500 you just took and spent?

17 A Yes.

18 Q Go on from that point.

19 A Can I ask, basically from that point on he'd call me  
20 every once in a while and , you know tell me, "I'm having  
21 trouble getting the money together. I am broke." I am this  
22  
23  
24  
25

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1 and that. And I said, "okay. Don't worry about it. Relax.",  
2 and this and that.

3 And sometime after that he went to see his  
4 attorney and he called me and he said, "my attorney is  
5 yelling at me". And I said, "what are you worried  
6 about? Yell back at the guy. You have to have an  
7 attorney. This attorney can't know what I am doing  
8 with you," and which I wasn't doing anything with this  
9 Judge. Because I felt he had no case and was going  
10 to win anyway and I was not worried about it.

11  
12 Q So you tried to convey to Mr. Salem not to tell his  
13 attorney what you had told him?

14  
15 A Yes, I did tell him.

16 Q You told him not to tell his attorney what you and he  
17 were doing?

18 A Well he had asked me, "does my attorney have to know  
19 about it," and I said, "of course not. I said, "no, you can't  
20 tell your attorney what's happening. That's why you have any  
21 attorney to represent you. It is basically just phone calls."

22  
23 He says "I am short of money. I don't have any  
24 money." He tells me this and that, and I said "call me  
25

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when you get here."

Last Friday night he called me and said, "I'm coming in Monday and I will get with you and get you some money ." And I said, "don't worry about." He said, "I'll give it to you Monday." I said, "I can't Monday because I'm working all day and I bowl Monday night." I said, "I'll see you Tuesday." So Tuesday he called me. I am on my way home from work and he calls me on the cell --

Q Tuesday is October 17th?

A I said, "I can't meet you now. I want to go home and relax a while and eat. And I said, "just call me later after I got home when you got time."

So he called me twenty to seven or so and he says, "you going to come up now." I said, "no, my wife just went up to the corner to get some food." I wanted some chicken so I sent her to the corner to get some chicken. I said, "I'll tell you what though. I will leave my house at 7:15. It takes me ten minutes to get there." He said, "okay. Meet me at the back of the Trop." I said, "at the room where you stayed last

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time, at the room at the back of the hotel?" He said,

"yes."

So I pulled up about, oh, I got there approximately at 7:25-7:30. So I pulled up. He is sitting on the step, his hand in his pocket and he reaches in and gives me some money and hands it to me. I said "what's here". He says "one thousand". I said "ok".

I put it in my pocket. "How is it going? Going okay." Just normal conversation, and he says, "I'll have the rest when I get it." I said, "relax. Don't worry about anything. Everything is okay."

He asked me what's happening with a friend of mine and I told him what I thought I knew and it was a little bit of conversation, and he says, "well, I am going to take off now." I was getting out of the car. He reached over and shakes hands with me. I say, "get this case behind you so we can make some money." He said, "tell the judge" and I said, "yes." I said, "I will." He goes off, and I call my wife on my cellular phone -- and "I'll be home." And I got home and I told my wife I have to pay Jerry five hundred dollars -- "I

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might as well pay him now before I blow the money."

I called him up and told him to put some coffee on, to put the coffee on -- I want to bring him something. I go over and go to house and paid him the \$500 I owed him and I left.

I come home and the FBI stopped me.

Q I want to ask you what happened when the FBI stopped you in a minute. But I'd like to do is if you will explain to me why it is you would have called the Judge and how it is it came about you owed him money?

A Why I called the judge?

Q Yes, how it came about, the money came about. You told us a little earlier you had been unemployed for about fourteen months?

A I was involved in a corporation. I was going to be director of operations for a corporation. And in the interim I wasn't working and I was broke and the corporation had defunct and they had \$6,300 dollars left in the bank and I had asked Gerard to see if he could go to the officers of the corporation to ask them to lend me \$500. And I asked him to ask them for me and I was too embarrassed to ask these people

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1 for a \$500 loan.

2 So he had never said anything to me if he was  
3 going to or wasn't going to. Two days later he had  
4 called me and said to get over there for coffee -- "I  
5 have something for you." I went over to his house and  
6 he gave me \$500. And I said, "thanks for asking the  
7 guys for me and I'll pay them back when I get it."  
8 This was July or August.

9  
10 Q July or August '95?

11 A Yes.

12 Q Do you remember if he specifically told you where he  
13 got the \$500 from?

14 A Oh, yeah; from the corporation.

15 Q So he got it from some of these guys?

16 A Yeah. He went to the stockholders or whatever they  
17 were called, board members.

18 Q So he did give you the \$500?

19 A He had lent me the money. He had given me money a lot  
20 of times -- paid for my golf, you know.

21 Q What do you mean he has given you money different  
22 times?

23  
24  
25  
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1 A You know, I mean ten or twenty as a loan.

2 Q Now you had used a phrase that struck me when you said  
3 you called the judge on the night of October 17th and you said  
4 "I've got something for you." "I've got something for you."

5 A Yes.

6 Q Was that a phrase you had used in the past?

7 A Oh, Mr. Pitaro, I call the Judge every night at 8:00.  
8 I couldn't tell you how many years I am doing this, when I  
9 called him. A and sometimes I'd bring him donuts -- coffee.  
10 Sometimes I bring him donuts and sometimes I'd bring him home  
11 made meals because he eats microwave meals -- rolls from the  
12 bakery -- I take him things from the C & S; I take him  
13 something a lot of days.

14 Q Is that because of the family situation?

15 A He has no social life. He has got no friends. I just  
16 try to take some pressure off of his mind about his family  
17 situation and just go and just go and sit and laugh and talk  
18 about different things.

19 Q So you're saying "I am bringing something over?"

20 A It is just a normal thing for me. I don't want to tell  
21 him what I'm bringing him. It's like a treat. It's like my  
22

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bringing my grandson a lollypop.

Q So the use of that phrase did not connote anything sinister?

A No, sir. Not at all.

Q Alright now. You went over to the Judge's house; and then what happened .

A I walked in. "How are you?"

Q Was your wife with you?

A Yes, sir, she was.

Q How did it come about she was with you?

A My wife always goes with me. I'd say ninety-nine percent of the time she would go with me. They used to discuss the O. J. Simpson case because my wife doesn't believe in DNA and I would sit and watch.

Q Did your wife go with you to the Trop?

A No.

Q So after you left the Trop you went home?

A I told my wife I had some money now that the Judge lent me and I wanted to give it back before I blew this money --

Q And your wife knows you and she wanted to go with you?

A She knows I am a sick man.

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1 Q So you went over to the Judge's house?

2 A I went over to the Judge's house. "How you doing? I'm  
3 tired. I'm tired too." Poured me a cup of coffee, my wife  
4 and I a cup of coffee. So my wife got bored with the  
5 conversation. She went in the living room and watched TV.  
6 And I took five hundred out of my pocket and said "Here,  
7 Jerry, thank you for the loan. Tell the guys . Okay?" And  
8 he said, "are you sure you can afford to do this" and I said,  
9 "yes, I am working now. I'm doing okay now."  
10

11 So I left and when I left the FBI agents grabbed  
12 me on <sup>K15066 RD</sup> Industrial Road.  
13

14 Q Tell me what happened when they grabbed you?

15 A They stopped me. They take me out of the car. They  
16 frisked me. They asked me to get out of my car. They asked  
17 me some questions.  
18

19 Q To your knowledge were you violating any laws when they  
20 stopped you?

21 A To my knowledge I was in total shock and they said they  
22 wanted to talk to me. There was a Metro officer there with  
23 them -- did I remember sometime in '95 about the Salem case  
24 and I said yes I remember. And then we get in the car and the  
25

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1 FBI says to me, he says, "what did you give the Judge," and I  
2 said. "I didn't give the Judge anything."

3 "You lie. We know. You gave him some money for  
4 Terry Salem." He works for us as an FBI informant."  
5 And I said, "I don't know what you're talking about".  
6 He said, "Don't lie. Here is the deal. We got you on  
7 the Angelo Commorado deal. We got you on the bank deal  
8 with Terry Salem. We are going to get you for bribing  
9 a Judge."

11 I said, "I don't know what you're talking about.  
12 What do you want me to do?" "If you don't take this  
13 deal you are looking at fifteen years federal time, and  
14 federal time there is no grace period. You might get  
15 a year off for good behavior. We want you to wear a  
16 wire and go back and trap this Judge". I said, "I  
17 can't do that."

19  
20 Q Did you explain to them that the Judge didn't know  
21 anything about this?

22 A Not really because I was in disbelief. I just couldn't  
23 believe it, you know. I was like in shock. I just couldn't  
24 believe it. And I said to them, "let me talk to my wife".  
25

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And they put my wife in the car and I said to my wife "I'm in trouble and I'm going to go to jail for fifteen years unless I put a wire on and trap the Judge, and I'm not going to do that. I am going to jail if I have to."

Q When you said you are not going to trap the Judge --

A Yes, if I was not so shocked about the situation I would have just said, "I'm not going to trap the Judge because he didn't do anything." He hadn't done anything.

Q So you knew in your mind you couldn't trap him because he didn't do anything?

A Yes. Why would you go trap a guy if he didn't do anything?

Q So you told them you wouldn't do that.

A They said, "don't do this again. Let's don't protect these people." You will lose your friends -- you will lose your job. And they said, "do the right thing for yourself this time -- don't protect these people."

"I never protected anybody. I never did.

I never did give the money to the Judge. He didn't know anything about it. The only think I did was shake a guy down for a few dollars to try to get

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money to live.

Q From this Salem guy?

A This Salem guy.

Q So after you told the FBI Agent and the Metro Police that you wouldn't go in there wearing a wire to try, and as you put it, to trap the Judge what happened next?

A They told me they have a search warrant. They are going back to the Judge's house. So I said "do what you have to do".

My wife got out of the car. They took me out of the car and one of the agents, the lead agent I guess and the Detective left. I'm assuming they went to the Judge's house. I have no idea where they went.

I was just standing around basically waiting around to see what was going to happen. So after maybe fifteen minutes I say, "can this lady go home or can I go home or take me to jail?" I wanted my wife to go home.

They said, "oh no, Mr. Dottore, we just want you to sign this. This is the document of the things we recorded we took from you." So they asked me to print

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1 my name at the top and sign it and I agreed. And then  
2 they handed me a form to sign, and I said, "what is  
3 that". And they said, "it is a consent to a search  
4 warrant, and I said I did not agree, "I am not going to  
5 do that."

6 I did not give anybody permission to search.  
7 They said, "okay Mr. Dottore here's your keys, here's  
8 your car and go home." And I called an attorney friend  
9 of mine and told him I had a problem, and that was it  
10 -- not an attorney friend of mine -- an attorney I  
11 know.  
12

13  
14 MR. PITARO: Let's just stop a minute.

15 (Brief recess)

16 MR. PITARO: Mr. Dottore, we are back after taking a little  
17 break to use the restroom and get some water.

18 Q I would just like to go back and ask you to review  
19 something for me.  
20

21 You said that you and Judge Bongiovanni would go  
22 out. How would that come about?

23 A Well as far as going out, I mean his first duty was --  
24 to me this man gave up his life for his children. His home  
25

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was his very life. When he was at work the nurse was there.

Q Now you say when he was at work the nurse was there?

What do you mean by that?

A Well his wife is an invalid. He needed somebody to take care of her.

Q While he was at work then there was a nurse that would stay with Mrs. Bongiovanni?

A Yes.

Q And when he got home, it was --

A And when he got home it was him for the kids; him for his wife. If we went out we went out on a Friday night and he couldn't go out until the kids' social life was over. I'm mean we would go out at 12:00 at night. Those times he used to talk to them to go out and have their parties, do these things done and get back. "We can't do this we can't do that --"

Q So basically you say he tried to have the kids live as normal life a life as they could without having to give up any of their activities?

A You bet. The man gave up everything for his kids to have a normal life, I mean to keep it as normal as he could

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and having an invalid wife is not normal. It is a tough situation to be in. I couldn't do it. The man gave up his social life so his kids could go on and have a normal life.

Q So you are saying when you and he, if you would go out it was after the kids were home doing whatever teenagers did and then he would then, after a few hours doing it they used to come home and you two would go out?

A If he was not tired of taking care of his wife we would take a ride for an hour or so, yeah.

Q And that's why most of the time you would go over to his house?

A Oh yes, most of the time. Excuse me -- yes, most of the time was at his house. If the kids were home then maybe he'd come to my home for coffee. If they weren't then I would go to his house for some coffee, Marie Callender's, Dunkin Donuts, home-made pastries my wife made.

Q Let me ask you this. We have gone through this. I mean I want to just be a little pointed in this. Did Judge Jerry Bongiovanni know that you had asked Mr. Terry Salem for money concerning the case pending in front of Jerry Bongiovanni?

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1 A No.

2 Q Did Judge Bongiovanni ever know that you were  
3 attempting to and had received money from Mr. Salem under the  
4 guise of helping him out with his case?

5 A No.

6 Q I mean you gave Judge Bongiovanni this \$500 on October  
7 17, 1995. Did you tell him it was from Mr. Salem?

8 A No.

9 Q When you gave Judge Bongiovanni this money did you tell  
10 him this was the repayment of the \$500 loan payment earlier in  
11 the summer?

12 A Yes, I did. And I told him to thank the gentlemen for  
13 lending me the money and helping me out at the time.

14 Q And as a matter of fact you only gave Judge Bongiovanni  
15 the \$500 you owed for this loan and you kept the rest of the  
16 money?

17 A Yes, I did.

18 Q Is there anything else you would like to tell me about  
19 this incident?

20 A Just the fact that I abused a good friendship. That's  
21 all I did. As far as him and I on our social thing with him,  
22

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1 knowing my financial situation there are time he would call me  
2 and tell me, "let's get out of the house." I did so. "Come  
3 on, I will give you \$20 and we'll play." And a lot of times  
4 he would get a jackpot and would give me \$50. That's the kind  
5 of friends we were. If I had luck and had a couple of bucks  
6 I would give it to him. If he had a couple of bucks after his  
7 bills were paid he would take me golfing and pay for me.

8  
9 Q And the way you got involved with this Mr. Salem  
10 basically he sort of asked you if you could help him and you  
11 saw this as an opportunity to maybe grab some money from him?

12 A Absolutely.

13  
14 Q And this was during a period of time when you had been  
15 unemployed for an extended period of time?

16 A At the time this happened I was <sup>just</sup> employed. It was <sup>just</sup>  
17 extra money for me, just to do whatever I wanted to do with,  
18 go gambling, pay extra bills, or just whatever. That was it.

19  
20 (Thereupon there being nothing further the taking of  
21 this statement was concluded.)  
22

23  
24   
25 PAUL RICHARD ANTHONY DOTTORE

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COUNTY OF CLARK )  
 ) ss  
 STATE OF NEVADA )

I, CYNTHIA ANN GARZA, Notary Public in and for the  
 County of Clark, state of Nevada, duly qualified commissioned  
 and acting hereby certify as follows that on the 15th day of  
November, 1995, personally appeared before me PAUL  
 ANTHONY RICHARD DOTTORE, who stated that he had read the  
 statement which appears hereinbefore and having made such  
 corrections and or additions thereto has hereunto affixed his  
 seal and subscribed his name at Las Vegas, Nevada this 15th  
 day of November, 1995.

Cynthia Ann Garza  
 NOTARY PUBLIC, In and For said County  
 and State

My commission expires: 07/15/96



CYNTHIA ANN GARZA  
 Notary Public - Nevada  
 Clark County  
 My appt. exp. July 15, 1996

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FD-302 (Rev. 10-6-95)

- 1 -

## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 6/23/97

Paul Dottore stated that after he was stopped by the FBI on October 17, 1995, he returned home and called attorney Peter Flangas at Flangas' residence. Dottore then drove to the Flangas residence where he met Peter Flangas who drove Dottore to what Flangas called a "safe house." This house was the residence of Flangas' son, Leo Flangas. Dottore told Peter Flangas that he had been stopped by the FBI after leaving Bongiovanni's residence and that the FBI suspected him of bribing Judge Bongiovanni and that the FBI had asked for his cooperation in the investigation of Bongiovanni. Dottore explained that he had refused to cooperate with the FBI. Flangas told Dottore, "I don't like what you did, but I admire you for what you are doing." Flangas then placed a telephone call to Gerard Bongiovanni and Flangas and Bongiovanni spoke for about 20 minutes. Dottore could not overhear that conversation. After speaking with Bongiovanni, Flangas told Dottore, "Wasn't it the \$500.00 that you borrowed from MASBO, Inc. that you were paying Gerard." Dottore understood from this statement by Flangas that he was supposed to say that the \$500.00 he gave Bongiovanni that night was a repayment of a loan and not a bribe. Flangas then told Dottore to come to his office the first thing the next morning.

The following morning Dottore went to Flangas' office. Also present was John Fadgen, who Dottore knew to be a disbarred attorney who worked at Flangas' law office. Fadgen and Flangas told Dottore that they would get him an attorney and they called another attorney who came to the office. This attorney said that he would help Dottore if he was indicted or arrested, and he left a business card with Dottore. Dottore never spoke with this individual again. Fadgen then advised Dottore that it would be a good idea if he would give a sworn statement the following day at attorney Thomas Pitaro's office. Dottore stated that he respected the legal advice of Flangas and Fadgen, and believed that he could speak with them in confidence. Consequently, if they advised him to make a statement, he believed that it was in his best interest to do so.

On the morning of October 19, 1995, Dottore met with John Fadgen at the Flangas law office. Dottore and Fadgen discussed what Dottore was to say when he gave the statement and Fadgen made suggestions as to how Dottore might phrase his

Investigation on 6/23-25/97 at Las Vegas, NevadaFile # 281A-LV-23545 Sub C

Date dictated

by SA Jerry W. Hanford *JWH*

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FD-302a (Rev. 10-6-95)

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Continuation of FD-302 of Paul Dottore, On 6/23/97, Page 2

answers. Dottore and Fadgen continued to discuss the statement as they walked over to Pitaro's office. Flangas did not accompany them. Present during the taking of the statement were Dottore, Thomas Pitaro, John Fadgen, and the stenographer. Pitaro asked Dottore numerous questions and Dottore responded in the manner that he and Fadgen had discussed. However, Dottore had not told Fadgen the truth regarding how he had paid the bribes to Bongiovanni and Fadgen never asked Dottore if he had ever paid a bribe to Bongiovanni. At one point, Dottore interrupted Pitaro in order to ask Fadgen a question. The interview was stopped and Dottore asked Fadgen if it was all right if he spoke about the \$2,500.00 that he had received from Terry Salem. Fadgen advised Dottore that he could speak about it, and the interview resumed.

Dottore continued to speak with Fadgen on a daily basis until he was convicted of bank fraud in March of 1997. They would meet at least four times each week at such places as Denny's Restaurant, Mickey's Cues and Brews, or at Dottore's house. On the days when they did not meet, they would speak by telephone. During these meetings they would discuss various topics related to the preparation of Dottore's and Bongiovanni's defense, such as the status of the tape review, the information being found on the tapes, how incompetent attorney Don Green was, and Dottore's concerns about his defense. For example, Dottore asked Fadgen if he should report the money received from Salem on his income tax, and Fadgen said, "Yeah, you better." During one such discussion, Dottore expressed to Fadgen that he was concerned that their conversations would remain confidential if Fadgen was ever subpoenaed. Fadgen stated that he could not be called to testify against Dottore if Dottore retained him and he advised Dottore to give him one dollar as a retainer. Dottore reached in his pocket, removed a dollar, and gave it to Fadgen.

Prior to Dottore's indictment and arrest, Fadgen told Dottore that he would arrange an attorney for Dottore, since Fadgen was still in a disbarred status at the time. Fadgen set up a meeting with attorney John Momot and accompanied Dottore to Momot's office, but did not go into Momot's office with Dottore. Momot agreed to represent Dottore and took a \$1,000.00 retainer which Dottore charged on his credit card. When Dottore was arrested, Momot appeared on Dottore's behalf at the initial appearance and requested Dottore's release. After Dottore was

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Continuation of FD-302 of Paul Dottore, On 6/23/97, Page 3

released, Monot informed Dottore that he would not be representing him any longer because Dottore did not have the ability to pay him. Dottore then requested appointed counsel and Kevin Kelly was appointed by the court. Kelly told Dottore that he could not represent him, therefore, the court appointed James Erbeck.

After Erbeck was appointed as Dottore's attorney, Dottore continued to meet with Fadgen on a regular basis and Fadgen continued to advise Dottore as he had before. In fact, Dottore met with Fadgen every morning during Dottore's trial on bank fraud charges. Dottore believes that Erbeck was not aware of these morning meetings with Fadgen. On the morning of the first day of the trial, Fadgen advised Dottore that he would be representing Bongiovanni at the bribery trial and that Don Green would withdraw as Bongiovanni's attorney.

Prior to the beginning of the bank fraud trial but after the trial date had been set, Dottore asked Fadgen about the possibility of Dottore testifying on his own behalf at the bank fraud trial. Fadgen advised Dottore that it would be a good idea if he testified on his own behalf so that he could give his side of the story. Dottore then discussed the possibility of testifying with attorney Erbeck, who advised Dottore that it was a bad idea and he should not do so. Erbeck was opposed to going to trial and told Dottore that he should enter a plea of guilty and make a deal with the government.

After the trial began, Fadgen told Dottore to come by his office each morning during the trial. This was the first time that Dottore knew that Fadgen had an office other than the one he used at the Flangas law office. Dottore continued to discuss his proposed testimony with Fadgen and Dottore told Fadgen what he intended to say when he testified. Fadgen would say either, "That's okay," or "Why don't you say it this way," and Fadgen would then suggest another way in which Dottore could phrase his testimony. After Erbeck's opening statement, Dottore changed his mind and told Erbeck that he no longer wanted to testify. However, Erbeck told him that it was too late to change his mind at that time and that he would have to testify.

08003-BONG0559

JA008223

FD-302a (Rev. 10-6-95)

281A-LV-23545 Sub C

Continuation of FD-302 of Paul Dottore, On 6/23/97, Page 4

Dottore stated that he trusted Fadgen's opinion and advice. Since he spoke with Fadgen every day and had difficulty in contacting Erbeck, Dottore relied on the advice that he received from Fadgen. Dottore stated that he testified at the bank fraud trial because Fadgen told him that it was a good idea, despite the fact that Erbeck, his appointed counsel, advised against it.

08003-BONG0560

JA008224

MP: PPO-08003-BONG0560

NR1PPO-88003-BONG0561

FD-302 (Rev. 10-6-95)

- 1 -

## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 6/24/97

James Erbeck was contacted by telephone and was asked if he could provide any information regarding Paul Dottore's relationship with attorney John Fadgen during the period of time prior to Dottore's trial on bank fraud charges. Erbeck agreed to provide whatever assistance he could.

Erbeck stated that during the time he was actively representing Dottore he was aware that Dottore would go to the Flangas law office to review tapes in preparation for trial. Erbeck knew that Peter Flangas and John Fadgen were present when Dottore was reviewing the tapes, but Dottore never told him that Fadgen was providing him with any legal advice or assistance. Erbeck knew that Dottore frequently went to the Flangas law office, but he did not know that Dottore spoke with Fadgen on a daily basis or that Dottore and Fadgen often met outside of the office to discuss the case.

Erbeck stated that he did not know that Dottore met with Fadgen each morning during the bank fraud trial and he was not aware that Fadgen had advised Dottore that it would be a good idea to testify at his trial. Erbeck stated that this was contrary to what he was advising Dottore and, had he know that Fadgen was speaking with Dottore, he would have taken some action to prevent it. At the very least, he would have discussed the matter with Fadgen.

Investigation on 6/24/97 at Las Vegas, Nevada (telephonically)  
 File # 281A-LV-23545-C Date dictated \_\_\_\_\_  
 by SA Jerry W. Hanford *JWH*

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08003-BONG0561

JA008225

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9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF NEVADA

11 -o0o-

12 UNITED STATES OF AMERICA,	)	
	)	
13 Plaintiff,	)	CR-S-96-98-LDG-RJJ
	)	
14 vs.	)	
	)	
15 GERARD J. BONGIOVANNI,	)	
PAUL R. DOTTORE,	)	
16 JEFF KUTASH,	)	
	)	
17 Defendants.	)	

18 NOTICE OF TAPE RECORDINGS  
19 INTENDED FOR USE IN GOVERNMENT'S CASE IN CHIEF

20 Comes Now the United States of America, by and through its  
21 Attorney's, Kathryn E. Landreth, United States Attorney, Kurt P.  
22 Schulke, Attorney in Charge, Jane Shoemaker and Eric Johnson,  
23 Assistant United States Attorneys, Organized Crime Strike Force, and  
24 states as follows:

25 The following is the Government's Notice of Tape  
26 Recordings. The Government anticipates playing some or all these  
recordings in its case in chief at trial. The Government may play

36



1 a recording in its entirety or it may redact a recording and play  
2 only a portion of the recording at trial. The Government will  
3 provide transcripts of the recordings to defendants as they are  
4 prepared and finalized for use at trial. The Government may during  
5 the course of trial preparation decide to play additional  
6 conversations. The Government will file supplemental Notices of  
7 Tape Recordings as necessary to notify defendants of any additional  
8 recordings.

9 CM=Consensual Recording

10 D =Dottore's Home Telephone (702) 261-0664

11 BH=Bongiovanni's Home Telephone (702) 433-1652

12 BC=Bongiovanni's Chambers Telephone (702) 455-4261

13 BS=Bongiovanni's Secretary's Telephone (702) 455-4652

14	Source of Recording	Date and Time of Recording	Participants in Conversation
15	CM [105]	09-2-93/	Steven Johnson/T. Salem
16	CM [13]	09-17-93/1327	S. Johnson/T. Salem
17	CM [26]	10-15-93/1746	S. Johnson/T. Salem
18	CM [20]	11-7-93/	S. Johnson/T. Salem
19	CM [8]	12-01-93/	S. Johnson/T. Salem
20	CM [12]	12-02-93/1000	S. Johnson/T. Salem
21	CM [82]	12-02-93/1530	S. Johnson/T. Salem
22	CM [6]	12-21-93/1005	S. Johnson/T. Salem
23	D {4}	08-11-94/2014	P. Dottore/T. Salem
24	D {4}	02-01-94/1806	P. Dottore/Greg Lioce
25	D {6}	02-04-94/2005	P. Dottore/Bongiovanni
26			

1	D {6}	02-04-94/2056	Dottore/Bongiovanni/ Lioce
2			
3	D {1}	02-06-94/2005	Dottore/Bongiovanni
4	D {8}	02-06-94/2006	Dottore/G. Lioce
5	D {1}	02-07-94/1228	Dottore/G. Lioce
6	D {10}	02-07-94/1327	Dottore/D. Strano
7	D {3}	02-07-94/1531	Dottore/A. Commarato
8	D {2}	02-07-94/2229	Dottore/T. Salem
9	D {2}	02-10-94/1844	Dottore/G. Lioce
10	D {1}	02-10-94/1846	Dottore/Bongiovanni
11	D {8}	02-14-94/1559	Dottore/A. Commarato
12	D {4}	02-23-94/1945	Dottore/Bongiovanni
13	D {3}	02-27-94/1807	Dottore/Leslie LNU
14	D {3}	02-27-94/2013	Dottore, Jr./Leslie LNU
15	D {1}	02-28-94/1559	Dottore/Ans. Machine
16	D {2}	02-28-94/1114	Dottore/Karen Anderson
17	D {1}	02-28-94/1120	Dottore/D. Woofter
18	D {2}	02-28-94/1120	Dottore/D. Woofter
19	D {4}	02-28-94/1549	Dottore/Leslie LNU
20	D {1}	03-03-94/1848	Dottore/Bongiovanni A. Bongiovanni
21	D {13}	03-04-94/1032	Dottore/Salem/Dottore, Jr.
22			
23	D {6}	03-04-94/1832	Dottore/T. Salem
24	D {3}	03-07-94/1145	Dottore/Scheiber
25	D {6}	03-07-94/1350	Dottore/Nick or Mick LNU
26	D {3}	03-09-94/2024	Dottore/Bongiovanni

1	D [3]	03-16-94/1532	Dottore/Del Potter
2	D [4]	03-16-94/1538	Dottore/John-US Auto
3	D [3]	03-16-94/1921	Dottore/Bongiovanni
4	D [2]	03-17-94/1957	Lynn Leavitt/Dottore
5	D [2]	03-17-94/2021	Dottore/L. Leavitt
6	D [3]	03-18-94/1858	Dottore/Bongiovanni
7	D [4]	03-21-94/1342	Dottore/Arnie DiFabio
8	D [4]	03-28-94/2054	Unk Male/Dottore
9	D [6]	04-07-94/2115	Dottore/Bongiovanni
10	D [2]	04-10-94/1723	Dottore/Bongiovanni
11	D [2]	04-10-94/2007	Dottore/Bongiovanni
12	D [9]	04-16-94/1551	Dottore/Martin Carson
13	D [1]	04-30-94/1342	Dottore/Karen Anderson
14	D [2]	05-01-94/1821	Dottore/M. Carson
15	D [1]	05-02-94/1128	Dottore/Rose Dottore
16	D [2]	05-02-94/1416	Dottore/R. Dottore
17	D [5]	05-03-94/1750	Dottore/M. Carson
18	D [4]	05-04-94/1934	Dottore/A. Commarato
19	D [6]	05-05-94/1703	Dottore/A. Commarato
20	D [2]	05-09-94/1048	Dottore/G. Lioce
21	D [2]	05-10-94/1748	Dottore/K. Lombard
22	D [3]	05-10-94/1750	Dottore/Bill Giamballuca
23	D [4]	05-10-94/1758	Dottore/Bongiovanni
24	D [3]	05-10-94/1850	Dottore/Bongiovanni
25	D [3]	05-10-04/1920	Dottore/K. Lombard
26	D [6]	05-10-94/1924	Dottore/Bongiovanni

1	D [10]	05-10-94/1816	Dottore/T. Salem
2	D [4]	05-11-94/2001	Dottore/Bongiovanni
3	D [8]	05-12-94/1807	Dottore/A. Commarato
4	D [7]	05-16-94/1543	Dottore/Benjie
5	D [3]	05-16-94/1550	Dottore/J. Barrier
6	D [9]	05-16-94/1906	Dottore/A. Commarato
7	D {4}	05-19-94/2054	Dottore/Jim Barrier
8	D {5}	05-19-94/2122	Dottore/J. Barrier
9	D [5]	05-20-94/1807	Dottore/M. Carson
10	D [12]	05-21-94/1701	Dottore/G. Lioce
11	D [9]	05-21-94/2004	Dottore/A. Commarato
12	D [6]	05-22-94/1843	Dottore/A. Commarato
13	D [3]	05-23-94/1002	Dottore/Frank Carl
14	D [4]	05-23-94/1133	Dottore/Del Potter
15	D [4]	05-23-94/1309	Dottore/J. Barrier
16	D [2]	05-23-94/1637	Dottore/Bongiovanni
17	D [2]	05-23-94/2124	Dottore/R. Dottore
18	D [2]	05-23-94/1111	Dottore/A. Commarato
19	BH {3}	06-15-94/1435	Bongiovanni/Giamballuca
20	BH {2}	06-15-94/1855	Bongiovanni/P. Flanges
21	BH {2}	06-15-94/1857 1859	Bongiovanni/Detention Center (2 calls)
22	BC {2}	06-19-94/1233	Perri/Bongiovanni
23	D [2]	06-22-94/1952	Dottore/Angela & Gerard Bongiovanni
24			
25	D {7}	06-22-94/1926	Dottore/A. Commarato
26	D {3}	06-22-94/1929	Dottore/Eddie LNU

1	D {3}	06-23-94/1752	Dottore/Arnie DeFabio
2	D {4}	06-24-94/	Dottore/A. Commarato
3	D {8}	06-27-94/1616	Dottore/ Anthony Palmisano
4			
5	D {2}	06-27-94/1645	K. Lombard/D. Woofter/ Del Potter
6	D {3}	06-27-94/1650	K. Lombard/Del Potter
7	BS {2}	07-05-94/1623	D. Woofter/Officer Tatten
8			
9	BS {2}	07-05-94/0855	D. Woofter/George LNU
10	BS {2}	07-05-94/1623	D. Woofter/
11	BS {3}	07-05-94/1051	D. Woofter/ Robert Panaro
12	BS {2}	07-06-94/1414	D. Woofter/P. Flangas
13	BH {1}	07-06-94/1855	Bongiovanni/P. Flangas
14	BH {1}	07-06-94/1946	Sam LNU-Female/ Bongiovanni
15			
16	D {5}	07-07-94/1727	Dottore/G. Lioce
17	D {15}	07-11-94/1213	Dottore/T. Salem
18	D {4}	07-20-94/2134	Dottore/Michael Dresser/Bongiovanni
19	D {3}	07-21-94/1917	Dottore/Jerdan
20	BC {2}	07-22-94/1023	Bongiovanni/P. Flangas
21	D {7}	07-22-94/1655	Dottore/G. Lioce
22	BH {2}	07-23-94/1553	Bongiovanni/P. Flangas
23	BH {2}	07-23-94/1556	Bongiovanni/Detention Center
24			
25	D {6}	07-25-94/1130	Dottore/T. Salem
26	D {2}	07-25-94/1959	Dottore/Bongiovanni
	D {3}	07-28-94/1740	Dottore/A. Commarato

1	D [6]	07-28-94/1813	Dottore/J. Jerdan
2	D [2]	07-28-94/2015	Dottore/T. Salem
3	D [5]	07-28-94/1507	Dottore/T. Salem
4	D {10}	07-28-94/1545	Dottore/T. Salem
5	D [4]	07-28-94/1817	Dottore/T. Salem
6	D [10]	07-29-94/1333	T. Salem/Dottore
7	BC {10}	08-03-96/1036	Bongiovanni/J. O'Neil
8	BC {2}	08-03-94/1358	Del Potter/Verle
9	BS {2}	08-04-94/0826	D. Woofter/Bongiovanni
10	D {2}	08-04-94/0829	Dottore/R. Dottore
11	D {3}	08-04-94/0920	Dottore/Bongiovanni
12	D {2}	08-04-94/1014	Dottore/Bongiovanni/ D. Woofter
13	BS {2}	08-04-94/1016	Henderson Jail/Woofter
14	BS {2}	08-04-94/1018	Woofter/Henderson Jail
15			
16	BC {2}	08-04-94/1018	Dottore/Bongiovanni
17	BC {2}	08-04-94/1019	Bongiovanni/ Henderson Jail
18	BH {2}	08-05-94/1910	Bongiovanni/P. Flangas
19	BH {2}	08-05-94/1913	Bongiovanni/Detention Center
20			
21	BH {2}	08-07-94/0950	Bongiovanni/P. Flangas
22	BH {2}	08-07-94/0954	Bongiovanni/Detention Center
23	BS [2]	08-09-94/0844	Not Labeled
24	D [10]	08-10-94/2149	Dottore/J. O'Neil
25	D [10]	08-11-94/2014	Dottore/T. Salem
26	D [4]	08-16-94/1025	Dottore/J. Jerdan

1	D {4}	08-16-94/1204	Dottore/T. Salem
2	D {10}	08-16-94/1707	Dottore/T. Salem & J. Jerdan
3	D {3}	08-17-94/1108	Dottore/Bongiovanni
4	D {5}	08-17-94/2051	Dottore/Jerdan
5	D {2}	08-18-94/1037	Dottore/ Frank Santianna
6			
7	D {6}	08-18-94/1040	Dottore/Exhibit Fed Jerdan/Grand Jury
8			
9	D {7}	08-18-94/1157	Dottore/T. Salem
10	D {3}	08-18-94/1533	Dottore/J. Jerdan
11	D {8}	08-18-94/1709	Dottore/Jerdan/Salem
12	D {11}	08-19-94/1143	Dottore/T. Salem
13	D {3}	08-22-94/1629	Dottore/Joseph Slyman
14	D {3}	08-23-94/2140	Dottore/J. Jerdan
15	D {4}	08-24-94/1043	Dottore/T. Salem
16	D {5}	08-24-94/1055	Dottore/J. Jerdan
17	D {4}	08-24-94/1140	Dottore/M. Carson
18	D {3}	08-24-94/1302	Dottore/R. Dottore
19	D {4}	08-28-94/2133	Dottore/Dresser
20	BS {4}	08-29-94/1049	D. Woofter/Al Caci
21	BC {2}	09-08-94/1027	Bongiovanni/Dottore
22	BC {5}	09-13-94/1519	Del Potter/Herb Brown
23	BC {2}	09-13-94/	Del Potter/Herb Brown
24	D {2}	09-20-94/1025	Dottore/Joe Milano
25	D {6}	09-20-94/1030	Dottore/J. Jerdan
26	D {9}	09-21-94/1012	Dottore/Salem/Jerdan
	D {2}	09-21-94/1608	Dottore/D. Strano

1	D [5]	09-21-94/1506	Dottore/M. Carson
2	D [12]	09-21-94/1610	Dottore/Tony Domino
3	BC {2}	09-22-94/1111	Bongiovanni/P. Flangas
4	D [9]	09-22-94/1812	Dottore/M. Carson
5	D [3]	09-28-94/1700	Dottore/J. Jerdan
6	D {3}	10-01-94/1446	Dottore/Bob Anderson
7	D [2]	10-02-94/1338	Bob Anderson/Dottore
8	D {2}	10-03-94/0950	Dottore/J. Jerdan
9	D {2}	10-03-94/1400	Dottore/Dottore, Jr.
10	D {3}	10-03-94/1649	Dottore/Dottore, Jr.
11	D {3}	10-03-94/2042	Dottore/Dottore, Jr.
12	D {3}	12-05-94/1103	Dottore/A. DiFabio
13	D [3]	12-05-94/1416	Dottore/A. DiFabio
14	D {3}	12-05-94/2139	Dottore/J. Jerdan
15	D [4]	12-05-94/2120	Dottore/M. Carson
16	D [3]	12-06-94/1811	Dottore/M. Carson
17	D {5}	12-06-94/1006	Dottore/A. DiFabio
18	D {2}	12-06-94/1029	Dottore/A. DiFabio
19	D [2]	12-06-94/1124	Dottore/Anderson
20	D [10]	12-06-94/1338	Dottore/T. Salem
21	D {6}	12-06-94/1558	Dottore/T. Salem
22	D {3}	12-07-94/0955	Clint LNU/Unknown Male
23	D {4}	12-07-94/1244	Dottore/T. Salem
24	D [25]	12-07-94/1324	Dottore/Jerdan/M. Carson/Carmine LNU
25			
26	D {3}	12-07-94/1351	Dottore/R. Schieber



1	D {4}	12-07-94/1355	Dottore/J. Jerdan
2	D {6}	12-08-94/1125	Dottore/T. Salem/ Unknown Male
3	D {2}	12-08-94/1158	Dottore/Bob Anderson
4	BC {2}	12-08-94/1450	Potter/Lenny Waite
5	D {3}	12-08-94/2049	Dottore/R. Dottore
6	D {4}	12-11-94/1530	Dottore/M. Carson
7	D {2}	12-13-94/1817	Dottore/P. Flangas
8	D {4}	12-13-94/1819	Dottore/T. Salem
9	D {3}	12-14-94/1015	Dottore/J. Jerdan
10	D {5}	12-15-94/1126	Dottore/J. Jerdan
11	D {4}	12-16-94/1422	Dottore/J. Jerdan
12	D {6}	12-18-94/1330	Dottore/R. Dottore/ T. Salem
13			
14	D {2}	12-18-94/2032	Dottore/Bongiovanni
15	D {2}	12-18-94/2120	Dottore/M. Carson
16	D {2}	12-19-94/1428	Dottore/R. Dottore
17	BC {2}	12-19-94/1708	Potter/Bongiovanni
18	BC {2}	12-19-94/1711	Potter/Detention Center
19	D {2}	12-20-94/0819	Dottore/T. Salem
20	CM {20}	12-20-94/	Dottore/T. Salem
21	CM {2}	12-20-94/1336	Amy Baker/Dottore
22	BH {4}	12-20-94/1413	J. Jerdan/Dottore
23	D {1}	12-20-94/1425	Dottore/Bongiovanni Chamber
24			
25	D {4}	12-20-94/1443	Dottore/T. Salem
26	BH {4}	12-20-94/1518	Dottore/T. Salem

1	BC {4}	12-20-94/1522	Dottore/D. Potter
2	D {4}	12-20-94/1623	Dottore/T. Salem
3	D {1}	12-20-94/1730	Dottore/D. Potter
4	D {1}	12-20-94/1756	Dottore/D. Potter
5	BH {2}	12-20-94/1758	Bongiovanni/D. Potter
6	D {2}	12-20-94/1813	Dottore/Amy Baker
7	D {2}	12-20-94/1920	Dottore/T. Salem
8	D {2}	12-20-94/2025	Dottore/J. Jerdan
9	D {2}	12-20-94/2147	Dottore/T. Salem
10	D {2}	12-21-94/0824	Dottore/Gus Flangas
11	D {3}	12-21-94/0827	Dottore/Amy Baker
12	BC {2}	12-21-94/0827	D. Potter/Gus Flangas
13	D {3}	12-21-94/1038	Dottore/T. Salem
14	D {2}	12-21-94/1041	Bongiovanni/Dottore
15	D {2}	12-21-94/1048	Dottore/Amy Baker
16	D {15}	12-22-94/1950	T. Salem/Dottore
17	D {3}	12-23-94/1435	Dottore/K. Lombard
18	D {2}	12-24-94/1637	Dottore/K. Lombard
19	BH {2}	12-24-94/1648	Bongiovanni/K. Lombard
20	BH {2}	12-24-94/1651	Bongiovanni/Detention Center
21	D {7}	12-24-94/1713	T. Salem/Dottore
22	BC {2}	12-24-94/1717	Bongiovanni/Potter
23	BC {2}	12-24-94/1720	Potter/Detention Center
24			
25	D {2}	12-24-94/1924	K. Lombard/R. Florio
26	D {4}	12-27-94/1519	

1	BS [3]	12-28-94/1512	D. Potter/Garth LNU
2	BH [5]	12-29-94/1829	Bongiovanni/Unkn
3	BH [2]	12-29-94/2020	Ben Spano/Bongionvanni
4	BH {2}	12-29-94/2023	Bongiovanni/Henderson Jail
5	D	12-29-94/	Dottore/J. Milano
6	D [9]	12-30-94/1723	Dottore/T. Salem
7	D {2}	01-01-95/1517	Dottore/J. Milano
8	D [5]	01-01-95/1729	Dottore/J. Jerdan
9	D {5}	01-02-95/0901	Dottore/D. Strano
10	D {2}	01-02-95/1427	Dottore/Bongiovanni
11	D {2}	01-02-95/1618	Dottore/D. Strano
12	D {4}	01-02-95/1628	Dottore/T. Salem
13	D {2}	01-03-95/0917	Dottore/Bongiovanni
14	D {2}	01-03-95/1023	Dottore/P. Flangas
15	D {1}	01-03-95/1025	Dottore/T. Salem
16	D {2}	01-03-95/1214	Dottore/D. Strano
17	D {1}	01-03-95/1456	Dottore/Bongiovanni
18	D [4]	01-03-95/2022	Dottore/Bongiovanni
19	D [6]	01-04-95/1334	Dottore/D. Strano
20	D [7]	01-04-95/1349	Dottore/J. Jerdan
21	D [3]	01-04-95/1431	Dottore/D. Potter
22	D [5]	01-05-95/1557	Dottore/T. Salem/ Unknown Female
23			
24	D [2]	01-05-95/1607	Dottore/D. Strano
25	D {1}	01-05-95/1650	Dottore/D. Strano
26	D [5]	01-05-95/2001	Dottore/T. Salem

1	D [4]	01-05-95/2004	Dottore/Bongiovanni
2	D {3}	01-06-95/1019	Dottore/J. Jerdan
3	D [8]	01-06-95/1601	Dottore/T. Salem
4	D [6]	01-06-95/1624	Dottore/T. Salem
5	D {4}	01-07-95/1733	Dottore/J. Jerdan
6	D {3}	01-08-95/2007	Bongiovanni/Dottore
7	D {4}	01-11-95/	Dottore/D. Strano
8	D [6]	01-12-95/2059	Dottore/T. Salem
9	BS {3}	01-12-95/	D. Woofter/Dara Lee
10	D {1}	01-14-95/1315	Dottore/Milano
11	D {2}	01-14-95/2110	Dottore/Karen Anderson
12	D [1]	01-17-95/0912	Dottore (call to 800-759-7243 and entry of 261-0664)
13			
14	BH [2]	01-17-95/1915	Bongiovanni/Unk. Female
15	BH {1}	01-17-95/1950	Bongiovanni/Unk. Female
16	D {1}	01-17-95/1953	Dottore/Angela Bongiovanni
17	D {1}	01-17-95/1954	Dottore/Bongiovanni
18	D {1}	01-17-95/2006	Dottore/D. Strano/Bongiovanni
19			
20	D {1}	01-17-95/2121	Dottore/D. Strano/Bongiovanni
21			
22	D [3]	01-18-95/1019	Dottore/J. Jerdan
23	D [5]	01-18-95/1024	Dottore/T. Salem
24	D {2}	01-19-95/0944	Dottore/Schieber
25	D [2]	01-21-95/1035	Dottore/Frank Urh
26	D [6]	01-22-95/1515	Dottore/Bongiovanni
	D [6]	01-23-95/1106	Dottore/K. Lombard

1	D {3}	01-24-95/1236	Dottore/D. Strano
2	BS {2}	01-26-95/1551	D. Woofter/Bongiovanni
3	D {3}	01-26-95/1700	Dottore/D. Strano
4	D {7}	01-27-95/0948	Dottore/T. Salem
5	BC {3}	01-28-95/1126	Bongiovanni/Josephine Bone
6			
7	BC {1}	01-28-95/1129	Bongiovanni/Detention Center
8	D {2}	01-29-95/1424	Dottore/D. Strano
9	D {6}	02-01-95/1057	T. Salem/Dottore
10	D {2}	02-01-95/1115	Dottore/Dresser
11	D {2}	02-01-95/	Dottore/Potter
12	D {4}	02-01-95/1125	Dottore/Bongiovanni
13	D {1}	02-01-95/1132	Dottore/Dresser
14	BS {3}	02-01-95/1527	Del Potter/Unk Male
15	D {2}	02-02-95/1547	Dottore/Mickey Dresser
16	BC {5}	02-02-95/1550	Del Potter/Fabricio
17	D {2}	02-07-95/0942	Dottore/D. Potter
18	D {3}	02-07-95/0948	Dottore/M. Dresser
19	D {3}	02-07-95/1430	Dottore/T. Salem
20	D {3}	02-07-95/1630	Dottore/T. Salem
21	BS {3}	02-07-95/1645	D. Woofter/Marty Hastings
22			
23	BC {2}	02-08-95/0830	Del Potter/Randy LNU
24	BS {2}	02-08-95/0942	D. Woofter/Pat LNU
25	D {8}	02-08-95/1301	Dottore/J. Jerdan
26	BS {2}	02-08-95/1352	D. Woofter/Ron Weiss

1	BS {2}	02-08-95/1354	D. Woofter/Unknown Female
2	D {4}	02-08-95/1606	Dottore/T. Salem
3	D [10]	02-08-95/2158	Dottore/T. Salem
4	D [1]	02-09-95/1630	Dottore/T. Salem
5	BS {2}	02-10-95/0827	Bongiovanni/D. Woofter
6	BS {2}	02-10-95/0836	D. Woofter/Greta LNU
7	BS {1}	02-10-95/	Greta LNU/D. Woofter
8	D {4}	02-10-95/0947	Dottore/Dresser
9	BH	02-10-95/1448	Dottore/Bongiovanni
10	BS {2}	02-10-95/	Bongiovanni/D. Woofter
11	D {5}	02-11-95/1612	Dottore/T. Salem
12	D {3}	02-11-95/1948	Dottore/Bongiovanni
13	BS [2]	02-13-95/1107	D. Woofter/B. Spano
14	D {3}	02-14-95/1427	Dottore/P. Flangas
15	D {2}	02-14-95/1543	Dottore/T. Salem
16	D {2}	02-14-95/1823	Dottore/J. Jerdan
17	D {3}	02-15-95/2129	Dottore/T. Salem
18	D {1}	02-16-95/1951	Dottore/Bongiovanni
19	D {3}	02-17-95/1309	Dottore/T. Salem
20	D {6}	02-17-95/1547	Dottore/Dresser
21	D {3}	02-19-95/2138	Dottore/Bongiovanni
22	D {4}	02-23-95/1654	Dottore/Strano
23	BC {2}	03-04-95/0942	Bongiovanni/P. Flangas
24	BC {2}	03-04-95/0944	Bongiovanni/Detention Center
25			
26	BC {3}	03-04-95/1037	Bongiovanni/Joe LNU

1	D {3}	03-05-95/1916	Dottore/T. Salem
2	D {2}	03-06-95/1100	Dottore/T. Salem
3	BS {3}	03-06-95/1320	D. Woofter/Bruce Gardiner
4	D {2}	03-06-95/1753	Dottore/T. Salem
5	CM [14]	07-25-95/1300	Dottore/T. Salem
6	CM [15]	08-07-95/1420	T. Salem/Dottore
7	CM [8]	08-08-95/1640	T. Salem/Dottore
8	CM [14]	08-24-95/1130	T. Salem/Dottore
9	CM [12]	09-29-95/1430	T. Salem/Dottore
10	CM [8]	09-29-95/1430	Dottore/T. Salem
11	D [6]	10-07-95/1838	Dottore/T. Salem
12	D [2]	10-11-95/2115	Bongiovanni/Dottore
13	D {2}	10-12-95/1407	T. Salem/Dottore
14	BC {3}	10-13-95/1505	Bongiovanni/Potter
15	BC {3}	10-14-95/1223	Bongiovanni/P. Flangas
16	BC {2}	10-14-95/1225	Bongiovanni/Detention Center
17			
18	D [5]	10-15-95/0935	Dottore/Bongiovanni
19	D [2]	10-15-95/0944	Dottore/Lynn Levitt
20	D [3]	10-15-95/1006	Dottore/Star Levitt
21	D [2]	10-15-95/1016	Dottore/Star Levitt
22	BC {3}	10-15-95/1042	Bongiovanni/P. Flangas
23	BC {3}	10-15-95/1046	Bongiovanni/Detention Center
24	BC {3}	10-15-95/1050	Bongiovanni/P. Flangas
25	BC {3}	10-15-95/1100	Bongiovanni/Detention Center
26			

1	BH [1]	10-15-95/1348	Bongiovanni/Dottore
2	BH [3]	10-15-95/1352	Flangas/Bongiovanni
3	D [1]	10-15-95/1739	Dottore/S. Leavitt
4	D [2]	10-15-95/1814	Dottore/T. Salem
5	D [3]	10-15-95/1833	Dottore/Bongiovanni
6	D [1]	10-15-95/1852	Dottore/S. Leavitt
7	D [1]	10-15-95/1913	Dottore/Bongiovanni
8	BH {5}	10-15-95/2222	Bongiovanni/Flangas
9	D [3]	10-17-95/1829	Dottore/R. Dottore
10	D [1]	10-17-95/1838	Dottore/T. Salem
11	D [1]	10-17-95/2012	Dottore/Bongiovanni
12	BH {3}	10-20-95/1848	Bongiovanni/Potter
13	BH {2}	10-20-95/	Bongiovanni/Detention Center
14	BS {2}	10-23-95/1057	D. Woofter/Unknown Male
15			
16	BH {2}	10-23-95/1720	Bongiovanni/P. Flangas

17           The following list comprises conversations that the

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18 Government does not intend to use in its case in chief, unless

19 listed above, but may use as impeachment materials if either

20 defendant Paul R. Dottore or defendant Gerard J. Bongiovanni

21 testifies at the trial of this matter. The Government may play some

22 or all of these recordings as impeachment at trial. The Government

23 may play a recording in its entirety or it may redact a recording

24 and play only a portion of the recording at trial.

25

26   SOURCE                           DATE/TIME                   PARTICIPANTS



1	D	[5]	02-01-94/1814	P.DOTTORRE/UNK MATE
2	D	[5]	02-03-94/1839	P. DOTTORRE/ANGE (LNU)
3	D	[9]	02-14-94/1559	P. DOTTORRE/ ANGELO (LNU)
4	D	[2]	02-14-94/1608	P. DOTTORRE/R. DOTTORRE
5	D	[2]	02-17-94/1741	P. DOTTORRE/R. SCHIEBER
6	D	[8]	02-18-94/2007	P. DOTTORRE/ A. COMMARATO
8	D	[13]	03-04-94/1032	P. DOTTORRE/T. SALEM/ F. DOTTORRE, JR.
9	D	[4]	03-13-94/1831	P. DOTTORRE/A. COMMARATO
10	D	[20]	03-13-94/1838	P. DOTTORRE/"BUFFALO"/ PAULA DOTTORRE
11	D	[4]	04-02-94/1731	P. DOTTORRE/A. COMMARATO
13	D	{4}	04-13-94/2007	P. DOTTORRE/BONGIOVANNI
14	D	[4]	04-28-94/1751	P. DOTTORRE/A. COMMARATO
15	D	[4]	07-20-94/2153	P. DOTTORRE/T. SALEM
16	D	[14]	07-11-94/1213	P. DOTTORRE/T. SALEM
17	D	[3]	07-21-94/1653	P. DOTTORRE/T. SALEM
18	D	[4]	07-21-94/1917	P. DOTTORRE/J. JERDAN
19	D	[8]	07-24-94/2030	P. DOTTORRE/A. PALMISON
20	D	[6]	07-25-94/1130	P. DOTTORRE/T. SALEM
21	D	{4}	07-25-94/1826	P. DOTTORRE/SCHIEBER
22	D	[9]	07-25-94/2015	P. DOTTORRE/T. SALEM
23	D	[5]	07-28-94/1507	P. DOTTORRE/T. SALEM
24	D	[5]	07-28-94/1708	P. DOTTORRE/ PAULA DOTTORRE/ A. COMMARATO
25				
26	D	{5}	07-28-94/1740	P. DOTTORRE/A. COMMARATO

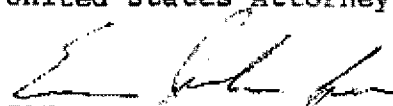
1	D	[6]	07-28-94/1813	P. DOTTORE/J. JERDAN/ UNK FEMALE
2	D	[4]	07-28-94/1817	T. SALEM/P. DOTTORE
3	D	[3]	07-28-94/2011	P. DOTTORE/ A. COMARATO/ MRS. COMARATO
4				
5	D	[3]	07-28-94/2015	P. DOTTORE/T. SALEM
6	D	[9]	07-29-94/1333	P. DOTTORE/T. SALEM
7	D	[4]	07-29-94/1619	P. DOTTORE/T. SALEM
8	D	[4]	07-29-94/1810	P. DOTTORE/A. COMARATO
9	D	[4]	07-29-94/2005	P. DOTTORE/ ROSE DOTTORE/T. SALEM
10	D	[2]	07-29-94/2009	P. DOTTORE/A. COMARATO
11	D	[5]	07-30-94/1319	P. DOTTORE/ A. COMARATO/ DENNIS PETROWSKI
12	D	[3]	07-30-94/1319	P. DOTTORE/X. COMARATO
13	D	[4]	07-30-94/2043	P. DOTTORE/T. SALEM
14	D	[4]	07-31-94/1405	P. DOTTORE/ A. COMARATO/ MARTY CARSON
15	D	[5]	07-31-94/1820	P. DOTTORE/T. SALEM
16	D	[5]	08-02-94/1554	P. DOTTORE/T. SALEM
17	D	[6]	08-03-94/1717	P. DOTTORE/T. SALEM
18	D	[6]	08-05-94/1107	P. DOTTORE/T. SALEM
19	D	[7]	08-18-94/1157	P. DOTTORE/T. SALEM/ J. JERDAN
20	D	[5]	08-18-94/1514	P. DOTTORE/COMARATO
21	D	[4]	08-18-94/1533	P. DOTTORE/J. JERDAN
22				
23				
24				
25				
26				


1	D [6]	04-13-94/2007	P. DOTTORE/ G. BONGIOVANNI
2			
3	D {4}	09-20-94/2028	P. DOTTORE/ G. BONGIOVANNI

4 DATED this 24 day of August, 1996.

5 Respectfully Submitted,

6 KATHRYN E. LANDRETH  
7 United States Attorney

8   
9 JANE HAWKINS SHOEMAKER  
Assistant U.S. Attorney

10   
11 ERIC JOHNSON  
12 Assistant U.S. Attorney  
13 Organized Crime Strike Force  
14 District of Nevada

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

-oOo-

UNITED STATES OF AMERICA,	)	CR-S-96-098-LDG(RJJ)
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
GERARD BONGIOVANNI, et al.,	)	
	)	
Defendants.	)	

PROOF OF SERVICE

I, Robyn M. Guice, hereby certify that I am an employee of the Organized Crime Strike Force, United States Department of Justice, and that on this day I served a copy of the following:

NOTICE OF TAPE RECORDINGS  
INTENDED FOR USE IN GOVERNMENT'S CASE IN CHIEF

upon the following:

Oscar Goodman, Esq.  
520 S. Fourth St.  
Las Vegas, NV 89101

James Erbeck, Esq.  
300 S. Fourth St., #620  
Las Vegas, NV 89101

Don Green, Esq.  
633 S. Fourth St., #2  
Las Vegas, NV 89101

by placing said Notice in the United States Mail, clearly addressed and postage prepaid.

DATED: Aug 2, 1996

Robyn M. Guice  
ROBYN M. GUICE

IN THE SUPREME COURT OF THE STATE OF NEVADA

\*\*\*\*\*

MICHAEL RIPPO,  
Appellant,  
-vs-  
E.K. McDANIEL, et al.,  
Respondent.

No. 53626

**FILED**

OCT 19 2009

TRACIE K. INDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

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3	Reporter's Transcript of Proceedings: Jury Trial, Vol. I; 10:00 a.m.	01/30/96	JA00634-JA00641
3 4	Reporter's Transcript of Proceedings: Jury Trial, Vol. II; 1:30 p.m.	01/30/96	JA00642-JA00725 JA00726
4	Reporter's Transcript of Proceedings: Jury Trial, Vol. III; 3:30 p.m.	01/30/96	JA00727-JA00795
4	Reporter's Transcript of Proceedings: Jury Trial, 11:15 AM	01/31/96	JA00796-JA00888
4 5	Reporter's Transcript of Proceedings: Jury Trial, 2:30 PM	01/31/96	JA00889-JA00975 JA00976-JA01025
5	Reporter's Transcript of Proceedings: Jury Trial, Vol. I; 10:20 a.m.	02/01/96	JA01026-JA01219
5	Reporter's Transcript of Proceedings: Jury Trial, Vol. VI; 10:20 a.m.	02/02/96	JA01220-JA01401
5B	Reporter's Transcript of Proceedings: Jury Trial, Vol. 1, 1:30 p.m.	02/05/96	JA01401-001 to JA01401-179
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8	Reporter's Transcript of Proceedings: Jury Trial, 1:45 PM	02/07/96	JA01767 JA01872
8 9	Reporter's Transcript of Proceedings: Jury Trial, 10:15 AM	02/08/96	JA01887-JA01938 JA01939-JA02054
9 10	Reporter's Transcript of Proceedings: Jury Trial, 10:45 AM	02/26/96	JA02055-JA02188 JA02189-JA02232
10	Reporter's Transcript of Proceedings: Jury Trial, 11:00AM	02/27/96	JA02233-JA02404
11	Reporter's Transcript of Proceedings: Jury Trial, Vol. I, 10:30 a.m.	02/28/96	JA02405-JA02602
12 13	Reporter's Transcript of Proceedings: Jury Trial, Vol. I, 10:35 a.m.	02/29/96	JA02630-JA02879 JA02880-JA02885
13	Reporter's Transcript of Proceedings: Jury Trial 9:00 AM	03/01/96	JA02886-JA03064
13	Reporter's Transcript of Proceedings: Jury Trial Vol. I, 10:30 a.m.	03/04/96	JA03065-JA03120
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1 is this a conversation with Mr. Dottore?

2 THE COURT: You need the foundation, counsel.

3 MR. JOHNSON: Is it between the defendant and Mr.  
4 Dottore?

5 BY MR. PITARO:

6 Q Were these conversations -- did you -- were you aware of  
7 this from Mr. Dottore in conversations?

8 A Yes, I was.

9 Q And were you also aware of and in listening to all --  
10 some of the wiretaps the government had taken of the various  
11 conversations?

12 MR. JOHNSON: Again, Your Honor --

13 THE WITNESS: Yes.

14 MR. JOHNSON: -- I'm going to object to any  
15 testimony that's based upon --

16 THE COURT: And I'm gonna sustain --

17 MR. JOHNSON: -- the defendant's listening to the --

18 THE COURT: -- any testimony from tapes that are not  
19 in evidence.

20 MR. PITARO: Your -- if I may, when Mr. Hanford was  
21 there he was allowed to go through his conclusions from this.  
22 I don't think there is any dispute, because they provided us  
23 those tapes --

24 THE COURT: Counsel, he's raised an objection, I  
25 think it's a sound objection. You want to play the tapes, you



1 know very well anything that's relevant you can play.

2 MR. PITARO: Your Honor, you told me I couldn't play  
3 them.

4 THE COURT: Well, if they're not relevant, then you  
5 can't play them.

6 MR. PITARO: But that's different than saying they  
7 don't exist.

8 THE COURT: Well, I'm not saying one way or the  
9 other.

10 MR. PITARO: They are implying they don't exist.

11 THE COURT: Well, I don't know that he is implying  
12 that at all. He's saying that --

13 MR. JOHNSON: No one is -- we aren't arguing that  
14 Mr. Dottore cashed in life insurance policies around this  
15 period of time.

16 MR. PITARO: Thank you.

17 MR. JOHNSON: The point that was at issue was the  
18 specific day.

19 THE COURT: If that's the point, then fine --

20 MR. PITARO: Then I'm --

21 THE COURT: -- they've agreed to it.

22 MR. PITARO: -- then I'm -- then I'm happy.

23 THE COURT: Then let's move on.

24 MR. PITARO: Okay.

25 THE COURT: But that was in long before.

1 BY MR. PITARO:  
2 Q I want you to turn to Exhibit 122, a conversation of  
3 January 6th, 1995.  
4 A Okay.  
5 Q Look down about the middle to that. Do you see where Mr.  
6 Dottore says that, "I can't be -- I can't do nothing. When  
7 it's over -- after it's over we'll golf, we'll eat, we'll  
8 dance, we'll fart, we'll sing"?  
9 A Yes, I see that.  
10 Q And he said that you had said that?  
11 A That's what he said.  
12 Q Did you ever have any conversation with Dottore about you  
13 playing golf with Mr. Salem?  
14 A No, I did not.  
15 Q Did you ever make comments such as this?  
16 A No. These certainly are not words I would of ever spoked  
17 [sic].  
18 Q Is that how you talk?  
19 A No, that's not how I talk.  
20 Q Now, let me just shift gears here a minute. You heard in  
21 the government's opening statement that the rationale they  
22 gave was that you were somehow in financial distress because  
23 of your wife's illness; is that correct?  
24 A That's correct.  
25 Q Now, let's go through your finances.

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- 1 A You know, my wife was very sick and --
- 2 Q Okay. Well, let me ask you this, what were you talking
- 3 about in this conversation with Rose?
- 4 A I was talking about my son, at this time he was fifteen
- 5 and a half, he'd just got his learner's permit and we were
- 6 talking about buying him a car -- he wanted a car. And I was
- 7 joking around with Rose that, oh, now I'm going to be
- 8 bankrupt, because I got to buy G.E. a automobile.
- 9 Q Now, if you turn just quickly -- and I just want to make
- 10 this comparison, if you turn quickly to 125.
- 11 A Yes.
- 12 Q Okay. And that was a call from Mr. Dottore to you on the
- 13 same day?
- 14 A Yes.
- 15 Q January 17th?
- 16 A Yes.
- 17 Q Okay. Now, let's just keep that in mind for a minute,
- 18 but were you bankrupt?
- 19 A No, I was not.
- 20 Q Okay. Let's just go through for the jury your finances
- 21 to see if --
- 22 A Okay.
- 23 Q -- you were destitute because of your wife's illness.
- 24 Okay?
- 25 A Fine.

1 Q You owned a house?

2 A Yes, I did.

3 Q How much was your mortgage payment?

4 A I didn't have a mortgage. I paid off my mortgage in

5 1991.

6 Q And why did you do that?

7 A Because my wife was getting worse and worse and I just

8 wanted that out of the way, so I just --

9 Q What about an automobile, did you have one?

10 A Yes, I had a automobile, and that was free and clear

11 also.

12 Q Now, what about your wife's medical bills? We know she

13 was very, very ill and -- and -- and she died, they had to be

14 enormous. Weren't they?

15 A Yes, they were enormous, but I had --

16 Q Who --

17 A -- okay.

18 Q -- was your wife -- who paid your wife's medical bills?

19 A I had health insurance from my employment with the State,

20 and she was also on Social Security disability and Medicare.

21 So between the two of them everything was paid, including

22 monies to pay for the day-time help we had for her. If I ever

23 had to go into my pocket more than two hundred dollars (\$200)

24 a month --

25 Q Okay. Now --

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1 A -- that would be it.

2 Q -- what about your kids, G.B. and Angela?

3 A G.B. and Angela also received Social Security disability  
4 benefits.

5 Q And how much did they get each month each?

6 A I believe between three hundred and three fifty (300 and  
7 350).

8 Q And what happened to that money?

9 A That money I put in bank accounts for them for their  
10 college education and to use when they grew up.

11 Q Did you ever --

12 A I've never touched --

13 Q -- use any of that?

14 A -- never touched a penny of their money.

15 Q And did you get a salary as a judge?

16 A Yes, I did. I --

17 Q And what was that?

18 A -- I earned seventy-nine thousand dollars (\$79,000) a  
19 year.

20 Q Did you have any savings?

21 A Yes, I had deferred savings at work where I would save  
22 seventy-five hundred dollars (\$7500) a year. At this time it  
23 was probably in the neighborhood of thirty-five thousand  
24 dollars (\$35,000).

25 Q Did you have any other savings?

1 A I had saving accounts in various banks, yes.

2 Q Okay. So at the time that you're talking with your  
3 sister about being bankrupt, were you?

4 A No, it was just --

5 Q Huh?

6 A No, I was not.

7 THE COURT: He's answered that four times --

8 MR. PITARO: Okay.

9 THE COURT: -- already.

10 MR. PITARO: Okay.

11 BY MR. PITARO:

12 Q Now, I want to go back to the 17th of January. Did Paul  
13 Dottore give you any money from Terry Salem that night?

14 A No, he did not.

15 Q Okay. Did you go over to Dottore's that evening?

16 A Yes, I did.

17 Q Okay. I want you to look at Exhibits 127 and 128.

18 Okay? And --

19 A Okay.

20 Q -- looking at 127, that appears to be a conversation  
21 between Paul Dottore and Dominic Strano --

22 A That's right.

23 Q -- do you see that?

24 A Yes.

25 Q Okay. Do you see on page 2 where Dottore tells Dominic

1 Strano the reason you are coming over to his house that night  
2 is to get some golf balls?

3 A That's correct.

4 Q And then I want you to go to 128, which is when you  
5 appear to be over at Mr. Dottore's.

6 A Yes.

7 Q And what does he give you?

8 A Mr. Dottore gave me golf balls that Dominic Strano had  
9 bought for us.

10 Q And does on the first line on Exhibit 120 of the  
11 Government acknowledge that he gave you some golf balls?

12 A Yes.

13 Q Is there any mention of money in either of these calls?

14 A There is no mention of money.

15 Q Okay. I want you to go to 129, a conversation on January  
16 22nd, 1995.

17 A Okay.

18 Q And do you see on the middle of page 1 Dottore said he  
19 won a hundred and sixty dollars (\$160) last night?

20 A Yes.

21 Q And you said you'd taken a beating?

22 A Yes.

23 Q And then the next page he says, you're welcome to some if  
24 you need it, and you say you don't need any?

25 A Right.

1 Q Huh?

2 A Yes.

3 Q What was your understanding of what he was saying when he  
4 told you, do you need any money?

5 A My understanding was that he musta' had some -- he had  
6 money from when he cashed in his life insurance policies and  
7 he took some of it and he went out gambling and he won a  
8 hundred sixty dollars (\$160). And he was telling me that he  
9 had some money available to, if I needed any money, a loan, he  
10 had some money. Because I would always be loaning him money  
11 and he wanted to return the favor.

12 Q Okay.

13 A But I didn't need any money. I thought he was just --

14 MR. JOHNSON: Objection, non-responsive.

15 THE WITNESS: -- bragging --

16 MR. PITARO: All right.

17 THE COURT: It's --

18 THE WITNESS: -- as a matter of fact.

19 THE COURT: There's no question --

20 BY MR. PITARO:

21 Q Now --

22 THE COURT: -- Mr. Bongiovanni.

23 BY MR. PITARO:

24 Q -- from January onward through August --

25 A Yes.



1 Q -- during this period of time, did you do anything about  
2 this Salem case?

3 A No.

4 Q Okay. Did you grant any writs?

5 A No.

6 Q Did you move the trial up?

7 A No, I didn't.

8 Q Did you let him waive a jury trial --

9 A No.

10 Q -- so it'd be in front of you?

11 A No.

12 Q Okay. The Government played an exhibit which was  
13 February 8th, 1995 between Paul Dottore and Rose Dottore.

14 A Yes.

15 Q And they say they're stopping by -- he said he's dropping  
16 by Gerard's to drop off some paperwork.

17 A That's correct.

18 Q What was happening at this time, what was he dropping  
19 off?

20 A Okay. This was I believe the beginning of Massbo  
21 Corporation; he was dropping over literature on the  
22 corporation with the lottery.

23 Q And this is the same time when we started this back there  
24 when that Gresser tape was also in February of 1995 --

25 A That's correct.

1 Q -- wasn't it?

2 A That's correct.

3 Q Okay. Now, there's some other conversations that go on,  
4 1:32, 1:33, things of that nature, between Dottore and Salem.  
5 Were you aware of any of these calls that Dottore was making  
6 to Salem --

7 A No, I wasn't.

8 Q -- or vice versa?

9 A No, I was not, not until I was indicted and reviewed the  
10 tapes.

11 Q And do you see like in 132 where Dottore keeps telling  
12 Salem, there's nothing to worry about, don't worry. Are you  
13 telling Salem -- are you telling Dottore that at all?

14 A No, I'm not.

15 Q Is he relaying any conversations you had with him?

16 A No, he was not.

17 Q Okay. And you're not a party to these conversations, are  
18 you?

19 A That's correct.

20 Q This is between a Government agent --

21 A Right.

22 Q -- Salem, and Mr. Dottore?

23 MR. JOHNSON: Objection, asked and answered.

24 THE COURT: Sustained.

25 THE WITNESS: That's correct.

1 THE COURT: Sustained. Let's -- let's move on,  
2 counsel.

3 MR. PITARO: Okay.

4 BY MR. PITARO:

5 Q Did you ever tell Dottore to tell Salem not to worry  
6 about his case?

7 A No, I didn't. I would of been telling Salem the  
8 opposite.

9 MR. JOHNSON: Objection --

10 THE COURT: You've answered --

11 MR. JOHNSON: -- non-responsive.

12 THE COURT: -- the question. Let's move on.

13 BY MR. PITARO:

14 Q Well, let me ask you this, in Exhibit 133 --

15 A Right.

16 Q -- on page 2, where Dottore is allegedly telling Salem at

17 the top that you're saying, "Please, tell him not to worry."

18 Do you see that?

19 A Yes.

20 MR. JOHNSON: What page are you on?

21 MR. PITARO: Page 2, 133.

22 THE WITNESS: Wait a minute.

23 BY MR. PITARO:

24 Q Do you see that?

25 THE COURT: Where you talking about, Mr. Pitaro?

1 MR. PITARO: I'm sorry --

2 THE WITNESS: No, I don't.

3 BY MR. PITARO:

4 Q Okay. Do you see where he says on the call of 2/15/95?

5 A Okay.

6 Q "Was supposed to see Pete for five minutes. See them  
7 tomorrow, that's it. He couldn't get off the phone. I saw  
8 the other guy tonight at the lanes." '33 -- 133?

9 A I have 133.

10 Q Okay. Well --

11 A Yes, I see that.

12 Q Okay, do you see that?

13 A Yes.

14 Q Did you ever tell Mr. Dottore to tell Mr. Salem that?

15 A No, I didn't.

16 Q Does that make any sense to you?

17 MR. JOHNSON: Objection, Your Honor.

18 THE COURT: He's answered the question. Whether it  
19 makes any -- let's --

20 MR. PITARO: Okay.

21 THE COURT: -- let's move on, counsel.

22 MR. PITARO: Alrighty.

23 BY MR. PITARO:

24 Q Now, I want to -- the Government's Exhibits now jump on  
25 to August, do you see that?

1 THE COURT: What number are you --

2 MR. PITARO: Starting with 134.

3 THE WITNESS: Yes, sir.

4 THE COURT: 134.

5 THE WITNESS: Yes.

6 BY MR. PITARO:

7 Q Okay. What -- tell the jury what was happening between  
8 this period of time between Mr. Dottore, yourself and others.

9 A Okay.

10 MR. JOHNSON: Objection, Your Honor, that's an over-  
11 broad question.

12 THE COURT: Well --

13 MR. JOHNSON: We're talking about over a --

14 MR. PITARO: All right. Why don't we do this --

15 MR. JOHNSON: -- period of six months --

16 THE COURT: You're talking about --

17 MR. JOHNSON: -- what's happening between --

18 MR. PITARO: All right.

19 THE COURT: -- what period of time, Mr. Pitaro?

20 MR. JOHNSON: -- Dottore and other people.

21 MR. PITARO: That's fine.

22 THE COURT: Just a minute.

23 MR. PITARO: I'll just --

24 THE COURT: What period of time are you talking  
25 about?

1 MR. PITARO: From February through June, July.

2 THE WITNESS: That's when we were working on the  
3 Massbo business, trying to get that off the ground.

4 BY MR. PITARO:

5 Q Okay.

6 A Paul had went back east to --

7 MR. JOHNSON: Objection, non-responsive.

8 BY MR. PITARO:

9 Q Had Mr. Dottore done anything about Massbo?

10 A Yes.

11 Q Did you do anything about Massbo?

12 A No, I didn't, not much.

13 Q Well, did you --

14 A Other than --

15 Q -- invest any money?

16 A -- invest.

17 Q Huh?

18 A Other than invest, I did nothing.

19 Q And did you get other people to invest?

20 A Yes, and I got others to invest, Pete Flangas, my  
21 brother, Delwin Potter and a couple other people.

22 Q How much did you put up each?

23 A Four thousand dollars (\$4,000).

24 Q And what was the purpose of this investment in this  
25 lottery deal?

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1 A We were hoping that the business would be a success  
2 because Paul told me that he could --

3 MR. JOHNSON: Objection, Your Honor.

4 MR. PITARO: Well --

5 THE COURT: You may respond. They were --

6 THE WITNESS: Okay.

7 THE COURT: -- hoping the business would be a  
8 success. Let's --

9 THE WITNESS: Okay.

10 THE COURT: -- move on.

11 MR. PITARO: Okay.

12 BY MR. PITARO:

13 Q Who was going to run it for you?

14 A Dottore was gonna run the business; everybody else had  
15 jobs, so --

16 Q Okay.

17 A -- that was one of the factors why we started it, to try  
18 and get Paul off his feet, give him --

19 Q Okay.

20 A -- an opportunity.

21 Q And he didn't have to put any money up?

22 A No, he didn't. And he --

23 Q But he was gonna get a share?

24 A -- he was going to get an equal share, plus a salary; we  
25 was gonna ---

1 Q Okay. Did the business go bust?

2 A Yes, it did.

3 Q We heard Mr. Dottore say it ended up being --

4 A Right.

5 Q -- a scam?

6 A It was a scam all right.

7 Q And so you guys lost your money?

8 A Yes, we did.

9 Q Okay. Did Mr. Dottore come back to Las Vegas?

10 A Yes, he did.

11 Q Okay. Now, during this period of time did he get --

12 receive any money from Massbo?

13 A Yes, he did.

14 Q What did he get?

15 A He -- we loaned him five hundred dollars (\$500). He

16 asked me for a loan, I went to each of the individuals and we

17 threw in a hundred apiece when we divided up -- closed the

18 bank account and divided up what was left.

19 Q And when was that?

20 A It was in the -- in the summer, I believe, June or July

21 of '94.

22 Q Okay -- '95?

23 A '95.

24 Q Was Mr. Dottore working at this time?

25 A No, he wasn't.



1 Q Okay.

2 A He was unemployed.

3 Q Now, there were two calls that were played, the phone  
4 calls of the August 24, '95, which was Exhibit 134 and our  
5 1553. Okay?

6 A Yes.

7 Q And then the Government's 134, right?

8 A That's correct.

9 Q Okay. Now, during this period of time, and in -- what  
10 was our 1553, but the Government's exhibit, you hear Paul  
11 telling Salem about waiting for Christmas. Do you see that?

12 A Yes, I see it.

13 Q Did you ever tell Paul to say that?

14 A No, I did not.

15 Q Okay. Now, what was Paul's financial situation as you  
16 knew it in August of 1995 when he made that call?

17 A Well, he had been unemployed since, I believe, June, or  
18 before that, and his benefits from unemployment had stopped.  
19 I believe he borrowed all that he could out of his insurance,  
20 and he had a welfare weight on him at this time for child  
21 support.

22 Q Okay.

23 A So his situation was not good.

24 Q Did there come a time the following month when he got a  
25 job?

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1 A Yes.

2 Q Okay. And do you know where he got the job?

3 A He got a job working at the showroom at "Splash."

4 Q Okay. Do you know what he was doing there?

5 A I understood that he was a part-time maitre d', and then  
6 eventually he was also working in the office selling the  
7 showroom tickets or whatever --

8 Q Okay.

9 A -- whatever he was doing. Something about the shows.

10 Q Now, this is gonna take us up to October 1995, which is  
11 Government's Exhibit 201.

12 A Okay.

13 Q Okay? Which starts what we call the Kutash-Riklis  
14 matter.

15 A Yes.

16 Q And you had this call on October 13th, 1995 as reflected  
17 in 201 with your law clerk?

18 A Yes.

19 Q And what were you telling him?

20 A I was --

21 Q On the top of page 1.

22 A I was telling Mr. Potter that we had this case on our  
23 calendar, and that it was a rather complex, complicated issue,  
24 and to make sure that he prepared me when I came in Monday so  
25 I'd be aware of it.

1 Q Okay. Now, on October 15th, 1995 you had a conversation  
2 with Mr. Dottore, is that correct?

3 A Yes.

4 Q And that was Government's Exhibit 202?

5 A Yes.

6 Q And Mr. Dottore called you, didn't he?

7 A Yes, he did.

8 Q And why did he call you?

9 A He called me to see if my son made it home well because  
10 the night before my son had a homecoming dance, and Mr.  
11 Dottore made arrangements through one of his friends for him  
12 and his friends to go see a show. My son didn't show up,  
13 evidently he met with other friends and they went to a  
14 different show, so Paul was worried that something might a  
15 happened to G.B., and that's why he was calling me.

16 Q Okay. Did you mention the Riklis-Kutash case to him?

17 A Yes, I did.

18 Q Why'd you do that?

19 A Well, I knew he worked there, and it was just  
20 conversation; I thought he'd be interested.

21 Q Okay. And there was a point there where -- in this  
22 conversation that you start laughing?

23 A Yes.

24 Q And what was that about?

25 A I starting laughing when -- let me see; can't find it on

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1 the page, I forgot what he said.

2 Q Is that right after Dottore said, "Nobody said nothing to  
3 me"?

4 A What page is that?

5 Q 2.

6 MR. JOHNSON: Well, Your Honor, is the witness  
7 testifying he doesn't remember as he --

8 THE COURT: I'm --

9 MR. JOHNSON: -- right now --

10 THE COURT: I'm sorry, what's --

11 MR. JOHNSON: -- that he's -- what the reason was he  
12 was laughing?

13 THE COURT: Pardon me?

14 MR. JOHNSON: Is Mr. Pitaro seeking to refresh his  
15 recollection? I mean, is the witness's testimony is, that he  
16 doesn't remember why he was laughing and he's --

17 THE COURT: Oh, I think you're trying to identify a  
18 place on the transcript.

19 MR. PITARO: Yes. Right.

20 THE WITNESS: Right.

21 THE COURT: Go ahead.

22 BY MR. PITARO:

23 Q Do you see that?

24 A Not yet. On page 2 of Exhibit?

25 Q 202.

1 A 202? Okay.

2 Q Do you see where Mr. Dottore says to -- says to you, "No

3 one said nothing to me" after you said they're fighting over

4 the control of the show or something?

5 A Yes.

6 Q Okay. And then you were laughing, and then you --

7 A Yes.

8 Q Okay. Why --

9 A I remember that.

10 Q -- why were you laughing?

11 A I was laughing because he was a relief maitre d' and it

12 seemed awful funny to me that Mr. Kutash or Mr. Riklis is

13 gonna tell him about what -- that they're having a lawsuit; it

14 just hit me as being funny.

15 Q Okay. Were you telling Mr. Dottore to try to get you a

16 bribe?

17 A No, I was not.

18 Q Okay. Did you tell him how your original review of the

19 case looked?

20 A Yes, I did.

21 Q And what'd you say?

22 A Well, I said I thought Mr. Kutash was gonna -- it looks

23 like he was getting the short end of the deal, but we'll see

24 what happens when I have the hearing Monday.

25 Q Okay. Now, there were a couple conversations with Starr

1 Leavitt and Paul Dottore?

2 A Yes.

3 Q Were you aware of those?

4 A No, I was not.

5 Q Okay. I want you to go to Exhibit 212.

6 A Okay.

7 Q Okay?

8 A Yes.

9 Q And do you see where Paul says "5" and you say "5:00

10 o'clock?"

11 A Yes.

12 Q Was that supposed to signify a bribe?

13 A No, it was not.

14 Q What were you talking about?

15 A We were talking about meeting the next day at my office.

16 I was going to swear in some new admittees to the State Bar,

17 some attorneys that passed the Bar, we swear 'em in, and Paul

18 was gonna come and meet me around 5:00 o'clock before we went

19 to bowling.

20 Q Okay. Later in that evening, did Mr. Dottore call you?

21 A Yes, he did.

22 Q Okay. And is that what the Government referred to as a

23 "pen register call"?

24 A Yes.

25 Q And what did he say?

1 A We were talking, and -- in fact he woke me up, I remember  
2 that, and in the course of the conversation he told me before  
3 we hung up, stop over in the morning. I says, okay.

4 Q Okay. And did you in fact -- well, let me -- let me put  
5 you to Exhibit 213. Okay?

6 A 213.

7 Q So Mr. Dottore called you and asked you if you'd stop  
8 over. Did he tell you why?

9 A No, he didn't.

10 Q Okay. Did you in fact stop over at Mr. Dottore's the  
11 next morning?

12 A No, I didn't. I forgot to stop over.

13 Q And that's reflected in page 5 of Exhibit 213?

14 A Yes.

15 Q Okay. And you heard Dottore say that he had supposedly  
16 got a five-thousand-dollar (\$5,000) bribe?

17 A That's what he said.

18 Q And then he told you to -- he called you at 11:00 o'clock  
19 to tell you to come get it before you went to work?

20 A That's what he said.

21 Q And yet the tape reflects that you forgot to go by?

22 A That's what the tape reflects.

23 Q Did he ever talk to you about coming by to get a bribe?

24 A Never.

25 Q Huh?

1 A Never.

2 Q Would you forget five thousand dollars (\$5,000) from  
3 11:00 o'clock to 8:00 the next morning?

4 MR. JOHNSON: Objection, asked and answered.

5 THE COURT: It has been asked and answered, counsel,  
6 let's move on.

7 MR. PITARO: Okay.

8 BY MR. PITARO:

9 Q Now, was there any bribe?

10 A No, there was not.

11 MR. JOHNSON: Objection, asked and answered.

12 THE COURT: It has been asked and answered. Let's  
13 move on.

14 BY MR. PITARO:

15 Q The night of the 16th, did Dottore give you any money at  
16 bowling?

17 A No, he did not.

18 Q Okay. Now I want to turn to the night of the 17th.

19 Okay?

20 A 17th. Yes.

21 Q And that's when your house was searched?

22 A That's the night my house was searched, that's correct.

23 Q Now prior to the house being searched, did the -- did Mr.  
24 Dottore and Mrs. Dottore come over?

25 A Yes, they did.



1 Q And what did they do?

2 A They come over for coffee, and I believe they brought  
3 pastries, or -- they come for coffee, we had a cup of coffee.

4 Q Did Paul give you any money that night?

5 A Yes, he did.

6 Q Will you tell the jury what he paid you?

7 A He paid me back the loan that I gave him from the Massbo  
8 Corporation.

9 Q Okay. Now, Paul had just got a job after being out of  
10 work for about a year and a half?

11 A Yes, he did.

12 Q Is that correct?

13 A That's right. He'd just got back to work --

14 Q And then he came over --

15 A -- he came over to my house, he told me he was  
16 embarrassed because he owed --

17 MR. JOHNSON: Objection, Your Honor, hearsay.

18 THE COURT: Sustained.

19 MR. PITARO: Well, Your Honor, I think it's a prior  
20 inconsistent statement of Paul Dottore, and I think we're  
21 entitled to offer it for the conversation that Mr. Dottore  
22 testified to, and what happened; and it's inconsistent, and it  
23 can come in as a prior inconsistent statement of Mr. Dottore.

24 MR. JOHNSON: I don't think there was any testimony  
25 about Mr. Dottore that was -- as to what was said prior to

1 meeting with Mr. Bongiovanni.

2 THE COURT: I don't think I remember any  
3 testimony --

4 MR. PITARO: No, this is at his house.

5 THE COURT: Pardon?

6 MR. PITARO: At his house.

7 THE COURT: Oh, I understand, but I don't think  
8 there's any --

9 MR. PITARO: He testified that he was over there for  
10 an hour and they were talking.

11 THE COURT: He testified he was there for an hour --

12 MR. PITARO: Mm-hmm.

13 THE COURT: -- but I don't know that --

14 BY MR. PITARO:

15 Q Well, did you have a --

16 THE COURT: But I'm gonna sustain the objection.

17 BY MR. PITARO:

18 Q About how long did the Dottores stay there?

19 A He stayed at my house approximately one hour.

20 Q Okay. Can you tell the jury how the search came down?

21 A Yes. I just got through taking care of my wife, giving  
22 her her medicine and taking her blood pressure -- not her  
23 blood pressure, her blood test for diabetes, and feeding her,  
24 and was just laying down and I heard the doorbell ring. And  
25 my daughter was out there and I heard voices, many voices, so

1 I walked down the hall, and that's when I first saw Detective  
2 Nicholson.

3 Q And then what happened?

4 A He was in his raincoat and there were about, I don't  
5 know, four or five other FBI agents in their raincoats.

6 Q What do you mean "raincoats"?

7 A Well, they had "FBI" written on it, and Nicholson had  
8 "Metro" or "Las Vegas Police Department" on his.

9 Nicholson told me that he had a warrant. I thought that  
10 it was a warrant for my -- a warrant for me to sign, because  
11 it was common for police to come to my house in the evenings  
12 to -- and I would review warrants and sign 'em so they could  
13 go search other places. So I didn't realize that -- what they  
14 were saying, that it was for my house. So I invited 'em into  
15 the kitchen, we went into the --

16 COURT RECORDER: Excuse me, Mr. Bongiovanni.

17 THE WITNESS: I'm sorry.

18 COURT RECORDER: I need you to speak more into the  
19 microphone.

20 THE WITNESS: I'm sorry.

21 I invited 'em into the kitchen, and Nicholson  
22 started saying, you don't understand, this is a warrant for  
23 your house. I said, what do you mean, for my house? He said,  
24 this -- and then they started asking me all questions about  
25 Mr. -- was Mr. Dottore here?

1 BY MR. PITARO:

2 Q And what did you say?

3 A I says, yes, Mr. Dottore was just here, we had coffee,  
4 him and his wife were here.

5 Q And then what happened?

6 A Okay. And then Nicholson started getting louder and  
7 louder, he's -- he was leaning over my shoulder, yelling in my  
8 ear, we know Dottore brought you money, give us the money that  
9 he brought here. And I kept saying, what is this all about.  
10 And he just kept yelling and they all started yelling. The  
11 officers were fanned out throughout the house, I mean, into  
12 the -- there was one in the dining room, there was one in the  
13 family room; my house is open so I could see where these  
14 individuals were. And there were three of 'em in the kitchen,  
15 Officer Nicholson and Officer Byers and another agent, and  
16 they're looking -- he started looking through the kitchen

17 cupboards. And I could see the others lifting up the pillows  
18 on the couch and snooping around the rooms.

19 Q So what did you do?

20 A So I kept on asking, what is this all about. And  
21 Nicholson, especially, he just kept getting -- yelling at me.  
22 And I looked at my children and they were standing there and  
23 they were so frightened, I could see tears in my daughter's  
24 eyes. I said, who's in charge here. And I believe it was  
25 Byers said, Agent Hanford is in charge. I says, well, where

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1 is he, get him over here and we could resolve this. So, at  
2 that point in time I thought Byers had radioed Mr. Hanford.  
3 At any rate, he did tell me that Hanford will be right in to  
4 answer your questions.

5 So now I'm trying to still read the search warrant that  
6 they had, and Nicholson is still yelling in my ear. And I'm  
7 inquiring from them, I said, what -- and I'm thinking to  
8 myself, what in the world is this all about. And they're  
9 talking about Dottore, I said, what could he have done. The  
10 only thing I could think of is that he --

11 MR. JOHNSON: Objection, Your Honor, as to what he  
12 was thinking.

13 MR. PITARO: All right.

14 THE COURT: Sustained.

15 BY MR. PITARO:

16 Q What happened? What was said to you, and then what did  
17 you say back? And then what did you do?

18 A They were -- just kept saying, give us the money. And I  
19 says, get Hanford in here so we could get this resolved. And  
20 I inquired if the money was counterfeit.

21 Q And what was the response?

22 A There wasn't, he just kept yelling at me.

23 Q Okay? And what did you do?

24 A There was no response.

25 Q What did you do?

1 A Well, then I -- then I didn't know what to do. I just  
2 told my kids, go back to your rooms. And just then I heard  
3 somebody yell, I thought it was Nicholson, start searching. I  
4 said, what do you mean, start searching, you're already been  
5 searching. He says, make it easy on us; start searching. And  
6 then I --

7 Q What did you do then?

8 A -- they started walking toward my bedroom.

9 Q And what did you do?

10 A And with all this commotion and loud noise going on, I  
11 just got worried, that I could -- I was wondering what my wife  
12 was thinking, 'cause you could hear this noise, the noise was  
13 unbelievable. So all's I wanted to do was to get to her.

14 Q And what did you ask him?

15 A So I -- so I asked if I could go check on my wife, I  
16 asked permission. And one of 'em says, Byers I think it was,  
17 says, go ahead. I wanted to get to that room. And I had the  
18 money Paul had paid me in my back pocket, I wanted to get to  
19 my bedroom, give it to the -- whoever was in there and get 'em  
20 out of there.

21 Q So what did you do?

22 A So I started down the hallway. Nicholson, I believe was  
23 walking behind me, he said, what's in your back pocket.  
24 'Cause there was a hole in my back pocket. And I pulled out  
25 the money and handed it to him and I said, this is the money

1 Dottore gave me -- paid me back, not money that he gave me.

2 Q Did they tell you that you were accused of being -- that  
3 they were accusing you of taking a bribe?

4 A Well, that was later. Then Nicholson ordered me back to  
5 the room; they wouldn't let me go and check on my wife. And  
6 that's when Hanford -- I first saw Hanford come in.

7 Q And what did he do?

8 A He advised me that -- that he thought the money was to  
9 affect the outcome of a case.

10 Q And what did you say?

11 A I said, you mean I'm a witness to something.

12 Q And what did he say?

13 A He says, no, you're a target. And then they checked the  
14 money over and they left.

15 Q Did they write the serial numbers down and things like  
16 that?

17 A I believe so.

18 Q Okay.

19 A I was so upset, I don't know.

20 Q Okay.

21 A But I believe so, yes.

22 Q What was the five hundred dollars (\$500)?

23 A That was the repayment of the Massbo loan.

24 Q That's all it was?

25 A That's all it was.

1 MR. JOHNSON: Objection, asked and answered.

2 BY MR. PITARO:

3 Q And did you tell the agents that that evening?

4 A Yes, I did.

5 Q Okay. Was it a bribe?

6 A No, it was not.

7 Q Gerry, let's end it. Are you the type of man who would  
8 take a bribe?

9 MR. JOHNSON: Objection, Your Honor.

10 THE COURT: Sustained.

11 BY MR. PITARO:

12 Q Did you?

13 A No, I did not.

14 Q Why didn't you?

15 A I made three vows, a vow to care for my wife --

16 MR. JOHNSON: Objection, Your Honor.

17 MR. PITARO: He's entitled to --

18 THE COURT: You may respond.

19 MR. PITARO: -- respond.

20 THE WITNESS: -- in sickness and in health, and I  
21 took care of my wife. When we adopted our children, I vowed  
22 to care for them and bring 'em up right, and I've done that.  
23 And when I was elected as a judge, I was elected and I made a  
24 vow to be a good judge, and I was.

25 MR. PITARO: I have nothing further.



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DISTRICT OF NEVADA

DEPUTY

United States District Court  
District of Nevada  
Las Vegas, Nevada

UNITED STATES OF AMERICA

Plaintiff

vs.

GERARD J. BONGIOVANNI

Defendant

Docket No. CR-S-96-098-LDG(RJJ)

Las Vegas, Nevada

October 28, 1998

8:51 a.m.

JURY TRIAL - DAY 8  
VOLUME I

(CLOSING ARGUMENTS TRANSCRIBED UNDER SEPARATE COVER)

THE HONORABLE LLOYD D. GEORGE PRESIDING  
UNITED STATES DISTRICT COURT JUDGE

COURT RECORDER:

JANE BOWMAN  
U.S. District Court

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08009-BONG1816

JA008040

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1 PROCEEDINGS BEGIN AT 8:51 A.M.

2 (Jury is present)

3 THE COURT: Please be seated.

4 THE CLERK: This is the time set for Day 8 in the  
5 jury trial in Criminal-S-96-098-LDG(RJJ), the United States of  
6 America versus Gerard Bongiovanni.

7 Counsel, please note your appearance.

8 MR. JOHNSON: Eric Johnson and Jane Shoemaker for  
9 the United States.

10 THE COURT: Thank you.

11 MR. PITARO: Tom Pitaro with Gerry Bongiovanni.

12 THE COURT: Thank you, counsel. Let me take care of  
13 just a couple of matters before -- you're going to start your  
14 cross-examination of --

15 MR. JOHNSON: Yes, Your Honor.

16 THE COURT: -- Mr. Bongiovanni. There are a couple  
17 of things that have arisen that -- that may in some way  
18 mislead you, and I wanted to be sure that you understood. I  
19 have the feeling that you probably already understand.

20 At one time, and you may have forgotten totally  
21 about it, we had some dialogue back and forth between the  
22 lawyers and me about conspiracy and people being part of a  
23 conspiracy. For the very limited purpose of employing a  
24 particular rule of evidence, and we will talk a little bit  
25 about that perhaps later, though I may not, I think it's

1 enough to say that the Court is obligated to make a kind of  
2 tentative finding to find that certain kinds of evidence can  
3 come in. And I was commenting on that.

4 I don't want you to think that I have made any  
5 findings of guilt as to anyone, including other people who may  
6 have participated in this activity of alleged crimes. I  
7 didn't have to do that and I didn't do it and I want you to  
8 understand that your responsibility will be a responsibility  
9 that'll be limited to this defendant to make a finding one way  
10 or the other. But I don't want you to go into your  
11 deliberations thinking that the Court has already found that  
12 certain people were absolutely criminally a part of a  
13 conspiracy.

14 Now you've heard about certain people who have pled  
15 guilty and have been found guilty. That -- that is so, but  
16 the application of that is not to determine the guilt of this  
17 defendant, but rather you will be cautioned about the  
18 testimony of those in that category, and that will be  
19 elaborated upon.

20 I also wanted to take a moment, in the course of the  
21 examination of Mr. Bixler, Judge Bixler, who is a justice of  
22 the peace, he was asked a number of questions, and I wanted to  
23 be sure that you didn't have any misunderstanding because I'm  
24 not sure that perhaps Judge Bixler didn't misunderstand the  
25 question. A question was asked, "Now, if you were approached

1 by someone who wanted to give you a hundred dollars (\$100) for  
2 handling a ticket, would that violate the ethical rules of the  
3 State of Nevada," and the answer was "Yes, it sure would."

4 Well, I'm sure that you all understand that if  
5 someone came in tomorrow and offered one of the judges  
6 something and the judge didn't take anything and -- the mere  
7 fact that someone may have solicited a judge is not a crime as  
8 far as the judge being a criminal. It's a crime to offer, but  
9 unless -- and the final question that was asked, and this was  
10 probably the question that was intended, "If someone offers  
11 you a hundred dollars (\$100) for handling a ticket and you  
12 agree to take the hundred dollars (\$100), but you handle a  
13 ticket exactly like you've done every other ticket in that  
14 type of circumstance before, is that still bribery," and the  
15 answer to that by Bixler was "Yes."

16 But you see there's a big difference between those  
17 questions. The idea that somebody offers you and then the  
18 idea that not only is it offered, but it's taken and agreed  
19 to, that's the difference. And I know that you're all  
20 comprehending enough to understand the difference.

21 Does that take care of --

22 MR. PITARO: Yes, Your Honor.

23 THE COURT: -- counsel, the thing that we --

24 MR. JOHNSON: Yes, Your Honor.

25 THE COURT: -- talked about? Okay. And I think it

1 takes care of both of them.

2 MR. PITARO: You were -- you were going to do that  
3 limiting --

4 THE COURT: The --

5 MR. PITARO: -- on the statutes?

6 THE COURT: Well, I thought you wanted that to be  
7 part of the stack of instructions, counsel.

8 MR. PITARO: I -- I thought -- yes. But I thought  
9 you also said you were going to read it today.

10 THE COURT: Okay. I don't have that final copy.  
11 I'll do that --

12 MR. PITARO: Okay.

13 THE COURT: -- and I'll be sure and read it, the  
14 limiting instruction --

15 MR. PITARO: Yeah.

16 THE COURT: -- and I'll -- I'll give that and I'll  
17 make very clear that the jury understands that.

18 MR. PITARO: Thank you, Judge.

19 THE COURT: Will counsel stipulate to the presence  
20 of the jury?

21 MR. PITARO: Yes, Your Honor.

22 MR. JOHNSON: Yes, Your Honor.

23 THE COURT: Okay. Fine. Mr. Bongiovanni, if you  
24 will take the -- and you know without me saying that you're  
25 still under oath, of course.

BONGIOVANNI - CROSS

7

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: Are you going to examine the witness,  
3 Mr. Johnson?

4 MR. JOHNSON: Yes, Your Honor.

5 THE COURT: Okay. You may proceed.

6 (Pause in the proceedings)

7 CROSS-EXAMINATION

8 BY MR. JOHNSON:

9 Q Mr. Bongiovanni, focusing on the period of 1994 and 1995,  
10 during that period of time you regularly played golf with Paul  
11 Dottore, is that correct?

12 A Yes.

13 Q And how many times a week, not focusing when you played  
14 golf with Paul Dottore, but how many times a week did you  
15 normally play golf?

16 A Once, sometimes twice. Normally once.

17 Q And how frequently would Paul Dottore go with you on  
18 those golf dates?

19 A Oh, I would say maybe every other time.

20 Q You regularly bowled with Paul Dottore during the period  
21 of 1994 and 1995?

22 A Yes.

23 Q And you had one to two nights a week that you bowled?

24 A I believe I was bowling one night a week.

25 Q Okay. So at least one --

1 A There was a period of time, I think, for a few months  
2 that we bowled twice a week, but then I could no longer do  
3 that and he continued.

4 Q But you regularly had one night a week to bowl?

5 A Yes, at least. Yes, one night a week.

6 Q And Paul Dottore was on the same league?

7 A Yes, he was.

8 Q You regularly had lunch with Paul Dottore during the week  
9 days?

10 A Well, he would come down a couple times a week.

11 Q And that would be to your chambers?

12 A He would usually come and meet us at chambers, then we'd  
13 go from there to lunch.

14 Q All right. You also were members together of the Elks  
15 Club?

16 A Yes.

17 Q And you would go to Elks Club's meetings together?

18 A No, I -- because of my wife, I couldn't attend meetings.

19 Q You'd go out gambling one to three times a week?

20 A Yes.

21 Q And Paul Dottore would go with you probably a majority of  
22 those times?

23 A Well, probably two out of the three.

24 Q And you spoke almost every day during the period of 1994  
25 and 1995 with Paul Dottore over the telephone, is that



- 1 correct?
- 2 A Pardon me?
- 3 Q You spoke almost every day --
- 4 A Yes, oh, yes.
- 5 Q -- during the period --
- 6 A Yes.
- 7 Q -- of 1994 and 1995 --
- 8 A I spoke with him.
- 9 Q -- with Paul Dottore over the telephone, is that correct?
- 10 A Very frequently he would call.
- 11 Q I think it's been your testimony that looking at the
- 12 period of 1994 and up to October 1995, Paul Dottore was your
- 13 best friend?
- 14 A Yes, he was.
- 15 Q Now you met Paul Dottore, if I'm correct, in the late
- 16 1970s or was it the early 1980s?
- 17 A I believe 1980.
- 18 Q And that's when you worked at the Royal Casino?
- 19 A That's correct.
- 20 Q What was your position at the Royal Casino?
- 21 A I started as a boxman in craps, then I learned the other
- 22 games and I became a floorperson and --
- 23 Q As a boxman --
- 24 A -- twenty-one, craps.
- 25 Q As a boxman at craps, what were your responsibilities?

1 A To watch over the game.

2 Q And when you say, watch over the game, what were you  
3 supposed to do?

4 A Make sure -- make sure the payouts were correct and  
5 nobody was cheating or whatever.

6 Q When you went over to becoming a floorperson, what --  
7 what were your responsibilities there?

8 A Again, the same thing, oversee the games.

9 Q And that involved making sure the payments were correct  
10 and nobody was --

11 A That's right.

12 Q -- cheating?

13 A They had a lot of dealers that were just getting --  
14 beginning, and they would make mistakes, and it was my  
15 function to make sure they didn't make mistakes.

16 Q All right. And you were also to protect the game from  
17 cheaters, is that correct?

18 A Certainly.

19 Q After you left the Royal Casino, you continued to  
20 maintain contact with Paul Dottore?

21 A I would say he maintained contact with me. He would call  
22 me now and then and especially on the holidays.

23 Q So you remained friendly with him?

24 A Yes.

25 Q And it's your testimony you became closer after you were

1 elected to a judge in 1990?

2 A That's correct.

3 Q Now I believe your testimony was that, despite your close  
4 relationship with Paul Dottore, you did not know that he was  
5 involved in any type of criminal activity.

6 A That's correct.

7 Q I think yesterday, if I'm correct, Mr. Pitaro asked you  
8 at one point in looking at a transcript, and he said, "You  
9 remember where Paul testified that he was afraid that if you  
10 knew about the bank fraud, you would never talk to him again."  
11 Do you remember Mr. Pitaro asking you a question like that?

12 A Yes.

13 Q And do you remember testifying at that point, "And after  
14 I found out about the fraud, I haven't talked to him again."

15 A That's correct.

16 Q All right. Now --

17 A That was on October 19th when I gave that statement about  
18 the fraud to Mr. Pitaro.

19 Q I'm sorry, you made a statement about a fraud --

20 A No, when Mr. Dottore --

21 Q -- on October 19th?

22 A -- gave his statement under oath --

23 Q I didn't ask --

24 A -- on the 19th.

25 Q -- about Mr. Dottore. Did you give a statement on

1 October 19th about any fraud?

2 MR. PITARO: Your Honor, if I may. I don't think he  
3 said that. It seems it's argumentative. He said Mr.  
4 Dottore's statement.

5 THE COURT: Well, I think he's asking and --

6 MR. JOHNSON: No, I asked him if he gave a statement  
7 on October 19th.

8 THE COURT: Yes, and you can respond.

9 THE WITNESS: No, I didn't.

10 MR. JOHNSON: All right.

11 BY MR. JOHNSON:

12 Q Now, during this period of the mid-1980s, early to mid-  
13 1980s, you were aware during that period of time that Mr.  
14 Dottore was charged with money laundering and tax conspiracy  
15 relating to laundering drug money through the Royal Casino, is  
16 that correct?

17 A I wouldn't say I was aware that he was charged with  
18 specific crimes, I knew that the owner of the casino and he  
19 were charged with something and then they were later found not  
20 guilty.

21 Q So your --

22 MR. PITARO: Your Honor, if I may. I was precluded,  
23 obviously, from asking Mr. Dottore about this.

24 MR. JOHNSON: He was precluded from impeaching Mr.  
25 Dottore because of the acquittal. I'm asking the defendant

1 what he knew in regard to Mr. Dottore's background.

2 THE COURT: I think it's a different reason,  
3 counsel.

4 MR. JOHNSON: Thank you, Your Honor.

5 BY MR. JOHNSON:

6 Q So you are saying that you knew that Mr. Dottore had been  
7 charged with the owner of the Royal Casino in some crime?

8 A Yes, but he was acquitted on the charges.

9 Q Do you know what type -- what the charges related to?

10 A No, I don't specifically.

11 Q Did you ever ask Mr. Dottore what the charges related to?

12 A We may have discussed it, but as I sit here today, I  
13 don't remember. He was --

14 Q So you may have discussed -- you're saying you may have  
15 discussed it with Mr. Dottore?

16 A We may have -- he may have discussed it sometime, why  
17 certainly.

18 Q But you don't, as you sit here today, have any  
19 recollection of what those charges relate to?

20 A No, because I wasn't close with him at that time.

21 Q All right. Well, when would you have discussed it with  
22 him? If you had discussed it, wouldn't it have been after  
23 1990 when he became a closer friend of yours?

24 A It may have been, it may not have been. It may have been  
25 one of the rare occasions I saw him in between.

1 Q Now in -- you heard the testimony of Mr. Dottore that he  
2 obtained a black box for you, is that correct?

3 A Yes, I did.

4 Q And you understand that a black box is a device to  
5 intercept cable signals without paying the cable company for  
6 it, is that correct?

7 A Yes, it is.

8 Q And did you purchase through Mr. Dottore a black box for  
9 your cable TV?

10 A No, I didn't. He -- you pulled out --

11 Q I didn't --

12 A Okay. I'm sorry.

13 MR. JOHNSON: I don't believe a question is before  
14 the witness, Your Honor.

15 THE COURT: Again, just listen to the question and  
16 respond.

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: Your attorney will --

19 THE WITNESS: I'm sorry.

20 THE COURT: -- have an opportunity to take you back  
21 on redirect.

22 BY MR. JOHNSON:

23 Q In March and April of 1994, you only had basic cable  
24 service on your TV, is that correct?

25 A In 1994?

1 Q March and April of 1994.

2 A I believe so.

3 Q And I'll ask you if you remember, you didn't increase  
4 your cable service to where you had movie channels until  
5 October of 1994, is that correct?

6 A It probably is. I don't have a specific recollection of  
7 my records, but I know that the period when you're talking  
8 about Paul selling me a cable box, I declined, although we did  
9 talk about it and my records indicate that I did have the  
10 premium channels.

11 Q All right.

12 MR. JOHNSON: Your Honor, if I could for a moment,  
13 I'd like to show witness a record to refresh his recollection.

14 MR. PITARO: Could I see it?

15 THE COURT: Sure.

16 MR. JOHNSON: Sure. In fact, I'll give you a copy.

17 MR. PITARO: These are his cable bills?

18 BY MR. JOHNSON:

19 Q Mr. Bongiovanni --

20 A Yes, sir.

21 MR. PITARO: I mean, it -- okay, is that what this  
22 is supposed to be?

23 MR. JOHNSON: Well --

24 MR. PITARO: You pulled his cable bills?

25 MR. JOHNSON: -- you can read it. It's Prime Cable

1 of Las Vegas, Nevada account detail.

2 MR. PITARO: That's fine.

3 MR. JOHNSON: I'm sorry if you had problems seeing  
4 that.

5 BY MR. JOHNSON:

6 Q If you would, Mr. Bongiovanni, starting with the first  
7 date which is 10/4/93, would you look through the service up  
8 until October of 1994? And -- would you do that for me? You  
9 don't need to testify or anything, just look through that.

10 (Pause in the proceedings)

11 A Okay.

12 Q Does that refresh your recollection that in March and  
13 April of 1994, you only had basic cable service in your house?

14 A Yes.

15 Q And it wasn't until October of 1994 that you increased  
16 your cable service to involve movie channels, is that correct?

17 MR. PITARO: Your Honor, can I have the relevancy of  
18 this?

19 MR. JOHNSON: Your Honor, I think we'll be moving --  
20 I want to clarify when he had certain service before we move  
21 on into other areas.

22 THE COURT: Okay. Go ahead.

23 MR. JOHNSON: Thank you.

24 MR. PITARO: Well, I -- but that doesn't answer the  
25 relevancy.



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17

1 MR. JOHNSON: Your Honor --

2 MR. PITARO: I mean, is -- is --

3 MR. JOHNSON: -- we're going to go into Mr.

4 Bongiovanni's efforts to get -- unlawfully get illegal --

5 THE COURT: Well, I think --

6 MR. JOHNSON: -- service through Mr. Dottore.

7 THE COURT: -- it's relevant, counsel.

8 MR. PITARO: Then it has to be under 404(b), which I

9 don't think it is, but if it is, I'd need a limiting

10 instruction on 404(b).

11 THE COURT: Well, you may. Go ahead.

12 BY MR. JOHNSON:

13 Q And I think my question before you was it wasn't until

14 October of '94 that you increased your service to include

15 movie channels, is that correct?

16 A That's what this record shows. It might have been

17 September, and then I was charged in October.

18 Q Okay.

19 A But, always --

20 Q So about that time, then --

21 A Yes.

22 Q -- you increased it?

23 Now in March and April of 1994, did Paul Dottore arrange

24 for your cable equipment to be reprogrammed to accept paid

25 cable channels off of your cable line?

1 A In '94?

2 Q In March --

3 A No.

4 Q -- and April --

5 A No.

6 Q -- of '94?

7 A He never did.

8 MR. JOHNSON: Your Honor, I want to offer at this  
9 point in time another government exhibit for a conversation  
10 between Mr. Dottore and Mr. Bongiovanni on March 23rd, 1994.

11 MR. JOHNSON: Your Honor, this is collateral matter  
12 for 404.

13 MR. JOHNSON: I can offer evidence in regard to a  
14 404(b) issue, Your Honor.

15 MR. PITARO: Your Honor, when I tried to play  
16 anything on that, I --

17 THE COURT: I don't know that it's --

18 MR. PITARO: -- we were said, no, it was collateral.

19 THE COURT: -- but it --

20 MR. JOHNSON: This is --

21 THE COURT: -- it is necessarily collateral. It's  
22 an impeachment process.

23 MR. JOHNSON: Thank you, Your Honor.

24 THE COURT: Okay.

25 THE CLERK: What exhibit is it, Mr. Johnson?

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19

1 MR. JOHNSON: We'll mark this --

2 MR. PITARO: Excuse me, could we have --

3 MR. JOHNSON: -- 5 --

4 MR. PITARO: -- could we have a sidebar on this?

5 MR. JOHNSON: -- 23 -- excuse me. 523.

6 THE CLERK: 524.

7 MR. JOHNSON: 524? Thank you.

8 THE CLERK: Sidebar, Mr. Johnson.

9 (Discussion at sidebar)

10 THE COURT: I understand that collateral is part of

11 the impeachment process, but --

12 MR. PITARO: My objection is, Judge, that you made

13 specific finding for the impeachment material that I could not

14 bring out anything. I was stuck with whatever answer I got

15 and I could not bring any collateral in.

16 THE COURT: Well, you --

17 MR. PITARO: To now -- to now --

18 THE COURT: Just a minute. You went way beyond just

19 asking a question and getting an answer.

20 MR. PITARO: I could not play any of those tapes. I

21 requested to. Now, why can the government then on a

22 collateral matter, attempting to impeach him on something that

23 I've never got discovery of of this --

24 MR. JOHNSON: Oh, you have the tapes.

25 THE COURT: You have these tapes.

1 MR. PITARO: Out of ten thousands, they never  
2 designated there -- that there was anything in these.

3 THE COURT: Well, but --

4 MR. PITARO: To now to be playing this is inherently  
5 unfair.

6 MR. JOHNSON: Our position, Your Honor, is that the  
7 defendant has made specific representations that go to the  
8 heart of his defense which is "I had no idea Paul Dottore was  
9 this criminal and thief. I'm just a good guy who was taken  
10 advantage of." We have the right as direct evidence to bring  
11 in evidence to contradict it and then under 404(b) to go to  
12 his notice and --

13 THE COURT: I think it is direct evidence, counsel.

14 MR. PITARO: Well, I just -- I think it's inherently  
15 unfair. I think each sides are being treated differently.

16 THE COURT: Okay.

17 MR. JOHNSON: I'm going to play three tapes of this,  
18 one setting it up and one later on where there is -- one  
19 setting it up, one in which Mr. Dottore speaks to someone and  
20 clarifies exactly the --

21 MR. PITARO: Oh --

22 MR. JOHNSON: -- cable fraud and one --

23 THE COURT: Well, I think it does reach directly to  
24 the --

25 MR. JOHNSON: -- where Mr. Bongiovanni shows --

1 talks about how his channels aren't working right.

2 MR. PITARO: Then why couldn't I play them? Why  
3 couldn't I play, when I had Dottore? I mean, I --

4 THE COURT: I don't remember what you --

5 MR. PITARO: I don't even know what these tapes are.  
6 I have no transcript or --

7 THE COURT: Do you have transcripts?

8 MR. PITARO: -- anything concerning it.

9 MR. JOHNSON: I don't have transcripts, Your Honor.

10 THE COURT: Okay.

11 (End of discussion at sidebar)

12 THE COURT: Identify the exhibit, please.

13 MR. JOHNSON: All right. The first exhibit we'll  
14 identify as a recording on March 23rd, 1994, at 7:38 p.m.  
15 between Dottore and Bongiovanni. That will be Exhibit 524.

16 (Pause in the proceedings)

17 THE CLERK: Do you want 525?

18 MR. JOHNSON: The second exhibit, 525, be a  
19 conversation occurring almost right after the last one on  
20 March 23rd, 1994 at 1946 between Dottore and an unknown male.

21 And then --

22 MR. PITARO: Your Honor --

23 MR. JOHNSON: -- the last one will be a --

24 THE COURT: I'm sorry?

25 MR. PITARO: I'd have to object on any other grounds

1 is a tape between Dottore and an unknown male.

2 THE COURT: Well --

3 MR. PITARO: It can't be introduced as 801(d)(2)(E).  
4 It's not part of anything.

5 MR. JOHNSON: Your Honor, in terms of collaterally  
6 -- in terms of establishing that there was a effort on Mr.  
7 Bongiovanni to obtain illegal cable service from Mr. Dottore  
8 in March and April of 1994, there was -- we're alleging the  
9 first tape, and the second tape shows definitely a conspiracy  
10 between Mr. Bongiovanni and Mr. Dottore.

11 MR. PITARO: Your Honor, I'm going to --

12 MR. JOHNSON: The tape between --

13 MR. PITARO: -- object to that --

14 MR. JOHNSON: -- Mr. Dottore and the unknown male --

15 MR. PITARO: -- type of argument being made.

16 MR. JOHNSON: -- clarifies specifically what Mr.

17 Dottore was doing at this time in terms of reprogramming cable  
18 boxes.

19 THE COURT: None of this dialogue is evidence, of  
20 course.

21 Well, I'm troubled. You're talking about a tape  
22 between Dottore and an unknown person?

23 MR. JOHNSON: This comes immediately after Mr. --  
24 the first tape between Mr. Dottore and Mr. Bongiovanni in  
25 which they discuss generally Mr. Dottore coming over and doing

1 -- working --

2 THE COURT: Well --

3 MR. JOHNSON: -- on the TV.

4 THE COURT: -- I'm inclined to keep out a -- any  
5 tape of Dottore and an unknown individual. The other two I  
6 will receive.

7 (Plaintiff's Exhibit Nos. 524 and 526 admitted)

8 MR. JOHNSON: Okay, Your Honor.

9 The last one is an April 13, 1994 tape at 8:07 or  
10 2007 military time. We'll mark that Government Exhibit 526.

11 THE CLERK: Okay. 525 is not going to come in then?

12 MR. JOHNSON: Right.

13 THE CLERK: Okay.

14 MR. JOHNSON: Your Honor, I'd ask that we go ahead  
15 and play 524 which is the March 23rd, 1994, conversation  
16 between Mr. Bongiovanni and Mr. Dottore.

17 THE COURT: You may play the tape.

18 (Plaintiff's Exhibit No. 524 is played)

19 BY MR. JOHNSON:

20 Q Mr. Bongiovanni, when Mr. Dottore asked you, do you want  
21 us to do the TV, wasn't Mr. Dottore asking you if you wanted  
22 him to reprogram the TV to take -- to get movie channels off  
23 of your cable line?

24 MR. PITARO: Your Honor, the tape didn't say that.

25 MR. JOHNSON: I'm asking him if that's what --

1 THE COURT: Well, he's asking him.

2 THE WITNESS: No, he wasn't. At that period of  
3 time, my children wanted cable in their rooms and Mr. Dottore  
4 was going to have his son install cable into his rooms, wire  
5 the rooms with cable, and that's what we were referring to.

6 MR. JOHNSON: Your Honor, I'd move to play at this  
7 time 526 -- oops -- this is 526 -- which is a conversation on  
8 April 13, 1994, between Mr. Dottore and Mr. Bongiovanni.

9 THE COURT: You may play the tape.

10 (Plaintiff's Exhibit No. 526 is played)

11 BY MR. JOHNSON:

12 Q Mr. Bongiovanni --

13 A Yes.

14 Q -- do you recall in that conversation you telling Dottore  
15 that you could not get most channels, but you could still get  
16 the movie channel?

17 A That's correct.

18 Q And in April of 1994, you did not have paid cable service  
19 for the various paid movie channels, is that correct?

20 A That's right.

21 Q All right. By April 13 --

22 A I had paid service.

23 Q That's -- by April 13, 1994, hadn't Paul Dottore come  
24 over to your house and arranged for the cable box on your TV  
25 to be reprogrammed to play the pay movie channels?



1 A No, he didn't. I had converter boxes -- first I had  
2 the one that I purchased from Prime Cable, and then I bought a  
3 box --

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

6 THE WITNESS: Oh.

7 MR. PITARO: Well, I think he's entitled to answer,  
8 Your Honor.

9 THE COURT: Well, I don't know that there's a  
10 question. I'll allow you to answer fully. What is the  
11 question?

12 THE WITNESS: Well, I'd like to --

13 MR. JOHNSON: I asked --

14 THE WITNESS: -- okay. I'm sorry.

15 MR. JOHNSON: -- if by April 13, 1994, if the  
16 defendant hadn't had Mr. Dottore come over and reprogram the  
17 cable boxes to allow the TVs in his home to play the pay  
18 channels.

19 THE COURT: Okay. That's a fairly narrow focus  
20 question. You can answer that.

21 THE WITNESS: Can I explain?

22 THE COURT: Go ahead --

23 THE WITNESS: Okay.

24 THE COURT: -- and answer the question.

25 THE COURT: The question is --

1 THE WITNESS: I --

2 THE COURT: -- if you had Mr. Dottore come over and  
3 reprogram.

4 THE WITNESS: The answer to that is no, I didn't,  
5 but if I could explain further, is that -- is that allowable?

6 THE COURT: Well, you've answered and --

7 THE WITNESS: Okay.

8 THE COURT: -- Mr. Pitaro can follow up.

9 THE WITNESS: Fine.

10 BY MR. JOHNSON:

11 Q Now a year later, focusing on February 19, 1995, you  
12 heard the government play a tape on that date, is that  
13 correct?

14 A Yes, I did.

15 Q And in that tape, Mr. Dottore said that he had ordered  
16 your black box to -- for your TV, is that correct?

17 A That's correct.

18 Q And you responded at that time that you were going to  
19 reduce -- once you got that, you could reduce your cable  
20 service to the minimum.

21 A That's correct.

22 Q And when you said that, what you meant was once I had a  
23 black box on my TV, I wouldn't need to pay for the movie  
24 channels, right?

25 A Yes. But my records -- the records indicate that I never

1 did -- done that.

2 Q Right. But what I'm asking you is when you said that,  
3 you meant I wouldn't need to pay -- continue to pay --

4 A That's right.

5 Q -- for the movie channels once you put a black box on my  
6 TV, right?

7 A I did discuss with Mr. Dottore the possibility of getting  
8 one of those and though at the end I declined to do it.

9 Q And when you said, once I get a black box, I can reduce  
10 my cable service to the minimum, you were saying that I  
11 wouldn't need to pay the cable service for the pay channels  
12 once I got a black box --

13 THE COURT: I think he's answered --

14 BY MR. JOHNSON:

15 Q -- on my TV.

16 THE COURT: -- that, counsel.

17 MR. JOHNSON: I'm sorry, what?

18 THE COURT: I think he's answered that.

19 BY MR. JOHNSON:

20 Q Now the next day on February 20th, you and Dottore had  
21 another call which was played here, is that correct?

22 A I'm not sure. I don't remember that call.

23 Q All right. Don't you remember a conversation when Mr.  
24 Dottore said that your black box was in?

25 A Oh, okay. Yes.

1 Q And you stated that you didn't have the money to pay for  
2 it that day, right?

3 A That's correct.

4 Q And do you remember a subsequent conversation when Mr.  
5 Dottore called you up and indicated that he needed the money  
6 for the black box and you said that you'd have to go down to  
7 the bank to get it?

8 A Yes.

9 Q And your testimony, though, that you never went down and  
10 paid for the box?

11 A That's correct. I never bought it. I declined.

12 Q Now --

13 A I believe my records show that, that I maintained my  
14 premium channel service through then, so that --

15 Q Now, let me --

16 A -- shows that I didn't buy it.

17 Q -- go on and talk about Mr. James O'Neill.

18 A Fine.

19 Q If you -- James O'Neill. Would you look at Exhibit 503?

20 MR. PITARO: Excuse me. Before we do that, then I  
21 move to strike these first -- these exhibits, 524 and 526.  
22 That clearly wasn't 404(b) material. 524/26, we listened to  
23 two men laugh about where they were going. Secondly, it has  
24 to be given with a limited instruction that it's not evidence  
25 against him.

1 THE COURT: The objection or the motion will be  
2 denied --

3 MR. PITARO: I do ask for a limiting instruction  
4 under 404(b).

5 THE COURT: Well -- go ahead.

6 BY MR. JOHNSON:

7 Q Would you turn to Exhibit -- or transcript 503?

8 A 503.

9 Q Mr. Bongiovanni, this was a conversation on August 3rd,  
10 1994 between you and James "Jack" O'Neill, is that correct?

11 A Yes, it was.

12 Q I believe, looking at the beginning of the conversation,  
13 Mr. O'Neill was the one who called you?

14 A Yes.

15 Q And so Mr. O'Neill had your telephone number?

16 A I believe he called my office.

17 Q All right.

18 A Was that at my office? I don't know.

19 Q Did you know Mr. O'Neill?

20 A My office number is in the phone book.

21 Q Did you know Mr. O'Neill?

22 A Yes, I did. Yes.

23 Q How long had you known Mr. O'Neill?

24 A I worked with his wife at the Royal Casino. She was a  
25 dealer. So, I met him way back in the 80, 1980, I believe,

1 1981.

2 Q And did you continue contact with him after 1980?

3 A No, we weren't close friends, but periodically he would  
4 call me, discuss legal problems. I think I may have done  
5 something for him, represented him at one time for a -- for  
6 different matters.

7 Q And he had called you previously to this conversation on  
8 August 3rd, 1994, to request a reduction in bail for his son,  
9 right?

10 A I don't know if he telephoned. I could remember that he  
11 was at my office one or two times, and we discussed his son.

12 Q And you would have then met with him at your office and  
13 discussed his son which I believe is James O'Neill, Jr.?

14 A Yes, and I believe I reduced his son's bail to ten  
15 thousand dollars (\$10,000).

16 Q This conversation on August 3rd, 1994, related to Mr.  
17 O'Neill asking for a reduction in bail for a friend of his  
18 son, is that correct?

19 A Yes, he was concerned about his friend -- his son's  
20 friend and he wanted to see if I would reduce the bail on --  
21 for his son's friend, but I wasn't comfortable for it, with  
22 it, and I --

23 Q Now let me ask you, you obviously -- you were talking  
24 with Mr. O'Neill in this conversation, correct?

25 A Yes, I was.

1 Q At the time that this conversation occurred, you knew  
2 that Mr. O'Neill was under indictment for telemarketing fraud,  
3 is that correct?

4 MR. PITARO: Your Honor, I would object. That is  
5 totally improper. He knows it is improper.

6 THE COURT: Let me have you come to sidebar.

7 MR. PITARO: This is outrageous.

8 (Discussion at sidebar)

9 THE COURT: Let me explain what I think is happening  
10 and you can clarify. This is not, in my judgment, 404(b).  
11 I'll give a limiting instruction 404(b). I think the reason  
12 that they're introducing this is because of the testimony of  
13 Mr. Bongiovanni that he had no idea that Dottore was involved  
14 in any illegal activity, and as soon as he found out that he  
15 was he cast off the friendship. And this is for purposes of  
16 showing that he did know that Dottore was involved in criminal  
17 activity, and for that purpose I think it's clearly  
18 admissible. I'll give a 404(b). It wasn't so much to show  
19 that this defendant was involved, although he seemed to have  
20 some knowledge, and I think that -- that's appropriate for  
21 that purpose.

22 MR. PITARO: Let me -- let me just say, the last  
23 time I made an objection, you ruled that it came in under  
24 404(b). Not -- now you're saying -- now the thing is that it  
25 wasn't, and I asked for and got a limiting instruction that

1 time. That -- that --

2 THE COURT: Well, I've give a limiting instruction,  
3 if you want me to give --

4 MR. PITARO: Well, I've asked for one.

5 THE COURT: -- a limiting instruction. But the  
6 Government can tell me, I think it's for purposes of showing  
7 evidence that they suggest that this witness knew, contrary to  
8 his statement that Dottore was involved in criminal activity.

9 MR. PITARO: All I can say is --

10 MR. JOHNSON: That's our intention, Your Honor.

11 MR. PITARO: -- the last time we went through that,  
12 we went through the 404(b) --

13 THE COURT: Well, I'll give the limiting  
14 instruction, but I don't think --

15 MR. PITARO: -- just so the record's clear --

16 THE COURT: -- it's 404(b) evidence.

17 MR. PITARO: -- that's how you ruled last time,  
18 limiting instruction.

19 THE COURT: Well --

20 MR. PITARO: Now the second -- okay, that's fine.  
21 The second thing --

22 THE COURT: Okay, now tell me about this. I don't  
23 know anything about this one.

24 MR. PITARO: Neither do I.

25 MR. JOHNSON: Mr. O'Neill was charged with



1 telemarketing fraud --

2 MR. PITARO: Yeah. So?

3 MR. JOHNSON: -- in a fairly significant case.

4 THE COURT: So?

5 MR. PITARO: So?

6 MR. JOHNSON: Well, the point of it is, he's saying  
7 that when I found out from Dottore that he was involved in  
8 fraud, I never talked to him again. I'm going to point out  
9 that you knew that Mr. O'Neill was involved -- was charged  
10 with telemarketing fraud and you continued to talk with him,  
11 you continued to entertain bail requests from him, for his  
12 son, for his son's -- son's bond. The defendant is trying to  
13 set himself up as this good man who --

14 MR. PITARO: He is a good man.

15 MR. JOHNSON: -- was isolated and with no idea of  
16 anything that was going on around him.

17 THE COURT: Well, this is quite a different  
18 approach. I'm going to keep the O'Neill thing out.

19 MR. PITARO: Thank you.

20 THE COURT: And I will give that limiting  
21 instruction if you want it, but I don't think it's applicable.

22 MR. PITARO: Oh, I do. So I would appreciate it if  
23 you would.

24 MR. JOHNSON: Your Honor? Your Honor, could I  
25 continue just one second on that?

1           Your Honor, in this circumstance, Mr. Bongiovanni  
2 was friends with numerous individuals who had either criminal  
3 convictions or were under indictment, and he's sitting here  
4 saying that I wouldn't associate with Paul Dottore because he  
5 was involved with --

6           THE COURT: Well --

7           MR. JOHNSON: -- because he had --

8           THE COURT: -- and that's why I think it's very  
9 legitimate to bring this evidence out. But these other  
10 matters, I'm going to -- unless -- every circumstance may  
11 invite a --

12          MR. JOHNSON: Well --

13          THE COURT: -- a different consideration.

14          MR. JOHNSON: -- am I allowed to ask him if he knew  
15 that Mr. O'Neill --

16          MR. PITARO: Your Honor, that's outrageous.

17          MR. JOHNSON: -- was charged with telemarketing  
18 fraud?

19          MR. PITARO: That's not even --

20          MR. JOHNSON: I'm not going to bring out anything  
21 that's outrageous.

22          MR. PITARO: It is outrageous. The first case I  
23 ever did in -- as an attorney, was United States vs. Dunn  
24 [phonetic] where they reversed the conviction where that type  
25 of evidence came in.

1 THE COURT: Well --

2 MR. PITARO: You can't -- no, sir, you can't impeach  
3 this man based upon the fact that someone was indicted.

4 MR. JOHNSON: I'm --

5 MR. PITARO: I can't --

6 MR. JOHNSON: -- impeaching him on the fact that  
7 he's claiming --

8 THE COURT: Again, I think you don't understand the  
9 reason. I'm going to keep it out, but I'm -- I'll keep it out  
10 on that basis --

11 MR. PITARO: Okay.

12 THE COURT: -- of a 403 balance.

13 MR. PITARO: Okay. Thank you.

14 MR. JOHNSON: All right. So I cannot ask him  
15 about --

16 THE COURT: About O'Neill?

17 MR. PITARO: How many times --

18 MR. JOHNSON: -- about O'Neill.

19 Now, Your Honor, let me just for a second here.  
20 There were a number of other people that we intended to ask  
21 the defendant about that he was friends with that had either  
22 criminal convictions or pending charges, Dominic Strano, Greg  
23 Lioce, Delwin Potter. Again, he's setting himself up as this  
24 individual that had no conception of what was going on around  
25 him and that if he had any inkling of anyone being involved in

1 criminal, fraudulent activity --

2 THE COURT: You may disagree, but I think that's  
3 quite different. I'll keep out anything to O'Neill if there's  
4 just a pending charge of some sort.

5 MR. PITARO: Delwin Potter had a pardon, received a  
6 presidential pardon.

7 THE COURT: Well --

8 MR. PITARO: And if you're going to speak -- allow  
9 him to get into that, then I move for a mistrial right now.

10 THE COURT: Well, I'll allow you to ask questions --  
11 if you're talking about -- he has tried to paint himself as a  
12 person who had nothing to do --

13 MR. PITARO: With --

14 THE COURT: -- with people involved --

15 MR. PITARO: No, he didn't.

16 THE COURT: -- in criminal activity.

17 MR. PITARO: He did not. That is absolutely a  
18 misstatement of this trial. He said that he didn't know that  
19 Paul Dottore was involved in the Cal Fed scam, and Dottore  
20 said he didn't want him to know about it. Now the fact that  
21 Delwin Potter was --

22 THE COURT: Now, there was --

23 MR. PITARO: -- got a presidential pardon, this --  
24 this is not how trials are conducted, and I move for a  
25 mistrial.

1 MR. JOHNSON: I found --

2 MR. PITARO: This is outrageous.

3 MR. JOHNSON: -- I found that Dottore --

4 MR. PITARO: You rule they can't get it --

5 THE COURT: Settle down.

6 MR. PITARO: You rule they can't --

7 THE COURT: Settle down. I'll listen one at a time.

8 MR. PITARO: This is the third time, Your Honor,  
9 that you ruled it can't come in and they keep coming back  
10 with, let me get it in again. How many times?

11 THE COURT: Go ahead.

12 MR. JOHNSON: I lost my train of thought. I'm  
13 sorry, give me just one second I've totally lost my train of  
14 thought here.

15 Your Honor, as -- the defendant, in his testimony  
16 yesterday said, I didn't know until October 17th that Paul  
17 Dottore was a thief, a cheat and a liar --

18 THE COURT: Mm-hmm.

19 MR. JOHNSON: -- and I was heartbroken; as soon as I  
20 found out that Paul Dottore was involved in the bank fraud, I  
21 haven't talked to him again.

22 THE COURT: That's right.

23 MR. JOHNSON: And he --

24 THE COURT: And that's why I let this --

25 MR. PITARO: And he hasn't.

1 THE COURT: -- other information in.

2 MR. JOHNSON: What he's saying --

3 MR. PITARO: What --

4 MR. JOHNSON: But what he's saying, Your Honor --

5 THE COURT: Mr. Pitaro, you're going to have to wait  
6 like the rest of us do until a person finishes, and then I'll  
7 let you have your full say, but I want it to be in order, you  
8 understand?

9 MR. PITARO: That's fine.

10 THE COURT: All right. Go ahead.

11 MR. JOHNSON: He's essentially trying to portray  
12 himself, Your Honor, as this individual who, once he knows  
13 somebody has been involved in something criminal or illegal,  
14 he's -- he's backing off and he's not going to have that  
15 person as their friend anymore, where the simple fact of the  
16 matter is is that almost all of his close friends were either  
17 indicted or had prior convictions for crimes. It's -- it's  
18 improper for him to be able to get up here and say, I was  
19 heartbroken when Paul Dottore had -- found out that Paul  
20 Dottore was a thief, a liar and a cheat and I never talked to  
21 him again once I found out that he was involved in a fraud,  
22 but the -- not allow us to question him about all this other  
23 relationships where over and over again he knows these people  
24 had prior convictions, are under indictment --

25 THE COURT: Well, again --

1 MR. JOHNSON: -- and he associates with them  
2 frequently.

3 THE COURT: -- again, just like the limitations that  
4 I put on Mr. Pitaro, you know, you're going to have an awful  
5 lot to talk about in terms of the choosing of friendships and  
6 so forth. The circumstance where I let it in, I think is  
7 totally appropriate. And I don't think it's 404(b), but I'll  
8 give that limiting instruction.

9 As to the matter with O'Neill, clearly if somebody  
10 has been indicted, I think that stays out.

11 Now be specific about the others that you want to --

12 MR. JOHNSON: Well, can I ask him then if he knew  
13 that Mr. O'Neill had had a conviction for grand larceny prior  
14 to this conversation?

15 MR. PITARO: That is improper. You cannot impeach  
16 him --

17 THE COURT: Well, I'm not sure that O'Neill has been  
18 shown to be a close personal associate of --

19 MR. JOHNSON: Well, he's calling up --

20 THE COURT: -- he did certain things for him.

21 MR. JOHNSON: The point of it is, he's calling up  
22 him and asking for favors, Your Honor, and then in his  
23 subsequent conversation with Mr. Dottore, Mr. O'Neill says, I  
24 go to him myself, so. So -- and Mr. Bongiovanni admits that  
25 he's known this individual for an extended period of time and

1 that they kept contact over the years.

2 The point of it is, really, in this context is, he  
3 knows the guy, the guy calls up for favors, and despite  
4 knowing that the guy's under indictment, or despite knowing  
5 that the guy has a prior conviction for grand larceny, he  
6 freely talks with the guy, freely associates with him and  
7 clearly entertains the --

8 THE COURT: I'm going to keep those matters out.  
9 Now whatever you want to say, put on the record.

10 MR. PITARO: The O'Neill matter shouldn't come in.  
11 To ask him --

12 THE COURT: I've already ruled on that.

13 MR. PITARO: That's right. Del Potter -- well, he's  
14 got a presidential pardon over twenty years ago. That is  
15 improper to ask about Delwin.

16 THE COURT: We'll keep Mr. Potter's --

17 MR. PITARO: Strano is --

18 THE COURT: -- connection with --

19 MR. PITARO: -- is the same thing, of Strano being  
20 convicted. I'm not aware that he was, I've never got any of  
21 this information that he was, in fact, convicted.

22 MR. JOHNSON: Well, I think I should be able to ask  
23 about --

24 MR. PITARO: You can't ask the --

25 MR. JOHNSON: -- Strano --



1 THE COURT: Just --

2 MR. JOHNSON: -- him knowing about Strano.

3 THE COURT: -- just -- just a moment. Let Mr.  
4 Pitaro finish.

5 MR. PITARO: You can't impeach someone by virtue of  
6 the fact that someone else got arrested. Okay?

7 THE COURT: That's not the point.

8 MR. PITARO: Because the --

9 THE COURT: Now just a minute, Mr. -- listen to me.  
10 That's not the point. The point is, is the perception that's  
11 trying to be created, and whether or not it's appropriate to  
12 respond to that by showing that it's not so. It was clearly  
13 appropriate, in my judgment, with respect to this television  
14 thing.

15 With respect to the others, I'm going to keep those  
16 out.

17 MR. PITARO: Good. Thank you.

18 MR. JOHNSON: Thank you.

19 (End of discussion at sidebar)

20 THE COURT: You may proceed, Mr. Johnson.

21 MR. PITARO: Your Honor, may I have my limiting  
22 instruction?

23 THE COURT: You can at the appropriate time.

24 BY MR. JOHNSON:

25 Q Mr. Bongiovanni, would you look at tape 516, please.

1 THE COURT: At, what is it?

2 MR. JOHNSON: 516.

3 THE COURT: Exhibit 516?

4 MR. JOHNSON: Yes.

5 THE WITNESS: Okay.

6 BY MR. JOHNSON:

7 Q Now if you'll look at page 4 -- hold on a second.

8 At about halfway down, a little -- maybe more than two thirds  
9 of the way down, do you see where Argenio says to you -- and  
10 that's Joe Argenio, right?

11 A That's correct.

12 Q Argenio says to you, "So then we'll go over there. I'll  
13 call you Monday morning." In this conversation when he says  
14 "we'll go over there" he's referring to Spanish Trails Country  
15 Club, is that correct?

16 A That's right.

17 Q You respond, "Yeah, remind me. Don't let me pull an,"  
18 and then unintelligible. Argenio then states, chuckles,  
19 "Yeah. See, uh, he's got a little thing." You respond,  
20 "Okay."

21 Argenio then says on the next page, "And, uh, I want ya  
22 to meet him." And you said, "All right." Argenio then said,  
23 "And I want him to take care of you on the golf course  
24 whenever you want to go. He's got a season pass."

25 Did you subsequently meet with the person that Mr.

1 Argenio wanted you to meet?

2 A Yes, I did.

3 Q And what was his name?

4 A Sonny -- Sonny Harris, I think it was. I know his first

5 name was Sonny, I'm not sure about the last name.

6 Q And did you meet with him at Spanish Trails?

7 A Yes, we all had lunch.

8 Q What was the little thing that Mr. Argenio said that

9 Sonny had that he wanted you to deal with?

10 A I believe it was a traffic citation that he or his wife

11 had.

12 Q Now looking at page 6 of the transcript, about a third of

13 the way down Mr. Argenio states, "Yeah. And that's why that I

14 remember I told you I got this guy I want you to meet."

15 You respond, "Yeah."

16 Mr. Argenio states, "And then when you run, I want him to

17 throw a party for you at Spanish Trails and see what we can do

18 over there."

19 You respond, "Yeah, that'll be nice."

20 Mr. Argenio says, "That's why I want you in with this

21 guy."

22 And you respond, "Uhh."

23 Argenio then states, "It's a bad way of getting into with

24 him, but, uh, one way or another, at least, I'm sure he's

25 gonna be there this time, you know."

1 You respond then, "Yeah. All right."

2 What did Mr. Argenio mean when he said, "It's a bad way  
3 of getting into with him"?

4 MR. PITARO: Your Honor, he can't say what Mr.  
5 Argenio meant.

6 THE COURT: Well, he can say if he can or can't.

7 MR. JOHNSON: I'm asking what he understood at the  
8 time of that conversation, he understood Mr. Argenio to mean  
9 when he said this is "a bad way of getting into with him."

10 THE COURT: Okay. You may respond.

11 THE WITNESS: Mr. Argenio was good friends with this  
12 person. He talked to me about him prior to this; he says, I'd  
13 like you to meet this man, he's a nice man, good friends of  
14 mine, and when it come time to run for reelection, he'd like  
15 to throw a -- he offered to throw a party for me, and he  
16 discussed it previously with him. So my understanding was

17 that we tried to -- he tried to arrange us to meet before, but  
18 we never -- I never had the occasion to meet his friend. And  
19 what I think he meant was, this is a bad way to meet him, but  
20 come to lunch and this is the opportunity we -- that you would  
21 have to meet this man.

22 (Pause in the proceeding)

23 BY MR. JOHNSON:

24 Q Mr. Bongiovanni, you testified in a previous proceeding  
25 about this matter, is that correct?

1 A Yes.

2 Q And that was in December of 1997?

3 A I believe so.

4 MR. JOHNSON: May I approach the witness, Your  
5 Honor?

6 THE COURT: You may.

7 BY MR. JOHNSON:

8 Q Would you look at page 34 of the transcript of December,  
9 and look primarily at lines 9 through 16?

10 THE COURT: What are you asking him to look at,  
11 counsel?

12 MR. JOHNSON: Testimony page 34 on I believe it's  
13 December 15.

14 BY MR. JOHNSON:

15 Q Have you had a chance to look at that?

16 A No. No, 'cause I don't understand what he's saying.

17 Okay.

18 Q Mr. Bongiovanni, in December of 1997 were you asked the  
19 question, "Mr. Bongiovanni, what did Mr. Argenio mean when he  
20 said, 'It's a bad way of getting into with him'?"

21 And didn't you respond, "I don't know what he meant by  
22 that"?

23 A I can't --

24 Q Isn't that how you responded?

25 A I did. I can't speak for Mr. Argenio.

1 MR. PITARO: Yes, Your Honor, that was different  
2 than the question --

3 THE WITNESS: Right. I was just --

4 MR. PITARO: -- that he asked Mr. Bongiovanni.

5 THE WITNESS: -- I just told you what I understood  
6 he meant by it.

7 (Pause in the proceeding)

8 BY MR. JOHNSON:

9 Q Now you met with Mr. Argenio and Sonny at Spanish Trails.  
10 Did you at any time find out what Sonny did for a living?

11 A I don't recall. I don't believe so. He may have said  
12 it, but I didn't remember, but I don't recall that I did.

13 Q Did he give you the ticket at the meeting? Did Sonny  
14 give you the ticket that he wanted handled at the meeting?

15 A I believe he did, yes.

16 Q And did Sonny at that meeting give both you and Mr.  
17 Argenio a bottle of Dom Perignon champagne?

18 A He gave me, Mr. Argenio and another -- a number of other  
19 people a bottle of champagne. There was a whole group of us  
20 there.

21 Q Did Mr. -- did Sonny also tell you that you could play  
22 golf anytime at Spanish Trails?

23 A He invited me to golf anytime I wanted to go, yes. He  
24 said, give me a call.

25 Q Now --

1 A I said, fine.

2 Q -- I'd like to turn to December of '94. And you  
3 indicated in your testimony, if I'm correct, that the first  
4 time you heard about Mr. Salem was between December 13th, 1994  
5 and December 17th, 1994?

6 A That's correct.

7 Q And you indicated, I believe yesterday, that it was in  
8 the evening that you had a -- on one of those days that you  
9 had a telephone call -- or not a telephone call, a meeting  
10 with Paul Dottore?

11 MR. PITARO: Your Honor, I don't --

12 THE WITNESS: I wouldn't --

13 BY MR. JOHNSON:

14 Q At Desert Spring Hospital.

15 Q -- call it a meeting, he --

16 MR. PITARO: Wait --

17 THE COURT: Just a moment.

18 THE WITNESS: Oh.

19 MR. PITARO: Could I -- I think his testimony was  
20 that he, when he first heard that Mr. Salem had a criminal  
21 case.

22 THE COURT: Well, what's the question, counsel?

23 MR. JOHNSON: Well, that's -- that's fine.

24 BY MR. JOHNSON:

25 Q Had you prior to this period of time in December 13, 1994

1 through December 17, 1994, prior to this time had you ever  
2 heard of Mr. Salem?

3 A No, I don't believe so.

4 Q So this was the first time that you heard of Mr. Salem,  
5 was during this period of time?

6 A Yes.

7 Q And you heard about him from Mr. Dottore?

8 A Yes.

9 Q And it was at Desert Springs Hospital?

10 A That's correct.

11 Q And it was in the evening?

12 A I believe so.

13 Q And it was at the cafeteria?

14 A I believe we went to the cafeteria, or we got a coffee  
15 there and walked outside.

16 Q Now, your wife came home during the day on December 17th,  
17 didn't she?

18 A Most likely, yes.

19 Q So more likely than not, we're talking about Mr. Dottore  
20 and you having this conversation between December 13th and  
21 December 16th, is that correct?

22 A That'd be fair to say.

23 Q And according to your testimony, while you were in the  
24 cafeteria Mr. Dottore said to you that he had a client that he  
25 was going to be bringing in to Peter Flangas, is that correct?



1 A He had a friend of his that he knew prior that he was  
2 gonna bring in to Pete Flangas, that's correct.

3 Q Did he indicate at that time what the friend was being  
4 charged with?

5 A I don't recall.

6 Q He indicated at this time, according to your testimony,  
7 that the friend owed him money, is that correct?

8 A Yes, he did.

9 Q And you testified that your response when he said the  
10 friend owed him money was, how could that be because you'd  
11 been out of work for some months?

12 A Right. I couldn't understand why he would loan this man  
13 money because he's been out of work so long.

14 Q Did he at this time tell you how much the friend owed  
15 him?

16 A He told me that he owed him -- he knew him from a long  
17 time ago, that he had owed him a lot of money and he owed him  
18 still about two thousand dollars.

19 Q And he told you this in the December 13 to December 16  
20 conversation?

21 A That's how I recall it.

22 Q All right. Did Mr. Dottore tell you where he anticipated  
23 his friend would get the money to pay him back?

24 A No.

25 Q Did Mr. Dottore say, at that time in December, that his

1 friend's family had a lot of money and he'd be able to pay  
2 him?

3 A Yeah, he made that statement.

4 Q I'm sorry?

5 A Yes, he made that statement.

6 Q All right. And he indicated that the friend would pay  
7 him and he wasn't worried about it, is that your testimony?

8 A That's correct.

9 Q Now, subsequently you had another conversation about Mr.  
10 Salem on January 1st of 1995, is that correct?

11 A I'm not sure -- probably -- oh, yes, yes. I was looking  
12 for a tape, yes.

13 Q I'm sorry?

14 A Yes.

15 Q Okay.

16 A That's right.

17 Q You said something before and I didn't hear you.

18 A I was gonna look for a tape.

19 Q Ahh.

20 A I'm sorry.

21 Q There wouldn't --

22 A Yes, we did.

23 Q That was a conversation just between --

24 A January 1st at --

25 Q -- you and Mr. Dottore?

1 A -- when we were playing golf, that's correct.  
2 Q And you were gonna --  
3 THE COURT: Can all of you hear the witness?  
4 MR. JOHNSON: I'm having trouble hearing him a  
5 little bit, Your Honor.  
6 THE COURT: Yes.  
7 THE WITNESS: Should I sit closer?  
8 THE COURT: Get up closer to the microphone.  
9 THE WITNESS: Okay. I'm sorry.  
10 BY MR. JOHNSON:  
11 Q And you and Mr. Dottore were in a golf cart together  
12 during the tournament?  
13 A Yes.  
14 Q And your testimony is that while you were together in the  
15 golf cart Paul brought up the fact that he was bringing Salem  
16 in to meet with Pete at Pete's office the following week?  
17 A That's correct.  
18 Q And your testimony yesterday, if I'm correct, was that  
19 Mr. -- according to Mr. Dottore, Mr. Salem was going to be  
20 paying him his two thousand dollars the following week?  
21 A Mr. Dottore indicated to me that he was pretty sure that  
22 Mr. Salem was gonna bring him the money that he owed him.  
23 Q And he indicated again at this meeting on January 1st  
24 that that was going to be about two thousand dollars?  
25 A I don't know if he said two thousand on this occasion,

1 but all's I remember is telling him, don't count on it if he  
2 -- 'cause he's gonna need money for his attorney; I couldn't  
3 believe that he would be thinking that he was gonna get money  
4 from Mr. Salem when he had to retain an attorney.

5 Q Didn't Mr. Dottore, according -- did Mr. Dottore tell you  
6 on this January 1st meeting, again, that Mr. Salem's parents  
7 are wealthy and he knew that Mr. Salem would pay him the  
8 money?

9 A He may have, either that time or the other time, or both.

10 Q And you don't recall this time whether or not he said  
11 that, on January 1st whether he said that?

12 A I believe he did.

13 Q Mr. Bongiovanni, would you look at Exhibit 116.

14 I'm sorry, I picked the wrong transcript, I want 119.

15 And, Mr. Bongiovanni, if you would go to page 2, about a  
16 quarter of the way down, you state at this point, "If your guy  
17 comes through." When you said "your guy" you were referring  
18 to Terry Salem, is that correct?

19 A Yes.

20 Q Now --

21 A I didn't remember his name.

22 Q -- I'd like you to look now at Exhibit 126.

23 A 126?

24 Q Yes.

25 A Okay.

1 Q And this was a call on January 17, 1995 at about 7:53  
2 p.m. between you and Paul Dottore, is that correct?

3 A Yes, it is.

4 Q And then about, oh, two thirds, three quarters of the way  
5 down, Dottore says, "Uhh, you want to stop by a minute?" And  
6 you respond, "Okay." Did you go over to Mr. Dottore's house  
7 that night?

8 A Yes, I did.

9 Q Now, your testimony is you deny that Mr. Dottore paid you  
10 any bribe money when you went over to his house on January  
11 17th?

12 A Mr. Dottore did not pay me any bribe money at any time.

13 Q And then on January 17th you did receive some golf balls,  
14 is that correct?

15 A That's correct.

16 Q And those were golf balls from Dominic Strano?

17 A That's right.

18 Q Now, prior to this time on January 17th, did you know  
19 Dominic Strano?

20 A Yes.

21 Q And how did you know Mr. Strano?

22 A I met him through Paul; I believe he worked at the Vegas  
23 World in the showroom with Paul.

24 Q And how -- had you ever been out with Mr. Strano?

25 A No. I had coffee with him a few times at Paul's house,

1 and I believe I met him once down at Vegas World while he was  
2 working.

3 (Off-record counsel colloquy)

4 THE COURT: Counsel, this might be an appropriate  
5 time to take a ten-minute recess. We'll be in recess for ten  
6 minutes.

7 CRIER: All rise.

8 THE COURT: Before you go let me take just a moment.  
9 There has been some discussion of a limiting instruction. You  
10 all remember the testimony relative to the, in quotes, "black  
11 box." My judgment is that that evidence came in for a reason  
12 other than showing that the witness participated in any  
13 criminal activity, but in any event, in case there's any  
14 mistake or confusion, the rule is clearly that evidence of  
15 other crimes or wrongs or acts is not admissible to prove the  
16 character of a person in order to show action in conformity  
17 therewith. It may, however, be admissible for other purposes  
18 such as proof of motive, opportunity, intent, preparation,  
19 plan, knowledge, identity, or absence of mistake or accident.  
20 And so that's the limiting purpose.

21 I think it came in for a different purpose, but in  
22 any event you've been given that instruction.

23 We'll be in recess for ten minutes.

24 (Jury recessed at 10:02 a.m.)

25 THE COURT: Counsel, let me advise you that in the

1 courtroom or at sidebar, when somebody is making a statement I  
2 don't expect anybody to interrupt them. I expect them to be  
3 permitted to finish. And when they finish you will have full  
4 opportunity to respond. And I'm listening with the hope that  
5 I'll get information that'll help me make a determination.  
6 And I don't want it to happen again. When someone is speaking  
7 let them finish, even ask if they've finished, and when they  
8 have finished you'll be given ample opportunity to respond.  
9 But I don't want anybody interrupting anybody else.

10 Understood?

11 MR. PITARO: Yes, Your Honor.

12 (Court recessed at 10:03 a.m. until 10:18 a.m.)

13 THE COURT: Oh, no, just be seated, that's fine.

14 Let me meet with you for just a moment.

15 THE CLERK: Do you want me to bring the jury in,

16 Judge?

17 THE COURT: Yeah, you can bring 'em in. Thank you.

18 (Discussion at sidebar)

19 MR. PITARO: I apologize for --

20 THE COURT: Well, I wish you wouldn't do that.

21 MR. PITARO: Okay.

22 THE COURT: It's -- it's counter productive to  
23 everybody and we have to listen to one another.

24 Now this is the limiting instruction that I intend  
25 to give.

1 MR. PITARO: Okay.

2 THE COURT: But, Mr. Pitaro, I don't believe it  
3 should be given twice. The instructions -- listen to me --  
4 the instructions that I give refer to limited -- limiting  
5 instructions and I say where I have given them you must follow  
6 them. Now I'll give this instruction now, and I'll give you a  
7 copy of this. And if you wish, in the course of your  
8 arguments, you can refer to this instruction, but I don't  
9 think all of the limiting instructions ought to be repeated  
10 again. And I think the best thing to do is give it to them  
11 now, and then if you want to relate -- refer to it in your  
12 argument you can.

13 Let me read it to you for the record.

14 "Ladies and gentlemen of the jury, I have admitted"  
15 -- "you will find that I have admitted in evidence certain  
16 Nevada bail statutes and certain provisions of the Nevada Code  
17 of Judicial Conduct, which are Government Exhibits" such and  
18 such.

19 "I feel that a limiting instruction is appropriate  
20 at these times. These" -- "at this time. These exhibits are  
21 being presented to you only for your consideration in  
22 determining whether or not a defendant intentionally sought to  
23 defraud the citizens of Nevada of his honest services in doing  
24 those acts alleged in the indictment. Alleged failure to  
25 follow the bail statutes and/or code of judicial conduct is



1 not, in itself, a criminal violation and is not to be  
2 considered as such by you."

3 And you can refer to it as well, if you wish in the  
4 course of your argument. But I'm not going to include it both  
5 places. If you want me to give it now, I'll give it now, and  
6 I think this is the place that it belongs.

7 MR. PITARO: Or as an instruction and not give it  
8 now.

9 THE COURT: I don't think that should be done. I've  
10 given a lot of limiting instructions and I give them --

11 MR. PITARO: Okay.

12 THE COURT: -- the general instruction that says --

13 MR. PITARO: All right, we can just refer to this  
14 then.

15 THE COURT: Okay. Let --

16 MR. PITARO: Okay.

17 THE COURT: -- let me tell you, as well, the reason  
18 for the ruling with respect to these other crimes. What  
19 concerns me, and it's legitimate to be concerned with guilt by  
20 association. If the question had been, and I had the  
21 impression that there was testimony that indicated, in effect,  
22 I don't associate with people who commit criminal acts. But  
23 if it was limited to Dottore the testimony should have been  
24 limited to Dottore.

25 If the question had been, just by way of example,

1 Mr. Bongiovanni, you have indicated that you do not associate  
2 with people who do or have committed criminal acts. And if he  
3 said, yes, then I think the follow-up questions would be  
4 appropriate. But if we -- I concluded, and I think you  
5 probably -- and that's why I was willing to let it in because  
6 I thought that was the testimony. And I find these things out  
7 by listening when people speak to me one at a time in a civil  
8 fashion. But I suppose there could arguably be reason to let  
9 it in. But I'm troubled with the possibility that anyone  
10 could be found guilty because of guilt by association. And  
11 that's why on 403 I kept it out. But if the question had been  
12 as I indicated and the answer was, yes, then I would have  
13 allowed the other. But apparently there was no testimony.

14 MR. PITARO: Are you going to read that now?

15 THE COURT: I am.

16 MR. PITARO: Okay.

17 (End of discussion at sidebar)

18 (Jury reconvened at 10:19 a.m.)

19 THE COURT: From time to time, ladies and gentlemen,  
20 I have given you limiting instructions. I'm going to give you  
21 another limiting instruction at this point and then when you  
22 finally are instructed at the conclusion of the trial, and  
23 that'll be the last thing that you'll be given, there will be  
24 a general instruction that will say, where I have given a  
25 limiting instruction you must follow it. But the attorneys on

1 both sides can, and it's not inappropriate for them to refer  
2 to limiting instructions.

3 I have admitted and you will see in evidence certain  
4 Nevada bail statutes and certain provisions of the Nevada Code  
5 of Judicial Conduct, which are Government Exhibits 552 and  
6 553. This limiting instruction, I think, is appropriate at  
7 this time.

8 These exhibits are being presented to you or  
9 received into evidence only for your consideration in  
10 determining whether or not the defendant intentionally sought  
11 to defraud the citizens of Nevada of his honest service in  
12 doing those acts alleged in the indictment. An alleged  
13 failure to follow the bail statutes and/or code of judicial  
14 conduct is not in itself a criminal violation and is not to be  
15 considered as such by you, but is for your general  
16 consideration. Okay?

17 MR. PITARO: Thank you, Judge.

18 THE COURT: Go right ahead, Mr. Johnson.

19 CROSS-EXAMINATION (Continued)

20 BY MR. JOHNSON:

21 Q Mr. Bongiovanni, I'm going to hand you -- do you want me  
22 to mark these for identification purposes at all?

23 THE COURT: If you're just doing it for purposes  
24 of --

25 MR. JOHNSON: Cross --

1 THE COURT: -- refreshing his memory?

2 MR. JOHNSON: No, I'm going to be asking him  
3 questions from it. This is a transcript, which includes a  
4 portion which has not been admitted into evidence.

5 THE COURT: Oh, yes, it should be marked.

6 MR. JOHNSON: But I'm going to be --

7 THE COURT: And you're going to ask to have it  
8 admitted?

9 MR. JOHNSON: No, I'm not going to ask to have the  
10 actual tape admitted, I'm going to ask that the defendant --

11 THE COURT: Okay, I think it should be lodged with  
12 the court, even if it isn't received into evidence.

13 (Off-record colloquy between Mr. Johnson and Clerk)

14 THE COURT: That's marked as Exhibit 139, Your  
15 Honor.

16 THE COURT: Okay.

17 BY MR. JOHNSON:

18 Q Mr. Bongiovanni, and, again, the jurors don't have this,  
19 so I want just to have Mr. Bongiovanni, if you would, refer to  
20 the bottom of page 4.

21 Now, Mr. Bongiovanni, this is a call between you and Paul  
22 Dottore that occurred on January 22nd, 1995, is that correct?

23 A Yes.

24 Q And at the bottom of page 4 Mr. Dottore makes a statement  
25 to you, "Yeah, what about that host?"

1 And you respond, "You know the guy, they made a host out  
2 of the guy that tried, set him up or whatever."

3 Mr. Dottore responds, "Yeah."

4 And then you say, "With tokes -- with the tokes, with  
5 Dominic or whatever." Do you see that portion of the  
6 conversation?

7 A Yes. On page 4 and page 5, yeah.

8 Q Right. Now on -- at the time that you made the statement  
9 about the host, were you referring to -- well, let me stop  
10 there. When you say Dominic, with the tokes with Dominic or  
11 whatever, were you referring to Dominic Strano?

12 A No, I was not.

13 Q Who were you referring to?

14 A A person, Dominic -- I was referring to a host at the  
15 Horseshoe.

16 Q And do you remember that host's name?

17 A No, I don't.

18 Q And when you said, they made a host out of the guy that  
19 tried, set him up, or whatever, who were you referring to by  
20 the host?

21 A I know it was a person at the Horseshoe. I believe,  
22 Dominic Lacasano [phonetic]. This Dominic mentioned in here,  
23 I think I'm referring to Dominic Lacasano at the Horseshoe.

24 Q Now later on in the conversation you say -- well, let's  
25 go back. You state:

1 "You know the guy -- they made a host out of the guy that  
2 tried, set him up, or whatever --"

3 Dottore responds, "Yeah."

4 You then state, "-- with the tokes, with Dominic or  
5 whatever."

6 Dottore says, "Yeah."

7 You then reply, "Trying to get him to accept tokes --"

8 Dottore said, "They're going to what?"

9 And then you state, "He's the one that started all this  
10 trouble, this guy, and they make him a host. And we found out  
11 he's been -- I don't know how many felonies he's got."

12 Now what incident are you talking about when you said,  
13 "He's the one that started all this trouble?"

14 A Evidently there was a problem with -- at the Horseshoe  
15 and from what I understood, some person whom they made a host  
16 was trying to set up some friends of mine that I knew there at  
17 the Horseshoe, and that's what --

18 Q All right, and then you --

19 A -- I was referring to.

20 Q -- said, "And we found --"

21 THE COURT: Let him finish, counsel.

22 MR. JOHNSON: I'm sorry.

23 THE WITNESS: That's who I was referring to.

24 BY MR. JOHNSON:

25 Q And then you said, "And we found out he's been -- I don't

1 know how many felonies he's got." What are you saying by that  
2 statement?

3 A I remember Dominic indicated to me that this person was  
4 trying to set them up and blame them for things that was going  
5 on in the Horseshoe.

6 Q Now when you say, "And we found out he's been -- I don't  
7 know how many felonies he's got --"

8 A Right.

9 Q -- are you indicating that your office made an effort to  
10 find out the criminal history of this host that was causing  
11 problems for your friends?

12 A I believe I did find out that this person had a felony on  
13 his record. And he, in fact, was -- had a felony for  
14 stealing, and it was him, and there was a --

15 Q Now Dottore then responds to you, and correct me if I'm  
16 wrong, after you said, "And we found out he's been -- I don't

17 know how many felonies he's got." Dottore then says to you,  
18 "Oh, that's the guy you're getting the paperwork on." And you  
19 respond, "Yeah." You see that?

20 A Yes, I see that.

21 Q All right, so when Dottore says to you, "That's the guy  
22 you're getting the paperwork on," was Dottore referring to you  
23 getting a criminal history for the person that was causing  
24 trouble for your friends?

25 A No, he meant that's the guy that I was going to find out