

1 is addressed you need to bring it in, it's without any  
2 prejudice but I think we're to the point of starting to waste  
3 time on these things. Okay?

4 MS. SHOEMAKER: Okay, Your Honor.

5 THE COURT: All right.

6 MS. SHOEMAKER: We probably should bring up another  
7 area, right now, that I'm probably going to be moving into as  
8 my next area very shortly.

9 MR. PITARO: I don't have my notes --

10 MS. SHOEMAKER: We have a -- you'll remember what  
11 this is. We have a series of about eight calls that concern  
12 -- it starts with a person named Angelo Commarato who is in --  
13 out of Detroit or Ohio -- I think it's Ohio. Anyway, he's a  
14 friend a good friend of Paul Dottore's, a lifelong friend, and  
15 he wanted to get started on an ankle bracelet business down  
16 here that --

17 THE COURT: What's now?

18 MS. SHOEMAKER: An ankle bracelet business for  
19 people released on home detention. And he was asking Paul  
20 Dottore if he thought he could get the judge to -- he knew  
21 Judge Bongiovanni and Dottore were close friends, and wanted  
22 to know if he could get Bongiovanni to do anything to help  
23 him, like give referrals and whatnot and Paul Dottore says  
24 that he would talk to him about it and came back and said that  
25 he would be willing to help him out but he's going -- expect

1 he's going to have his hand out to be expecting something.  
 2 Commarato talks about how he can get him clothes and how he  
 3 understands and he'd be willing to do that. Now, Paul Dottore  
 4 does say up front that at point in time that it was being  
 5 handled privately or something and that the court couldn't do  
 6 anything right away with it, but that ultimately they thought  
 7 they would be able to. And then there are some calls that  
 8 relate to Mr. Commarato, who came here to town, and they set  
 9 up a meeting where Defendant Bongiovanni and Del Potter and  
 10 Dottore and Mr. Commarato and some other people actually did  
 11 meet to discuss the ankle bracelet business in furtherance of  
 12 this plan that they were going to do.

13 THE COURT: With the idea of utilizing his influence  
 14 as a judge?

15 MS. SHOEMAKER: Yes, Your Honor. With the  
 16 expectation that he was going to get kickbacks for it.

17 MR. PITARO: Let me -- let me. That whole -- that  
 18 whole series of calls they're interspersed. It's -- how do I  
 19 put it kindly? I mean, Commarato sounds like the stereotype  
 20 that you would see in a cartoon, okay? A mole, you know?  
 21 He's -- and they're talking about ankle bracelets, okay, that  
 22 Commarato claims that he knows -- he thinks he might be able  
 23 to get someone that knows the manufacturer of it and all you  
 24 have is Paul B.S.-ing him again. Now, in your 302, once again  
 25 you can put Dottore who says, I was B.S.-ing.

1 MS. SHOEMAKER: Mm-hmm.

2 MR. PITARO: I was -- I was B.S.-ing on this. Now,  
3 Commarato was never -- met Bongiovanni.

4 MS. SHOEMAKER: Yes, he did and the evidence will  
5 show that.

6 MR. PITARO: No, he met him at this meeting.

7 MS. SHOEMAKER: Yes, at the meeting.

8 MR. PITARO: Okay. Well -- but the meeting started  
9 -- the meeting was actually a meeting not with Commarato. The  
10 first -- it was concerning that Victoria Station or whatever  
11 it is casino where Dottore was attempting to see if -- he had  
12 a -- someone was going to buy a closed shell of a casino down  
13 on Boulder Highway. I remember seeing it.

14 THE COURT: But at this point, again it seems to me  
15 that it's oblique. It certainly is not an appropriate thing  
16 for a judge to be involved in, but it's obliquely related.

17 I'm going to keep that out, too.

18 MR. PITARO: Thank you.

19 MS. SHOEMAKER: Okay.

20 (End of discussion at sidebar)

21 THE COURT: Okay.

22 MS. SHOEMAKER: If I can just have the Court's  
23 indulgence for one moment, please.

24 THE COURT: Yes.

25 (Pause in the proceeding)

1 MS. SHOEMAKER: At this time I'll move for the  
2 admission of the first of a series of four calls that are  
3 related to one another. The first one is Exhibit 10.

4 THE COURT: 10?

5 MS. SHOEMAKER: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. PITARO: If I may, Your Honor, that series -- I  
8 would object under the usual grounds. If you will -- if you  
9 will look -- which I believe the next one would be 11. I mean  
10 the sequence -- I would object to that whole sequence.

11 THE COURT: Okay. And you're suggesting that this  
12 is 801(d)(2)(T) --

13 MS. SHOEMAKER: Yes, Your Honor.

14 THE COURT: -- (d)(2)(E).

15 MS. SHOEMAKER: It's part of the conspiracy and 1343  
16 charges and it's tied in to the defendant through number 12.

17 The series of calls is 10, 11, 12, and 14, and tape number 12  
18 is what ties it in to the defendant. In addition, it could  
19 also be tied in as Diane Woofter being the agent for the  
20 defendant.

21 THE COURT: The objection will be overruled.

22 (Plaintiff's Exhibit No. 10 admitted)

23 MS. SHOEMAKER: Thank you, Your Honor.

24 Pursuant to the stipulation of the parties, Exhibit  
25 10 is a recorded conversation on February 28th, 1994, at 11:14



1 a.m. It is an incoming call over Paul Dottore's home  
2 telephone. The participants are Paul Dottore and a Karen A.  
3 Anderson.

4 May we play Exhibit 10 at this time, Your Honor?

5 THE COURT: You may.

6 (Plaintiff's Exhibit No. 10 is played)

7 BY MS. SHOEMAKER:

8 Q Before we move to the next tape, Agent Hanford, do you  
9 know who Karen Anderson is?

10 A She's the wife of Bob Anderson who was an entertainer at  
11 Vegas World.

12 Q Do you know whether they're friends with Paul Dottore?

13 A Yes, they are.

14 Q Do you know whether they're friends with the defendant?

15 MR. PITARO: Objection, speculation.

16 THE COURT: You'd need to lay some foundation.

17 MS. SHOEMAKER: That's all right, I'll withdraw the  
18 question, Your Honor.

19 At this time I'd move for a -- admission of the  
20 follow-up -- first follow-up call, which is marked as Exhibit  
21 Number 11.

22 THE COURT: Okay. Same objection?

23 MR. PITARO: Yeah, I have the same objection to that  
24 whole series.

25 THE COURT: The objection's overruled.

1 (Plaintiff's Exhibit No. 11 admitted)

2 MR. PITARO: Thank you.

3 MS. SHOEMAKER: Pursuant to the stipulation of the  
4 parties, Exhibit 11 is a recording of a call on February 28th,  
5 1994, at 11:20 in the morning. It's an outgoing call from  
6 Paul Dottore's home telephone to 702-455-4652, which is one of  
7 the chambers telephones. And the participants are Paul  
8 Dottore and Diane Woofter.

9 May we play Exhibit 11, Your Honor?

10 THE COURT: You may.

11 MS. SHOEMAKER: Thank you.

12 (Plaintiff's Exhibit No. 11 is played)

13 MS. SHOEMAKER: I'd move for the admission of  
14 another follow-up call which is marked Exhibit 12.

15 MR. PITARO: Same objection.

16 THE COURT: The objection's overruled. It'll be  
17 received.

18 (Plaintiff's Exhibit No. 12 admitted)

19 MS. SHOEMAKER: Thank you, Your Honor.

20 Pursuant to the parties' stipulation, Exhibit 12 is  
21 a recorded call on February 28th, 1994, at 11:20 in the  
22 morning. It's an outgoing call to 702-455-4652, which is one  
23 of the chambers telephones from Paul Dottore's home telephone,  
24 and the participants are Paul Dottore and Diane Woofter.

25 May we play Exhibit 12?

1 THE COURT: You may.

2 MS. SHOEMAKER: Thank you, Your Honor.

3 (Plaintiff's Exhibit No. 12 is played)

4 MS. SHOEMAKER: There's one additional follow-up  
5 call that we'd like to play, Your Honor, and that's Exhibit  
6 14. We'd move for the admission of that tape.

7 MR. PITARO: I'm sorry. Same objection, Judge.

8 THE COURT: Same objection. Okay. It'll be  
9 received.

10 (Plaintiff's Exhibit No. 14 admitted)

11 MS. SHOEMAKER: Thank you, Your Honor.

12 Pursuant to the stipulation of the parties, Exhibit  
13 14 is a recording on February 28th, 1994, at 1539 military  
14 time which is 3:59 in the afternoon. It's an outgoing call  
15 from Paul Dottore's home telephone to 702-456-4466. And the  
16 participant is Paul Dottore speaking to an answering machine.

17 May we play Exhibit 14 at this time, Your Honor?

18 THE COURT: You may.

19 MS. SHOEMAKER: Thank you.

20 (Plaintiff's Exhibit No. 14 is played)

21 MS. SHOEMAKER: At this time, I would move for the  
22 admission of Exhibit 25.

23 MR. PITARO: Yes, Your Honor. I have this as  
24 Exhibit 509 and under Rule 106 --

25 MS. SHOEMAKER: Your Honor, we'd need --

1 MR. PITARO: -- if you could look at my 509, Judge,  
2 you will see the --

3 MS. SHOEMAKER: Your Honor, we'll need to have a  
4 sidebar if we need to go into any discussion on this, but the  
5 portion that Mr. Pitaro wants to play is inadmissible under  
6 608(b), in addition, under 403, and this portion that we're  
7 offering of the conversation is not taken out of context by  
8 having the inadmissible portions redacted.

9 THE COURT: Okay. Is this the only tape in this  
10 series?

11 MS. SHOEMAKER: Well, it's the only one that's --  
12 there's another tape that follows it that deals with this same  
13 person in Exhibit 25 and a favor situation, but it's not  
14 directly related to this.

15 THE COURT: Come to sidebar.

16 MR. PITARO: You mean 26.

17 MS. SHOEMAKER: No, I'm not going to offer 26.

18 THE COURT: Come to sidebar.

19 Karen, let me see you for just a minute.

20 MR. PITARO: Well, you said there was another one.  
21 I'm sorry.

22 MS. SHOEMAKER: 86.

23 MR. PITARO: Oh, 86. Okay.

24 (Pause in the proceeding)

25 //

(Discussion at sidebar)

THE COURT: Now, why is this one important?

MR. PITARO: I wish I knew, Judge.

MS. SHOEMAKER: Paul Dottore is --

THE COURT: What does it do that --

MS. SHOEMAKER: Paul Dottore is conveying in this conversation to Marty Carson that he has an in with the Judge. And then a later tape that I was going to be offering next, which would be Exhibit 86, is where Judge Bongiovanni is doing a favor for Marty Carson at Paul Dottore's request, and in exchange Marty Carson said he's willing to do anything around the Judge's house for him for free, that he was --

THE COURT: Okay. And what is it that you want to do?

MR. PITARO: This will come in under 608, under ----  
- this -- what we -- this -- I'm sorry, Judge.

THE COURT: It'll come in under 608?

MR. PITARO: Yes.

THE COURT: Okay.

MR. PITARO: This is clearly the -- he says here, "I got a charge against me." Okay. And I'll just skip if I could quick, Judge. "I got a charge now," Dottore says, "You know, since I've been working at Vegas World." He said, "I got an assault with a deadly weapon." "You did? How'd it come out." "Well, it was dismissed." "Well, you got no

1 charge, I mean he's probably said you didn't." "No, I was  
2 arrested." "Well, no shit, you know, must have been a nice  
3 guy. The guy must have been a felon." "Well, I shoot at him  
4 twice and I miss." "You shot him? I missed though. Well,  
5 shit, Paul, and you got it dismissed? Yeah. Okay. I wish I  
6 knew a judge too." That's what they want to put in now. "You  
7 do? I got one." They leave that out and then they leave out,  
8 "You know I told you that's terrible, thank God you missed, I  
9 would have shot the mother fucker." "Naw, he's gone, someone  
10 talked him into dropping the charges and he left."

11 You see? And so that's the sequence it's in and all  
12 they pulled out was "I wish I knew a Judge too. You do?"

13 MS. SHOEMAKER: Your Honor, if I can just explain,  
14 it's not what Mr. Pitaro thinks that the conversation is.  
15 This is actually relating back to when Paul Dottore, I'm sure  
16 the Court will recall in the last trial, that it came out that  
17 Paul Dottore had paid off another judge in Henderson, I  
18 believe, it was seven hundred dollars or something to have  
19 some assault --

20 THE COURT: Yeah, I remember.

21 MS. SHOEMAKER: -- against his girlfriend charges  
22 dismissed against him and charges that were brought against  
23 her for assault dismissed also. And actually that's what this  
24 relates to. Apparently, we never knew this until preparing  
25 for trial here, he actually shot at his girlfriend that night.

1 And that's what -- that's what the assault with a deadly  
2 weapon charge was against Paul Dottore. The only time he's  
3 ever had a charge brought against him like that, that's what  
4 it was, and Marty Carson is the one who talks about it being a  
5 fellow and Paul just goes along with it 'cause he doesn't want  
6 to go into the details about it being his girlfriend. But  
7 it's the only time he's ever been charged with assault with a  
8 deadly weapon, it's when he shot at his girlfriend. And that  
9 part is not an admissible thing, the fact that he paid off a  
10 judge in Henderson would be, but the fact that he got into an  
11 altercation with a girlfriend and shot at her, that is totally  
12 prejudicial and inadmissible, it's not a proper 608(b) thing  
13 that goes to honesty. Only the bribery of the judge in  
14 Henderson was. And as far as the statement in this  
15 conversation where he says that somebody said something to the  
16 guy to not to testify and then he left town, he was just  
17 making that up. But the part we've pulled out of this  
18 conversation is not taken out of context, 'cause we're only  
19 offering it for the purpose of showing that he had in with the  
20 judge.

21 THE COURT: Mr. Pitaro, I understand. I'm going to  
22 keep it, I'm going to play the tape that they're proposing.  
23 In the course of your examination of Dottore, if you want to  
24 make inquiry about this --

25 MR. PITARO: Okay.

1 THE COURT: -- you can make inquiry. I -- but  
2 you're stuck with his answer; it's clearly collateral.

3 Let's go.

4 MS. SHOEMAKER: Is Mr. Pitaro going to be permitted  
5 to question Paul Dottore about whether he shot at his  
6 girlfriend?

7 THE COURT: Yeah, it's a collateral matter.

8 MS. SHOEMAKER: If we don't play this tape --

9 MR. PITARO: Wait a minute.

10 MS. SHOEMAKER: -- is he going to be permitted to  
11 inquire into it?

12 MR. PITARO: Judge, what are you -- I understand  
13 your ruling. He doesn't say I shot at my girlfriend, he's  
14 lying, he's making a misrepresentation, clearly under 608.  
15 I've made a representation and he's saying exactly what it is.  
16 Their interpretation now is after I --

17 THE COURT: In any event it's a collateral matter --

18 MR. PITARO: Can I --

19 THE COURT: -- and -- and because it has some --  
20 you'd probably be better just letting the entire thing be  
21 played and then forget about the time --

22 MS. SHOEMAKER: Is Your Honor -- is Your Honor  
23 indicating that if -- even if we don't play this tape that Mr.  
24 Pitaro would be permitted to inquire into that on cross-  
25 examination?



1 THE COURT: It's collateral.  
2 MR. PITARO: I can get into it in 608.  
3 THE COURT: I don't think you can.  
4 MR. PITARO: Under Tarentino.  
5 THE COURT: I don't think you can.  
6 MS. SHOEMAKER: Well --  
7 THE COURT: You'll have to show me specifically.  
8 MS. SHOEMAKER: Then we'll withdraw the playing of  
9 this tape --  
10 THE COURT: Okay. Then let's move on.  
11 MS. SHOEMAKER: -- to avoid that issue. Thank you.  
12 THE COURT: We'll deal with that later.  
13 MS. SHOEMAKER: Thank you.  
14 (End of discussion at sidebar)  
15 MS. SHOEMAKER: We'll move over -- we'll withdraw  
16 offering that into evidence, Your Honor, and instead we'll  
17 move over to the later call, 86, and offer --  
18 THE COURT: 86?  
19 MS. SHOEMAKER: Yes, Your Honor, 86, and offer that  
20 call into evidence. It's in binder number 2.  
21 THE COURT: Okay. And you object to this as well.  
22 MR. PITARO: Yes, Your Honor.  
23 MS. SHOEMAKER: 86, Your Honor, is a clear part of  
24 the conspiracy in 1343.  
25 MR. PITARO: Well, part of the alleged conspiracy,

1 from your viewpoint.

2 THE COURT: I understand. The objection will be  
3 overruled. 86 will be received.

4 (Plaintiff's Exhibit No. 86 admitted)

5 MS. SHOEMAKER: Thank you, Your Honor.

6 Pursuant to the stipulation of the parties, Exhibit  
7 86 is a recorded call on December 11th, 1994 at 1530 military  
8 time, which is 3:30 in the afternoon. It's an incoming call  
9 over Paul Dottore's home telephone. And the speakers are Paul  
10 Dottore and Marty Carson. May we play Exhibit 86 at this  
11 time?

12 THE COURT: You may.

13 (Plaintiff's Exhibit No. 86 is played)

14 MS. SHOEMAKER: At this time, Your Honor, there are  
15 only two other tapes that I wanted to play that relate to the  
16 conspiracy in 1343. And the first one -- they're both related

17 to each other. The first one that I would offer is Exhibit  
18 112.

19 THE COURT: 112?

20 MS. SHOEMAKER: Yes, Your Honor.

21 MR. PITARO: Your Honor, I'm going to object to  
22 this. Court would look at it.

23 MS. SHOEMAKER: Your Honor may need to look at --

24 MR. PITARO: It's talking about golf.

25 MS. SHOEMAKER: -- the two together as 112 and 117.

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1 It may save time if I could explain at sidebar, if the Court  
2 wants.

3 MR. PITARO: 117?

4 MS. SHOEMAKER: 117.

5 THE COURT: Just a --

6 (Pause in the proceedings)

7 THE COURT: I think it's relevant, counsel.

8 MS. SHOEMAKER: Thank you, Your Honor. Is Exhibit  
9 112 received then?

10 THE COURT: 112 is received..

11 (Plaintiff's Exhibit No. 112 admitted)

12 MS. SHOEMAKER: Thank you, Your Honor.

13 Pursuant to the stipulation of the parties, Exhibit  
14 112 is a recorded conversation on December 29th, 1994 at  
15 military time 1829, which is 6:29 p.m. It was an incoming  
16 call over the defendant's home telephone. And the speakers

17 are Gerard Bongiovanni and Joe Argenio [phonetic]. May we  
18 play Exhibit 112 at this time, Your Honor?

19 THE COURT: You may.

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

21 MS. SHOEMAKER: At this time, Your Honor, I would  
22 move for the admission of follow-up call that's marked Exhibit  
23 117.

24 THE COURT: I've reviewed 117. Your objection is  
25 the same, counsel?

1 MR. PITARO: Yes, Your Honor.

2 THE COURT: It'll be received.

3 (Plaintiff's Exhibit No. 117 admitted)

4 MS. SHOEMAKER: Thank you, Your Honor.

5 THE COURT: 117.

6 MS. SHOEMAKER: Pursuant to the stipulation of the  
7 parties, Exhibit 117 is a call that was recorded on January  
8 2nd, 1995 at military time 1427, which is 2:27 in the  
9 afternoon. It's an incoming call over Defendant Bongiovanni's  
10 home telephone. And the participants are Paul Dottore, Gerard  
11 Bongiovanni and an unknown female. May we play Exhibit 117?

12 THE COURT: You may.

13 (Plaintiff's Exhibit No. 117 is played)

14 MS. SHOEMAKER: At this time, Your Honor, I would  
15 move for the admission of Exhibit 134.

16 THE COURT: 134?

17 MS. SHOEMAKER: Yes, Your Honor, it's in binder  
18 number 3.

19 MR. PITARO: I'll object, Your Honor, same grounds.

20 THE COURT: We haven't played this tape?

21 MS. SHOEMAKER: No, we haven't played this tape,  
22 Your Honor, and actually this one is -- it's concerning the  
23 defendant gambling on a particular day, and it's going to be  
24 tied into the --

25 MR. PITARO: Well, I'm not sure that there --

1 MS. SHOEMAKER: I can argue at sidebar if necessary,  
2 but --

3 THE COURT: Well, it's going to be tied into what?

4 MS. SHOEMAKER: It's going to be tied into the Salem  
5 bribe, Your Honor, because of the timing and a prior tape that  
6 was played, Exhibit 129.

7 MR. PITARO: Judge, 129 is five days before.

8 MS. SHOEMAKER: Yes, I know. In 129 the defendant  
9 talked about his financial situation on January 17th prior to  
10 the time that it is alleged that the bribe money was passed to  
11 the defendant.

12 MR. PITARO: Your Honor, 117 he's talking to his  
13 sister-in-law. We've heard that. That was the --

14 THE COURT: 117?

15 MR. PITARO: Right. And the name's Rose not Pat,  
16 but we'll clear that up now. But in any event he's talking to  
17 his sister-in-law in 117 about getting his kid a car. But  
18 then -- now this one is 122 --

19 MS. SHOEMAKER: Exhibit --

20 MR. PITARO: -- where we've had one, two, already  
21 three phone calls between 117 and 122 between Dottore and Mr.  
22 Bongiovanni, before we even get to this one, which is 122.

23 MS. SHOEMAKER: Your Honor, Exhibit --

24 MR. PITARO: And so to say that -- wait a minute let  
25 me just finish. This -- to say that this 122 is because of

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1 the -- or the 134 is because of that is the 122 date. Exhibit  
2 134 is because of a conversation that he had with his sister-  
3 in-law five days before with a number of intervening calls.

4 THE COURT: How are they interrelated?

5 MS. SHOEMAKER: Because, Your Honor, Exhibit 129,  
6 which was already played and received in evidence, was a  
7 conversation on January 17th --

8 THE COURT: 129?

9 MS. SHOEMAKER: Pardon me?

10 THE COURT: 129?

11 MS. SHOEMAKER: Yes, Your Honor, 129.

12 THE COURT: Mm-hmm.

13 MS. SHOEMAKER: That was received during Terry  
14 Salem's testimony. It is a conversation that was on January  
15 17th, 1995 in which the defendant told a person, who's  
16 identified on the transcript anyway as Pat, last name unknown,  
17 that he only had enough -- he was going to buy his son a car,  
18 but that he -- that was it, he had no more money, he's run  
19 through his savings, he can't -- he doesn't have enough to  
20 meet his obligations. Five days later on the 22nd, and by the  
21 way that call that was on January 17th was prior to the time  
22 it's alleged that the sale and bribe money was passed to the  
23 defendant. Five days later on January 22nd, which is Exhibit  
24 134, the defendant is talking about how he went out and  
25 gambled the night before and how he took a beating. And we're

1 going to be producing evidence that will indicate that he was  
2 not paid during that period of time, and therefore it ties  
3 into the Salem bribe if he's alleging on January 17th he  
4 doesn't have any money to meet his obligations and yet he  
5 turns -- and he's run through his savings, and then he turns  
6 around five days later after it's alleged that he received  
7 money from the Salem bribe, and he's out gambling and took a  
8 beating.

9 MR. PITARO: Your Honor, Pat is really Rose, it's  
10 his sister-in-law and they're talking, as we heard, about him  
11 buying his kid a car in six months, he's not going to be able  
12 to go anyplace and he won't have any money. Then we have  
13 conversations a week later, or five days later, that he's  
14 talking to Dottore, now this is five days apparently after --

15 THE COURT: Well, let's go back to the question, the  
16 transcript clearly indicates Pat, Pat and Rose doesn't sound  
17 much -- there's no similarity in the sound.

18 MR. PITARO: No, they said it's Pat.

19 THE COURT: Pardon?

20 MR. PITARO: They said it's Pat, I'm saying it's --

21 THE COURT: Well, that's what the transcript says.

22 MR. PITARO: He's saying Rose.

23 MS. SHOEMAKER: That doesn't really matter who the  
24 person is he was speaking to --

25 MR. PITARO: It is Rose.

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1 MS. SHOEMAKER: -- it's the fact of --

2 MR. PITARO: It's his sister-in-law Rose. Okay.

3 MS. SHOEMAKER: It's the fact of the statements that  
4 he made in the two calls.

5 THE COURT: Okay. And you're asking to receive 1177

6 MR. PITARO: No, that's --

7 THE COURT: What are you asking to receive?

8 MS. SHOEMAKER: We're asking for Exhibit 134 to be  
9 received, which is the tape five days after he's alleged to  
10 have received the first bribe payment from Salem where he's  
11 talking about having gone out gambling and taking a beating  
12 after just prior to getting the Salem bribe he was complaining  
13 that he had run out of his money and had -- couldn't meet his  
14 obligations.

15 THE COURT: Okay. And you're objecting for the same  
16 reason that you --

17 MR. PITARO: Well, of course it's not relevant. I  
18 mean to try -- for the government to try to tie in -- I mean  
19 they go on and they -- it -- there is no large scale gambling.  
20 What we're talking about is a guy talks five days before to  
21 his sister-in-law and says, I blow a hundred, I'm buying my  
22 kid a car, et cetera. Between two family members joking.  
23 Then you come five days later and says that he went out and he  
24 took a beating, because he went out and he played some slots,  
25 that that's evidence that five days before that again meant



1 that there was some money. I mean it just drains credibility  
2 at this stage. And then to let this in for that purpose,  
3 because that's all it is.

4 MS. SHOEMAKER: Your Honor, it's clear that this is  
5 just a matter of argument for the jury, and the jury needs to  
6 decide this, but it --

7 MR. PITARO: No, it's a matter of relevancy of the  
8 tape.

9 THE COURT: Well, it appears as though it is, but  
10 the other matter is a matter of admissibility and we're --

11 MR. PITARO: And I don't think it's relevant.

12 THE COURT: Just a moment. Are you saying this is  
13 during and in furtherance of?

14 MS. SHOEMAKER: Your Honor, what I'm saying is that  
15 this is an admission of the defendant that he was out gambling  
16 the night before and took a beating, after his prior admission  
17 right before he was supposed to have received the money from  
18 Terry Salem on January 17th through Paul Dottore, that he had  
19 run through his savings and that he didn't have any more money  
20 left, he can't even meet his obligations.

21 THE COURT: All right. On that basis, and it'll be  
22 dealt with in argument, 134 will be received.

23 (Plaintiff's Exhibit No. 134 admitted)

24 MS. SHOEMAKER: Thank you, Your Honor.

25 Pursuant to the stipulation of the parties, Exhibit

1 134 is a recorded conversation on January 22nd, 1995 at  
2 military time 1515, which is 3:15 in the afternoon. It's an  
3 incoming call over Paul Dottore's home telephone. And the  
4 participants are Paul Dottore and Gerard Bongiovanni. May we  
5 play Exhibit 134 at this time?

6 MR. PITARO: Your Honor, let me just say this, this  
7 tape is a -- is a whole tape and there's one line in there and  
8 the rest of it is not admissible. And what they're saying is  
9 what they want to admit is the last -- the third and fourth  
10 line from the bottom on page 6 of 134. And what it is is,  
11 "Yeah, well, I took a beating last night," or that line, then  
12 I'll stipulate that's what it says. But I don't think that's  
13 the reason they're trying to do this, what they're trying to  
14 do is get in this tape, for some reason, but that's what it  
15 said on one line out of their eight-page --

16 THE COURT: Well, let me ask then if we can avoid  
17 the time, and that's the purpose, and counsel is willing to  
18 stipulate that in the course of the conversation the defendant  
19 acknowledged that he took a beating last night, is that all  
20 that you're interested in?

21 MS. SHOEMAKER: Well, that's the primary purpose  
22 that we're introducing the tape for, Your Honor.

23 MR. PITARO: Then I'll --

24 THE COURT: Okay. To that end it'll --

25 MR. PITARO: I'll stipulate to that, that's what it

1 says.

2 THE COURT: -- the stipulation will be received.

3 Let's move on.

4 MS. SHOEMAKER: At this time, Your Honor, I would  
5 move for the admission of Exhibit 151.

6 THE COURT: 151?

7 MS. SHOEMAKER: Yes, Your Honor.

8 THE COURT: Any objection, counsel?

9 MR. PITARO: Just the same continuing type  
10 objection, beyond that.

11 THE COURT: 801 -- 801 is that correct?

12 MR. PITARO: Yes, Judge.

13 THE COURT: Okay. The objection is overruled. 151  
14 will be received.

15 (Plaintiff's Exhibit No. 151 admitted)

16 MS. SHOEMAKER: Thank you, Your Honor.

17 Pursuant to the stipulation of the parties Exhibit  
18 151 is a recorded conversation on February 10th, 1995 at  
19 military time 1948, which is 7:48 in the evening. It was an  
20 outgoing call to 702-261-0664 from Defendant Bongiovanni's  
21 home telephone. And the speakers are Paul Dottore and Gerard  
22 Bongiovanni. May we play Exhibit 151 at this time?

23 THE COURT: You may.

24 MS. SHOEMAKER: Thank you, Your Honor.

25 (Plaintiff's Exhibit No. 151 is played)

HANFORD - DIRECT

143

1 MS. SHOEMAKER: There's just one further tape that I  
2 would like to move for admission of through Agent Hanford, and  
3 that is Exhibit 158.

4 THE COURT: 158?

5 MS. SHOEMAKER: Yes, Your Honor.

6 MR. PITARO: Objection based upon not only 801, but  
7 relevancy, Your Honor. This thing is now in the --

8 THE COURT: How is it relevant?

9 MR. PITARO: -- end of February.

10 MS. SHOEMAKER: Your Honor, these are admissions of  
11 the defendant and it shows motive, and I will point to the  
12 Court specifically, motive with respect to the bribery, I  
13 would point specifically to -- well, there's more than one  
14 statement, but the key statements are found on page 3, in the  
15 middle to the top of the page, and again on the bottom of page  
16 4 concerning the defendant's gambling habits.

17 THE COURT: Okay. The objection is overruled.

18 MS. SHOEMAKER: Thank you, Your Honor.

19 THE COURT: It'll be received.

20 (Plaintiff's Exhibit No. 158 admitted)

21 MS. SHOEMAKER: Pursuant to the stipulation of the  
22 parties Exhibit 158 is a tape recording of a conversation on  
23 February 22nd, 1995 at military time 2138, which is 9:38 p.m.  
24 It's an outgoing call to 702-433-1652 over Paul Dottore's home  
25 telephone. The participants are Paul Dottore, Gerard

1 Bongiovanni and, briefly in the beginning, Angela Bongiovanni.  
2 May we play tape 158 at this time?

3 THE COURT: You may.

4 (Plaintiff's Exhibit No. 158 is played)

5 BY MS. SHOEMAKER:

6 Q Agent Hanford, I just have a few other questions for you.  
7 Do you recall yesterday the Court received and we played a  
8 tape that was marked Exhibit Number 50, it involved a  
9 conversation with Mickey Gresser and Paul Dottore in which I  
10 asked you if Gerard -- you recognized Gerard Bongiovanni's  
11 voice on the tape?

12 A That's correct.

13 Q Have you had a chance to relisten to that tape since your  
14 testimony yesterday?

15 A Yes, I have.

16 Q When you listened to the tape did you recognize Defendant  
17 Bongiovanni's voice --

18 A Yes, I did.

19 Q -- on the tape?

20 MR. PITARO: Your Honor, I'm going to -- this has  
21 been asked and answered and went over yesterday.

22 MS. SHOEMAKER: Yesterday, Your Honor, the Agent  
23 didn't --

24 MR. PITARO: I mean the tape speaks for itself.

25 THE COURT: Well, but it's an appropriate question.

1 You may respond.

2 THE WITNESS: Yes, I did recognize his voice in one  
3 part.

4 MS. SHOEMAKER: Okay.

5 Your Honor, may we replay that tape for the jury so  
6 the agent can point out where it is that he heard Defendant  
7 Bongiovanni's voice in the background?

8 THE COURT: Well, the tape has been received. If  
9 it's that important you can play it at the time of argument  
10 and invite the jury to -- they've heard these tapes and can  
11 make that assessment.

12 BY MS. SHOEMAKER:

13 Q Agent Hanford, can you -- do you recall where it was on  
14 the tape that you heard the defendant's voice?

15 A Yes, if you give me just a moment I'll point it out.

16 MR. PITARO: I'm sorry, I apologize, I didn't hear  
17 the question.

18 THE COURT: Do you remember where in the tape that  
19 you heard the voice.

20 THE WITNESS: On page 3 of the transcript there's  
21 the fifth voice down, it says, "Dottore: Las Vegas," when I  
22 listened to that, that sounded to me as if that was  
23 Bongiovanni saying Las Vegas.

24 MR. PITARO: Oh. Oh, wait, wait a minute, Judge,  
25 we've -- we stipulated they went through this for three years,

MR:eco-08009-BONG0769

1 now he's going to hear it the night before and decide that who  
2 the government represents it isn't?

3 THE COURT: Well, you stipulated to the foundation.

4 MR. PITARO: No, that's right, we stipulated that  
5 the people on there as designated in the transcript were in  
6 fact the people, that was the stipulation, that's what she's  
7 been saying with every tape.

8 MS. SHOEMAKER: Yes, Your Honor, but at the same  
9 time the agent can testify if he recognized the defendant's  
10 voice in the background, and Gerard --

11 MR. PITARO: No, it's up to the jury.

12 THE COURT: If that's a motion, counsel, it's  
13 denied. Anything further?

14 MS. SHOEMAKER: Not with regard to that tape, Your  
15 Honor, but I do have just a couple other questions of the  
16 agent.

17 BY MS. SHOEMAKER:

18 Q I don't recall, Agent Hanford, if I asked you already,  
19 but in case I didn't, do you know who Mickey Gresser is?

20 A He's a friend of Paul Dottore's, he owns a local  
21 establishment called Mickey's Cues and Brews.

22 MS. SHOEMAKER: May I approach the witness, Your  
23 Honor?

24 THE COURT: You may. How much longer are you going  
25 to be with this witness?

1 MS. SHOEMAKER: This is it, Your Honor, just one  
2 other question.

3 I'm showing defense counsel first what's been marked  
4 Government Exhibit 207, it's identified on the exhibit list,  
5 but involves money so it hasn't been provided to defense  
6 counsel before.

7 MR. PITARO: Isn't this what we did yesterday?

8 MS. SHOEMAKER: No.

9 MR. PITARO: Oh, I'm not sure what -- was the --

10 THE CLERK: Yesterday was 213-B and 213-C.

11 MR. PITARO: You've lost me there.

12 MS. SHOEMAKER: This is an envelope that agent will  
13 testify how many bills are in this envelope.

14 MR. PITARO: I'm going to object in relevancy.

15 THE COURT: Well, it's clearly relevant.

16 MR. PITARO: I'm sorry what?

17 THE COURT: It's clearly relevant.

18 MR. PITARO: Could we have a sidebar then?

19 THE COURT: Well, we can wait until tomorrow morning  
20 and you can go through this tomorrow morning.

21 MR. PITARO: Okay.

22 THE COURT: I'm not going to hold the jury up any  
23 further than they -- we continued the noon hearing until 5:00  
24 today, didn't we?

25 THE CLERK: Yes, Your Honor.



ORIGINAL

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*[Signature]*

CLERK

OPPS  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

MICHAEL DAMON RIPPO,  
#0619119

Defendant(s).

Case No. C106784  
Dept. No. IV  
Docket C

ANSWER IN OPPOSITION TO  
MOTION FOR NEW TRIAL

DATE OF HEARING: 5-1-96  
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through MELVYN T. HARMON, Chief Deputy District Attorney, and opposes Defendant Rippo's Motion for a New Trial on the grounds that (1) no newly discovered evidence has been shown which requires ordering a new trial and (2) the defense is in procedural default pursuant to NRS 176.515(4) regarding any issue raised in its motion in addition to the allegation of newly discovered evidence. A motion for a new trial based on any grounds other than newly discovered evidence must be made within seven days after the verdicts of guilt.

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UEST

1 This Answer is made and based upon all the papers and pleadings on file herein, the attached  
2 points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary  
3 by this Honorable Court..

4 DATED this 30th day of April, 1996.

5 Respectfully submitted,

6 STEWART L. BELL  
7 DISTRICT ATTORNEY  
8 Nevada Bar #000477

9 BY Melvin T. Harmon  
10 MELVYN T. HARMON  
11 Chief Deputy District Attorney  
12 Nevada Bar #000862

13 **POINTS AND AUTHORITIES**

14 **I**

15 **THE DEFENSE MOTION DOES NOT DEMONSTRATE THE EXISTENCE**  
16 **OF ANY NEWLY DISCOVERED EVIDENCE WHICH WOULD PROVIDE**  
17 **A LEGAL BASIS FOR ORDERING A NEW TRIAL.**

18 The defense motion makes a number of general allegations which it claims constitute newly  
19 discovered evidence. However, the defense does not offer any specific factual finding in support of its  
20 naked allegations.

21 It was known to all parties to this case before the commencement of this trial that Judge Gerard  
22 Bongiovanni was the target of a federal grand jury probe. Accordingly, the defense did request that  
23 Judge Bongiovanni recuse himself because of the pending investigation. The judge summarily denied the  
24 motion for recusal by stating emphatically that the Rippo case and the pending federal investigation  
25 against the court were completely unrelated. The court assured the parties that nothing about the  
26 pending investigation would in any way impair his ability to preside fairly and impartially over the Rippo  
27  
28

1 trial proceedings.

2 The defense motion for a new trial has not presented one iota of evidence which contradicts the  
3 previous declarations of Judge Bongiovanni made on the record in his denial of the motion for recusal.

4 The defense alleges in his motion that it "... has now learned that the Judge had a unique  
5 relationship with the business partner of one of the victims in this case, specifically Denny Mason." (Page  
6 3 of the defense Motion for a New Trial). The defense does not elaborate upon the precise nature of this  
7 "unique relationship" it claims the trial judge had with a business partner of Denny Mason. General -  
8 nonspecific allegations do not satisfy the Nevada standard for newly discovered evidence. The defense  
9 also contends that "At no time did the judge advise that he knew this victim nor did the judge advise that  
10 he knew the business partner of Denny Mason ..." (Page 3 of the defense Motion for a New Trial). Did  
11 Judge Bongiovanni know Denise Lizzi or Denny Mason? Does the judge know the business partner of  
12 Denny Mason? Naked allegations are not facts. The defense further asserts that it "... has learned that  
13 reputed Buffalo mob associate Ben Spano is the business partner of Denny Mason in both Security  
14 Enterprises, a telemarketing operation now out of business, and in the big screen television business."  
15 (Page 3 of defense Motion for a New Trial). Upon what does the defense base this contention and how  
16 does this information relate to the trial proceedings of Michael Rippo? The defense also argues that if  
17 it "... had known about the connection between the judge, Denny Mason, and organized crime ..." it  
18 would have asked for a recusal and considered calling the judge as a witness. (Pages 3 and 4 of the  
19 defense Motion for a New Trial). What is the connection between the judge, Denny Mason, and  
20 organized crime about which the defense alludes in its argument? What would have been the line of  
21 questioning directed at Judge Bongiovanni if he had been a witness? The defense further argues that had  
22 it known of Judge Bongiovanni's "mob connection" it would have had additional information upon which  
23 it could base other questions of Denny Mason and this information would have reflected on Mason's  
24 credibility and the credibility of Denise Lizzi as well. How would such information have impacted the  
25 credibility of Denny Mason and why would the credibility of a homicide victim ever be pertinent at the  
26 trial of her assailant?

27 This Motion for a New Trial is specious. The motion has not demonstrated a single fact upon  
28 which a reviewing court could determine that the rulings in the Rippo case were somehow related to a

1 relationship the trial judge had with an associate of Denny Mason. Further, the defense has presented  
2 nothing which would suggest that its information would somehow render a different result probable upon  
3 retrial.

4 Nevada case law has established a clear standard which must be met by the defense as a condition  
5 to the granting of any motion for a new trial based upon newly discovered evidence. The newly  
6 discovered evidence criteria is set forth in Oliver v. State, 85 Nev. 418, 424, 456 P.2d 431 (1969). The  
7 court in Oliver declared:

8 " . . . In seeking a new trial the newly discovered  
9 evidence must be (1) newly discovered, (2) material to  
10 movant's defense, (3) such that it could not with  
11 reasonable diligence have been discovered and produced  
12 for the trial, (4) not cumulative, and (5) such as to  
13 render a different result probable upon retrial. To which  
we add (6) that it does not attempt only to contradict a  
former witness or to impeach or discredit him, unless  
witness impeached is so important that a different result  
must follow . . . and (7) that these facts be shown by the  
best evidence the case admits . . . "

14 See also McLemore v. State, 94 Nev. 237, 577 P.2d 871 (1978) and Lightford v. State, 91 Nev. 482, 538  
15 P.2d 585 (1975).

16 The defense has really not satisfied any of the criteria for newly discovered evidence. It has  
17 certainly not demonstrated that the evidence it alleges is (1) newly discovered or (2) material to its  
18 defense or (3) such as to render a different result probable upon retrial or (4) that it does not attempt only  
19 to contradict a former witness or to impeach or discredit him. (See also Biondi v. State, 101 Nev. 252,  
20 256-257, 699 P.2d 1062 (1985)).

## 21 II

22 **THE DEFENSE IS IN PROCEDURAL DEFAULT PURSUANT**  
23 **TO NRS 176.515(4) REGARDING ANY ISSUE RAISED IN ITS**  
24 **MOTION IN ADDITION TO THE ALLEGATION OF NEWLY**  
25 **DISCOVERED EVIDENCE DUE TO UNTIMELINESS.**

26 Any motion for a new trial based upon grounds other than newly discovered evidence must be  
27 made within seven days after the verdicts of guilty. (See NRS 176.515(4)). The trial jury verdicts finding  
28 Defendant Rippo guilty of two counts of Murder of the First Degree, Robbery and Unauthorized Signing

1 of Credit Card Transaction Document were returned on March 8, 1996. The defense motion for a new  
2 trial was filed on April 29, 1996. The time interval which has elapsed from the return of the guilty  
3 verdicts and the filing of the defense motion for a new trial is forty-two days. Hence, any portion of the  
4 defense motion which raises issues other than the issue of newly discovered evidence is untimely and  
5 causes the defense to be in procedural default on such issues.

6 Even assuming for sake of argument that the defense motion had been filed within the time frame  
7 mandated by NRS 176.515, the motion is not meritorious on its face. Nothing about the suspension of  
8 Judge Bongiovanni serves as a legal impediment to a completion of criminal proceedings against Michael  
9 Rippo. The defense has failed to cite the court to any authority which has application to the case at bar.

10 The trial jury has returned verdicts of guilty with respect to Michael Rippo. The trial jury has  
11 already imposed sentences of death regarding Counts I and II. All that remains is for the court to impose  
12 sentences as to Count III (charging the offense of Robbery) and Count IV (charging the offense of  
13 Unauthorized Signing of Credit Card Transaction Document). If judges can impose sentences pursuant  
14 to pleas of guilty than this court is certainly capable of imposing sentences pursuant to jury verdicts.

15 NRS 175.101 reflects the legislative mandate regarding the disability of a judge after verdicts of  
16 guilty. It is the governing authority which is relevant to the case at bar. The official suspension of  
17 District Court Judge Gerard Bongiovanni by the Nevada Judicial Discipline Commission following the  
18 judge's recent federal indictment is a disability which causes him to be unable to perform the duties of  
19 formal sentencing in this case. Therefore, as NRS 175.101 provides: "... any other judge regularly  
20 sitting in or assigned to the court may perform those duties ..."

21 The prosecution is satisfied that the judge assigned to handle the sentencing duties is in a position  
22 to carry out the responsibility. The trial jury has already fixed the punishment for Counts I and II and the  
23 ratification of the death sentences is simply a matter of formality. Any warrant of execution issued by  
24 this court will be based upon the entire record of these proceedings and it may certainly be issued by a  
25 judge who is serving as a successor to the trial court. As to Counts III and IV where a sentence must  
26 yet be imposed, the court will have as a basis for his decision the entire record of these proceedings, the

27 ///

28 ///

1 Pre-Sentence Report submitted by the Nevada Department of Parole and Probation, victim impact  
2 statements, an allocution statement of the Defendant and arguments of counsel.

3 Accordingly, Defendant's Motion for a New Trial should be denied.

4 DATED this 30th day of April, 1996.

5 Respectfully submitted,

6 STEWART L. BELL  
7 DISTRICT ATTORNEY  
8 Nevada Bar #000477

9 BY

Melvyn T. Harmon  
10 MELVYN T. HARMON  
11 Chief Deputy District Attorney  
12 Nevada Bar #000862

13 RECEIPT OF COPY

14 RECEIPT OF A COPY of the above and foregoing ANSWER IN OPPOSITION TO MOTION  
15 FOR NEW TRIAL is hereby acknowledged this \_\_\_\_\_ day of April, 1996.

16 PHILIP H. DUNLEAVY, ESQ.

17 By Philip H. Dunleavy / oo.  
18 2810 W. Charleston #G-67  
19 Las Vegas, Nevada 89102

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CLERK

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DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	Case No. C106784
	)	Dept. No. IV
Plaintiff,	)	Docket No. C
	)	
vs.	)	<u>DEFENDANT'S MOTION TO</u>
	)	<u>STRIKE AGGRAVATING</u>
	)	<u>CIRCUMSTANCES NUMBERED 1</u>
MICHAEL DAMON RIPPO,	)	<u>AND 2 AND FOR SPECIFICITY</u>
	)	<u>AS TO AGGRAVATING</u>
Defendant.	)	<u>CIRCUMSTANCE NUMBER 4.</u>

9-10-93

COMES NOW the Defendant, Michael Damon Rippo, by and through his attorney, Steven B. Wolfson of the law firm Wolfson & Glass, and hereby moves to strike aggravating circumstances numbered 1 and 2 and for specificity as to aggravating circumstance number 4.

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This Motion is based upon all of the papers and pleadings on file herein, the Memorandum of Points and Authorities attached hereto, and argument of counsel to be heard at the time of hearing.

Dated this the 20 day of August, 1993.

Respectfully submitted,

WOLFSON & GLASS

By: 

Steven B. Wolfson, Esq.  
Nevada Bar #001565  
302 E. Carson Avenue, Suite 400  
Las Vegas, Nevada 89101  
Attorney for Defendant

NOTICE OF MOTION

To: The District Attorney of Clark County, Nevada:

PLEASE TAKE NOTICE that the undersigned shall bring the above and foregoing DEFENDANT'S MOTION TO STRIKE AGGRAVATING CIRCUMSTANCES NUMBERED 1 AND 2 AND FOR SPECIFICITY AS TO AGGRAVATING CIRCUMSTANCE NUMBER 4 on for hearing in Department No. IV of the above-entitled Court, on the 10 day of August, 1993, at the hour of 9 a.m., of said day, or as soon thereafter as counsel may be heard.

Dated this the 20 day of August, 1993.

Respectfully submitted,

WOLFSON & GLASS

By: 

Steven B. Wolfson, Esq.  
Nevada Bar #001565  
302 E. Carson Avenue, Suite 400  
Las Vegas, Nevada 89101  
Attorney for Defendant



1 MEMORANDUM OF POINTS AND AUTHORITIES

2 STATEMENT OF FACTS

3 The prosecutor has filed with this Court a Notice of Intent  
4 to Seek Death Penalty in this matter. Such Notice lists the  
5 following four aggravating circumstances in support of her Notice:

6 1. The murders were committed by a person under sentence of  
7 imprisonment. NRS 200.033(1).

8 2. The murders were committed by a person who was previously  
9 convicted of a felony involving the use or threat of violence to  
10 another person. NRS 200.033(2).

11 3. The murders were committed while the person was engaged  
12 in the commission of or an attempt to commit robbery. NRS  
13 200.033(4).

14 4. The murders involved torture, or the mutilation of the  
15 victim. NRS 200.033(8).

16 ARGUMENT

17 The Defendant moves to strike the first and second aggravating  
18 circumstances on the ground that the plea entered in the case  
19 utilized by the prosecutor to support those aggravating  
20 circumstances was illegal because the plea was not voluntary, and  
21 there was no factual basis for it.

22 NRS 174.035(1) provides in part:

23 That a court may not accept a plea of guilty  
24 without first addressing the defendant  
25 personally and determining that the plea is  
26 made voluntarily with understanding of the  
nature of the charge and the consequences of  
the plea...[or] unless it is satisfied that  
there is a factual basis for the plea.

27 The facts of Defendant's previous criminal case are as  
28 follows:

1 On January 18, 1982, the Defendant was arrested and eventually  
2 charged with various offenses. At the time of his arrest,  
3 Defendant was only sixteen years old. The Defendant was held in  
4 Juvenile Hall, and assigned a public defender, Jerrold Courtney.  
5 Mr. Courtney immediately convinced the Defendant to enter into a  
6 plea agreement which required Defendant to plead guilty, as an  
7 adult, to one count of burglary and one count of sexual assault.  
8 The Defendant was eventually convicted, and sentenced to serve a  
9 sentence of imprisonment. At the time the instant offense was  
10 committed, the Defendant had been released on parole.

11 On March 25, 1982, the Defendant appeared before The Honorable  
12 Addelmar D. Guy, Eighth Judicial District Court Judge, for the  
13 purpose of entering his negotiated guilty plea. However, Judge Guy  
14 quickly determined that the Defendant was not qualified to enter a  
15 plea on the grounds that Mr. Courtney had not adequately explained  
16 the plea and its consequences to the defendant.

17 Incredibly, Mr. Courtney asked Judge Guy to "just pass this a  
18 few minutes so I could talk to him." Judge Guy responded with a  
19 resounding "No. I am going to continue this, sir. This is serious  
20 -- very serious." Although Mr. Courtney further protested by  
21 claiming to have talked to the Defendant "for hours," Judge Guy  
22 determined that the Defendant did not understand the consequences  
23 of his plea and continued the arraignment. See Exhibit A, page 9,  
24 lines 5 - 15.

25 Not only did the Defendant not understand those proceedings  
26 but Judge Guy erred when he informed the Defendant that probation  
27 was a sentence that the Court could impose. Exhibit A, page 5,  
28 lines 19 - 21. The range of punishments established for sexual

1 assault do not include probation. NRS 200.366.

2 When a criminal offense is committed in which one may not  
3 receive a term of probation then the trial court, before any such  
4 plea of guilty is accepted, must so advise the defendant the  
5 offense is not probationable. Meyer v. State, 95 Nev. 885, 603  
6 P.2d 1066, 1067 (1979). See also Aswegan v. State, 101 Nev. 760,  
7 710 P.2d 83 (1985) (Meyer reaffirmed).

8 In Meyer, supra, a case factually indistinguishable from the  
9 instant case, the defendant pleaded guilty to a charge of sexual  
10 assault and the Nevada Supreme Court held that the plea was fatally  
11 defective because the record was devoid of any indication that the  
12 defendant was informed that sexual assault was not a probationable  
13 offense.

14 Unlike the Meyer Court, however, Judge Guy actually stated  
15 that probation was an available punishment. It is clear that the  
16 Defendant's guilty plea for sexual assault would not, and will not,  
17 stand even the slightest scrutiny. Because of this glaring error,  
18 Defendant's prior conviction for sexual assault cannot now be used  
19 as an aggravating circumstance as the prosecutor seeks to take the  
20 life of this Defendant.

21 On March 30, 1982, the Defendant returned to Judge Guy's Court  
22 to continue his arraignment. Apparently, Mr. Courtney had by now  
23 explained the process and the Defendant's legal rights to him.  
24 However, the canvass by Judge Guy was once again flawed. Judge  
25 Guy's finding as to whether or not there was a factual basis to the  
26 Defendant's plea of guilty to the charge of sexual assault is  
27 completely inadequate because the defendant clearly, and  
28 unequivocally denied an essential element to sexual assault.

1 To be guilty of sexual assault one must engage in either  
2 cunnilingus, fellatio, or penetration. NRS 200.364(2).

3 The Defendant was charged with, and plead guilty to, sexual  
4 assault by penetration. Judge Guy's canvas relative to the  
5 elements of the offense are instructive:

6 THE COURT; Did you actually insert your  
7 penis inside of her vagina?

8 THE DEFENDANT: No.

9 Exhibit B, page 6, lines 25 - 27.

10 At that point, Mr. Courtney, who was so anxious to have this  
11 young man enter his negotiated plea, proceeded to answer for the  
12 Defendant by informing Judge Guy that the alleged victim stated  
13 that there was very slight penetration but that the Defendant  
14 simply did not remember the penetration. Exhibit B, pages 6 and 7.

15 Judge Guy then asked the defendant whether or not he was  
16 willing to take the word of the victim that slight penetration had  
17 occurred. To the almost certain relief of his own attorney, the  
18 Defendant answered that he would. Exhibit B, lines 5 - 8.

19 The Defendant was unequivocal in his denial of penetration.  
20 (Neither cunnilingus nor fellatio was an issue.) Therefore, Judge  
21 Guy erred when he accepted Defendants plea of guilty to the charge  
22 of sexual assault. It is simply not enough for the Defendant to  
23 decide not to deny the allegations of the alleged victim. The  
24 Defendant must understand each of the elements of the charge  
25 against him, and he must admit to having committed them. Highby v.  
26 Sheriff, 86 Nev. 774, 476 P.2d 959 (1970). See also Hanley v.  
27 State, 97 Nev. 130, 624 P.2d 1387 (1981).  
28

In Breshahan v. People, the Court stated:

The fact that defendant was 16 years of age at the time does not affect his competency but it does impose upon the trial court a duty of great care and caution in accepting a guilty plea.

487 P.2d 551, 553-54 (Colo. 1971)

In the instant case, the Defendant was but sixteen years old when the alleged offense of sexual assault occurred, and only one month into his seventeenth year when he entered his plea of guilty. That fact should carry great weight with this court as it ponders whether or not the Defendant's plea was voluntary, or whether the factual basis for the plea was adequate.

Even if the Court were to determine that the Defendant adequately admitted his penetration of the alleged victim in the sexual assault case by his agreement to not contest the claims made by her, the law is clear as to the Court's duty to advise a Defendant wishing to enter a plea of guilty to a charge of sexual assault that he is not eligible for parole.

In the instant case, not only did the Court fail to so advise the Defendant, the Court actually informed the Defendant that the Court could impose probation. Further, the young age of the defendant, coupled with the extreme urgency the public defender exhibited in rushing this case to a negotiated conclusion, works in favor of a finding that the Defendant's plea was not voluntary. Therefore, the prosecutor should not be allowed to utilize the Defendant's plea, or the subsequent fact that the Defendant had served a prison sentence and was on parole, as aggravating factors in this Case should the unfortunate happen, and the Defendant be convicted.

1 Additionally, the fourth alleged aggravating circumstance is  
2 vague. The Defendant requests that the Court require the  
3 prosecutor to be more specific in her statement as to what torture,  
4 or mutilation the evidence will show. Only then will the defendant  
5 be equipped to defend this aggravating circumstance.

6 CONCLUSION

7 For all of the reasons stated above, the Defendant requests  
8 that the Court not allow the prosecutor to rely upon the  
9 Defendant's 1982 conviction for sexual assault to support  
10 aggravating circumstances numbers one and two, and for an order  
11 requiring the prosecutor to be more specific as to aggravating  
12 circumstance number four.

13 Dated this the 20 day of August, 1993.

14 Respectfully submitted,

15 WOLFSON & GLASS

16  
17 By: 

18 Steven B. Wolfson, Esq.  
19 Nevada Bar #001565  
20 302 E. Carson Avenue, Suite 400  
21 Las Vegas, Nevada 89101  
22 Attorney for Defendant  
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1 REX BELL  
 2 DISTRICT ATTORNEY  
 3 Nevada Bar #001799  
 4 200 S. Third Street  
 5 Las Vegas, Nevada 89155  
 6 (702) 455-4711  
 7 Attorney for Plaintiff  
 8 THE STATE OF NEVADA

9 DISTRICT COURT  
 10 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,	)	CASE NO.	C106784
11 Plaintiff,	)	DEPT. NO.	IV
12 -vs-	)	DOCKET NO.	C
13 MICHAEL DAMON RIPPO,	)		
14	)		
15 Defendant.	)		
16	)		

17 STATE'S RESPONSE TO DEFENDANT'S MOTION TO STRIKE  
 18 AGGRAVATING CIRCUMSTANCE NUMBERED 1 AND 2  
 19 AND FOR SPECIFICITY AS TO AGGRAVATING  
 20 CIRCUMSTANCES NUMBER 4

21 COMES NOW, the State of Nevada, by REX BELL, District  
 22 Attorney, through TERESA LOWRY, Deputy District Attorney, and files  
 23 this Response to Defendant's Motion to Strike Aggravating  
 24 Circumstances Numbered 1 and 2, and for specificity as to  
 25 Aggravating Circumstances Number 4.

26 This Response is made and based upon all the papers and  
 27 pleadings on file herein, the attached points and authorities in  
 28 // //

1 support hereof, and oral argument at the time of hearing, if deemed  
2 necessary by this Honorable Court.

3 DATED this 11th day of February, 1994.

4 Respectfully submitted,

5 REX BELL  
6 DISTRICT ATTORNEY  
7 Nevada Bar #001799  
8 Nevada Bar #003901

9 BY: *Teresa Lowry*  
10 TERESA LOWRY  
11 Deputy District Attorney

12 POINTS AND AUTHORITIES

13 Defendant RIPPO has been previously convicted of the felony  
14 offenses of Burglary and Sexual Assault. On April 27, 1982,  
15 defendant RIPPO received a life sentence with the possibility of  
16 parole for the crime of Sexual Assault. (See Exhibit 1) While on  
17 parole the defendant was charged with the double murder now set for  
18 trial before this Court.

19 Nevada's statutory aggravating circumstances include the  
20 commission of a murder by a person under a sentence of imprisonment  
21 and a murder by a person previously convicted of a felony involving  
22 the use of or threat of violence to the person of another. (See  
23 NRS 200.033(1)(2)).

24 The defense suggests that the defendant's prior felony  
25 conviction for Sexual Assault was the product of an involuntary  
26 guilty plea.

27 [Prior felony convictions are presumed to be valid and are not  
28 subject to collateral attack in pre-trial capital murder  
proceedings.] If this Court is inclined to revisit the Defendant's  
guilty plea the State incorporates by reference Exhibit 2 - the



1 State's Brief as to the validity of the Defendant's guilty plea.

2 The granting of defense motion would frustrate the legislative  
3 intent manifested by NRS 200.033(1)(2) and it would emasculate the  
4 prosecutions ability to present all of the statutory aggravating  
5 circumstances which are applicable to defendant RIPPO.

6 The defense seeks to insulate defendant RIPPO from the full  
7 impact of his prior criminal history. Accordingly the defense  
8 motion to strike aggravating circumstances numbered 1 and 2 should  
9 be denied.

10 With regard to defense request for specificity as to  
11 aggravating circumstances number 4. Aggravating circumstance  
12 number 4 alleges the murders involved torture, or the mutilation of  
13 the victim. NRS 200.033(8).

14 More specifically the State alleges torture to victim DENISE  
15 LIZZI by repeated shock with a stun gun.

16

17 DATED this 11th day of February, 1994.

18

Respectfully submitted,

19

REX BELL  
DISTRICT ATTORNEY  
Nevada Bar #001799  
Nevada Bar #3901

20

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BY: *Teresa Lowry*  
TERESA LOWRY  
Deputy District Attorney

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RECEIPT OF COPY of the above and foregoing is hereby  
acknowledged this 11<sup>th</sup> day of February, 1994.

STEVEN WOLFSON, ESQ.  
ATTORNEY FOR DEFENDANT

BY: Steven B. Wolfson / SA  
302 E. Carson Ave. #400  
Las Vegas, Nevada 89101

RECEIPT OF COPY of the above and foregoing is hereby  
acknowledged this \_\_\_\_\_ day of February, 1994.

PHILIP DUNLEAVY, ESQ.  
ATTORNEY FOR DEFENDANT

BY: \_\_\_\_\_  
2810 W. Charleston Blvd. #G-67  
Las Vegas, Nevada 89102

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THE STATE OF NEVADA,

Plaintiff,

-vs-

MICHAEL DAMON RIPPO

Defendant.

DISTRICT COURT  
CLARK COUNTY, NEVADA

-FILED IN OPEN COURT-

MAR 14 1996

LORETTA BOWMAN, CLERK

*[Signature]* Dep

10:12 pm

Case No. C106784  
Dept. No. IV  
Docket C

SPECIAL  
VERDICT

We, the Jury in the above entitled case, having found the Defendant, MICHAEL DAMON RIPPO, Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Denise M. Lizzi), designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

- ☒ The murder was committed by a person under sentence of imprisonment, to-wit: Defendant was on parole for a Nevada conviction for the crime of Sexual Assault in 1982.
- ☒ The murder was committed by a person who was previously convicted of a felony involving the use or threat of violence to the person of another. Defendant was convicted of Sexual Assault, a felony, in the State of Nevada, in 1982.

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☒ The murder was committed while the person was engaged in the commission of or an attempt to commit any Burglary and the person charged:

- (a) Killed the person murdered; or
- (b) Knew that life would be taken or lethal force used; or
- (c) Acted with reckless indifference for human life.

☒ The murder was committed while the person was engaged in the commission of or an attempt to commit any Kidnapping and the person charged:

- (a) Killed the person murdered; or
- (b) Knew that life would be taken or lethal force used; or
- (c) Acted with reckless indifference for human life.

☒ The murder was committed while the person was engaged in the commission of or an attempt to commit any Robbery and the person charged:

- (a) Killed the person murdered; or
- (b) Knew that life would be taken or lethal force used; or
- (c) Acted with reckless indifference for human life.

☒ The murder involved torture.

DATED at Las Vegas, Nevada, this 14 day of March, 1996.

  
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THE STATE OF NEVADA,

Plaintiff,

-vs-

MICHAEL DAMON RIPPO

Defendant.

DISTRICT COURT  
CLARK COUNTY, NEVADA

—FILED IN OPEN COURT—

MAR 14 1996

19

LORETTA BOWMAN, CLERK

By *[Signature]* Det

10:18 PM

Case No. C106784  
Dept. No. IV  
Docket C

SPECIAL  
VERDICT

We, the Jury in the above entitled case, having found the Defendant, MICHAEL DAMON RIPPO, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (Lauri M. Jacobson), designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

- ☒ The murder was committed by a person under sentence of imprisonment, to-wit: Defendant was on parole for a Nevada conviction for the crime of Sexual Assault in 1982.
- ☒ The murder was committed by a person who was previously convicted of a felony involving the use or threat of violence to the person of another. Defendant was convicted of Sexual Assault, a felony, in the State of Nevada, in 1982.

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CE31

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☒ The murder was committed while the person was engaged in the commission of or an attempt to commit any Burglary and the person charged:

- (a) Killed the person murdered; or
- (b) Knew that life would be taken or lethal force used; or
- (c) Acted with reckless indifference for human life.

☒ The murder was committed while the person was engaged in the commission of or an attempt to commit any Kidnapping and the person charged:

- (a) Killed the person murdered; or
- (b) Knew that life would be taken or lethal force used; or
- (c) Acted with reckless indifference for human life.

☒ The murder was committed while the person was engaged in the commission of or an attempt to commit any Robbery and the person charged:

- (a) Killed the person murdered; or
- (b) Knew that life would be taken or lethal force used; or
- (c) Acted with reckless indifference for human life.

☒ The murder involved torture.

DATED at Las Vegas, Nevada, this 14 day of March, 1996.

*Richard A. Leal*  
FOREPERSON

MICHAEL DAMON RIPPO  
SOCIAL HISTORY

UPDATED: AUGUST 4, 2009

CAST OF CHARACTERS

Alice Kenyon (Dec. age 10)	Michael's maternal great aunt
Alice M. Starr Fries	friend, girlfriend (post-arrest)
Angelina Sarafina Ricci	Mamie Ripo-Ricci's daughter
Anthony Ripo (Dec. 2006)	Michael's maternal uncle
Antoinette T. Rippo McNamara	Michael's maternal aunt
Bettina Grimaldi-Rippo <sup>2</sup>	Michael's maternal grandmother
Bessy Kenyon	Michael's maternal great aunt
Betty Ann Ripo	Tommy Ripo's daughter, Michael's cousin
"Black Joe"	associate
Carole Ann Campanelli (Dec.) ("Carole Ann")	Michael's half-sister
Carole Ann Rippo Campanelli Anzini Duncan ("Carole")	Michael's mother
Carmine Ripo	Tommy Ripo's son
Cathy Walken	early (age 12) sexual partner
Charlie Kenyon (Dec.)	Michael's maternal great uncle
Charlie Ripo (Dec.)	Michael's maternal uncle
Chris David	high school friend
Christine A. Gibbons	girlfriend
David Levine	jailhouse snitch
David Shear	mother's pastor in Las Vegas
Deidre Rita D'Amore Patterson Perry	friend
Dolores Antoinette Rippo Baur	Michael's maternal aunt
Denise Michelle Lizzi	victim
Diana Hunt Bracy	girlfriend, co-defendant, snitch
Domiano Leonard Campanelli	Michael's father
Elvira "Honey" Kenyon (Dec.)	Michael's maternal grandmother
Florence Keyon (Dec. age 17)	Michael's maternal great aunt
Frank A. Rippo <sup>1</sup> (b. 1912 d. 1958)	Michael's father
Gerald Ripo	Tommy Ripo's son
Gerald (Charles) Ripo <sup>2</sup>	Michael's maternal grandfather
Isabel Campanelli-Ahern	Michael's paternal aunt
James Oliver Anzini	Michael's step-father
Jay O. Anzini	Michael's step-brother

---

<sup>1</sup>The spelling of Ripo was changed to Rippo during Frank's military service.

<sup>2</sup>Bettina and Gerald Ripo immigrated from Naples to New York City around the turn of the 20<sup>th</sup> century.

MICHAEL DAMON RIPPO  
SOCIAL HISTORY

UPDATED: AUGUST 4, 2009

Jessica Paret-Asaro .....	Ollie's ex-sister-in-law
Jimmy Kenyon .....	Michael's maternal great uncle
John D. Meador .....	cellmate
John Dwight Stephenson .....	friend
Joseph Ricci, Jr. ....	Mamie Ripo-Ricci's son
Joseph T. Asaro .....	teen-years friend
Larry Baur .....	Dolores Rippo's husband
Lauri M. Jacobson .....	victim
Linda M. Donovan Dunn Perez Jenkins .....	Michael's first love
Linn Kenyon .....	Michael's maternal grandfather
Mamie Ripo (Dec.) .....	Michael's maternal aunt
Marian Keyon .....	Michael's maternal great aunt
Mark Beeson .....	Ollie's brother-in-law; husband to Ann Anzini
Milie Ripo (Dec.) .....	Michael's maternal aunt
Michael Beaudoin .....	boyfriend of Diana Hunt and drug dealer
Michael Damon Rippo .....	client
Patsy Asaro .....	Ollie's ex-brother-in-law
Robert B. Anzini .....	Michael's step-brother
Ronald A. Rippo, Sr. ....	Michael's maternal uncle
Rosalia "Rosie" Kenyon .....	Michael's maternal great aunt
Roxanna M. Thome Hollaway McKibben .....	girlfriend
Ruth Kenyon-Rippo (b. 1922 d. 1982) .....	Michael's maternal grandmother
Sandra A. Rippo .....	Michael's maternal aunt
Sari [Shah-ree] Paret Anzini Heslin .....	Ollie Anzini's first wife
Stacie Anne Campanelli Rotterdam-Gliszczynski .....	Michael's sister
Steve Smeltz .....	parole officer
Thomas E. Sims (Dec) .....	friend
Tommy Ripo (Dec.) .....	Michael's maternal uncle
Tony Ripo (Dec.) .....	Michael's maternal uncle
Valerie .....	girl in bong incident

**General History of Rippo Family**

The Rippo family, according to Dolores Rippo (Frank's daughter), is that her branch of the family is the only one where its members spell "Rippo" with two "Ps." The original family name is "Ripo," but it was changed on Frank Rippo's records when he entered the military. Frank never corrected the record and the name stuck with him and his immediate family ever since. [Tab 47.]

Frank Rippo's parents were "Bettina Grimaldi-Ripo" and "Gerald (Charles) Ripo" and they immigrated to the U.S. from Naples, Italy around the turn of the twentieth century and



MICHAEL DAMON RIPPO  
SOCIAL HISTORY

UPDATED: AUGUST 4, 2009

settled in New York City. Bettina and Gerald had children in the following order: Frank (Carole Ann, Ronald, Antoinette and Dolores' father) born 1912, died 1958, Tony, Tommy, Milie, Mamie, Charlie, and Anthony. They also had three or four younger children who died when they were small children due to illnesses that they were born with (Dolores believes it may have been MS or Cerebral Palsy; she recalled seeing photos of them where their heads had to be propped-up with pillows or by her mother's hands and they were all kept in sanitariums). [Tab 47.]

All of Frank's siblings are now deceased. Dolores' uncle Anthony was the last surviving sibling and he passed away in the fall of 2006. Dolores has 15 first cousins on the Ripo side of her family. [Tab 47.]

The parents of Ruth Kenyon-Rippo (Dolores' mother) were Linn (Grandfather) and Elvira Kenyon and they lived/raised their family on a dairy farm in Norwich, NY (upstate). Dolores, Carole and their other siblings lived in Queens, NYC, but went to the Kenyon family farm every summer and during school break. Linn and Elvira had their children in the following order: Ruth (Carole and Dolores's mother), Charlie, Rosalia (aka, "Rosie"), Bessy, Marian, Elvira (aka, "Honey"), Jimmy, and Florence and Alice (who both died in a house fire at ages 17 and 10; Dolores never met them). [Tab 47.]

Of all of Ruth's siblings only Rosie, Bessy, Marian and Jimmy are still alive. Dolores has 26 first cousins on this side of the family. Dolores also noted that the Kenyon family trace their roots back to the American Revolution, and her son (the FBI agent in Atlanta, GA) was recently admitted into the "Sons of The Revolution" organization and his lineage was confirmed by the organizations historians. Dolores has been looking for the genealogy book on the Kenyon family but hasn't located it yet. [Tab 47.]

Closest Cousins: Dolores recalls first cousins Betty Ann (daughter of Uncle Tommy Ripo) and Angelina Serafina (daughter of Aunt Mamie Ripo-Ricci) were probably the closest in the family to Carole Ann and Dolores because they were all about the same age and spent considerable time together (just a bit more than the other relatives who were always around). Both Betty Ann and Angelina Serafina were married and had their own families, but Dolores does not remember their last names nor does Dolores know their current location. Dolores lost contact with Betty and Angelina over 20 years ago as they all moved away from Long Island and started their own families. [Tab 47.]

Family's Criminal Background: Dolores could only think of two relatives who spent time in prison beside Michael Rippo. Cousin Betty Ann had brothers named Gerald and Carmine, and one of them went to jail as a teenager (approximately 16) for manslaughter. Gerald or Carmine got into a fist fight with another teen at a playground and when the other teen went home he collapsed and died, allegedly as a result of some injury he sustained during the altercation. [Tab 47.]

The other incident involved the brother of Angelina Serafina, Joseph Ricci Jr., who went to prison a long time ago on narcotics charges and he still incarcerated now, as far as Dolores knows, in New York or Florida and dying. [Two Joseph Ricci's were located in New York both of whom did time in the early 1980s for Attempted Murder and Attempted Burglary (both

MICHAEL DAMON RIPPO  
SOCIAL HISTORY

UPDATED: AUGUST 4, 2009

paroled both 1985); and one in Florida who was arrested on drug trafficking charges in Florida in 2002 and is still incarcerated.] [Tab 47.]

**Family Health Issues:** As far as Dolores knows, there are no instances of mental illness in either sides of her family. Dolores could not even think of a relative whose behavior may have suggested an undiagnosed condition. Dolores doesn't know of anyone in the family who uses psychiatric medication, was seen at a hospital for mental issues (even temporarily) nor institutionalized. Dolores could think only of grandparents' (Frank and Bettina Ripo's) four young children who had MS and/or Cerebral Palsy, who were born with genetic defects and institutionalized. [Tab 47.]

As far as physical health issues go, cancer is prevalent on the Ripo side of the family and heart problems are ubiquitous on the Kenyon side. [Tab 47.]

**James Anzini:** Dolores believes she only saw Anzini on two occasions and Carole Ann never discussed what was going on in her relationship with him. Dolores would not be surprised if Anzini was abusive to Carole Ann and her kids, but Dolores has no factual information which indicated that it ever occurred. [Tab 47.]

**Mother and Sibling Contact Info:** Ronald Rippo (Brother), 9112 63<sup>rd</sup> Street East, Parrish FL 34219; (941) 776-8970; Antoinette McNamara (Sister), 22478 Grouper Court, Boca Raton FL 33428; (561) 479-4713; Ruth Kenyon-Rippo (Mother), 9826 Marina Blvd./#1017, Boca Raton FL 3328; (561) 451-3957. [Tab 47.]

Dolores believes that her siblings will have no problem with meeting me to discuss Michael's case and the family background, but her 85-year-old mother may have some reservations as she is frail and fearful of the outside world (doesn't answer the door for strangers; doesn't pick up phone if she doesn't recognize the number, etc.). [Tab 47.]

Frank Rippo was a career military man. Dolores and her siblings were raised as "Army brats." During Frank's career the family lived in the southern US; Albany, New York; Queens, New York; Germany; Switzerland; Italy; and Long Island. [Tab 47.]

Dolores said she has tons of family photos, including several of Carole Ann and her children when they were young. Dolores said she had access to a scanner and will send a CD of family photos across the generations and of Carole Ann's family when they were young. [Tab 47.]

The church Carole Ann attended is called "The Word Of Life" and is located on Buffalo around Cheyenne. [Tab 47.]

There was a huge space in Dolores' contact with Michael when he was young. Dolores did not see Michael between the ages of eight or nine years old through his mid- to late-twenties when he was paroled from the burglary/sex assault conviction in '89. [Tab 47.]

Ida Ripo, the wife of Dolores' late uncle Charlie, is still alive and living in Sarasota, FL not far from Dolores' brother Ronald. Dolores believes that she has other aunts-in-law who are still alive and living down in the Florida area. [Tab 47.]

**Carole's Parents - Domiano Campanelli** knew Carole's parents from the time that he was six years old when Betty Ann's parents married. Domiano described them as being "all

MICHAEL DAMON RIPPO  
SOCIAL HISTORY

UPDATED: AUGUST 4, 2009

right." Carole's dad used to drink alcohol and gamble on the horses with Domiano, but Domiano would not say that Mr. Rippo had a problem with these activities because he did not do them excessively (as far as Domiano knew) and Domiano never saw Mr. Rippo drunk. Domiano also had the idea that Mr. Rippo could have been a womanizer because he frequently pointed out to Domiano attractive women with nice bodies at the horse tracks or in bars and restaurants. However, Domiano never actually saw Mr. Rippo with another woman. The worst thing Domiano could say about Mr. Rippo is that he made side deals to get free/discounted liquor and porn at the NCO (Non-Commissioned Officers) Club that he ran in Germany; and that he also received many kickbacks as well. Mr. and Mrs. Rippo were both very nice and likeable people and he always got along well with them. Carole's siblings, Antoinette and Ronald, lived with Domiano and Carole for a few months (along with Mr. and Mrs. Rippo) when they relocated to Long Island from upstate New York. Dolores was married and living in Long Island, but Domiano did not have much interaction with her. Domiano recalled that Dolores' husband was an alcoholic, a womanizer and he physically abused her. [Tabs 71 and 105.]

The Domiano Campanelli family background:

The Campanelli family came from the small town of "Bari," which is located in southern Italy. The Campanelli family has a rich background and there is a church in Bari which contains over 1000 years of their family history in its archives (Domiano hasn't seen it personally, but various family members have made a pilgrimage and have seen it first hand). Domiano's paternal grandparents were Sebastian Campanelli and \_\_\_\_\_ Cariola-Campanelli (Domiano couldn't recall his grandmother's name), and they immigrated to the United States in the late 1880s. [Tabs 71 and 105.]

In Italy, Sebastian was a stone mason and he was also heavily involved in politics and real estate. Before immigrating, Sebastian and his wife had eight children who all died from childhood illnesses (Domiano is not aware of the diagnoses). A doctor told Sebastian that he needed to go to America if he wanted to have healthy children, this served as his motivation in immigrating. In New York, Sebastian and his wife went on to have seven more children and they were all healthy physically. The only one who had difficulties was Domiano's Uncle Sammy. Sammy was diagnosed with having some kind of mental problems after witnessing his best friend commit suicide by jumping off a water tower (the friend actually died in Sammy's arms afterwards). Sammy was ultimately institutionalized at a mental facility (either Bellevue in Manhattan, or Creedmore in Queens). Also, Domiano's uncle Joey Campanelli had a child with Down Syndrome. The men in the family died of prostate cancer and heart attacks in their 60s (except Domiano's dad who died of pneumonia at a young age). [Tabs 71 and 105.]

The following are the children of Sebastian and his wife: Leo (Domiano's Dad); Michael; Dominic; Joey; Sophie; Ana; Catherine (she's currently the last living sibling). [Tabs 71 and 105.]

MICHAEL DAMON RIPPO  
SOCIAL HISTORY

UPDATED: AUGUST 4, 2009

The Ladisos

The Ladiso side of Domiano's family also came from Bari, Italy. [Note: I couldn't find the names of his paternal grandparents in my notes and their immigration story.] The Ladiso family were all very healthy and enjoyed long in life spans. They all died between their late 80s and early 100s (except an Uncle who died in his 70s). Domiano's mom, Ana, lived until she was 91 years old and both of his siblings are still alive. Domiano's brother suffers from gall bladder problems and recently had a heart attack, and his sister is overweight and is borderline diabetic. There are no mental health issues on the Ladiso side of the family, as far as Domiano knows. [Tabs 71 and 105.]

Domiano's maternal aunt Grace was married to Carole's paternal uncle, Tommy Ripo. He has known Carole since she was a little girl. [Tab 106.]

The following are Ana Ladiso-Campanelli's siblings: Elizabeth; Samuel; Maurice; Gracie; Paschal (aka, "Patty"); Ana (Mom). [Tabs 71 and 105.]

00/00/1912 Frank Ripo born. [Tab 66.]

00/00/1932 Benjamin Anzini born. [Tabs 79 and 108.]

00/00/1933 Albert Anzini born. [Tabs 79 and 108.]

08/28/1935 James Oliver Anzini born in Brooklyn, New York, the third of eight siblings. [Tab 67.]

00/00/1937 Domiano was born and raised in Jamaica, Queens. His parents were Ana Ladiso-Campanelli and Leo Campanelli. His father worked in an ice house and his mother was a homemaker. Domiano was the eldest of three children, and his siblings are Isabel and Leonard (all two years apart in age). Domiano and his siblings all attended PS 40 and Woodrow Wilson High School (Domiano said there were no middle schools back then). Woodrow Wilson was located in Baisley Park and the name was changed to August Martin High School years later. [Tabs 71 and 105.]

Adele Anzini was born. [Tabs 79 and 108.]

00/00/1940 Ann Anzini born. [Tabs 79 and 108.]

12/28/1942 Carole Ann Rippo born Jamaica, NY. (Check Date) [Tab 66.]

00/00/1942 Melody Anzini born. [Tabs 79 and 108.]

00/00/1943 Domiano's father died when he was six years old and the family believes that he

MICHAEL DAMON RIPPO  
SOCIAL HISTORY

UPDATED: AUGUST 4, 2009

died of pneumonia, which is only a guess because they refused an autopsy for religious reasons. Domiano and his siblings were all raised primarily in the home of their maternal grandparents (the Ladiso clan) in Jamaica, New York. Domiano's mother Ana was living in the home as well and remained their primary care-giver. [Tabs 71 and 105.]

07/29/1943 Larry Baur born in Indianapolis, Indiana (will marry Dolores Rippo). [Tab 67.]

07/24/1945 Dolores Rippo born Jamaica, NY. [Tab 66.]

00/00/1947 Spencer Anzini born. [Tabs 79 and 108.]

00/00/1949 In the late 1940s, Ruth reports her two youngest sisters died in a house fire. The incident occurred in upstate New York and Ruth's family lived in Queens at the time. Carole and Dolores were about six and four, respectively, at the time and Ronald and Antoinette were not yet born. Ruth does not think this incident permanently scarred her children. [Tab 73.]

Vincent Greco lived across the street from Ruth and Frank Rippo. He considers them to be wonderful people. [Tab 85.]

00/00/1950 Ronald A. Rippo (Sr.) born. [Tab 77.]

Keith Anzini born. [Tabs 79 and 108.]

Ollie and his siblings were raised near Ft. Hamilton, Brooklyn, just west of the Verrazano bridge. Ollie was considered a slacker as a teen and was a marginal student. Ann Spencer Anzini, their mother, was of German descent and a homemaker. Albert Anzini was of Italian descent and was a musician (sax, clarinet). [Tabs 79 and 108.]

00/00/1951 Ollie enlisted in the Army in 1951 (age 18) because his two older brothers were in the Navy. Ollie never had a job before entering the military. He signed up to serve the standard commitment of two years but had to stay another year due to the Korean conflict. He was stationed in Germany for the better part of his military service. [Tabs 79 and 108.]

00/00/1953 Antoinette Rippo born. [Tab 74.]

00/00/1953 Patsy Asaro and Ollie Anzini met each other while both were in the Army at Ft. Dix, New Jersey. [Tabs 84 and 107.]

00/00/1954 Domiano described himself as a troubled youth and said he ran with a wild group

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of friends. Domiano and his friends got into many fights and were in trouble at school and with the law on various occasions. In 1954 (during an gang assault case where someone was stabbed) a local judge became tired of seeing Domiano in his courtroom, the judge gave Domiano an ultimatum. The judge told Domiano that he was going to do time for his crime but had to choose whether it would be in state prison or in the US military. Domiano chose the military and enlisted in the Air Force. [Tabs 71 and 105.] [Tab 103]

Domiano served in the Air Force between 1954 - 1958, just after the main action in the Korean war ended (thus he saw no war time service). Domiano was in SAC (Strategic Air Command) and worked as an aircraft electrician in the bomb squadron field maintenance area. [Tabs 71 and 105.] [Tab 103]

Domiano had a few Article 15 infractions on his military records for going AWOL for a few hours to drink at bars. Domiano earned one such infraction after he left the base a North Africa (Domiano believes it was Morocco [NOTE: Wheelus AB, Libya is more likely.]) to go drinking, and got into a bar fight and was arrested. Domiano recalled those few hours in the North African jail as the most terrifying experience in his life. Domiano pretty much mellowed out his behavior after this experience and was honorably discharged in 1958. [Tabs 71 and 105.] [Tab 103]

00/00/1954 Ollie left the military and entered an "aimless period" in his life – he was jobless for a year or two. Melody recalls her parents were disappointed and frustrated by Ollie's lack of ambition and recalled her father saying often, "Ollie, do something with yourself." [Tabs 79 and 108.]

12/00/1955 Ollie and Patsy Asaro leave the Army. Ollie met and married his first wife, Sari Paret. Ollie was a gangster, according to Patsy and Jessica Paret-Asaro. [Tabs 84 and 107.]

00/00/1956 Ollie became a private investigator after a couple of years of unemployment and sporadic odd jobs. He primarily worked on divorces until New York changed its matrimonial laws and infidelity became of little or no consequence. Ollie then worked primarily commercial espionage. Ollie did not enjoy this line of work because he felt like a snitch. [Tabs 79 and 108.]

Although Ollie had a career, he did not have stable work or income. It was always feast or famine. His poor finances were a major source of disruption in his relations with Sari Heslin (Bobby and Jay's mother) and Carole. His financial instability was made worse by his inability to save money when he had it and his gambling habit. Melody felt the move to Las Vegas was the recipe for disaster because it would afford Ollie an increased opportunity to gamble. [Tabs 79 and

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108.]

Ollie had a sweet, charming side to his personality. He could be polite, kind, funny and gentle. But people who were around him learned he used his charm and manners to manipulate. If that didn't work, he would turn into a different person – enraged, yelling, intimidating. Melody recalled Ollie saying very nasty things to her to make her cry. She sometimes was so frightened of his “in your face” expressions of anger that she feared he would physically strike her. She felt emotionally abused by Ollie. [Tabs 79 and 108.]

Ollie was never diagnosed with any mental illnesses. But Melody believes he may have suffered from bipolar disorder. Melody is not aware that anyone in her family was diagnosed with a mental illness. Her elder sister Adele may have suffered a mental illness. She's reclusive and doesn't communicate with anyone in the family. Adele suffers from paranoia and delusions. Adele displayed mood swings of the type Ollie exhibited. [Tabs 79 and 108.]

Melody confirmed that Ollie was also an alcoholic. She does not know when his drinking began but possibly while he was in the military. Albert and Ollie are the only two alcoholics in the family. [Tabs 79 and 108.]

Melody also confirmed Ollie's misogynistic character. He didn't hold women's opinions in high regard; he was very controlling in his relationships with his ex-wife and Carole. She recalls he spoke in a generally disrespectful way about women. Melody does not understand his attitude because their mother was very intelligent, kind, gentle and strong and did nothing that would have reflected badly on women or herself. Their father Albert was loving and respectful and never spoke ill of women. [Tabs 79 and 108.]

00/00/1958 Frank Rippo died. [Tab 66.] Ollie's first son, Jay was born. [Tabs 84 and 107.]

00/00/1958 After Domiano's release from the Air Force, he was employed with Lockheed Aircraft for two years and then the Merchant Marines after that. [Tabs 71 and 105.] [Tab 103]

00/00/1959 Ollie and Sari Parket married. Sari was about 19. Ollie exited the civil ceremony, beat Sari on the street and left her crying on the ground. [Tabs 84 and 107.] After the civil ceremony, at Ollie's mother's home, Ollie beat Sari as his mother watched without protest. [Tabs 93, 100, 112, 113.]

Sari was introduced to Ollie by Jessica's husband Patsy, who was their next door neighbor growing up, and her decision to marry Ollie was based on her desire to emancipate herself from her parents' household. Sari's family all found Ollie to be a very charming person initially and they were happy that Sari found a nice guy. In reality, however, Ollie was never kind to Sari and never treated her

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well when they were together alone, even throughout the time of the brief courtship. Sari tolerated Ollie's meanness for the sake of being able to leave home. [Tabs 93, 100, 112, 113.]

Sari and Ollie were married in 1959 when she was 19 years old and Ollie was 24 and unemployed. They were married in a short ceremony at city hall, and Sari's sister Jessica was in attendance as one of the witnesses. Ollie became angry with Jessica because he thought that she was laughing at him during the ceremony. When Sari tried to calm Ollie down afterwards and explain that Jessica suffered from an involuntary nervous laugh, Ollie's anger then turned towards Sari. Ollie did not appreciate Sari disagreeing with him and he felt that she was challenging his authority. Ultimately, Ollie ended their argument by severely beating Sari at his mother's house and in front of his mother. Ollie's mother did nothing to stop Ollie and she never orally corrected him for anything that he did wrong. Ollie was the apple of his mother's eye, her favorite child and he could do no wrong as far as she could see, and this was a major factor in Ollie's negative development as far as Sari is concerned. This incident marked the first time that Ollie physically abused Sari, but it was certainly not the last. [Tabs 93, 100, 112, 113.]

00/00/1960 Domiano was working with the Merchant Marines for about three years when he met Carole and was earning a high income. It was Domiano's intention to work with the Merchant Marines for a few years until in was able to earn enough money to purchase a restaurant. [Tabs 71 and 105.] [Tab 106.]

Isabel Campanelli describes Carole as being a spoiled Army brat who always wanted to have things her own way. Carole was very argumentative and often fussed with everyone around her over the most insignificant things. Besides being belligerent, Carole rarely had a kind thing to say about anyone. [Tab 91.]

00/00/0000 Angela and Carole were very close when they were growing up and into early adulthood. After Carole married Domiano, Angela was in their home in Valley Stream almost daily. Angela described Domiano as a womanizer who drank and neglected Carole and the kids. Angela saw Domiano become verbally abusive with Carole, but saw no physical abuse nor did Carole speak of such. [Tab 72.]

Ruth Rippo recalls that Carole and her siblings all were well-behaved children and all performed well in school from start to finish. None of them had behavioral issues or learning disabilities. There were no major illnesses among the children. Ruth recalls Ronald had whooping cough and Antoinette had chickenpox. But none of the children was ever hospitalized. [Tab 73.]

Ollie and Sari (his first wife) met in New York City in the early 1960s and married after a brief courtship. Sari was about 19 when she married and he



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seemed more mature and experienced. They had the same problems that later plagued Ollie's relationship with Carole. Ollie was an alcoholic, a gambler and financially unstable. He also may have indulged in infidelities. [Tabs 79 and 108.]

00/00/1962 Ollie and Sari's second son, Robert born (or 1963). Ollie was well into being emotionally and physically abusive to his wife and children. Ollie was described as having a short fuse and very bad temper. Ollie screamed at his children, saying demeaning things to them; he slapped them, punched them, and even picked them up and threw them around. Ollie was very controlling toward Sari, telling her what she could and could not wear, who her friends would be. [Tabs 84 and 107.]

00/00/1963 Dolores married first time. [Tab 66.]

00/00/0000 Domiano's aunt Grace married Carole's paternal uncle Tommy Ripo; they had three children: Betty Ann, Gerard and Carmine. Betty Ann and Gerard are twins. [Tabs 71 and 105.] [Tab 91.] Tommy had a falling out with Carole's father, Frank, and the men did not speak for years. [Tab 91.]

Domiano had known Carole since she was a little girl. Members of both families did not want Carole and Domiano to marry because he was a party man, a drinker, a gambler, a workaholic and a womanizer. Domiano told Carole he wouldn't change his lifestyle; Carole said she could handle it. [Tabs 71 and 105.]

10/18/1963 Carole married first time to Donald [Dominao] Campanelli in Long Island, New York. Donald is much older than Carole, who was 21. Dolores describes Donald as a "gambler, drinker and womanizer." He was a night-time bartender. After a few years, Carole divorced Donald. Carole had to go to court to have Donald ordered to pay child support. Campanelli never saw his children after they left Long Island. [Tab 66.] Domiano at the divorce hearing testified he was married to Carole on 11/9/1963 in Jamaica, Queens. [Tab 101.]

Domiano reports that he and Carole agreed he would continue being in the Merchant Marine when they married for at least six years so that he could accumulate enough money to purchase or open a restaurant, which was a long-time dream for him. Within months of their marriage, Carole demanded he leave the Merchant Marine and get a local job or she would divorce him. He left the Merchant Marine. [Tabs 71 and 105.]

In their early years of marriage, Domiano tried to act responsibly as a husband and later as a father. He grew up around the horse tracks of Queens and Long Island and gambled heavily on the races. [Tabs 71 and 105.]

Jacqueline Schmidt and her now-deceased husband, Robert, lived on the

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block with Domiano and Carole. Their children played with the Rippo children. [Tab 87.]

Ruth Rippo (Carole's mother) warned Carole not to marry Domiano; Carole's father called Domiano a "bum." Domiano had a reputation for being a womanizer, a heavy drinker and a gambler. In the early years of their marriage, Carole worked at office clerical jobs while Domiano worked as a waiter. They moved to Long Island and Domiano used his GI benefits to get money for a down payment for the house on Long Island. Ruth and her family (husband and two youngest children) moved to Utica, New York. Carole's dad moved to Utica to be closer to his military buddies. Ruth spoke with Carole once every week or two while in Utica. She recalls the first two years of Carole's marriage were peaceful and uneventful. [Tab 73.]

Ruth recalls that Carole's best friend was a Jewish girl from their neighborhood. She was also the maid of honor at Carole's wedding. [Tab 73.]

Other confidantes of Carole's were Rosanne and Vinny Greco who lived on Ruth's block in Syosset, New York. Vinny was a police officer with the NYPD. [Tab 73.]

Antoinette was ten in 1963 when Carole married Domiano Campanelli. She knew nothing of their courtship. Domiano was friendly and no one discussed any problems Carole had in her marriage. [Tab 74.]

Vincent Greco reports the Carole's children seemed happy and healthy. He was not aware of problems in the family. The Rippo family were good neighbors. [Tab 85.]

Domiano Campanelli believes (in 2007) that their home likely contained lead paint. [Tab 88 and 105.] Jacqueline Schmidt, a former neighbor across the street concurs that the houses likely have lead-based paint somewhere in their pasts. [Tab 87.]

Carole frequently complained about everything Domiano did, reports Isabel. He was an excellent provider and a loving father, but Carole was a selfish and ungrateful wife. It seemed Domiano could do nothing to please her. The more he did, the more she wanted. She did little in return. [Tab 91.]

00/00/0000 Carole did everything in the home that traditionally were done by both husband and wife. She cooked, cleaned, changed diapers and cared for the children; she also did the yard work, painted, replaced wooden paneling and fixed/installed windows. Angela felt sorry for Carole having to work and struggle so hard with little or no support from Domiano. [Tab 72.]

Angela saw Carole become very sad and depressed at times with the circumstances of her marriage and existence. She never saw Carole's depression or self-pity translate into mistreatment of her children. She did not notice how

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Carole's circumstances may have affected Michael and his siblings (emotionally and behaviorally). [Tab 72.]

Angela had no contact with Carole after Carole left Long Island. She never met Ollie Anzini. [Tab 72.]

02/26/1965 Michael Damon Rippo<sup>3</sup> born in New York City, New York (but also uses Queens, NY as birthplace). [Tab 7.] [Tab 67.] His mother reports that he was born in "Doctor's Hospital, in Hollis, Queens." [Doctor's Hospital in New York now is on Staten Island.] Michael weighed six pounds and was a full-term baby.

Ruth Rippo says Carole's pregnancy with Michael was normal and everything went well, as far as she knew. When Michael was born Carole told Ruth Michael had problems sleeping. Ruth showed Carole how to swaddle him and then he fell asleep quickly. [Tab 73.]

Domiano stopped gambling shortly after Michael was born. He scaled back on drinking as well. He felt that Carole, however, made no effort to make concessions on her issues as they related to her marriage. She was controlling, manipulative and always seemed to go out of her way to disregard anything Domiano wanted to do. He recalls telling Carole she could purchase any rug she wanted for their home in Valley Stream, as long as it was not beige. Carole bought a beige rug; and she was not even fond of the color herself. There was no compromise with Carole – "it was her way or the highway." Domiano thinks she probably "castrated" every male in her life. [Tabs 71 and 105.]

Domiano says Carole was neglectful in caring for Michael from the beginning. Michael was circumcised shortly after birth and the doctors instructed Carole in how to care for the wound – they told her to pull back the skin and apply an ointment daily. Carole did not do what she was told and the foreskin fused to the head of Michael's penis, which caused him pain and frustration when he had an erection or urinated (Michael would cry). A few months later, Michael had to undergo a second circumcision to correct the problem. Domiano said it broke his heart to see Michael crying and screaming as he was wheeled away into surgery. [Tabs 71 and 105.]

When Antoinette was 12 or 13 years old and her family was living in Carole and Domiano's Valley Stream home after relocating to Long Island from upstate New York, Antoinette was downstairs watching television in the livingroom when Domiano came home drunk. He began hugging and touching Antoinette in a manner that she felt inappropriate. She called for Carole to come

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<sup>3</sup>We need to find out why, if she married before Michael's birth, Michael has Carole's maiden name while his siblings are Campanellis.

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for her and Carole told Antoinette to come upstairs. She did so and spent the night with Carole. Nothing like that occurred again. [Tab 74.]

During the several months Antoinette lived with Carole and Domiano, she never saw Domiano abuse the children or be mean to them. She recalls mostly that Domiano was always working and almost never home. [Tab 74.]

Ronald recalled living with Carole and her family in Valley Stream when their parents left upstate New York. They lived there about ten months; Ronald was fifteen at the time.

00/00/1965 Ollie's father, Albert, died. Ollie took his death hard. [Tabs 79 and 108.]

Sari and Ollie divorced in 1965 or 1966. Sari shortly afterward took the two boys and moved to California. [Tabs 79 and 108.] [Tabs 84 and 107.]

Ollie became a deadbeat dad; Sari never received a dime in child support, even with court orders requiring it. [Tabs 84 and 107.]

Melody remained close to Sari and Ollie was resentful of their friendship; this led to an argument in which he called Melody a traitor and then did not speak with her for a couple of years. Ollie's favorite sister, Adele, agreed and refused to speak to Melody either. [Tabs 79 and 108.]

After his divorce, Ollie did not pay child support and rarely saw his children. Sari lamented to Melody about the lack of child support and Ollie not contacting his sons. Sari took Ollie to court over his failure to pay his child support. [Tabs 79 and 108.]

Isabel says during the early years of their marriage, Domiano was very happy and very proud of his family. As the years passed, Carole's selfish ways and blatant disregard for him put a strain on him emotionally. Domiano was especially close with Michael. [Tab 91.]

02/26/1966 Michael is one year old.

00/00/1966 Sari, Ollie's first wife, became involved with her soon-to-be second husband. She followed him to California with her children. [Tabs 84 and 107.] Also during this year, Sari reports she and Ollie divorced. [Tabs 93, 100, 112, 113.]

At this time, Jessica and Patsy Asaro are living across the street and a few doors down from Carole. [Tabs 84 and 107.]

Ollie's abuse of Sari came in all forms. Ollie was very abusive verbally and he frequently yelled and cursed at Sari, and demeaned her character. Sari said it was like she was always crying whenever Ollie was around. Ollie broke things that she bought for him and vice versa. Ollie had no respect for women and spoke very disparagingly of them, and Sari was no exception. Whenever Sari spoke back to Ollie and tried to defend herself against his insults, it was not uncommon

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for Ollie to give her a smack in the face if not a punch. Ollie also had no problem with beating Sari while they were in the presence of their children. [Tabs 93, 100, 112, 113.]

Ollie smacked and punched Sari "all of the time," and it came very naturally to him. Sari recalled one incident where she and Ollie had gotten into an argument while she was pregnant with Jay. The argument ended by Ollie punching Sari in the stomach, and Sari keeling over in pain. [Tabs 93, 100, 112, 113.]

When Sari's mother was on her deathbed, Sari wanted to see her for the last time with Jay (who was less than a year old). Ollie demanded that Sari leave Jay and make the visit alone, and an argument ensued (Sari was insisting that she be allowed to let her mother see Jay for the last time). Ollie flew into one of his familiar rages, beat Sari up and then began throwing the spaghetti she cooked for dinner up in the air and all of the ceiling of their home. After Sari cleared herself up and stopped crying she proceeded to visit her dying mother alone. [Tabs 93, 100, 112, 113.]

Ollie's abusive behavior was also extended to the family dog Shane. On one occasion Ollie became so upset about something that he picked Shane up and threw him across the room and into a wall. [Tabs 93, 100, 112, 113.]

When Ollie was living with Sari and her children, the boys were very young and Ollie never abused them in her presence. However, Ollie was not very nice to them and he sometimes yelled at the boys and demeaned them. When Jay was one year old and just starting to walk, Ollie told him to go get Sari's pocketbook and bring it to them (himself and Sari). When Jay did not respond to Ollie, because he was too young to speak and communicate, Ollie started yelling at Jay and calling him stupid, and an idiot. Sari came to Jay's defense and told Ollie to leave Jay alone because was just a baby. [Tabs 93, 100, 112, 113.]

Although Ollie constantly abused Sari and made her cry, Sari remained defiant of his authority and she absolutely never stood for Ollie mistreating her children in any way. Ollie took custody of Jay without Sari's permission and, when she was able, she returned to New York to "kidnap" her child back while he was at school because she knew that it was not healthy for her son to live in the same household as Ollie. Looking back, Sari really felt sorry for Carole's children because she is certain that they all must have suffered at the hands of Ollie (even though they never said anything to Sari). [Tabs 93, 100, 112, 113.]

When Sari divorced Ollie in 1966, her motivation was her desire to have a better life for herself and her sons. She thought that Ollie was a negative influence on her children and she feared that they might become violent like Ollie in adulthood. Sari also feared that Ollie might seriously injure her one day. [Tabs 93, 100, 112, 113.]

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Ollie tried coming back home after Sari changed the locks on the house, and he promised her that he only wanted to talk. Sari was hesitant, but opened the door anyway. Ollie told Sari that he wanted her to either give him their son Jay or the television that was in the house. When Sari refused to give Ollie either Jay or the television, he flew into a rage and beat her up one final time. [Tabs 93, 100, 112, 113.]

Beside being physically, emotionally and verbally abusive, Ollie was also a thief. Ollie was not the type of person to rob someone at gun point, but he had no qualms about shop-lifting or taking someone's wallet off a beach towel while the owner was in the water. [Tabs 93, 100, 112, 113.]

Ollie also lead a very secretive life, and there were many things that Sari did not know Ollie and his activities. It was not uncommon for Ollie to not come home at night without calling, and he stayed away from home for days at a time. Sari does not think that Ollie was involved in the mafia, but she never knew much about the things that he did outside their home. [Tabs 93, 100, 112, 113.]

Ollie was a very egotistical person and very into himself. He wore nice clothes and was extremely neat. Ollie always had to be the center of attention whenever he was around his friends and family, and he loved giving people the impression that he was a big shot. It was not uncommon for Ollie to go out to dinner in a large group and then volunteer to put the everyone's meals on his charge card, even at times when he and Sari didn't have much of an income. Ollie never wanted anyone to know that he was broke and he forbade Sari to discuss their finances with others. [Tabs 93, 100, 112, 113.]

00/00/0000 There is an incident reported by family members where Michael may have drunk turpentine. Carole was painting in the bedroom and had a jar with a paint brush in it on the floor. She was distracted and turned when Michael said something about "milk" and was seen holding the jar in this hand. Carole rushed him to the emergency room. There he was given ipecac [to induce vomiting] and sent home. Michael vomited in the car as the family drove home. [Tab 69.]

Carole also reported Michael commonly stuffed objects up his nose. [Tab 69.]

Jacqueline Schmidt's children and Carole's children are similar ages and played together. Michael used to bully her son, Robert, Jr., talked mean to him and would sometimes push him. Robert, Jr., was about two years younger than Michael. Michael never fought with Robert, Jr., however, or other children in the neighborhood. She would not describe Michael as violent. [Tab 87.]

02/26/1967 Michael is two years old.

When Domiano brought a beagle home for Michael, Michael was excited

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and wanted to name it Itchy. Carole refused to allow Michael to call his dog Itchy and insisted the dog be called either Sara or Ethel. The dog was named as Carole wanted. [Tabs 71 and 105.]

Carole and Domiano were good friends of Jessica and Patsy Asaro. Jessica recalled Domiano as a hard worker and good provider who was not abusive to Carole or the children. Jessica recalls Domiano was a kind person. [Tabs 84 and 107.]

02/26/1968 Michael is three years old.

05/23/1968 Carole Ann, Michael's sister is born in Long Island, New York. [Tab 7.] [Tab 67.]

00/00/0000 Damiano Campanelli ran a restaurant while the family lived with him. Carole in 2007 describes Campanelli as an alcoholic, womanizer and a gambler. She recalls Damiano had an affair with Karen, a waitress who worked for him. Karen's husband was in Vietnam and Carole watched Karen's child along with her own, Michael and Carole Ann. Carole describes herself as very young and naive. She learned of the affair from Damiano's mother, Ana. [Tab 69.]

The Campanellis lived in an older home in the Valley Stream area of Long Island, 43 Elmwood Street. [Tab 69.]

The Betty Ann identified by Dolores is Betty Ann Ripo. Carole thinks that Dolores is mistaken saying Betty Ann spent a lot of time around the family. [Tab 69.]

Another problem Domiano had with Carole was all her pregnancies. Domiano never gave up his dream of owning a restaurant and knew a large family would cut into his savings. Carole agreed to have only one child. But then she became pregnant twice more and Domiano felt it was intentional. When he spoke with her about it, she said she always wanted a lot of kids. Domiano felt Carole never kept her word; he felt betrayed and disregarded by her. Carole was also very materialistic but poor at budgeting and careless with money. [Tabs 71 and 105.]

Although Carole was raised Catholic like Domiano, Carole fostered a deep disdain for the Catholic Church and everything it represented. Domiano tried to get Carole and the children to attend church with him on Sundays that he had off and to go by themselves when he had to work. He thought the kids would benefit from having religion in their lives. Carole did not agree. She never went to church with Domiano at all, so Domiano took the kids with him when he went, when his schedule would allow. He was very surprised to hear that Carole is now a very devout Christian; he had doubts whether she even believed in God. [Tabs

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71 and 105.]

As time went on, Ruth Rippo reports, Domiano's infidelities became a major issue in the marriage and eventually led to the divorce (1971). Domiano hung out all the time and did everything that he could not to come home. Ruth has no recollection of Domiano ever interacting with Michael and his siblings. Carole did not confide the details of her divorce in Ruth. [Tab 73.]

Ronald recalls baby-sitting Michael and Carole Ann (Stacie had not yet been born), playing with them, changing their diapers. He says it was good preparation for his later experience of fatherhood. Ronald said Michael and Carole Ann were "great kids," and "well adjusted." He recalls Carole was a very good mother and excellent care-giver. Domiano almost never interacted with the children at all. [Tab 77.]

02/26/1969 Michael is four years old.

Domiano always noticed a difference in the way Carole treated the children. Both Michael and Carole Ann heavily favored the Campanelli side of the family. Stacie looked more like the Rippos. Carole showed favoritism toward Stacie over her siblings. [Tabs 71 and 105.]

Carole's affair with Anzini coincided with her pregnancy with the Campanellis' youngest child, Stacie. Domiano always held the silent doubt whether Stacie was his daughter. The doubts were also supported by Stacie's lack of resemblance to her siblings. Nonetheless, Domiano never expressed the doubts to Carole or anyone else for fear of causing damage to Stacie. If she was not his child, at least she is sister to the other children and that was enough for Domiano to accept and support her. [Tabs 71 and 105.]

Ollie met Carole when she was picking Michael up from school. He was very taken with Carole and moved in with her within one or two weeks of their meeting. Jessica thought this was unwise and was sure Ollie would repeat his abusive behavior with Carole. But Jessica and Patsy Asaro did not interfere and voice their concerns. [Tabs 84 and 107.]

When Ollie moved in with Carole, he commandeered custody of his son Jay by taking him from Jessica and Patsy; he did not discuss the matter with their mother. Jay, Carole and the children were instructed by Ollie they could no longer speak with Jessica or Patsy Asaro. [Tabs 84 and 107.]

Once, Ollie came banging into Jessica's home yelling about something Carole told him about Jessica. After she calmed him down, Jessica set him straight and Ollie became visibly enraged with Carole, stormed back to Carole's house. A neighbor told Jessica he could hear Ollie yelling at Carole and also heard Carole screaming. Jessica was not surprised Ollie beat Carole when he went home; it was the same experience her sister Sari had with Ollie. [Tabs 84



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and 107.]

Domiano reports that Carole was no angel in the fidelity department because she started her relationship with James Anzini before she and Domiano were officially separated. Domiano recalled finding a pair of men's shoes in their bedroom (that were not his) on returning from a trip to Montauk. He didn't make a fuss over the shoes, but in retrospect, he figured that they must have belonged to Anzini. This occurred shortly before Domiano and Carole separated, while they were still trying to reconcile. [Tabs 71 and 105.]

Ruth Rippo recalls Michael was a happy child who loved to make people laugh. He was very close to his mother, who was a "pushover" when it came to disciplining her children. Carole was very easy going. She wanted her children to have everything that she did not have growing up, and she did not reprimand them enough. Carole may have spanked the kids once in a while, but they were very short spankings and never hard. [Tab 73.]

Ruth Rippo recalls that Carole's relationship with Anzini began after she had already broken up with Domiano. She was introduced to Anzini by a neighbor – Anzini's cousin or sister – who lived on Carole's block in Valley Stream. [Tab 73.]

Robert has no memory of the time period in which Ollie was married to his mother and living in the same household. Robert rarely saw Ollie because he (Ollie) almost never visited Robert and Jay, nor did he send for them much. One of Robert's most vivid memories of a time spent with Ollie was when he and Jay were at Carole's house in Valley Stream taking a bath together and playing around. Ollie became angry at Robert and Jay because he thought that they were making too much noise. As a result of the situation, Ollie flew into a rage, stormed into the bathroom and viciously beat both Robert and Jay about their wet, naked skin until they had red marks and were crying. [Tabs 93, 100, 112, 113.]

Robert said that everyone was always "walking on egg shells" and seemed very fearful whenever Ollie was around. Robert described Ollie as being very unpredictable in his moods, he yelled and hollered a lot, and "It was like you never knew what he would do." Robert described Ollie as a bully and very intimidating, and he could usually get Robert and Jay to comply with a simple look that was menacing. [Tabs 93, 100, 112, 113.]

Robert recalled an incident where he and Jay were at Carole's house, and everyone was having a good time and relaxing. Robert recalled that Carole made a lasagna for dinner that night and served out portions to everyone. When Ollie received his portion he found that it was too hot (with heat) for his taste and started yelling and cursing at Carole and demeaning her character for not allowing it to cool off before she served it. Carole did and said nothing to defend herself and seemed to cower at Ollie aggression. Robert recalled thinking how

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unnecessarily mean it was for Ollie to ruin everyone's happy mood and make Carole feel so badly after having made him and everyone else such a nice meal. [Tabs 93, 100, 112, 113.]

Robert also recalled that Ollie was never financially supportive of him and Jay, and he remembered observing his mom, Sari Heslin, struggle to make ends meet. Things became so bad for Sari and her boys that she actually had to receive public assistance and food stamps to get by for a couple years. To make matters worse, when Sari's second husband died she was left to care of their daughter, who was handicapped (she was born with a cleft palate), as well as Ollie's sons without Ollie's help. The economic stress became so hard that Sari had to send Robert and Jay to live with other family members. Jay went to live with Sari's sister Jessica Asaro in Valley Stream, and Robert went to live with another sister. [Tabs 93, 100, 112, 113.]

04/19/1969 Stacie Ann Campanelli is born in Rockville Centre, New York. [Tab 67.] [Tab 7.] Stacie's juvenile records indicate a birth date of October 4, 1969, and states that Carole and Domiano were separated by the time of Stacie's birth. [Tab 114.] Carole and Campanelli produced three children, according to Dolores. [Tab 66.]

00/00/1969 Ronald enlisted in the Air Force in 1969 and was stationed in Alaska from 1969 to 1973 (at the same base as Donald and Antoinette (likely Elmendorf AFB)). He was not around during Carole and Domiano's divorce. [Tab 77.]

02/26/1970 Michael is five years old.

Domiano thought Carole was careless with the children and did not watch them properly. Domiano reported the drinking turpentine incident and vomiting purple occurred when Michael was five. Carole called Domiano and told him Michael was vomiting a purple substance. Domiano rushed home and took Michael to the hospital. The doctors pumped Michael's stomach and confirmed Michael had eaten a purple crayon before drinking the turpentine. [Tabs 71 and 105.]

Domiano described Carole as "flighty" and said she often did things for no rhyme or reason. He recalled one occasion when she came home with an expensive and beautiful silverware set. Carole said it was a gift from her parents and acted surprised and excited. A few weeks later, however, Domiano found the bill for the silverware in the mail made out to Carole. Domiano ended up paying for the silverware himself. [Tabs 71 and 105.]

As time went on, Domiano found himself working longer and longer hours (he was managing a restaurant at the time) to support his growing family and to keep up his savings account for his dream of owning a restaurant. Domiano

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worked double shifts, days, nights, weekends and holidays, and sometimes had to manage a sister restaurant in Montauk, Suffolk County (on the other end of the island), and would spend days away from home at a time. [Tabs 71 and 105.]

Domiano eventually started drinking heavily again and began having extramarital affairs. He knows this was not the way to handle his troubles at home and that his actions were wrong. But he felt he did not have a partner in Carole. Domiano also felt that his extramarital activities were excusable because he always saw to it the bills were paid and the family always had everything it needed. Although there were verbal arguments, there was never any physical violence between Domiano and Carole. Domiano admits his drinking and womanizing were major contributing factors in their divorce. He regrets having the children taken away and out of the state by Carole in the years that followed. [Tabs 71 and 105.]

Ronald was only 12 or 13 when Carole married Domiano and did not have many details of their relationship. He did, however, overhear family say that Domiano was physically abusive to Carole, was an alcoholic, womanizer and gambler. He once overheard Domiano say he knew how to beat a woman and if he struck Carole, it wouldn't leave any marks. Ronald never liked Domiano. [Tab 77.]

Isabel reports that Domiano's decision to divorce Carole was very difficult, knowing that he would no longer be around his children every day. Isabel believes Carole's unhappiness in her marriage was based on a deep unhappiness with herself, and not knowing who she was or what she wanted in life. Isabel believes this insecurity in Carole was the main cause of what went wrong with the marriage. [Tab 91.]

- 02/00/1970 Domiano testified in divorce court in 1971: He reported the incident of February 1970: He and Carole were not getting along. He was sleeping on the couch and she returned to the house in the afternoon. She didn't like him sleeping, so threw a glass of water on him, and then threw a vacuum cleaner on him while he was lying down. He jumped up and she started screaming and yelling and hitting him. The electric sweeping broom landed on his chest. He was bruised on the chest and stomach. He states that Carole was not herself. [Tab 101.]
- 00/00/0000 Dolores says Michael was a "holy terror" as a child. He was smart and used to take things apart. He was a "busy boy." On one occasion, he rode his bike off the front porch and broke his arm. Dolores did not see Michael after he was six years old. Dolores describes Carole's discipline as inconsistent. She did not approve of the way Carole's children spoke and acted. [Tab 66.]

Domiano recalls that once, when Carole was watching Michael, he rode

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his bike off the back porch. He doesn't know if Michael received a head injury, but his elbow and knee were pretty banged up. He doesn't think Michael got medical treatment. [Tabs 71 and 105.]

Ruth Rippo describes Michael as being hyperactive and craving attention. She recalls an incident where Michael was caught swinging on the toilet stall doors in the bathroom during Antoinette's wedding. Ruth has no recollection of any head trauma suffered by Michael, broken bones or anything impactful. He also had no bed wetting issues. She did recall, however, that Carole Ann wet her bed until she was about six years old. [Tab 73.]

Jacqueline Schmidt's children and Carole's children were similar ages and played together. Michael used to bully her son, Robert, Jr., talked mean to him and would sometimes push him. Robert, Jr., was about two years younger than Michael. Michael never fought with Robert, Jr., however, or other children in the neighborhood. She would not describe Michael as violent. [Tab 87.]

09/00/1970 Michael started school, attending Valley Stream [Union Free School District 24]. [Tab 68.] For kindergarten his first semester grades are all Fair for personal growth, relationships with others, work habits, and knowledge and skills. By second semester he has improved his personal growth to Good; all other scores are the same. [Tab 80.]

A grid for rating<sup>4</sup> behavioral aspects indicates that Michael has significant *negative* interaction in the following: works and plays well with others, shows consideration for others; adjusts to group situations; works independently; and exhibits self-control. [Tab 80.]

Domiano recalls the strangest thing Michael ever did was to hide under a neighbor's porch for a few hours. Domiano, Carole, and neighbors searched the area and then called police. A neighbor's kid finally found Michael hiding under the porch. Michael told Domiano he was afraid to come out after he saw the police had been called because he thought he would be in trouble. Domiano held and kissed Michael and told him never to do that again and that there was no reason to be afraid of the police. [Tabs 71 and 105.]

10/00/1970 Domiano testified in the divorce action about an incident in October 1970: Carole and he were arguing in the kitchen. She threw a glass of milk at him, or something, and he yelled at her. She threw a knife at him, striking him on the arm and cutting him. [Tab 101.]

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<sup>4</sup>Only *significant* positive or negative aspects are noted.

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11/01/1970 Through December 4, 1974, the family received Family Assistance (Aid to Dependent Children) totaled \$6,911.27. [Tab 118.]

00/00/1970 Domiano reports he and Carole separated in 1970; the divorce was finalized the latter part of 1971. [Tabs 71 and 105.]

Domiano does not know exactly how their marital problems and the divorce affected Michael and his siblings, but did not recall emotional problems or disturbances among them. He said Michael was a well-adjusted, kind and affectionate little boy. Michael had his beagle which he loved and treated well. He does not recall Michael being hyperactive. Michael had no speech impediments, stopped wetting the bed at the normal age (about three), his scholastic abilities tested normal, and he played well with other children. Michael did not like going to bed and sometimes sat at the top of the stairs wrapped in a blanket until he fell asleep. Carole Ann and Stacie were also well-adjusted children and too young to understand [the divorce]. [Tabs 71 and 105.]

Ruth Rippo reported that Anzini actually moved into the Valley Stream home before it was sold. Carole told Ruth that Anzini was a retired NYPD detective, but Ruth never believed that. Like Antoinette, Ruth found Anzini's appearance creepy and described him as having a big head and bulging eyeballs. Ruth did not like Anzini for reasons similar to those for which she did not like Domiano: women, booze and gambling. But Anzini had the additional problem of being unable to hold down a job. [Tab 73.] Spencer Anzini, Ollie Anzini's younger brother, visited them at times. Spencer recalls the children were well-behaved and nice; everything in Carole and Ollie's relationship was normal. [Tab 78.]

Sari was very close with her sister Jessica, and she made frequent trips to visit Jessica and her family out Valley Stream. Sari had an opportunity to meet both Carole and Domiano on several occasions because they lived across the street from Jessica and her family. Sari had been over at Carole's house for dinner and other social gatherings, and Carole and her family also spent time at Jessica's house for the same occasions as well. Ollie was never around in those days when Sari socialized with Carole and Domiano because they were separated or divorced by the time Carole and Jessica were neighbors. Michael was the only child that Carole and Domiano had at the time. Sari described Michael as adorable, the "nicest kid," he always was smiling, very happy and fun loving. [Tabs 93, 100, 112, 113.]

From all that Sari observed, Domiano was a responsible husband and a great father to Michael. Domiano used to play catch and other games with young Michael, he was always hugging and kissing him. Sari could tell that Michael adored Domiano and loved being in his company. Sari never saw Domiano yell

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at, demean or abuse Carole or Michael in any way, and she never heard Carole complain about any such treatment. Overall, Domiano seemed like a good man and a positive force in his family's life. [Tabs 93, 100, 112, 113.]

00/00/0000 Carole, after her divorce from Domiano, received support from Dolores and her cousin Betty Ann. [Tab 66.] Carole went to live with Betty Ann, her cousin. [Tab 69.]

After the house was sold, Ruth says Carole and her children moved in with her into her four-room apartment in Syosset. Things were cramped but they got along. Carole continued her relationship with Anzini. [Tab 73.]

Carole reports that across the street from Betty Ann lived Arline ("Jay") and Patsy Asaro. Patsy (male) worked in sanitation. Jay's ex-brother-in-law was Ollie Anzini. Jay introduced Carole and Ollie. Michael was in first grade about this time. [Tab 69.]

Carole and Stacie are still close with Ollie's family. Ollie's brothers are Albert ("Bert") Anzini, Spencer, and Keith. There was also Melody, whom Carole describes as being "off in la-la-land." Carole says the Anzini siblings got together every Friday night at their Long Island home and play games. Melody attended college in Seward, Nebraska, for teaching. [Tab 69.]

Shortly after their separation, Domiano noted that Anzini moved into the Valley Stream home with Carole. [Tabs 71 and 105.]

Domiano met Anzini only once, at the closing of the sale of his and Carole's Valley Stream home. Anzini came to give Carole moral support and Domiano got into an argument with Anzini. Domiano doesn't recall the nature of the argument, but knows it was about Anzini making comments on matters that did not concern him. [Tabs 71 and 105.]

Domiano heard that Anzini was supposedly an ex-New York policeman, and that he had a gambling and drinking problem as well. [Tabs 71 and 105.]

Domiano has no records of the divorce because the court files burned and he lost his copies. The divorce was mutually agreed to and no one took the lead in the proceedings or wanted to stay together. The house was sold, equity divided and Domiano had to pay child support. [Tabs 71 and 105.]

One of the claims Carole asserted was that Domiano had abandoned her and the kids in 1970, which was a lie according to Domiano, because they had mutually agreed to separate and Domiano was still paying the mortgage and the bills. When he asked Carole why she lied about being abandoned, Carole told him that she created the story because she was desperate for extra cash all the time. Domiano found this to be dishonest and provided him with additional confirmation that he needed to divorce her. [Tabs 71 and 105.]

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Dominao reports an incident that occurred when he came home from work one day and saw Carole Ann (only three at the time). She looked at him and said, "You know mommy really hates you!" He was flabbergasted at this but did not get mad at her because he knew it was Carole's fault. [Tabs 71 and 105.]

Antoinette does not recall details of Carole's divorce from Domiano but later learned Domiano was a womanizer and an alcoholic. She does not know the impact of the divorce on Carole and the children because she was still young and those matters were not discussed around her. She does recall Carole struggled financially after her divorce and this was the reason Carole moved in with her parents. [Tab 74.]

Isabel never met Ollie and knows nothing of his background. She was aware he came into the picture shortly after Stacie was born, while Domiano and Carole were having problems. Isabel considered Carole's relationship with Ollie to be a blatant act of adultery. [Tab 91.]

02/26/1971 Michael is six years old.

00/00/0000 Carole reported that Michael rode his tricycle off the back porch, which had six or seven steps to the sidewalk. He was taken to the emergency room. He had only a broken ankle. Carole does not recall the name of the hospital. [Tab 69.]

Domiano reported that Carole forgot one day to pick Michael up from school (usually about 3:00 p.m.) and did not remember until Domiano came home around 5:00 p.m. When Domiano and Carole got to the school, it was completely closed down and everyone had gone home. They found Michael on a nearby street and he was standing in the middle of the road crying. Domiano is certain this event traumatized Michael and Domiano was furious with Carole for being so neglectful. [Tabs 71 and 105.]

00/00/1971 Michael reports his natural father and mother divorced. [Tab 7.]

Michael reports he was hyperactive as a child and saw a psychiatrist due to his hyperactivity. He was not medicated. Michael's mother reports the psychiatrist felt Michael was reacting to problems related to the divorce. [Tab 7.]

Carole described Michael as hyperactive. He could not pay attention in school. He would tear things apart and put them back together. Carole felt positive Michael was acting out because he did not have a father figure in his life. [Tab 69.]

Carole was a den mother for Michael's Cub Scout troop. [Tab 69.]

After the divorce, Carole had to go on welfare because Campanelli was not paying child support. She obtained Michael's psychiatric referral through Medicaid. The doctor was Jewish and met with Michael once a week. [Tab 69.]

IN THE SUPREME COURT OF THE STATE OF NEVADA

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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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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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CLERK, U.S. DISTRICT COURT  
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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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

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 A. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

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July 9, 1996

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Re: US v. Bongiovanni, et al, CR-S-96-93 and  
US v. Dottore, et al, CR-S-96-97

Specific Requests for Discovery

Dear Government Counsel:

Pursuant to the Federal Local Rules of Practice and the Joint Discovery Statement, the defense of Judge Gerard Bongiovanni hereby requests that the Government produce or make available for copying and inspection, the material identified in this letter. This request for supplemental discovery is made pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and/ or Kyles v. Whitely, 115 S.Ct. 1355 (1995), and Rules 16 and 26.2 of the Federal Rules of Criminal Procedure:

1. Copies of all FBI 302 Reports and/or other federal, state, or local law enforcement reports, rap sheets, payments to or offers of leniency and/or special criminal charging or sentencing benefits or immunity given, offered, or held out to any confidential informants identified in one or more search warrant or wiretap application as "CS 1" and "CS 2", Terry Salem and/or any person named or unnamed in the Indictment on file herein. This request includes, but is not limited to, the written proffers by any person, diversion, plea or immunity agreements, U.S.S.G. Sec. 5K1.1 letters, transcripts of plea proceedings, copies of presentence investigation reports, records of payment and/ or promises of dismissal, diversion or reduction of criminal charges in any Federal, State, County, or local Court, wherever located.

2. Copies of all reports, notes or memoranda supporting or referencing the " facts " or " conclusions " identified in subparagraphs 4i and 4j on pages 6 through 9 of FBI Agent Hanford's 10/11/95 Affidavit.

3. Copies of all reports, notes or memoranda supporting Agents Hanford's references in paragraph 10 on page 11 of his 10/11/95 Affidavit to information " provided to the FBI by confidential informants whose reliability is discussed..." in the Affidavit.

4. Copies of all reports, notes or memoranda concerning the " information " provided by a confidential source which information allegedly linked Dottore, Salem, and others to the California Federal Bank scam, as referenced in paragraph 11 of Agent Hanford's 10/11/95 Affidavit.

5. Copies of all reports, notes, memoranda, Clark County Regional Misdemeanor traffic Citations, City of Las Vegas Parking Infraction forms, and any other documents relating to and/or supporting the claims that Judge Bongiovanni engaged in improper conduct by " fixing parking tickets and excusing friends from having to appear for jury selection, to interfering with the enforcement of state laws, conspiring to receive kickbacks in exchange for judicial referrals, and influencing or attempting to influence, the outcome of judicial proceedings in exchange for bribes and other things of value referenced in paragraph 13 on pages 13 and 14 and paragraphs 163, 168, 169, 170, 171 and 172 on pages 82 through 89 of Agent Hanford's 10/11/95 Affidavit.

6. Copies of all reports, notes, and memoranda referencing/supporting the allegation that Terry Salem was approached by FBI Agents on or after September 20, 1994 as stated in paragraph 14 on pages 14 and 15 of Agent Hanford's 10/11/95 Affidavit.

7. Copies of all reports, notes, FISUR logs, and/or memoranda documenting the alleged physical surveillance of Dottore, Bongiovanni, and Flangas referenced in paragraph 17 on page 18 of Agent Hanford's 10/11/95 Affidavit.

8. Copies of all reports, notes, or memoranda supporting the conclusions in paragraph 22 of Agent Hanford's 10/11/95 Affidavit as follows:

(a) that North American Enterprises was owned by Buffalo La Cosa Nostra (LCN) associates Garganese and Angelo and operated by Buffalo LCN associate Spano;

(b) that New Image Way was owned and operated by Buffalo LCN Associate Spano;

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(c) that Confidential Source 2 overheard a conversation between Judge Bongiovanni and Dottore; and all background information concerning CS 2 supporting the statement that this informant provided reliable information in the past as referenced in paragraph 22 on pages 21 and 22; and,

(d) all information supporting Agent Hanford's conclusions that Judge Bongiovanni engaged in a plan to skim money from campaign contributions referenced in paragraph 22 on page 22 of the 10/11/95 Affidavit.

9. Copies of all reports, notes, or memoranda referencing an unidentified Vegas World employee who allegedly had discussions with CS 2 regarding Judge Bongiovanni as referenced in paragraph 23 on page 22 of Agent Hanford's 10/11/95 Affidavit; this request solicits all information as to date, time and place of this conversation, including but not limited to whether this conversation is reflected in an FBI 302 report or other federal, state or local law enforcement report of whatever type.

10. Copies of all reports, notes, or memoranda referencing "numerous telephone calls of a criminal nature between DOTTORE and Commarato" as reflected in paragraph 41 of Agent Hanford's 10/11/95 Affidavit.

11. Copies of all reports, notes, or other memoranda supporting Agent Hanford's conclusions that Judge Bongiovanni has other judges over whom Judge Bongiovanni has influence as referenced in paragraph 42 on pages 32 and 33 of the 10/11/95 Affidavit.

12. Copies of all reports, notes, or other memoranda concerning the " independent investigation " conducted by the FBI in Cleveland, Ohio concerning Commarato and all documents showing how that " independent investigation " has anything to do with the present case involving Judge Bongiovanni. This "independent investigation" is referenced in paragraph 45 on page 36 of the 10/11/95 Affidavit.

13. Copies of all reports, notes, FISUR logs, or other memoranda concerning any surveillance referenced in paragraph 50 on page 38 of the 10/11/95 Affidavit.

14. Copies of all reports, notes, or other memoranda concerning the "ticket" for leaving a dog in a parked car reference in paragraph 53 on page 40 of the 10/11/95 Affidavit.

15. Copies of all reports, notes, Clark County Regional Misdemeanor Citation form(s), or other memoranda referenced in paragraphs 93 through 101 on pages 59 through 62 of the 10/11/95 Affidavit.



16. Copies of all reports, notes, or memoranda supporting Agent Hanford's claim that "Robert Panaro" is a Buffalo, New York "soldier" as referenced in paragraphs 133 on page 72 and 145 on page 76 of the 10/11/95 Affidavit.

17. Copies of all reports, notes, or memoranda supporting Agent Hanford's claim that "Steve Cino" is a "made member" of the Los Angeles LCN and that Vincent Dominic Caci aka "Jimmy" Caci is a capo in the Los Angeles LCN family and a convicted felon referenced in paragraph 139 on page 74 of the 10/11/95 Affidavit.

18. Copies of all reports, notes, or memoranda concerning any interview(s) by the FBI or any other law enforcement entity with "Captain" Eddie Shields subsequent to any telephone conversation(s) referenced in paragraph 144 on pages 75 and 76 of the 10/11/95 Affidavit.

19. Copies of all reports, notes, or other memoranda supporting the allegations by Agent Hanford whereby the Agent suggests that Judge Bongiovanni had some prior illicit "deal" or arrangement with one Jack O'Neil referenced in paragraph 159 on pages 80 and 81 of the 10/11/95 Affidavit.

20. Copies of all reports, notes, transcripts of State Court proceedings and/ or Court minute records or correspondence or reports generated by the Office of the District Attorney, Clark County, Nevada in connection with the case involving the son of U.S. Marshall Herb Brown referenced in paragraph 162 on page 82 of the 10/11/95 Affidavit.

21. Copies of all reports, notes, memoranda or documents, whether admissible as evidence or not concerning "admissions of certain criminal activity by Salem and DOTTORE" whereby Agent Hanford admits that this information did not lead to admissible evidence of any criminal activity by Judge Bongiovanni or other targets referenced in paragraph 176 on pages 90 to 92 of the 10/11/95 Affidavit.

22. Copies of all reports, notes, memoranda, or FISUR logs referenced in paragraph 181 on page 95 of the 10/11/95 Affidavit.

23. Copies of all reports, notes, memoranda, or FBI 302's supporting Agent Hanford's conclusions in paragraph 182 on pages 96 to 97 of the 10/11/95 Affidavit that targets DOTTORE and JERDAN "lied" during their interviews and tried to cover up the alleged "truth."

24. Copies of all reports, notes, memoranda, or FBI 302's supporting the claims in paragraphs 184(b), (c) and (d) on page 98 of the 10/11/95 Affidavit.

25. Copies of all reports, notes, or memoranda generated by the Las Vegas Metropolitan Police Department or any other state, county or local law enforcement entity, including the Office of the Attorney General, State of Nevada, and/ or the Office of the District Attorney, Clark County, Nevada which reports, notes, or memoranda were or are being used by the FBI or any federal law enforcement agency in connection with this case.

26. Copies of the logs, notes, and/ or memoranda generated by FBI Agents or other law enforcement personnel in connection with any wiretap involved in this case as to any defendant during the period February, 1994 through November, 1995.

27. Copies of all grand jury transcripts generated in this case.

28. Copies of all logs, notes, and/or memoranda supporting the contention in paragraph 4 of page 5 of Agent Hanford's 10/95 Search Warrant Affidavit that an undercover officer was introduced to Salem and Dottore.

29. Copies of all documents concerning the case State of Nevada v. Louis Olejack as referenced in paragraph 7 on page 7 of Agent Hanford's 10/95 Search Warrant Affidavit.

30. Copies of all documents, inter-office memos, notes, logs and/or correspondence supporting the allegation in in paragraph 8 on pages 7 to 9 of Agent Hanford's 10/95 Search Warrant Affidavit that the Office of the District Attorney, Clark County, Nevada agreed to present an Indictment to the Clark County Grand Jury and to have that Indictment assigned to Department IV of the Eighth Judicial District Court.

31. Copies of all documents of whatever type which support the contention the "...other [wiretap intercepts] did not appear to support the conclusion that BONGIOVANNI could manipulate the system to insure that a particular case would be assigned/reassigned to BONGIOVANNI..." as referenced in paragraph 8 on pages 7 to 9 of Agent Hanford's 10/95 Search Warrant Affidavit.

32. Copies of all FISUR logs, notes, reports, and/or memoranda supporting the allegation that "...intensive physical surveillance..." was undertaken as to Judge Bongiovanni, Dottore and Peter Flangas, as referenced in paragraph 10 on page 10 of Agent Hanford's 10/95 Search Warrant Affidavit.

33. Copies of all documents, logs, notes, and/or memoranda supporting the statements concerning a Cleveland, Ohio LCN associate and/ or a Pittsburg LVN associate and or member, Pascuale Ferruccio, referenced in paragraph 12 on page 13 of Agent Hanford's 10/95 Search Warrant Affidavit.

34. Copies of all documents, notes, logs, and/or memoranda containing the names, addresses, and current telephone numbers of every person who falls into the category of "LCN associates" described as having been done favors by Judge Bongiovanni at any time within the time limits of the Indictment, referenced in paragraph 12 on page 13 of Agent Hanford's 10/95 Search Warrant Affidavit.

35. Copies of all documents, notes, logs, and/or memoranda supporting the allegations in paragraph 13 on pages 16 to 17 of Agent Hanford's 10/95 Search Warrant Affidavit that there was "information" received from CS-1 that Judge Bongiovanni "skimmed" a substantial amount of money from last minute campaign contributions.

36. Copies of all documents, notes, logs, and/or memoranda supporting any of the allegations contained in paragraphs 20 (a), (b), and (c) of Agent Hanford's 10/95 Search Warrant Affidavit.

37. Copies of all documents, legal citations, notes, logs, and/or memoranda supporting the allegation in paragraph 2 on page 2 of the Indictment that the Eighth Judicial District Court, Clark County, Nevada constitutes an "enterprise" as that term is defined in 18 U.S.C. Sec. 1961 (4), et seq.

38. Copies of all documents, notes, logs, and/or memoranda supporting the allegation in paragraph 5 on page 5 of the Indictment that Judge Bongiovanni and Dottore combined, conspired, and agreed together and/or with other individuals, known and unknown, to affect commerce in any way or degree by extortion.

39. Copies of all documents, notes, logs, and/or memoranda supporting any of the overt acts/predicate acts/and other charged conduct in any count of the Indictment, including but not limited to all such documentary material supporting any racketeering act.

40. Copies of any inventory, log, list, and description of any property subject to forfeiture as referenced in paragraph 15 on page 18 of the Indictment.

41. Copies of all post-arrest statements of any defendant in the criminal cases, CR-S-96-98 and CR-S-96-97.

42. Copies of all "rap sheets" of all government witnesses known to date, including Terry Salem, Dresser, Lioco, Dottore, any California Federal employee or ex-employee having anything to do with any of the allegations of bank fraud against California Federal as mentioned in the Indictment, or any Search Warrant or Wiretap Application in this case.

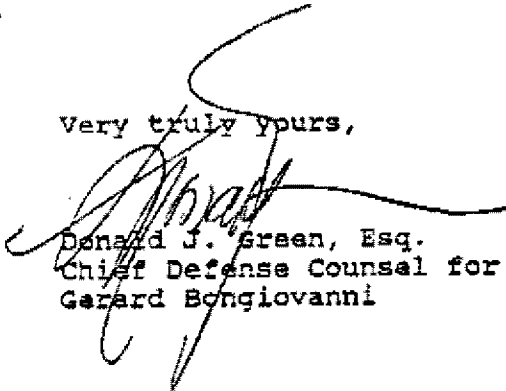
43. Copies of all records of disciplinary proceedings of whatever type against any Federal, State or local Law Enforcement Officer involved in the investigation of any aspect of this case.

44. Copies of all documents, letters, correspondence referencing compliance with all Federal Law Enforcement Guidelines regarding the authorization of "sting" operations involving judicial officers or attorneys, which documents are kept, promulgated and/ or approved by a designated Assistant Director of the Federal Bureau of Investigation and the Undercover Operations Review Committee of the Federal Bureau of Investigation.

45. Copies of all transcriptions of cellular telephone conversations between/among any of the defendants/ suspects/ targets involved in this case, including, but not limited to, copies of the wiretap applications, affidavits and orders for such intercepted calls at anytime during the investigation of this case.

Should the Government be of the position that all or part of this requested information will not be disclosed, then would you be so kind as to state the reasons in writing so that appropriate action can be taken in Court.

Very truly yours,



Donald J. Green, Esq.  
Chief Defense Counsel for  
Gerard Bongiovanni

cc: (1) O. Goodman, Esq.  
(2) G. Bongiovanni

NR1P0-08009-R0050625

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DEC 10 1997

United States District Court  
District of Nevada  
Las Vegas, Nevada

CLERK, U.S. DISTRICT COURT  
DISTRICT OF NEVADA

BY: *[Signature]* DEPUTY

UNITED STATES OF AMERICA

Plaintiff

vs.

GERARD J. BONGIOVANNI

Defendant

Docket No. CR-S-96-098-LDG(RJJ)

Las Vegas, Nevada  
December 9, 1997  
8:49 a.m.

JURY TRIAL - DAY 5

THE HONORABLE LLOYD D. GEORGE PRESIDING  
CHIEF UNITED STATES DISTRICT COURT JUDGE

COURT RECORDER:

JUDY WATSON  
U.S. District Court

TRANSCRIPTION BY:

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produced by transcription service.

NO

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JA008254

MR 11P0-08809-BONG0626

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3

1 PROCEEDINGS BEGIN AT 8:49 A.M.

2 (Jury is present)

3 THE COURT: Please be seated.

4 THE CLERK: This is the time set for Day 5 of the  
5 jury trial in Criminal-S-96-098-LDG(RJJ), United States of  
6 America versus Gerard Bongiovanni.

7 Counsel, please note your appearance.

8 MS. SHOEMAKER: Jane Shoemaker and Eric Johnson for  
9 the United States.

10 THE COURT: Thank you.

11 MR. PITARO: Tom Pitaro with Gerry Bongiovanni.

12 THE COURT: Thank you, Mr. Pitaro.

13 Will counsel stipulate to the presence of the jury?

14 MR. PITARO: Yes, Your Honor.

15 MS. SHOEMAKER: Yes, Your Honor.

16 THE COURT: You may continue.

17 MS. SHOEMAKER: Thank you.

18 JERRY HANFORD, PLAINTIFF'S WITNESS, REMAINS UNDER OATH

19 DIRECT EXAMINATION (Continued)

20 MS. SHOEMAKER: Government would move for admission  
21 of Exhibit 54.

22 THE COURT: 54?

23 MS. SHOEMAKER: Yes, Your Honor.

24 THE COURT: Okay.

25 MS. SHOEMAKER: Is Exhibit 54 received, Your Honor?

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MR: PPO-08009-BONG0627

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4

1 THE COURT: I'm sorry?

2 MS. SHOEMAKER: Is Exhibit 54 received?

3 MR. PITARO: Let me take a look first.

4 THE COURT: Okay.

5 MR. PITARO: No problem.

6 THE COURT: Okay. It will be received.

7 (Plaintiff's Exhibit No. 54 admitted)

8 MS. SHOEMAKER: Thank you, Your Honor.

9 Pursuant to stipulation of the parties, Exhibit 54  
10 is a recorded conversation occurring on July 25th, 1994 at  
11 1959 military time, which is 7:59 p.m. It was an outgoing  
12 call from Paul Dottore's home telephone to Gerard Bongiovanni,  
13 and the participants are Gerard Bongiovanni and Paul Dottore.

14 May we play the tape at this time?

15 THE COURT: You may.

16 (Plaintiff's Exhibit No. 54 is played)

17 MS. SHOEMAKER: At this time I would move for  
18 admission of Exhibit 146-1, which is in binder number 3.

19 THE COURT: 146-1?

20 MS. SHOEMAKER: Yes, Your Honor.

21 THE COURT: Any objection, counsel?

22 MR. PITARO: Yes, Your Honor, under Rule 106. They  
23 cut this tape off right in the middle, right before Jerdan  
24 gets back on and -- and says, the guy is going to go down and  
25 take care of it himself; and that's when they cut the tape

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1 off.

2 THE COURT: Okay.

3 MR. PITARO: And I have the complete tape here that  
4 we can hear it.

5 THE COURT: Okay. Do you have any problem playing  
6 the complete tape? How long is it?

7 MR. PITARO: It's not much longer after that, Judge.  
8 It just -- they go in, they're talking, and then -- and then  
9 they get back and they -- Jerdan says, well, he doesn't want  
10 to do it, he'll go down himself and then I'll charge him more  
11 when he comes back.

12 THE COURT: Okay. You have any problem if the  
13 complete tape is played?

14 MS. SHOEMAKER: Your Honor, Mr. Pitaro didn't  
15 previously tell us that he wanted to play this whole tape, so  
16 I haven't reviewed the entire tape to find out whether there's  
17 anything objectionable in it.

18 MR. PITARO: Well, that's not true, it's in the book  
19 I gave you. I gave you the transcript and the tape; I gave  
20 you the transcript from your tape.

21 THE COURT: No, she's talking about the list that  
22 you had the 106 problem on.

23 MR. PITARO: No, I did. These are the 106 cases;  
24 that's what they were.

25 THE COURT: You identified --



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6

1 MR. PITARO: Uh-huh.

2 MS. SHOEMAKER: I apologize, Your Honor, then,  
3 because I had been given thirty transcripts by Mr. Pitaro  
4 previously that he indicated was his 106 objections, and when  
5 we got the binder it was with the understanding that that was  
6 stuff he intended to impeach Terry Salem and Paul Dottore  
7 with. So I have not reviewed it with that in mind.

8 However, even if the end of the tape has just what  
9 Mr. Pitaro is saying and that there wasn't anything  
10 objectionable in it, we believe Mr. Pitaro should be -- try to  
11 put that in through cross-examination or in his case. At this  
12 point it doesn't really matter whether or not the person  
13 ultimately wound up going through it. These are still co-  
14 conspirator statements at this point in time and it's another  
15 instance of Paul Dottore talking about what it would cost to  
16 have the tickets done.

17 MR. PITARO: Judge, this isn't my tape, it's the  
18 tape that they gave me.

19 THE COURT: Oh, I --

20 MR. PITARO: They didn't put the whole transcript  
21 in --

22 THE COURT: I understand.

23 MR. PITARO: -- and I gave them the full transcript  
24 back, which was their transcript.

25 THE COURT: Well, I want to avoid playing the tape

1 twice.

2 MS. SHOEMAKER: May I take a moment then to review  
3 the transcript that Mr. Pitaro provided?

4 THE COURT: Yes.

5 MS. SHOEMAKER: And we may --

6 THE COURT: Go ahead.

7 MS. SHOEMAKER: -- does he have --

8 THE COURT: Yeah.

9 MS. SHOEMAKER: -- the entire tape?

10 THE COURT: Why don't you go ahead and do that.

11 MS. SHOEMAKER: May I ask if I can see Mr. Pitaro's  
12 copy of it? Because we have that binder back at the office.

13 THE COURT: Sure. Mr. Pitaro? Mr. Pitaro?

14 MR. PITARO: Yes, Judge.

15 THE COURT: Will you let counsel take a look at your  
16 copy of the transcript? She doesn't have that with her.

17 MR. PITARO: It's in the book I gave 'em.

18 THE COURT: I understand. They don't have that  
19 here. If you'll let her take a look at your --

20 MR. PITARO: Want my notes, too?

21 MS. SHOEMAKER: No.

22 THE COURT: Have you provided that for the jury as  
23 well?

24 MR. PITARO: Ahh --

25 THE COURT: Copies of the transcript?

MR 100-00009-BONG0631

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8

1 MR. PITARO: Actually, they have books of  
2 everything.

3 THE COURT: Okay. And what number is it?

4 MR. PITARO: 549-5.

5 THE COURT: Say again.

6 MR. PITARO: 549 dash 5.

7 THE COURT: And it's tabbed 549-5?

8 MR. PITARO: Yes.

9 THE COURT: Okay. Let me invite the jury to stand  
10 by just a moment, and then you may need to change books, too.  
11 Garon, why don't you go over and get the transcript.

12 (Off-record colloquy)

13 (Pause in the proceeding)

14 THE COURT: Now you said it was 549- what?

15 MR. PITARO: 5, dash 5.

16 (Off-record colloquy)

17 MS. SHOEMAKER: Actually, Your Honor, it's a second  
18 conversation that Mr. Pitaro is referring to, and there's a  
19 lot of other material in here. But I don't have any objection  
20 with the two being played together.

21 THE COURT: Okay. 549-5 will also be received,  
22 which is Defendant's exhibit.

23 (Plaintiff's Exhibit No. 146-1 and Defendant's Exhibit  
24 No. 549-5 admitted)

25 THE COURT: And you may play the tape.

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1 Do all of the jurors have the ---

2 MS. SHOEMAKER: Pursuant to the stipulation of the  
3 parties, this is a conversation that occurred on February 8th,  
4 1995 at 1301 military time, which would be 1:01 in the  
5 afternoon. It was an incoming call on Paul Dottore's home  
6 telephone between -- a conversation between Paul Dottore and  
7 Jack Jerdan, at least with respect to the first conversation.  
8 The second conversation is a follow-up call -- if Mr. Pitaro  
9 could just state the date and time of the follow-up call, and  
10 if -- I believe the participants are still Paul Dottore and  
11 Jack Jerdan in the follow-up call.

12 THE COURT: Do you know that date, Mr. Pitaro?

13 MR. PITARO: Your Honor, it -- it's the continuing  
14 call.

15 MS. SHOEMAKER: Transcript says it's a second call.

16 MR. PITARO: That's right, because he's talking to  
17 somebody else. But it's exactly the same time; they're in  
18 sequence.

19 MS. SHOEMAKER: We'll accept that.

20 MR. PITARO: Judge, just for the record, they all  
21 came off -- the government provided me a tape that they  
22 identified as tape 299. Tape 299 is my copy. What they did  
23 is they cut 299 off and made their 146-1. All I did was keep  
24 going on their tape 299 to the end.

25 THE COURT: Oh, I think they understand that.

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10

1 MS. SHOEMAKER: May we play the tape at this time,  
2 Your Honor?

3 THE COURT: Okay. You may play the tape.

4 MS. SHOEMAKER: Thank you.

5 (Defendant's Exhibit No. 549-5 is played)

6 MS. SHOEMAKER: At this time I'd move for admission  
7 of Government Exhibit 167.

8 THE COURT: 157?

9 MS. SHOEMAKER: 167.

10 THE COURT: Any objection, counsel?

11 MR. PITARO: If I could just take a minute to get  
12 this.

13 You said 1-6-77

14 MS. SHOEMAKER: Yes.

15 THE COURT: 1-6-77

16 MS. SHOEMAKER: Yes, Your Honor.

17 MR. PITARO: No, Your Honor.

18 THE COURT: Received.

19 (Plaintiff's Exhibit No. 167 admitted)

20 MS. SHOEMAKER: Thank you.

21 Pursuant to the stipulation of the parties, Exhibit  
22 167 is a recorded conversation occurring on October 11th, 1995  
23 at 2115 military time, which is 9:15 p.m. It was an outgoing  
24 call from Paul Dottore to Judge Bongiovanni at his home.

25 May we play the tape at this time?

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11

1 THE COURT: You may.

2 (Plaintiff's Exhibit No. 167 is played)

3 MS. SHOEMAKER: At this time I would move for the  
4 first of a series of calls, this one being Exhibit 139.

5 THE COURT: 139?

6 MS. SHOEMAKER: Yes, Your Honor.

7 MR. PITARO: No objection.

8 THE COURT: Received.

9 (Plaintiff's Exhibit No. 139 admitted)

10 MS. SHOEMAKER: Thank you.

11 Pursuant to the stipulation of the parties, Exhibit  
12 139 is a recorded conversation on February 1st, 1995 at 11:25  
13 in the morning. It was an outgoing call from Paul Dottore to  
14 Gerard Bongiovanni at his chambers telephone, and Del Potter  
15 is also intercepted in this call.

16 May we play the tape at this time?

17 THE COURT: You may.

18 (Plaintiff's Exhibit No. 139 is played)

19 MS. SHOEMAKER: Government would move for admission  
20 of another one of the calls in this series, which is marked  
21 Exhibit 140.

22 THE COURT: Any objection, counsel?

23 MR. PITARO: No, Your Honor.

24 THE COURT: Received.

25 (Plaintiff's Exhibit No. 140 admitted)

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1 MS. SHOEMAKER: Thank you.

2 Pursuant to the stipulation of the parties, Exhibit  
3 140 is a recorded conversation occurring on February 1st, 1995  
4 at 11:32 in the morning. It was an outgoing call from Paul  
5 Dottore to 702-361-2060, and the other participant in the  
6 conversation is Mickey Gresser.

7 May we play the tape at this time?

8 THE COURT: You may.

9 (Plaintiff's Exhibit No. 140 is played)

10 MS. SHOEMAKER: I'd move for the admission of  
11 Exhibit 141, which is another call in this series.

12 THE COURT: Any objection, counsel?

13 MR. PITARO: No, Your Honor.

14 THE COURT: Received.

15 (Plaintiff's Exhibit No. 141 admitted)

16 MS. SHOEMAKER: Thank you.

17 Pursuant to the stipulation of the parties, Exhibit  
18 141 is a recorded conversation occurring on February 2nd, 1995  
19 at 1547 military time, which is 3:47 in the afternoon. It was  
20 an outgoing call from Paul Dottore's home telephone to 702-  
21 361-2060, and the other participant is Mickey Gresser.

22 May we play the tape at this time?

23 THE COURT: You may.

24 MS. SHOEMAKER: Thank you.

25 (Plaintiff's Exhibit No. 141 is played)

1 MS. SHOEMAKER: At this time I would move for  
2 admission of Exhibit 142, which is another call in this  
3 series.

4 THE COURT: Any objection, counsel?

5 MR. PITARO: No, Your Honor.

6 THE COURT: Received.

7 (Plaintiff's Exhibit No. 142 admitted)

8 MS. SHOEMAKER: Pursuant to the stipulation of the  
9 parties, Exhibit 142 is a recorded conversation on February  
10 7th, 1995 at 9:42 in the morning. It was an outgoing call  
11 from Paul Dottore's home telephone to the chambers telephone,  
12 Gerard Bongiovanni's chambers telephone. And the participants  
13 in the conversation are initially Paul Dottore and Gerard  
14 Bongiovanni, and then Del Potter becomes a participant in the  
15 call.

16 May we play the tape at this time?

17 THE COURT: You may the tape.

18 MS. SHOEMAKER: May we play the tape, Your Honor?

19 THE COURT: Yes.

20 MS. SHOEMAKER: Thank you.

21 (Plaintiff's Exhibit No. 142 is played)

22 MS. SHOEMAKER: At this time I would move for  
23 admission of Exhibit 143, which is another call in this  
24 series.

25 THE COURT: Any objection?



1 MR. PITARO: Could I have the Court's indulgence one  
2 minute.

3 (Pause in the proceeding)

4 MR. PITARO: Your Honor, I'm going to have to  
5 object. This -- this ticket -- this young lady had gone down  
6 the night before and already pled no contest to this ticket.  
7 And they're playing tapes that it's obvious that Dottore, and  
8 Gresser in these tapes, that they don't know she's already  
9 disposed of the matter. And they're playing as if this is  
10 something that's going to happen in the future.

11 MS. SHOEMAKER: I don't believe that's the case,  
12 Your Honor. The tapes show that this reduced fine has been  
13 arranged here, that golf balls were given in exchange; there's  
14 a further reference in this conversation regarding those golf  
15 balls. And there's a later call that would be played in this  
16 series that also pertains to those golf balls actually having  
17 been given in exchange for it.

18 MR. PITARO: Judge, the official court record shows  
19 that on February 6th, the day before, at 6:00 o'clock Judge  
20 Ken Proctor took a no contest plea and amended it to illegal  
21 parking, the night before at 6:00.

22 THE COURT: Okay. Well, you'll be able to have --  
23 I'm going to go ahead and receive the tape. You certainly  
24 will have an opportunity to present at the appropriate time  
25 the record.

1 (Plaintiff's Exhibit No. 143 admitted)

2 MS. SHOEMAKER: Thank you, Your Honor.

3 THE COURT: Go ahead and play the tape.

4 MS. SHOEMAKER: Pursuant to the stipulation of the  
5 parties, Exhibit 143 is a recorded conversation on February  
6 7th, 1995 at 9:48 in the morning. It was an outgoing call  
7 from Paul Dottore to 702-361-2060, and the other speaker is  
8 Mickey Gresser.

9 May we play the tape at this time?

10 THE COURT: You may.

11 MS. SHOEMAKER: Thank you.

12 (Plaintiff's Exhibit No. 143 is played)

13 MS. SHOEMAKER: At this time I would move for  
14 admission of 155, which is another call in the series.

15 MR. PITARO: Your Honor, I'm going to object on  
16 relevancy.

17 MS. SHOEMAKER: Your Honor, in the end of the  
18 conversation there's a reference about -- when Mr. Dottore  
19 tells Mr. Bongiovanni he's going to drop off the golf balls.

20 MR. PITARO: Your Honor, this is supposedly two  
21 weeks after this thing. There's nothing that relates it to  
22 anything.

23 MS. SHOEMAKER: There'll be another follow-up  
24 conversation immediately after this call, Your Honor, that was  
25 played -- was recorded the next day that ties it in with the

1 earlier calls.

2 THE COURT: The objection is overruled.

3 (Plaintiff's Exhibit No. 155 admitted)

4 MS. SHOEMAKER: Pursuant to the stipulation of the  
5 parties, Exhibit 155 is a recorded conversation occurring on  
6 February 16th, 1995 at 1951 military time, which is 7:51 in  
7 the evening. It was an outgoing call from Paul Dottore to  
8 Gerard Bongiovanni's home telephone number. The speakers are  
9 Paul Dottore and Gerard Bongiovanni, except in the beginning  
10 of the call Angie Bongiovanni is intercepted as well.

11 May we play the tape at this time?

12 THE COURT: You may.

13 MS. SHOEMAKER: Thank you.

14 (Plaintiff's Exhibit No. 155 is played)

15 MS. SHOEMAKER: At this time I would move for  
16 admission of the final call in this series, which is Exhibit  
17 157.

18 (Pause in the proceeding)

19 MR. PITARO: No problem, Your Honor.

20 THE COURT: Received.

21 (Plaintiff's Exhibit No. 157 admitted)

22 MS. SHOEMAKER: Thank you.

23 Pursuant to the stipulation of the parties, Exhibit  
24 157 is a recorded conversation on February 17th, 1995 at 1547  
25 military time, which is 3:47 in the afternoon. It was an

1 incoming call at Paul Dottore's home telephone, and the other  
2 participant -- well, the two participants are Paul Dottore and  
3 Mickey Gresser.

4 May we play the tape at this time?

5 THE COURT: Yes.

6 (Plaintiff's Exhibit No. 157 is played)

7 MS. SHOEMAKER: Your Honor, yesterday I had moved  
8 for the admission of a series of tapes pertaining to another  
9 ticket that the Court indicated it was going to reserve ruling  
10 on. I would move for admission of the first of those calls at  
11 this time. And I would point out --

12 THE COURT: Is that 1, 3 and 18?

13 MS. SHOEMAKER: Yes, Your Honor. However, I forgot  
14 to mention that Exhibit Number 2 was also part of that series.

15 THE COURT: Okay. Well, what's different today?

16 MS. SHOEMAKER: I just -- I thought the Court was  
17 indicating yesterday that it was just going to reserve ruling  
18 on it so that it could look at it.

19 MR. PITARO: I don't think that's what the Court  
20 said.

21 THE COURT: Well, I -- it was my understanding that  
22 you were either going to provide some means of -- this appears  
23 to be a totally different -- does it stand independent, is  
24 that what you're suggesting?

25 MS. SHOEMAKER: Your Honor, we're offering it as two

1 things, part as the conspiracy to defraud theory on the -- we  
2 believe the jury can draw an inference that there was a  
3 payment in exchange for this ticket being handled. In  
4 addition, even if a payment was not made, that it was being  
5 done as a favor for a friend. And these tapes tie it in  
6 directly to the defendant.

7 Exhibit 18 could be construed as a quid pro quo. It  
8 could also be construed as the receipt of a gift in a  
9 situation that's prohibited under the ethical standards.

10 (Pause in the proceeding)

11 THE COURT: I think they address an issue that --  
12 that's appropriate.

13 Do you have any objection to these tapes, counsel?

14 MR. PITARO: I did, Your Honor, and I thought we  
15 ruled on it yesterday. So the same objection --

16 THE COURT: No, I didn't --

17 MR. PITARO: -- I had yesterday is the same one I  
18 had today.

19 THE COURT: I've --

20 MR. PITARO: We have this last tape which is seven  
21 weeks later that has nothing to do with the thing that  
22 happened seven weeks before.

23 And she's given us two speculations, maybe we can  
24 have a third or a fourth. But her speculation doesn't tie  
25 anything in to anything.

1 THE COURT: Well, I'm going to --

2 MR. PITARO: And that's all it is.

3 THE COURT: -- I'm going to allow the first two  
4 tapes, and then you can address the issue as to the other  
5 tapes.

6 MS. SHOEMAKER: Your Honor, when you say the first  
7 two tapes were you referring to 1 and 3 or -- 'cause I was  
8 going to be introducing -- or offering Exhibit 2 as well --

9 THE COURT: No, I've read 1 and 2. I think  
10 particularly 2 addresses an issue that is appropriate. So for  
11 the time being -- I presume you want to play 1 and 2, and then  
12 it's been suggested that the balance of the tapes have nothing  
13 to do with this. I'll leave it to you to tie them in some  
14 way. Okay?

15 MS. SHOEMAKER: Thank you, Your Honor. So 1 and 2  
16 are being received at this time?

17 THE COURT: They are received.

18 (Plaintiff's Exhibit Nos. 1 and 2 admitted)

19 MS. SHOEMAKER: Thank you, Your Honor.

20 Pursuant to the stipulation of the parties, Exhibit  
21 1 is a recorded conversation on February 4th, 1994 at 2005  
22 military time, which is 8:05 p.m. It's an outgoing call from  
23 Paul Dottore's home telephone to Gerard Bongiovanni's home  
24 telephone, and the speakers are Paul Dottore and Gerard  
25 Bongiovanni.

1 May we play the tape at this time?

2 THE COURT: You may.

3 MS. SHOEMAKER: Thank you.

4 (Plaintiff's Exhibit No. 1 is played)

5 MS. SHOEMAKER: Pursuant to the stipulation of the  
6 parties, Exhibit 2 is a recorded conversation on February 4th,  
7 1994, at 2056 military time, which is 8:56 p.m. It was an  
8 outgoing call from Paul Dottore's home telephone to 702-631-  
9 4913. It's a conversation between Paul Dottore and Greg Lioce  
10 with Gerard Bongiovanni intercepted in the background.

11 May we play this tape at this time?

12 THE COURT: You may play the tape.

13 (Plaintiff's Exhibit No. 2 is played)

14 MS. SHOEMAKER: At this time, the government would  
15 move for admission of Exhibit 46.

16 THE COURT: 46?

17 MS. SHOEMAKER: Yes, Your Honor.

18 THE COURT: Now is this something totally separate?

19 MS. SHOEMAKER: Yes, Your Honor. I mean, it's  
20 another ticket, but it's a new matter.

21 THE COURT: Well, you know, with respect to the last  
22 matter you had talked about 1 and 3 and 18. You have now  
23 played 1 and 2. If I understood correctly, you were saying  
24 that there was no sequence to this, this was weeks or months  
25 later. It appears as though this next call, 3, is in close

1 proximity. It's --

2 MS. SHOEMAKER: 3 was --

3 THE COURT: 2, 6 is --

4 MS. SHOEMAKER: -- Your Honor.

5 THE COURT: It's two days later.

6 MS. SHOEMAKER: It -- I believe it was Exhibit 18  
7 that Mr. Pitaro was referring to as being a matter of weeks  
8 later.

9 THE COURT: Okay. But you're now not asking the  
10 Court to receive 3 or 18 is that correct?

11 MS. SHOEMAKER: If the Court's willing to accept 3  
12 at this time, I would -- I would offer it at this time.

13 THE COURT: Well, it would appear to me that it's in  
14 close proximity, if it's part of the same -- it is -- it's not  
15 separated by a long time frame.

16 MS. SHOEMAKER: If we may receive that tape at this  
17 time, that's what I would move for, Your Honor, and we'll wait  
18 on Exhibit 18 until a later time.

19 THE COURT: Okay.

20 MR. PITARO: Your Honor --

21 THE COURT: You're still --

22 MR. PITARO: On -- on 3 --

23 THE COURT: -- objecting to 3, are you?

24 MR. PITARO: Sure. I mean, 3 says that -- why don't  
25 we go down, I'll see you for lunch tomorrow, or that Greg's --



1 Greg will be coming down for lunch, and then neither Dottore  
2 or Greg go down for lunch. So please tell me what the  
3 relevance of saying, I'll see you for lunch, and then no one  
4 goes down to lunch has to do with the traffic ticket.

5 THE COURT: Okay.

6 MR. PITARO: It boggles my mind --

7 THE COURT: Well --

8 MR. PITARO: -- as well as an objection.

9 THE COURT: Okay.

10 MS. SHOEMAKER: Your Honor, Exhibit 3 also shows  
11 further the friendship between the defendant and Mr. Lioce,  
12 and it also shows the defendant's financial situation which  
13 would also be relevant as to --

14 THE COURT: Okay. Well --

15 MS. SHOEMAKER: -- the issues that we're all --

16 THE COURT: -- I'm going to sustain the objection if  
17 that's what you're dealing with.

18 So we're back now with --

19 MS. SHOEMAKER: 46. We'll move for the admission of  
20 Exhibit 46.

21 THE COURT: Do you have any objection to --

22 MR. PITARO: Yes, Your Honor. 46 is -- is hearsay,  
23 it has nothing to do with this case. It's a person who was  
24 first unknown and it has nothing to do with Gerard  
25 Bongiovanni.

1 THE COURT: What does it have to do with this case?

2 MS. SHOEMAKER: We disagree with that, Your Honor.  
3 We believe that it does have to do with the defendant, and  
4 also his law clerk as an agent and we're offering it under  
5 801.

6 THE COURT: With what now?

7 MS. SHOEMAKER: We believe that it's another ticket  
8 situation that was going to be handled by the defendant and/or  
9 his law clerk as an agent in exchange for money. It's being  
10 offered under 801(d)(2)(E).

11 MR. PITARO: Judge, what they're talking about is  
12 not a ticket, it's some person asking about his sealing of  
13 records mentioning in Rhode Island and how -- what would have  
14 to do to do it down here and it has nothing to do with talking  
15 about Mr. Bongiovanni.

16 MS. SHOEMAKER: That's not --

17 MR. PITARO: It talks about sealing a record and now  
18 we've got the law clerk as now an agent for purposes of this  
19 case? That's the first time I've heard that one. This tape  
20 says nothing.

21 MS. SHOEMAKER: Your Honor, in this tape, the  
22 defendant -- or Mr. Dottore states that they can't do anything  
23 about the sealing of the record in Rhode Island and they go on  
24 to talk about the ticket that is pending here in Las Vegas and  
25 how that can be handled for money.

1 MR. PITARO: Your Honor, it's clear that the federal  
2 prosecutors have no clue as to how you seal records in state  
3 court because they couldn't be making that assertion --

4 THE COURT: I think she's referring to the second  
5 page. I'm not sure what the sealing has to do with the  
6 matter, but it does appear as though they're talking about  
7 another matter here, counsel.

8 MR. PITARO: What other matter? I'm -- that's what  
9 I'm missing.

10 THE COURT: Well, you're talking about --

11 MS. SHOEMAKER: It's clear on page 2 what the  
12 situation is.

13 THE COURT: Yeah, I think -- the objection will be  
14 overruled.

15 MR. PITARO: I don't see anything about a ticket any  
16 place.

17 THE COURT: I've ruled.

18 MR. PITARO: There's nothing on page 2 on a ticket,  
19 Judge.

20 THE COURT: Well --

21 MR. PITARO: -- unless -- unless they've given me a  
22 transcript -- he says, "call your attorney there," meaning in  
23 Rhode Island, "he can do something." I mean, how does this  
24 relate to this man? I mean, they play a tape between Dottore  
25 who seems to know --

1 MS. SHOEMAKER: Your Honor, Mr. Pitaro will have an  
2 opportunity to ask Mr. Dottore about this if he believes it  
3 has something --

4 MR. PITARO: Well, you have to --

5 MS. SHOEMAKER: -- to do with something else.

6 MR. PITARO: -- it has to be relevant to get in. I  
7 mean, how does it relate to Bongiovanni? First, you said it  
8 says there's a ticket.

9 THE COURT: Now you're asserting that the --

10 MR. PITARO: -- I read it, there's no ticket.

11 THE COURT: -- just a minute, you're asserting that  
12 the second matter involves something out of state that it  
13 doesn't -- what does tie it here locally?

14 MS. SHOEMAKER: Your Honor, in the beginning of the  
15 call it's clear that the defendant is -- or excuse me, Mr.  
16 Dottore was telling the individual on the call that they can't  
17 do anything about sealing something in Rhode Island, but with  
18 respect to the charge here that they can handle that, and that  
19 it's going to cost a buck seventy-five and whatever you want  
20 to give him, and he goes on to talk about, you know, how much  
21 it's going to cost and how they're going to be able to handle  
22 it here.

23 THE COURT: Well, where does it --

24 MS. SHOEMAKER: That's on page 2, Your Honor. Up at  
25 the top, it stated, "the stuff here is no problem." He goes

1 on to ask "what is it for," the individual talks about it  
2 being one charge, Dottore at the bottom of the page starts  
3 talking about it being a buck seventy-five --

4 THE COURT: That is talking about a local matter,  
5 counsel.

6 MR. PITARO: Judge, if I may, a hundred and seventy-  
7 five dollars is what it cost to file a petition to seal  
8 records in the district -- the state district court over  
9 there. You file a petition, then it's sent to the DA, the DA  
10 signs the stipulation and the stipulation signed by the DA is  
11 then assigned to a court and it's sent there. That's all a  
12 hundred seventy-five is.

13 Now whether they're talking about Pete Flangas, an  
14 attorney, there's nothing in there. Now to assume that  
15 because it doesn't say anything it means that there's some  
16 impropriety in Gerry Bongiovanni, strains, strains  
17 credibility.

18 Now, I mean, we can play this and what we end up  
19 having is the same thing. Remember we started out this was  
20 talking about a ticket, then there's no ticket in it.

21 THE COURT: Well, it doesn't mention a ticket and --

22 MR. PITARO: It does not, right?

23 MS. SHOEMAKER: But, Your Honor, there's been a  
24 number of tapes that have been introduced into evidence  
25 already and there'll be additional evidence that will show

1 clearly that based on Mr. Dottore's relationship with the  
2 defendant, he was able to have the defendant, and his staff as  
3 agents of the defendant, do a number of things.

4 THE COURT: Well, I understand, but this --

5 MR. PITARO: That's not alleged at all.

6 THE COURT: -- this raise -- just a minute, this  
7 raises at a minimum an ambiguity. If -- without tying that  
8 in, I'm going to sustain the objection.

9 Next?

10 MS. SHOEMAKER: Government would move for Exhibit  
11 82.

12 THE COURT: 82?

13 MS. SHOEMAKER: Admission of 82, yes, Your Honor.

14 (Pause in the proceedings)

15 MS. SHOEMAKER: I'm sorry. For the Court and the  
16 jurors, that's in binder number 2.

17 THE COURT: Okay. Any objection, counsel?

18 MR. PITARO: No, Your Honor.

19 THE COURT: Okay.

20 MR. PITARO: Actually yes, Your Honor. I -- where  
21 Dottore's claiming that he did something, the --

22 (Off-record colloquy)

23 MR. PITARO: -- ticket clearly shows that this  
24 matter --

25 MR. PITARO: Judge --

1 THE COURT: Yes.

2 MR. PITARO: -- quite true the ticket shows that  
3 this matter was handled at the traffic counter under the  
4 normal procedure of traffic court and I have a certified copy  
5 of that right here.

6 MS. SHOEMAKER: Your Honor, it's being offered under  
7 801(d)(2)(E). Paul Dottore is saying that he got this  
8 person's daughter's ticket back, and from all the evidence in  
9 the case the jury could find that that was that he got it back  
10 from the defendant and Mr. Pitaro can cross-examine Paul  
11 Dottore about that if he believes that it was handled some  
12 other way.

13 MR. PITARO: Your Honor, what we're having are tapes  
14 where Dottore is either -- whether he's scamming or doing it  
15 or whatever --

16 THE COURT: Counsel, let me have you come to --

17 MR. PITARO: -- this ticket went through the traffic  
18 calendar --

19 THE COURT: -- sidebar for just a moment.

20 (Discussion at sidebar)

21 THE COURT: It would seem to me, Mr. Pitaro, that  
22 you try the case however you want, but try it, but if they  
23 present evidence and you have contrary evidence, it would  
24 almost seem to me that that's beneficial to the defendant to  
25 say that, sure this conversation occurred, but this is

1 evidence of what really happened. And we're spending an awful  
2 lot of time --

3 MR. PITARO: Well --

4 THE COURT: -- getting --

5 MR. PITARO: With all due respect, if -- past  
6 practice, the way we've done this before, as soon as I ask  
7 anything about it, there'll be an objection that'll be, well,  
8 you know, he --

9 THE COURT: Well, that's not so.

10 MR. PITARO: -- probably didn't ask it.

11 THE COURT: That's not so. If you've got evidence  
12 to the contrary --

13 MR. PITARO: Well, but don't you --

14 THE COURT: -- of course it'll come in.

15 MR. PITARO: -- but don't you think the government  
16 -- what, you wouldn't let me put the -- the indictment in that  
17 showed it went to a different department. When I -- when we  
18 had Salem on the stand --

19 THE COURT: The evidence is clear that it --

20 MR. PITARO: It doesn't matter. You're right, I  
21 have to try my case, but --

22 THE COURT: Well, now, just -- just a minute.

23 MR. PITARO: All I'm --

24 THE COURT: So that you're not making any -- you  
25 didn't bring a certified copy over here and they objected



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1 based upon that.

2 MR. PITARO: No, they didn't.

3 THE COURT: That's why -- well, they did object to  
4 it.

5 MR. PITARO: No, you objected. You said it wasn't  
6 certified. They -- they did not. They said they didn't think  
7 it was relevant.

8 MR. JOHNSON: We said that we would agree that -- to  
9 stipulate that the case was assigned to a different court but  
10 that we did not want the actual allegations of the indictment  
11 to be submitted.

12 THE COURT: Well, it didn't come in because it  
13 wasn't certified --

14 MR. PITARO: Well, I'll bring it certified.

15 THE COURT: -- and in any event, but the evidence is  
16 clear --

17 MR. PITARO: My point, Judge is --

18 THE COURT: -- before the jury, so that's --

19 MR. PITARO: -- my point -- my --

20 THE COURT: -- nonsense, Mr. Pitaro.

21 MR. PITARO: My point --

22 THE COURT: Absolute nonsense.

23 MR. PITARO: Well, I -- respectfully disagree. My  
24 point in this is we have these tickets, that they're -- that  
25 they're making the assertions knowing that these -- knowing

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1 that the assertions are untrue, Judge. They're the  
2 government. They're supposed to be -- they're supposed to be  
3 the ones in search of truth, not in search of deception.

4 THE COURT: Well, we'll go ahead and play 'em and  
5 then if you have something and I see that you've certified it  
6 now and it addresses to this to this case then we'll go from  
7 there. Let's move on.

8 MS. SHOEMAKER: Thank you, Your Honor.

9 (End of discussion at sidebar)

10 MS. SHOEMAKER: Is Exhibit 82 received, Your Honor?

11 THE COURT: Is received.

12 MS. SHOEMAKER: Thank you.

13 (Plaintiff's Exhibit No. 82 admitted)

14 MS. SHOEMAKER: Pursuant to the stipulation of the  
15 parties, Exhibit 82 is a recorded conversation that occurred  
16 on December 6th, 1994, at 11:24 a.m. It was an outgoing call  
17 from Paul Dottore's home telephone to 702-456-1853. The  
18 speakers in the conversation at Paul Dottore and Bob Anderson.

19 May we play the tape at this time?

20 THE COURT: You may play the tape.

21 (Plaintiff's Exhibit No. 82 is played)

22 MS. SHOEMAKER: At this time, Your Honor, I'm going  
23 to be moving for the admission of a series of calls pertaining  
24 to a new matter. The first tape I would move for admission of  
25 is Exhibit 29 which is in binder number 1.

1 THE COURT: 29?

2 MS. SHOEMAKER: Yes, Your Honor.

3 THE COURT: Any objection?

4 MR. PITARO: Yes, Your Honor, it's hearsay.

5 MS. SHOEMAKER: It's being offered under  
6 801(d)(2)(E), Your Honor.

7 MR. PITARO: I don't think it's admissible under  
8 801.

9 THE COURT: The objection's overruled. It'll be  
10 received.

11 MS. SHOEMAKER: Thank you.

12 (Plaintiff's Exhibit No. 29 admitted)

13 MS. SHOEMAKER: Pursuant to the stipulation of the  
14 parties, Exhibit 29 is a recorded conversation occurring on  
15 May 10th, 1994 at 1748 military time which is 5:48 in the  
16 evening. It was an incoming call on Paul Dottore's home  
17 telephone. The speakers are Paul Dottore and Kenneth Lombard.

18 May we play the tape at this time?

19 THE COURT: You may.

20 (Plaintiff's Exhibit No. 29 is played)

21 MS. SHOEMAKER: The government would move for a  
22 follow-up call, Exhibit 30.

23 THE COURT: Any objection, counsel?

24 MR. PITARO: Yes, same objection. Relevancy, Judge.

25 THE COURT: Okay. The objection's overruled.

1 The --

2 MS. SHOEMAKER: Thank you. Pursuant to the --

3 THE COURT: -- tape will be received.

4 (Plaintiff's Exhibit No. 30 admitted)

5 MS. SHOEMAKER: Thank you, Your Honor. Pursuant to  
6 the stipulation of the parties, Exhibit 30 is a tape recorded  
7 conversation occurring on May 10th, 1994, at 1758 military  
8 time which is 5:58 p.m. It was an outgoing call from Paul  
9 Dottore's home telephone to Defendant Bongiovanni's home  
10 telephone and the speakers are Paul Dottore and Gerard  
11 Bongiovanni.

12 May we play the tape at this time?

13 THE COURT: You may.

14 (Plaintiff's Exhibit No. 30 is played)

15 MS. SHOEMAKER: At this time the government would  
16 move for admission of a follow-up call, Exhibit 33.

17 MR. PITARO: Your Honor, I would object to the call  
18 up -- follow-up call. There was two intermediary calls  
19 between that -- between Paul -- one with Paul Dottore and  
20 Bongiovanni, another one with Dottore and Uncle Billy before  
21 we even get to 33, so the idea that this --

22 THE COURT: Would you want the other two called?

23 MR. PITARO: What's that?

24 THE COURT: You want the other two played?

25 MR. PITARO: Sure --

1 THE COURT: -- preliminary to this?

2 MR. PITARO: -- if they want to play these two.

3 THE COURT: Pardon?

4 MR. PITARO: They pulled 'em out. They pulled 'em  
5 out of their exhibit, but now they're saying that this is the  
6 exact follow-up call. What they did is they eliminated the  
7 other two calls --

8 THE COURT: What about that?

9 MR. PITARO: -- which was their Exhibit 31 --

10 THE COURT: Yes.

11 MR. PITARO: -- and then there was actually my 514  
12 and then there was an Exhibit 32 that they pulled out and now  
13 they're going on 33. So what I'm saying is calling this as  
14 the follow-up call when you leave out three or four -- three  
15 calls at least in between, doesn't seem --

16 THE COURT: Well, you --

17 MR. PITARO: -- like a follow-up call.

18 THE COURT: -- you have those intermediate calls.  
19 Again, you'll be able to --

20 MR. PITARO: No, they pulled 'em out. I had 'em  
21 from the --

22 MS. SHOEMAKER: Mr. Pitaro has the --

23 MR. PITARO: I had 'em from the original tapes.

24 THE COURT: Well, you have them, you can play them  
25 if you choose to. Go ahead.

1 MS. SHOEMAKER: Your --

2 MR. PITARO: Well, I move to strike the follow-up.

3 THE COURT: Well, follow-up -- the immediate -- in  
4 any event, it was not an immediate follow-up from what counsel  
5 is saying.

6 MS. SHOEMAKER: There may -- there were a number  
7 of other calls that we didn't put in because they were  
8 cumulative, and in some cases, they also had other matters  
9 that would not be admissible --

10 THE COURT: Okay.

11 MR. PITARO: Well --

12 MS. SHOEMAKER: -- but there's nothing that's taken  
13 out --

14 MR. PITARO: Well, I --

15 MS. SHOEMAKER: -- out of context, Your Honor.

16 THE COURT: Well, you're acknowledging that there  
17 were intermediate calls and -- but you're telling me that this  
18 call is related --

19 MS. SHOEMAKER: Yes, Your Honor.

20 THE COURT: -- to the earlier calls.

21 MR. PITARO: Well, she's not going to --

22 THE COURT: It's five days later.

23 MR. PITARO: -- she's not going to stand up and say  
24 those other calls aren't related.

25 THE COURT: Pardon?

1 MR. PITARO: I mean, I don't want the impression to  
2 be that those other calls were, these were directly about  
3 getting Lombard --

4 THE COURT: Well --

5 MR. PITARO: -- while he's in jail, so the side --

6 THE COURT: -- the jury can make that assessment,  
7 counsel.

8 MR. PITARO: Well, they can't make it if they didn't  
9 play 'em. All I'm saying, Judge, is she's saying that they're  
10 unrelated --

11 THE COURT: Well, if --

12 MR. PITARO: -- and they are, and she knows it.

13 THE COURT: -- if they are related and you want to  
14 play 'em, I'm telling 'em -- telling you that you can play  
15 them.

16 MS. SHOEMAKER: For the record, Your Honor, I'm not  
17 saying that all -- there are no other related calls. There  
18 are. We cut them out where they're cumulative or there was  
19 also other stuff --

20 THE COURT: You're just choosing to --

21 MS. SHOEMAKER: -- that was inadmissible.

22 THE COURT: -- proceed in this fashion. Mr. Pitaro  
23 may proceed in a different way and that's appropriate as well,  
24 but you're presenting your case, and you're asking to receive  
25 33?

1 MS. SHOEMAKER: Yes, Your Honor.

2 MR. PITARO: Okay. Hold on then. Let me -- give

3 me --

4 THE COURT: And your only objection is that there  
5 were intervening calls?

6 MR. PITARO: Well, let -- give me one moment.

7 THE COURT: Surely.

8 MR. PITARO: We've got so many books of transcripts  
9 -- all right, I have no objection to 33.

10 THE COURT: Okay. 33 will be received.

11 MS. SHOEMAKER: Thank you, Your Honor.

12 (Plaintiff's Exhibit No. 33 admitted)

13 MS. SHOEMAKER: Pursuant to the stipulation of the  
14 parties, Exhibit 33 is a recorded conversation on May 10th,  
15 1994 at 1924 military time, which is 7:24 p.m. It was an  
16 outgoing call from Paul Dottore to Gerard Bongiovanni's home  
17 telephone and the speakers are Paul Dottore and Gerard  
18 Bongiovanni.

19 May we play the tape at this time?

20 MR. PITARO: Actually, I'm sorry, Your Honor, I do  
21 apologize. I pulled the wrong tab. On 33 I actually have the  
22 whole tape and it's my 516.

23 THE COURT: Okay.

24 MR. PITARO: And I'd ask that 516 be played because  
25 33, as you can see, has --



1 THE COURT: So your exhibit is --

2 MR. PITARO: -- breaks in it.

3 THE COURT: -- is a combination of several different  
4 calls, is that right?

5 MR. PITARO: No, mine is the -- the --

6 THE COURT: Entire tape?

7 MR. PITARO: Mine is the conversation. What they've  
8 done is they've -- they've excised out areas on it, and so I  
9 have 516 --

10 THE COURT: Well, do you have any problem with  
11 playing the whole tape?

12 MS. SHOEMAKER: Yes, we do, Your Honor, and we can  
13 come to sidebar if you'd like. There -- we don't believe that  
14 the remainder of the tape is admissible.

15 THE COURT: Well, bring it to sidebar.

16 (Off-record colloquy)

17 (Discussion at sidebar)

18 THE COURT: Come right over here, Mr. Pitaro.  
19 What's the problem?

20 MS. SHOEMAKER: We redacted the end of the  
21 conversation where we started -- where we cut it off.  
22 Bongiovanni starts talking about how he's going to take his --  
23 one of his kids shopping for school stuff and about  
24 medications for his kid which is totally irrelevant, then he  
25 goes on at length trashing Tina Lombard some more and starts

1 talking about how Kenny Lombard wants a divorce and how he  
2 wants Potter to get it started, and that's really irrelevant  
3 to the whole thing, and then at the very end of the  
4 conversation Bongiovanni talks about how Kenneth Lombard  
5 didn't call him directly because he doesn't get any  
6 satisfaction, then he says "Kenny Lombard would say, the cops  
7 are here," and Bongiovanni says, "Well, call me back when I  
8 know what they're going to do. I can't tell the cops what to  
9 do. I'll get a bad name and interfering with their job." But  
10 that --

11 THE COURT: Well, that's really already in --

12 MR. PITARO: No, it isn't.

13 MS. SHOEMAKER: That's --

14 MR. PITARO: This is part of --

15 THE COURT: Just a minute. That -- the idea that  
16 wait until they do what it's going to do and then call me back  
17 is clearly in. I just listened to the tape. It's a little  
18 further, but I'm going to play the entire tape. There's some  
19 of it that's irrelevant, but I will play the entire tape --

20 MR. PITARO: Okay.

21 THE COURT: -- if you've got it.

22 MR. PITARO: I do.

23 THE COURT: Okay. Well, let's play it.

24 THE CLERK: Defendant's 516?

25 MR. PITARO: 516.

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1 (End of discussion at sidebar)

2 (Off-record colloquy)

3 THE COURT: Does the jury have 560?

4 MR. PITARO: Yes, Your Honor.

5 (Off-record colloquy)

6 THE COURT: I do not have 560. Do you have a copy  
7 for me, Mr. Pitaro?

8 MR. PITARO: I -- it should be in that book I gave  
9 you, Judge.

10 THE COURT: It is not in that book that you gave me.

11 THE JURY: 560?

12 THE COURT: 5-6-0?

13 THE CLERK: 5-1-6.

14 THE COURT: 5-1-6?

15 MR. PITARO: 1-6.

16 (Off-record colloquy)

17 THE COURT: Again, this is the call that you've  
18 identified already, is that correct?

19 MS. SHOEMAKER: I don't believe I've identified it  
20 yet, Your Honor.

21 THE COURT: Well, go ahead.

22 MS. SHOEMAKER: This is a -- recorded call of a  
23 conversation occurring on May 10th, 1994 at military time 1924  
24 which would be 7:24 p.m. It was an outgoing call from Paul  
25 Dottore's home telephone to Defendant Bongiovanni's home

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1 telephone and the speakers are Paul Dottore and Gerard  
2 Bongiovanni.

3 THE COURT: And I take it that by listing -- Gerard  
4 and Paul we're talking about Paul Dottore and Gerard  
5 Bongiovanni, is that correct?

6 MS. SHOEMAKER: Well, this is --

7 THE COURT: Mr. Pitaro?

8 MR. PITARO: Yes.

9 THE COURT: Okay. Go ahead and play the tape.

10 (Defendant's Exhibit No. 516 is played)

11 MS. SHOEMAKER: At this time, Your Honor, the  
12 government would move for the admission of the final call in  
13 this series which is Exhibit 34.

14 THE COURT: 34? Any objection, counsel?

15 MR. PITARO: Your Honor, I have the same thing. I  
16 have the full tape.

17 MS. SHOEMAKER: Your Honor, may we have a sidebar  
18 concerning this?

19 (Discussion at sidebar)

20 MS. SHOEMAKER: We redacted a portion of the call at  
21 the end where this tape is being offered as admissions of the  
22 defendant, not as a coconspirator statement; the person's  
23 already been released from jail and all of that is done and  
24 over with. But in this call the defendant is telling Paul  
25 Dottore how he got heat from a family court judge and he

1 doesn't -- he told the family court judge, "I don't care."  
 2 Now, the part we cut out that Mr. Pitaro wants to get in is he  
 3 goes on to start talking about how in the old days you used to  
 4 be able to get a hearing within ten days to get out of jail  
 5 and he already had to wait until August, which is three months  
 6 from the time of this conversation, as if that excuses what he  
 7 did in the case. Those statements are not against, and  
 8 they're self-serving statements so they would not be  
 9 admissible as admissions. Then he goes on from there to trash  
 10 Tina Lombard some more and then there's other personal  
 11 conversation --

12 THE COURT: Well, I'm going to play the entire --

13 MR. PITARO: Thank you.

14 THE COURT: -- tape based upon Rule 106.

15 MR. PITARO: Thank you, Judge.

16 THE CLERK: What number is that?

17 MS. SHOEMAKER: What number?

18 MR. PITARO: It'd be 517.

19 MS. SHOEMAKER: Okay.

20 MR. PITARO: I'll go get 5-7 -- 1-7, I'm sorry.

21 THE CLERK: 5-1-7?

22 THE COURT: 5-1-7.

23 MR. PITARO: 5-1-7.

24 THE CLERK: Okay.

25 MR. PITARO: Well, you know, it's 517A. I did it

1 the same way they did.

2 THE CLERK: The A's the transcript, but the A's the  
3 tape, yes.

4 MR. PITARO: Thank you.

5 (End of discussion at sidebar)

6 THE COURT: Turn to tape 517.

7 (Defendant's Exhibit No. 517 admitted)

8 MS. SHOEMAKER: Pursuant to the stipulation of the  
9 parties, this is a recorded conversation that occurred on May  
10 11th, 1994, at military time 2001, which would be 8:01 p.m.  
11 It was an outgoing call from Paul Dottore's home telephone to  
12 Gerard Bongiovanni's home telephone. And the speakers are  
13 Paul Dottore and Gerard Bongiovanni.

14 THE COURT: Okay. You may play the tape.

15 MS. SHOEMAKER: Thank you, Your Honor.

16 (Plaintiff's Exhibit No. 517 is played)

17 MS. SHOEMAKER: This may be an appropriate time to  
18 take the morning break, if you'd like, Your Honor.

19 THE COURT: Okay. We will take a fifteen-minute  
20 break, ladies and gentlemen. You're advised to follow all of  
21 the directions that I have given you.

22 We'll be in recess for fifteen minutes.

23 (Court recessed at 10:25 a.m. until 11:09 a.m.)

24 (Jury is present)

25 THE COURT: Please be seated.

1 You may proceed.

2 MS. SHOEMAKER: Thank you, Your Honor.

3 THE COURT: Counsel will stipulate to the presence  
4 of the jury?

5 MR. PITARO: Yes, Your Honor.

6 MS. SHOEMAKER: Yes, Your Honor.

7 THE COURT: Okay.

8 (Off-record colloquy)

9 MS. SHOEMAKER: At this time, Your Honor, the  
10 government would move for the first of a series of two tapes,  
11 beginning with Number 108.

12 THE COURT: 108?

13 MS. SHOEMAKER: Yes, which would be found in binder  
14 number 2.

15 THE COURT: Okay.

16 Any objection, counsel?

17 MR. PITARO: No, Your Honor.

18 THE COURT: Received.

19 (Plaintiff's Exhibit No. 108 admitted)

20 MS. SHOEMAKER: Thank you, Your Honor.

21 Pursuant to the stipulation of the parties, Exhibit  
22 108 is a recorded conversation on December 24th, 1994 at 1717  
23 military time, which is 5:17 in the evening. It's an incoming  
24 call at Gerard Bongiovanni's home telephone. And the  
25 participants are Gerard Bongiovanni and Delwin Potter. May we

1 play the tape?

2 THE COURT: You may.

3 (Plaintiff's Exhibit No. 108 is played)

4 MS. SHOEMAKER: Now, I'd move for admission of the  
5 follow-up call, Exhibit 109.

6 THE COURT: 109? Any objection, counsel?

7 MR. PITARO: Let me just quickly look. No, Your  
8 Honor.

9 THE COURT: 109 will be received.

10 (Plaintiff's Exhibit No. 109 admitted)

11 MS. SHOEMAKER: Thank you, Your Honor.

12 Pursuant to the stipulation of the parties, Exhibit  
13 109 is a recorded conversation on December 24th, 1994 at 1720  
14 military time, which is 5:20 p.m. It was an outgoing call  
15 from Gerard Bongiovanni's home telephone to 702-455-3912. And  
16 the speakers are Gerard Bongiovanni and a Ginger, last name  
17 unknown. May we play Exhibit 109 at this time?

18 THE COURT: You may.

19 MS. SHOEMAKER: Thank you.

20 (Plaintiff's Exhibit No. 109 is played)

21 MS. SHOEMAKER: At this time I'd move for admission  
22 of Government Exhibit 195, which is in binder number 3.

23 THE COURT: 195?

24 MS. SHOEMAKER: Yes, Your Honor.

25 THE COURT: Any objection, counsel?



1 MR. PITARO: Judge, I've got to find that book.

2 THE COURT: Okay. It's in the very back end of that  
3 volume.

4 MR. PITARO: 1-9-5?

5 THE COURT: 1-9-5. It's the last one in volume 3 of  
6 the book.

7 MR. PITARO: I -- right, it wasn't -- no objection,  
8 Judge.

9 THE COURT: It will be received.

10 (Plaintiff's Exhibit No. 195 admitted)

11 MS. SHOEMAKER: Thank you, Your Honor.

12 Pursuant to the parties' stipulation, Exhibit 195 is  
13 a recorded conversation occurring on July 18th, 1994 at 1631  
14 military time, which is 4:31 in the afternoon. It was an  
15 outgoing call from the chambers telephone to Gerard  
16 Bongiovanni's home telephone. It was a conversation between

17 Delwin Potter and Gerard Bongiovanni. May we play 195 at this  
18 time?

19 THE COURT: You may.

20 MS. SHOEMAKER: Thank you, Your Honor.

21 (Plaintiff's Exhibit No. 195 is played)

22 MS. SHOEMAKER: At this time I would move for  
23 admission of 150-2.

24 THE COURT: 150-2?

25 MS. SHOEMAKER: Yes, Your Honor. It's in the same

1 binder.

2 THE COURT: Yes. Any objection, counsel?

3 MR. PITARO: Could I just have one second, Judge?

4 THE COURT: Surely.

5 MR. PITARO: No, Your Honor.

6 THE COURT: Received.

7 (Plaintiff's Exhibit No. 150-2 admitted)

8 MS. SHOEMAKER: Thank you.

9 Pursuant to the parties' stipulation Exhibit 150-2  
10 is a recorded conversation -- actually it's a recording of two  
11 calls occurring on February 10th, 1995 at 1058 and 1442  
12 military time, which would be 10:58 in the morning and 2:42 in  
13 the afternoon. The first one is an outgoing call and the  
14 second one -- from Defendant Bongiovanni's chambers, and the  
15 second one is an incoming call to Defendant Bongiovanni's  
16 Chambers. The speakers in the first call is Diane Woofter and  
17 a Pat, last name unknown; and the second call is between Diane  
18 Woofter and Peter Flangas. May we play the tape at this time?

19 THE COURT: You may.

20 (Plaintiff's Exhibit No. 150-2 is played)

21 MS. SHOEMAKER: At this time I would move for  
22 admission --

23 MR. PITARO: Your Honor, I --

24 MS. SHOEMAKER: Oh.

25 MR. PITARO: -- if I could, the -- I think it was

1 pretty clear in page 3 of that conversation, where it says  
2 from Michael -- it says Michael Groot and the transcript has  
3 nothing in it. Michael Root was the attorney in this case.  
4 And I heard Michael Root there and then they put a "u." I  
5 think the Court may be aware he's an attorney here in town.  
6 It's in page 3 of 50- --

7 THE COURT: You're talking about 150 --

8 MR. PITARO: 50-2.

9 THE COURT: You talking about the one that was just  
10 played?

11 MR. PITARO: Yes. On the third page where it says  
12 "Flangas." The first time Flangas comes up it says from  
13 Michael -- it said Michael Root, and they left the last name  
14 out.

15 THE COURT: Oh, you want to --

16 MR. PITARO: Just insert in the transcript.

17 THE COURT: Where it says "unintelligible"?

18 MR. PITARO: Yeah. It's an "Uh" from Michael and  
19 then the "u" for unintelligible.

20 THE COURT: Do you have any problem identifying that  
21 name?

22 MS. SHOEMAKER: Your Honor, I didn't hear that name  
23 and I'm not saying that it wasn't -- that wasn't said, but I  
24 didn't know. I would just say since the Court instructs the  
25 jury, the tape controls, not the transcript.

1 THE COURT: Well, the tape is the evidence.

2 MR. PITARO: I understand, but people do have the  
3 transcript, and I see that that is an error on the transcript  
4 and that's -- I'll assert to the Court that that is Michael  
5 Root who is the attorney, who was the attorney for this person  
6 that was going to associate Flangas -- and I heard Michael  
7 Root, right after Michael and they didn't put it in, they're  
8 just leaving it as Michael. So I think the transcript should  
9 be changed to reflect what was said, that's all.

10 THE COURT: Well, I didn't hear -- but in any event  
11 the jury is instructed that it's what you hear that is the  
12 evidence. And you'll have all of these tapes, if you want to  
13 replay any of them and you can make notes, and they'll be  
14 played back to you if you want to hear them again.

15 Okay. Go ahead.

16 MS. SHOEMAKER: Thank you, Your Honor. At this time  
17 I would move for admission of the first of two calls  
18 concerning another matter, the first one being Exhibit 170.

19 THE COURT: 170?

20 MS. SHOEMAKER: Yes, Your Honor.

21 THE COURT: Any objection?

22 MR. PITARO: No, Your Honor.

23 MS. SHOEMAKER: Is 170 received, Your Honor?

24 THE COURT: 170 is received.

25 (Plaintiff's Exhibit No. 170 admitted)

1 MS. SHOEMAKER: Thank you.

2 Pursuant to the stipulation of the parties, Exhibit  
3 170 is a recorded conversation from October 14th, 1995 at 1223  
4 military time, which is 12:23 in the afternoon. It was an  
5 incoming call over the chambers telephone, and the  
6 participants are Gerard Bongiovanni and Peter Flangas. May we  
7 play the tape at this time?

8 THE COURT: You may.

9 (Plaintiff's Exhibit No. 170 is played)

10 MS. SHOEMAKER: At this time I'd move for admission  
11 of a follow-up call, 171.

12 THE COURT: 171?

13 MS. SHOEMAKER: Yes, Your Honor.

14 MR. PITARO: No objection.

15 THE COURT: Received.

16 (Plaintiff's Exhibit No. 171 admitted)

17 MS. SHOEMAKER: Pursuant to the stipulation of the  
18 parties, Exhibit 171 is a recorded conversation on October  
19 14th, 1995 at 12:25 in the afternoon. It's actually two  
20 successive calls, the first is an outgoing call to 702-455-  
21 3912 from Gerard Bongiovanni's home telephone; and the second  
22 one is an incoming call to Gerard Bongiovanni's home  
23 telephone. The speakers are Gerard Bongiovanni and a Sam,  
24 last name unknown. May we play tape 171, Your Honor?

25 THE COURT: You may.

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1 (Plaintiff's Exhibit No. 171 is played)

2 MS. SHOEMAKER: At this time I would move for  
3 admission of Exhibit 193, which is a related call, but  
4 involves another incident.

5 THE COURT: 193?

6 MS. SHOEMAKER: Yes, Your Honor.

7 MR. PITARO: No objection.

8 THE COURT: It'll be received.

9 (Plaintiff's Exhibit No. 193 admitted)

10 MS. SHOEMAKER: Thank you, Your Honor.

11 Exhibit 193, pursuant to the parties' stipulation,  
12 is a recorded conversation on October 23rd, 1995 at 1720  
13 military time, which is 5:20 p.m. It was an incoming call at  
14 Gerard Bongiovanni's home telephone. And the speakers are  
15 Peter Flangas and Gerard Bongiovanni. May we play tape 193 at  
16 this time?

17 THE COURT: You may.

18 (Plaintiff's Exhibit No. 193 is played)

19 MS. SHOEMAKER: At this time, Your Honor, I would  
20 move for admission of Exhibit 44, which is the first of two  
21 related calls in another matter. This is back in binder  
22 number 1.

23 THE CLERK: What number, Jane?

24 MS. SHOEMAKER: 44.

25 THE COURT: Any objection, counsel?

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1 MR. PITARO: Just let me look.

2 No, Your Honor.

3 THE COURT: 44 will be received.

4 (Plaintiff's Exhibit No. 44 admitted)

5 MS. SHOEMAKER: Thank you, Your Honor.

6 Pursuant to the stipulation of the parties, Exhibit  
7 44 is a recorded conversation on June 15th, 1994 at 1855  
8 military time, which is 6:55 in the evening. It was an  
9 incoming call over Gerard Bongiovanni's home telephone. And  
10 the participants are Gerard Bongiovanni and Peter Flangas.  
11 May we play tape 44 at this time?

12 THE COURT: You may.

13 (Plaintiff's Exhibit No. 44 is played)

14 MS. SHOEMAKER: At this time I would move for  
15 admission of a follow-up call which is marked as Government's  
16 Exhibit 45.

17 MR. PITARO: Your Honor, I would have no problem as  
18 long as the government plays the large part of it, which is  
19 the second call, which is the callback which is on their tape.  
20 The callback procedure which they have attempted to delete,  
21 which is on the -- my transcript at least, but they've deleted  
22 and that's where the jail calls back pursuant to their  
23 procedure to make sure the person calling them is the judge.  
24 I think that's important and it should be on their tape.

25 THE COURT: Do you have any problem with the other

1 tape being played?

2 MS. SHOEMAKER: Your Honor, we could stipulate.

3 It's not on our tape -- we could stipulate that they called  
4 back and confirmed that it was Gerard Bongiovanni.

5 THE COURT: Do you have any problem --

6 MR. PITARO: Pursuant to the Clark County Detention  
7 Center policy.

8 MS. SHOEMAKER: I would stipulate to that as well.

9 MR. PITARO: Okay.

10 THE COURT: Okay. Go ahead and play it.

11 (Plaintiff's Exhibit No. 45 admitted)

12 MS. SHOEMAKER: Thank you, Your Honor.

13 Pursuant to the stipulation of the parties, Exhibit  
14 45 is a recorded conversation on June 15th, 1994, at 18:57  
15 military time which is 6:57 p.m. It is an outgoing call to  
16 702-455-3912 from Defendant Bongiovanni's home telephone. The  
17 speakers are Gerard Bongiovanni and an Ann, last name unknown.

18 (Plaintiff's No. Exhibit 45 is played)

19 MS. SHOEMAKER: At this time I would move --

20 MR. PITARO: And then pursuant to our stipulation  
21 that the Ann then called back, pursuant to the procedure at  
22 the Clark County Detention Center and made the verification.

23 THE COURT: By "pursuant to the procedure," you're  
24 talking about the callback.

25 MR. PITARO: Right, the Clark County Detention



1 Center has a callback procedure to make sure that the person  
2 calling them is in fact the -- the particularly judge. And so  
3 what they do is when the judge calls then --

4 THE COURT: To confirm that the call came from a  
5 judge --

6 MR. PITARO: Yes, they then always call back at a  
7 later time.

8 THE COURT: And that's what you're talking about --

9 MR. PITARO: Yes.

10 THE COURT: -- when you say procedure?

11 MR. PITARO: Yes.

12 THE COURT: Okay. And that's your understanding as  
13 well?

14 MS. SHOEMAKER: Yes, Your Honor.

15 THE COURT: Okay.

16 MS. SHOEMAKER: At this time I would move for

17 admission of the first of two related tapes -- well, they're  
18 not related to the calls we've just played, but they're -- the  
19 two are related to each other, the first one being Exhibit 47.

20 MR. PITARO: If I could have the Court's indulgence.

21 THE COURT: Surely.

22 (Pause in the proceeding)

23 MR. PITARO: Your Honor, I think under the rule of  
24 completeness I'd ask that my Exhibit 524 be played. And what  
25 that is, that is the preceding call from Peter Flangas to

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1 Diane Woofter giving the information concerning Hernandez.

2 THE COURT: Do you have any problem with 5 --

3 MR. PITARO: 2-4, Judge.

4 THE COURT: 5-2-4?

5 MR. PITARO: Yes, it's a call dated 7/06/94, and  
6 it's 1414 in the afternoon.

7 MS. SHOEMAKER: Your Honor, the rule of completeness  
8 would not require the playing of that tape because that's a  
9 conversation, as Mr. Pitaro just indicated, that's between Mr.  
10 Flangas and Diane Woofter, but there's no indication that  
11 anything he told Diane Woofter was then passed on to Gerard  
12 Bongiovanni. And in fact, this tape will show that Gerard  
13 Bongiovanni made his decision based on what Peter Flangas said  
14 in this particular tape, 47. The other tape's not required.

15 THE COURT: Okay. On cross-examination you can  
16 raise it and address it, and I'll leave open the question of  
17 playing the other tape. Other than that, do you have any  
18 objection?

19 MR. PITARO: Who am I going to cross-examine on it?

20 THE COURT: Pardon?

21 MR. PITARO: I mean who am I going to cross-examine?  
22 I mean Agent Hanford is not really a witness in this.

23 THE COURT: Well, I suppose --

24 MR. PITARO: I mean --

25 THE COURT: -- you will cross-examine him and --

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1 MR. PITARO: Well, I'll ask him then. I'll ask him  
2 to read the tape.

3 THE COURT: All right.

4 MS. SHOEMAKER: Is Exhibit 47 received then, Your  
5 Honor?

6 THE COURT: It is received.

7 (Plaintiff's Exhibit No. 47 admitted)

8 MS. SHOEMAKER: Thank you.

9 Pursuant to the stipulation of the parties, Exhibit  
10 47 is a recorded conversation on July 6th, 1994, at 18:55  
11 military time, which is 6:55 in the evening. It was an  
12 incoming call over Defendant Bongiovanni's home telephone.  
13 The speakers are Peter Flangas and Gerard Bongiovanni.

14 May we play tape 47 at this time, Your Honor?

15 THE COURT: You may play the tape.

16 MS. SHOEMAKER: Thank you.

17 (Plaintiff's Exhibit No. 47 is played)

18 MS. SHOEMAKER: Now I'd move for admission of the  
19 follow-up call which is Exhibit 48.

20 THE COURT: Okay.

21 MR. PITARO: Oh, I'm sorry, Judge. I have no  
22 objection.

23 THE COURT: Okay. 48 will be received.

24 (Plaintiff's Exhibit No. 48 admitted)

25 MS. SHOEMAKER: Thank you, Your Honor.

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1 Pursuant to the stipulation of the parties, Exhibit  
2 48 is a recorded conversation on July 6th, 1994, at 1946  
3 military time which is 7:46 in the evening. It was an  
4 outgoing call to 702-455-3912, from Defendant Bongiovanni's  
5 home telephone. The speakers are Gerard Bongiovanni and Sam  
6 -- last name unknown.

7 May we play tape 48 at this time?

8 THE COURT: You may.

9 (Plaintiff's Exhibit No. 48 is played)

10 MS. SHOEMAKER: At this time I would move for  
11 admission of the first of three calls that are related to one  
12 another, the first one being Exhibit 51.

13 MR. PITARO: No objection.

14 THE COURT: Received.

15 (Plaintiff's Exhibit No. 51 admitted)

16 MS. SHOEMAKER: Thank you, Your Honor.

17 Pursuant to the parties' stipulation, Exhibit 51 is  
18 a recorded conversation on July 22nd, 1994, at -- excuse me,  
19 1023 military time which is 10:23 in the morning. It was an  
20 incoming call over one of the chambers telephones. The  
21 speakers are Gerard Bongiovanni and Peter Flangas.

22 May we play tape 51 at this time?

23 THE COURT: You may.

24 (Plaintiff's Exhibit No. 51 is played)

25 MS. SHOEMAKER: Now I would move for admission of

1 one follow-up call which is Exhibit 52.

2 MR. PITARO: No objection.

3 THE COURT: Received.

4 (Plaintiff's Exhibit No. 52 admitted)

5 MS. SHOEMAKER: Thank you, Your Honor.

6 Pursuant to the parties' stipulation, Exhibit 52 is  
7 a recorded conversation on July 23rd, 1994, at 1553 military  
8 time which is 3:53 in the afternoon. It was an incoming call  
9 over Gerard Bongiovanni's home telephone, and the speakers are  
10 Gerard Bongiovanni and Peter Flangas.

11 May we play Exhibit 52, Your Honor?

12 THE COURT: You may.

13 (Plaintiff's Exhibit No. 52 is played)

14 MS. SHOEMAKER: Your Honor, I'd move for admission  
15 of the follow-up call, which is Exhibit 53.

16 MR. PITARO: No objection.

17 THE COURT: Be received.

18 (Plaintiff's Exhibit No. 53 admitted)

19 MS. SHOEMAKER: Thank you, Your Honor.

20 Pursuant to the parties' stipulation, Exhibit 53 is  
21 a recorded conversation on July 23rd, 1994, at 1556 military  
22 time, which is 3:56 in the afternoon. It was an outgoing call  
23 to 702-455-3912, from Defendant Bongiovanni's home telephone.  
24 The speakers are Gerard Bongiovanni and Carmella [phonetic],  
25 last name unknown.

1 May we play tape 53, Your Honor?

2 THE COURT: You may.

3 (Plaintiff's Exhibit No. 53 is played)

4 MS. SHOEMAKER: At this time, Your Honor, I would  
5 move for admission of the first of two calls that relate to  
6 each other, the first being Exhibit 67, which is in binder  
7 number 2.

8 MR. PITARO: Your Honor, I would object to this  
9 tape.

10 THE COURT: My 57, incidentally, is in binder volume  
11 1.

12 MS. SHOEMAKER: 67, Your Honor. I'm sorry.

13 THE COURT: Oh, 67.

14 MR. PITARO: Oh, you said 60?

15 MS. SHOEMAKER: Yes, 67.

16 THE COURT: 67.

17 (Pause in the proceeding)

18 MR. PITARO: No objection.

19 THE COURT: 67 will be received.

20 (Plaintiff's Exhibit No. 67 admitted)

21 MS. SHOEMAKER: Thank you, Your Honor.

22 Pursuant to the stipulation of the parties, Exhibit  
23 67 is a recorded conversation on August 7th, 1994, at 9:50 in  
24 the morning. It was an incoming call over Defendant  
25 Bongiovanni's home telephone. The speakers are Gerard

1 Bongiovanni and Peter Flangas.

2 May we play tape 67?

3 THE COURT: You may play the tape.

4 MS. SHOEMAKER: Thank you, Your Honor.

5 (Plaintiff's Exhibit No. 67 is played)

6 MS. SHOEMAKER: I'd now move for admission of a  
7 follow-up call which has been marked Exhibit 68.

8 THE COURT: Any objection, counsel?

9 MR. PITARO: No, Your Honor.

10 THE COURT: Received.

11 (Plaintiff's Exhibit No. 68 admitted)

12 MS. SHOEMAKER: Thank you, Your Honor.

13 Pursuant to the parties stipulation, Exhibit 68 is a  
14 recorded conversation on August 7th, 1994, at 9:54 in the  
15 morning. It was an outgoing call to 702-455-3912, from  
16 Defendant Bongiovanni's home telephone. The speakers are  
17 Gerard Bongiovanni and Carmella, last name unknown.

18 May we play Exhibit 68?

19 THE COURT: You may play the tape.

20 MS. SHOEMAKER: Thank you.

21 (Plaintiff's Exhibit No. 68 is played)

22 MS. SHOEMAKER: At this time I would --

23 MR. PITARO: Your Honor, given the time and I see  
24 that there's some other people here in the courtroom.

25 THE COURT: Are we going into something different?

1 MS. SHOEMAKER: It is an appropriate time to break  
2 if Your Honor wants.

3 THE COURT: We will take our morning recess.

4 The Court instructs you to follow all of the  
5 instructions that I've given you heretofore. I have a 1:00  
6 o'clock --

7 THE CLERK: Yes, Your Honor.

8 THE COURT: -- that will not take long. We'll  
9 reconvene at 1:15. I would ask you to be here no later than  
10 ten minutes after 1:00 and we'll start at 1:15.

11 I'm going to take a brief recess. We'll be right  
12 back.

13 (Court recessed at 12:03 p.m. until 12:11 p.m.)

14 HEARING ON THE WARRANT FOR JEFF KUTASH

15 (Jury is not present)

16 THE COURT: Please remain seated.

17 (Colloquy between Court and Clerk)

18 THE COURT: Mr. Goodman.

19 MR. GOODMAN: Yes, sir.

20 THE COURT: I scheduled this hearing. Mr. Pitaro  
21 has provided some evidence that suggests, at least, that Mr.  
22 Kutash was served with a subpoena. I understand that insofar  
23 as you know, you've been advised that he was not served. Is  
24 that correct?

25 MR. GOODMAN: That's correct, Your Honor.



1 THE COURT: And I don't know that I can resolve that  
2 at this point, but Title 18, 3144, does provide for the  
3 detention of a material witness and there's a procedure, an  
4 affidavit and so forth. You're, I'm sure, as familiar with  
5 that as I am. Because of the background and because of having  
6 tried the case, I think there's little question that he is a  
7 material witness and I would prefer not to go that route with  
8 this person, and I'm wondering if there's something that can  
9 be done to work it out to make him available for this trial.

10 MR. GOODMAN: Your Honor, if it please the Court, I  
11 should advise the Court that I am not retained by him for this  
12 purpose. I was trying to act as an accommodator --

13 THE COURT: I understand.

14 MR. GOODMAN: -- in talking to Mr. Pitaro about his  
15 availability.

16 THE COURT: I understand.

17 MR. GOODMAN: And I have spoken with him, he says he  
18 has not been served. I would certainly, if the Court is  
19 disposed to issue a material witness warrant, I would like the  
20 opportunity to at least speak with him.

21 THE COURT: Well, that's why I wanted to have you  
22 here and I think Mr. Pitaro has no objection to this  
23 procedure, as a matter of fact, encourages it.

24 MR. PITARO: No, Your Honor.

25 THE COURT: And I would imagine that the government

1 probably takes an independent position as far as Mr. Kutash is  
2 concerned.

3 The paperwork does suggest that someone identified  
4 himself as Mr. Kutash and was served -- I think through the  
5 window of the vehicle, was it, Mr. Pitaro?

6 MR. PITARO: Right. At the address that I was  
7 provided as his address.

8 THE COURT: Yeah. Do you want to talk to him and  
9 get -- and I know that --

10 MR. GOODMAN: Yes, Your Honor.

11 THE COURT: -- I can't impose on you --

12 MR. GOODMAN: No, I appreciate that.

13 THE COURT: -- if you're not retained.

14 MR. GOODMAN: I'd be happy to speak with him. I can  
15 represent that he told me that he was not served.

16 THE COURT: Oh, and I understand that --

17 MR. GOODMAN: And I asked --

18 THE COURT: -- and I know that you're speaking as an  
19 officer of the Court.

20 MR. GOODMAN: Right. I could just tell the Court  
21 what I was told.

22 THE COURT: Okay. You can tell him that I am  
23 disposed -- it seems that this is a very clear case that he  
24 would be, in my judgment, categorized as a material witness.  
25 You may, formally, to satisfy the statute, need to file an

1 affidavit, but knowing what I do about the prior trial it  
2 would clearly appear -- and I suppose you would think him to  
3 be a material witness also.

4 Are you going to be here -- how soon can you contact  
5 him, do you think?

6 MR. GOODMAN: I would hope to be able to do it this  
7 afternoon, Your Honor.

8 THE COURT: Okay. Would it be an acceptable time  
9 for us to meet again at 5:00 o'clock and see if we have an  
10 answer so that we know which way we're going to have to go?

11 MR. GOODMAN: I can do that.

12 THE COURT: Would you do that? Is that acceptable  
13 to you, Mr. Pitaro?

14 MR. PITARO: That's fine with me, Judge.

15 THE COURT: Mr. Barr?

16 MR. BARR: That's fine, Your Honor.

17 THE COURT: All right. Is there anything further  
18 that you have at this point, Mr. Pitaro?

19 MR. PITARO: No, Your Honor. I believe I gave -- we  
20 have as a matter of record the affidavit from the prosecution.

21 THE COURT: Yes.

22 MR. PITARO: Yes.

23 THE COURT: It's been lodged with the --

24 MR. PITARO: Okay.

25 THE COURT: -- with the Court. Do you want to see

1 this affidavit --

2 MR. PITARO: I can provide one to him. I can get --

3 THE COURT: Have you got a copy for him?

4 MR. PITARO: Yeah.

5 THE COURT: Okay.

6 MR. GOODMAN: Thank you.

7 THE COURT: All right. Thank you.

8 MR. PITARO: I have another copy, I'll show it to  
9 you.

10 MR. PITARO: Thank you.

11 THE COURT: Court will be in recess.

12 (Court recessed at 12:16 p.m. until 1:31 p.m.)

13 (Jury is present)

14 THE COURT: Please be seated.

15 MR. PITARO: No, I'm just --

16 THE COURT: Will counsel stipulate to the presence  
17 of the jury?

18 MR. PITARO: That -- yeah, I'm just stipulating.  
19 Yes, they're here.

20 MS. SHOEMAKER: Yes, Your Honor.

21 THE COURT: Thank you.

22 You may continue.

23 DIRECT EXAMINATION (Continued)

24 MS. SHOEMAKER: Government would move for admission  
25 of the first of two related tapes being Exhibit 65.

1 THE COURT: 55?

2 MS. SHOEMAKER: 6-5.

3 THE COURT: 6-5.

4 MS. SHOEMAKER: 65.

5 THE COURT: Okay. Any objection, counsel?

6 MR. PITARO: I'm trying to get there.

7 THE COURT: Okay.

8 MS. SHOEMAKER: I'm sorry, it's binder 2.

9 MR. PITARO: No, Your Honor.

10 THE COURT: 65 will be received.

11 (Plaintiff's Exhibit No. 65 admitted)

12 MS. SHOEMAKER: Thank you, Your Honor.

13 Pursuant to the stipulation of the parties, Exhibit

14 65 is a recorded conversation on August 5th, 1994 at 1910

15 military time, which is 7:10 p.m. It was an incoming call

16 over Defendant Bongiovanni's home telephone, and the

17 participants are Gerard Bongiovanni and Peter Flangas.

18 May we play tape 65, Your Honor?

19 THE COURT: You may.

20 (Plaintiff's Exhibit No. 65 is played)

21 MS. SHOEMAKER: Your Honor, I'd move for the

22 admission of the follow-up call, which is Exhibit 66.

23 THE COURT: 66?

24 MS. SHOEMAKER: Yes, Your Honor.

25 THE COURT: Any objection, counsel?

1 MR. PITARO: No, Your Honor.

2 THE COURT: It will be received.

3 (Plaintiff's Exhibit No. 66 admitted)

4 MS. SHOEMAKER: Thank you.

5 Pursuant to the parties' stipulation, Exhibit 66 is  
6 a recorded conversation on August 5th, 1994, at 1913 military  
7 time, which is 7:13 p.m. It's an outgoing call from Defendant  
8 Bongiovanni's home telephone to 702-455-3912, and the  
9 participants are Gerard Bongiovanni and a Janet, last name  
10 unknown.

11 May we play tape 66, Your Honor?

12 THE COURT: You may.

13 (Plaintiff's Exhibit No. 66 is played)

14 MS. SHOEMAKER: At this time I would move for  
15 admission of Government's Exhibit 75.

16 (Pause in the proceeding)

17 MR. PITARO: No objection.

18 THE COURT: Received.

19 (Plaintiff's Exhibit No. 75 admitted)

20 MS. SHOEMAKER: Thank you, Your Honor.

21 Pursuant to the stipulation of the parties, Exhibit  
22 75 is a recorded conversation on September 22nd, 1994 at 11:11  
23 a.m. It's an incoming call over one of the chambers  
24 telephones. There are a number of participants in this call,  
25 identified as Gerard Bongiovanni, Peter Flangas, Del Potter, a

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1 Kimberly, last name unknown, Diane Woofter, and an unknown  
2 male.

3 May we play tape 75, Your Honor?

4 THE COURT: Yes.

5 MS. SHOEMAKER: Thank you.

6 (Plaintiff's Exhibit No. 75 is played)

7 MS. SHOEMAKER: At this time I would move for the  
8 first of a series of four calls that are related to one  
9 another, the first exhibit being 176, which is in binder  
10 number 3.

11 (Pause in the proceeding)

12 THE COURT: Any objection?

13 MR. PITARO: Yes, Your Honor, 801.

14 THE COURT: Counsel?

15 MS. SHOEMAKER: Your Honor, we believe this is part  
16 of the conspiracy and we'd offer it under 801(d)(2)(E). It's  
17 also part of the 1343 allegations.

18 MR. PITARO: Your Honor, I have a motion on all of  
19 those issues that we've already discussed.

20 THE COURT: The objection's overruled. 176?

21 MS. SHOEMAKER: Yes, Your Honor.

22 THE COURT: Will be received.

23 (Plaintiff's Exhibit No. 176 admitted)

24 MS. SHOEMAKER: Thank you.

25 Pursuant to the stipulation of the parties, Exhibit

1 176 is a recorded conversation occurring on October 15th, 1995  
2 at 10:42 a.m. It's an incoming call over defendant's home  
3 telephone. The participants are Gerard Bongiovanni and Peter  
4 Flangas.

5 May we play tape 176 at this time?

6 THE COURT: You may.

7 (Plaintiff's Exhibit No. 176 is played)

8 MS. SHOEMAKER: Your Honor, at this time I'd move  
9 for the admission of Exhibit 177, which is a follow-up call in  
10 this series.

11 MR. PITARO: Same objection, Your Honor.

12 THE COURT: Received.

13 (Plaintiff's Exhibit No. 177 admitted)

14 MS. SHOEMAKER: Pursuant to the parties'  
15 stipulation, Exhibit 177 is a recorded conversation on October  
16 15th, 1995 at 10:46 a.m. It's an outgoing call from the  
17 defendant's home telephone to 702-455-3912, and the  
18 participants are Gerard Bongiovanni and Sam, last name  
19 unknown.

20 May we play tape 177? Your Honor?

21 THE COURT: You may.

22 MS. SHOEMAKER: Thank you.

23 (Plaintiff's Exhibit No. 177 is played)

24 MS. SHOEMAKER: At this time I would move for the  
25 admission of another follow-up call, 178.



1 MR. PITARO: Same objection.

2 THE COURT: Objection's over -- the objection is  
3 overruled. 178 will be received.

4 (Plaintiff's Exhibit No. 178 admitted)

5 MS. SHOEMAKER: Thank you, Your Honor.

6 Pursuant to the stipulation of the parties, Exhibit  
7 178 is a recording on October 15th, 1995 at 1330 military  
8 time, which is 1:30 in the afternoon. It's an incoming call  
9 over the defendant's home telephone, and the participants are  
10 Gerard Bongiovanni, Peter Flangas, and at one point in the  
11 beginning of the conversation Angela Bongiovanni.

12 May we play tape 178, Your Honor?

13 THE COURT: You may.

14 (Plaintiff's Exhibit No. 178 is played)

15 MS. SHOEMAKER: Your Honor, there's one further  
16 follow-up call I'd move for the admission of, and that is  
17 Exhibit 179.

18 MR. PITARO: Same objection.

19 THE COURT: Overruled. 179 will be received.

20 (Plaintiff's Exhibit No. 179 admitted)

21 MS. SHOEMAKER: Thank you, Your Honor.

22 Pursuant to the stipulation of the parties, Exhibit  
23 179 is a tape-recorded conversation on October 15th, 1995 at  
24 1347 military time, which is 1:47 in the afternoon. It's an  
25 incoming call over the defendant's home telephone; the

1 participants are Gerard Bongiovanni and Sam, last name  
2 unknown.

3 THE COURT: You may play the tape.

4 (Plaintiff's Exhibit No. 179 is played)

5 MS. SHOEMAKER: Your Honor, at this time I would  
6 move for the admission of the first of two related calls, the  
7 first exhibit being Number 191, two calls that are related to  
8 each other, not to the last calls.

9 THE COURT: Any objection, Mr. Pitaro?

10 MR. PITARO: Same objection I've been having, Judge.

11 THE COURT: Overruled. 191 will be received.

12 (Plaintiff's Exhibit No. 191 admitted)

13 MS. SHOEMAKER: Thank you, Your Honor.

14 Pursuant to the stipulation of the parties, Exhibit  
15 191 is a recorded conversation on October 20th, 1995 at 1848  
16 military time, which is 6:48 in the evening. It's an incoming  
17 call over the defendant's home telephone; the participants are  
18 Gerard Bongiovanni and Del Potter.

19 May we play tape 191?

20 THE COURT: You may.

21 MS. SHOEMAKER: Thank you.

22 (Plaintiff's Exhibit No. 191 is played)

23 MS. SHOEMAKER: At this time I would move for a  
24 follow-up call, Exhibit 192.

25 MR. PITARO: Same objection.

1 THE COURT: Overruled.

2 (Plaintiff's Exhibit No. 192 admitted)

3 MS. SHOEMAKER: Pursuant to the parties'  
4 stipulation, Exhibit 192 is a recorded conversation on October  
5 20th, 1995 at 1858 military time, which is 6:58 in the  
6 evening. It was an outgoing call from one of the chambers  
7 telephones to 702-455-3912, and the speakers are Gerard  
8 Bongiovanni and Joanne, last name unknown.

9 May we play tape 192 at this time, Your Honor?

10 THE COURT: You may.

11 (Plaintiff's Exhibit No. 192 is played)

12 MS. SHOEMAKER: At this time, Your Honor, I would  
13 move for the first of a series of three calls that are related  
14 to one another, the first exhibit being 159.

15 MR. PITARO: What'd you say, 1-5-9?

16 MS. SHOEMAKER: 1-5-9.

17 MR. PITARO: If I could --

18 THE COURT: Any objection, counsel?

19 MR. PITARO: Yes -- uhh, let me just -- if I could  
20 take a quick look, Judge.

21 Your Honor, we had a -- under 106 our 550-3, shows a  
22 longer conversation between these two.

23 THE COURT: Are you familiar with the other --

24 MR. PITARO: I'm sorry?

25 THE COURT: I'm asking counsel for the government.

1 Are you familiar with the ---

2 MS. SHOEMAKER: Yes, I am, Your Honor. But I don't  
3 believe it's necessary to give the conversation complete  
4 meaning; and it's not taken out of context.

5 THE COURT: How much longer is it, Mr. Pitaro?

6 MR. PITARO: If I can just pull it out here, Your  
7 Honor.

8 Just a couple seconds.

9 THE COURT: Let's --

10 MS. SHOEMAKER: It's about twice as long as the one  
11 we proposed.

12 THE COURT: What number is it?

13 MR. PITARO: 550-3.

14 THE COURT: 5?

15 MR. PITARO: 550, and I have a dash 3.

16 THE COURT: Go ahead and play the defendant's tape;  
17 it may save some time in the long run.

18 (Defendant's Exhibit No. 550-3 admitted)

19 MS. SHOEMAKER: Okay. Defendant's 550-3 is the  
20 complete tape for a recorded conversation on March 4th, 1995  
21 at 9:42 in the morning. It was an outgoing call from the  
22 defendant's home telephone to 702-735-3343; and the speakers  
23 are Gerard Bongiovanni and Peter Flangas.

24 MR. PITARO: If you'd just give us one minute.

25 THE COURT: Why don't you stand up and stretch for a

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1 moment if you'd like to.

2 (Pause in the proceeding)

3 MR. PITARO: Thank you.

4 THE COURT: Now is it 5-5-0?

5 MR. PITARO: Yeah, it's a 5-5-0 with a dash 3,  
6 Judge.

7 THE COURT: 3A?

8 MR. PITARO: Yeah. What I did when I first went  
9 through, then I found there were some that weren't in order so  
10 I did the dashes.

11 THE COURT: Go ahead and play the tape.

12 (Defendant's Exhibit No. 550-3 is played)

13 MS. SHOEMAKER: At this time, Your Honor, I would  
14 move for the admission of a follow-up call which is marked as  
15 Exhibit 160.

16 THE COURT: 160?

17 MS. SHOEMAKER: Yes, Your Honor.

18 THE COURT: Okay.

19 (Pause in the proceeding)

20 MR. PITARO: No objection.

21 THE COURT: Received.

22 (Plaintiff's Exhibit No. 160 admitted)

23 MS. SHOEMAKER: Thank you, Your Honor.

24 Pursuant to the stipulation of the parties, Exhibit  
25 160 is a recorded conversation on March 4th, 1995 at 9:45 in

1 the morning. Actually it's two successive calls. The first  
2 is an outgoing call to 702-455-3912, the second is an incoming  
3 call; and both of these calls were intercepted over the  
4 defendant's home telephone. The participants in the calls are  
5 Gerard Bongiovanni and a Brenda, last name unknown.

6 May we play Exhibit 160?

7 THE COURT: You may.

8 MS. SHOEMAKER: Thank you.

9 (Plaintiff's Exhibit No. 160 is played)

10 MS. SHOEMAKER: At this time I would move for the  
11 admission of the first of two calls that are related to one  
12 another; the first one is Exhibit 136.

13 THE COURT: 136?

14 MS. SHOEMAKER: Yes, Your Honor.

15 MR. PITARO: Same objection, Your Honor.

16 THE COURT: Overruled.

17 ~~(Plaintiff's Exhibit No. 136 admitted)~~

18 MS. SHOEMAKER: Thank you, Your Honor.

19 Pursuant to the parties' stipulation, Exhibit 136 is  
20 a recorded conversation on January 28th, 1995 at 11:26 in the  
21 morning. It's an outgoing call over the defendant's home  
22 telephone to 702-433-3869, and the participants are Gerard  
23 Bongiovanni and Josephine Bone.

24 BY MS. SHOEMAKER:

25 Q Before I play this tape, Agent Hanford, do you know

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1 whether Josephine Bone is a local attorney?

2 A No, I don't know.

3 MS. SHOEMAKER: May we play Exhibit 136 at this  
4 time, Your Honor?

5 THE COURT: You may.

6 (Plaintiff's Exhibit No. 136 is played)

7 MS. SHOEMAKER: At this time I would move for the  
8 admission of a follow-up call which is marked as Government  
9 Exhibit 137.

10 MR. PITARO: Same objection.

11 THE COURT: Overruled.

12 (Plaintiff's Exhibit No. 137 admitted)

13 MS. SHOEMAKER: Pursuant to the parties'  
14 stipulation, Exhibit 137 is a recorded conversation on January  
15 28th, 1995 at 11:29 in the morning. It's an outgoing call  
16 over the defendant's home telephone to 702-455-3912, and the  
17 speakers are Gerard Bongiovanni and a Janet, last name  
18 unknown.

19 May we play tape 137, Your Honor?

20 THE COURT: You may.

21 (Plaintiff's Exhibit No. 137 played)

22 MS. SHOEMAKER: At this time I would move for the  
23 admission of the first of two calls that are related to one  
24 another, the first call being Exhibit 148.

25 MR. PITARO: 148. Same objection, Judge.

1 THE COURT: Overruled. 148 will be received.

2 MS. SHOEMAKER: Thank you, Your Honor.

3 (Plaintiff's Exhibit No. 148 admitted)

4 MS. SHOEMAKER: Pursuant to the stipulation of the  
5 parties, Exhibit 148 is a recorded conversation of a call on  
6 February 10th, 1995, at 8:27 in the morning. It's an incoming  
7 call over one of the chambers telephones. The speakers are  
8 Gerard Bongiovanni and Diane Woofter.

9 May we play 148, Your Honor.

10 THE COURT: Your may.

11 MS. SHOEMAKER: Thank you.

12 (Plaintiff's Exhibit No. 148 is played)

13 MS. SHOEMAKER: At this time, Your Honor, I would  
14 move for a follow-up call -- move for the admission of a  
15 follow-up call that's marked as Exhibit 149.

16 MR. PITARO: Got an objection. Same one.

17 THE COURT: Overruled. It'll be received.

18 (Plaintiff's Exhibit No. 149 admitted)

19 MS. SHOEMAKER: Pursuant to the stipulation of the  
20 parties, Exhibit 149 is a recorded conversation on February  
21 10th, 1995, at 8:36 in the morning. It is a call that was  
22 placed from one of the chambers telephones. It's an outgoing  
23 call to extension 3912. Participants are Diane Woofter and a  
24 Greta, last name unknown.

25 May we play Exhibit 149?



1 THE COURT: Yes.

2 (Plaintiff's Exhibit No. 149 is played)

3 MS. SHOEMAKER: At this time, Your Honor, I would  
4 offer into evidence the first of a series of four calls that  
5 are related to one another that are -- the first two are found  
6 in binder number 1, the first one being Exhibit 58.

7 THE COURT: Is that 5-8?

8 MR. PITARO: I have an objection, Judge.

9 THE COURT: Overruled.

10 MS. SHOEMAKER: Thank you, Your Honor.

11 (Plaintiff's Exhibit No. 58 admitted)

12 MS. SHOEMAKER: Pursuant to the stipulation of the  
13 parties, Exhibit 58 is a recorded conversation occurring on  
14 August 4th, 1994, at 8:26 in the morning. It is an incoming  
15 call over one of the chambers telephones and the participants  
16 are Diane Woofter and Gerard Bongiovanni.

17 May we play tape 58 at this time?

18 THE COURT: You may.

19 MS. SHOEMAKER: Thank you.

20 (Plaintiff's Exhibit No. 58 is played)

21 MS. SHOEMAKER: Your Honor, we'd move for the  
22 admission of Exhibit 59 which is a follow-up call.

23 MR. PITARO: Same objection.

24 THE COURT: Overruled.

25 (Plaintiff's Exhibit No. 59 admitted)

1 MS. SHOEMAKER: Pursuant to the parties'  
2 stipulation, Exhibit 59 is a recording of a conversation on  
3 August 4th, 1994, at 9:20 in the morning. It's an incoming  
4 call over Paul Dottore's home telephone. The participants are  
5 Paul Dottore and Gerard Bongiovanni.

6 May we play Exhibit 59, Your Honor?

7 THE COURT: You may.

8 (Plaintiff's Exhibit No. 59 is played)

9 MS. SHOEMAKER: The other two follow-up calls are in  
10 binder number 2. I would move for the admission first of  
11 Exhibit 62.

12 MR. PITARO: Could I have the Court's indulgence one  
13 second?

14 THE COURT: Yes.

15 MR. PITARO: Same objection, Judge.

16 THE COURT: Overruled. 62 will be received.

17 MS. SHOEMAKER: Thank you, Your Honor.

18 (Plaintiff's Exhibit No. 62 admitted)

19 MS. SHOEMAKER: Pursuant to the stipulation of the  
20 parties, Exhibit 62 is a recorded conversation on August 4th,  
21 1994, at 10:18 in the morning. It's an outgoing call to 702-  
22 565-2028 being placed from one of the chambers telephones.  
23 The participants are Diane Woofter and an Officer Daughterer  
24 [phonetic]. May we play Exhibit 62 at this time?

25 MR. PITARO: Your Honor, due to the fact that these

1 have no connection with any of the participants and you did a  
2 day or two ago give a limiting instruction, I'd just request  
3 that maybe you remind the jury as to the limiting nature of  
4 the conversations that come in.

5 For example, what you've got is an Officer  
6 Daughterer and then Diane Woofter, and obviously what some of  
7 these people say isn't --

8 MS. SHOEMAKER: Your Honor.

9 MR. PITARO: -- isn't admissible. You've ruled to  
10 give it context, but we've heard so many tapes, I would just  
11 request a limiting instruction so the jury understands what  
12 the nature of that limiting instruction is.

13 THE COURT: Well, the limiting instruction, the  
14 participation of Daughterer who I think could not be  
15 characterized as a joint co-conspirator, but it gives context  
16 to the -- to the call, and I don't know, counsel, if that  
17 limits their consideration in terms of the totality of the  
18 case as to pertinent --

19 MR. PITARO: Well, it can't be introduced for the  
20 truth of the matter asserted.

21 MS. SHOEMAKER: We're not offering Officer  
22 Daughterer's statements for the truth of the matter asserted,  
23 those --

24 MR. PITARO: And that's exactly why I'm asking the  
25 limited instruction be given to the jury so that -- so that

1 they understand that it. You know that, I do, and the Judge  
2 does, but the rules of evidence are probably baffling --

3 MS. SHOEMAKER: The --

4 MR. PITARO: -- at this stage.

5 MS. SHOEMAKER: The officer's statements are only  
6 being offered to give meaning to Diane Woofter's statements;  
7 however, Diane Woofter was clearly acting at the direction of  
8 the defendant in this case and would be an agent, and  
9 therefore it should come in as a co-conspirator statement as  
10 to her statements --

11 MR. PITARO: Alleged co-conspirator, counsel. Okay.  
12 The point --

13 THE COURT: Well --

14 MR. PITARO: -- the point of the limiting  
15 instructions --

16 THE COURT: I understand.

17 MR. PITARO: -- is that so the jury understands it.

18 THE COURT: With that limitation, you may play the  
19 tape.

20 MS. SHOEMAKER: Thank you, Your Honor.

21 (Plaintiff's Exhibit No. 62 is played)

22 MS. SHOEMAKER: At this time, Your Honor, I would  
23 move for the admission of Exhibit 64 which is the final  
24 follow-up call to this series.

25 THE COURT: 64?

1 MS. SHOEMAKER: Yes, Your Honor.

2 THE COURT: Same objection, counsel?

3 MR. PITARO: Yes, Judge.

4 THE COURT: It'll be received.

5 MS. SHOEMAKER: Thank you, Your Honor.

6 (Plaintiff's Exhibit No. 64 admitted)

7 MS. SHOEMAKER: Pursuant to the stipulation of the  
8 parties, Exhibit 64 is a recorded conversation on August 4th,  
9 194, at 10:19 in the morning. It's an outgoing call over one  
10 of -- no, from Defendant Bongiovanni's home telephone to 702-  
11 565-2028 and the participants are Gerard Bongiovanni and  
12 Officer Daughterer.

13 May we play tape 64 at this time?

14 THE COURT: You may play the tape.

15 MS. SHOEMAKER: Thank you, Your Honor.

16 (Plaintiff's Exhibit No. 64 is played)

17 MS. SHOEMAKER: Your Honor, at this time I would  
18 move for the admission of Exhibit 104 which is the first of a  
19 series of three conversations that are related to one another.

20 THE COURT: 104?

21 MS. SHOEMAKER: Yes, Your Honor.

22 MR. PITARO: Same objection, Judge.

23 THE COURT: Overruled.

24 (Plaintiff's Exhibit No. 104 admitted)

25 MS. SHOEMAKER: Pursuant to the stipulation of the

1 parties, Exhibit 104 is a recorded conversation occurring on  
2 December 24th, 1994 at 1637 military time, which is 4:37 in  
3 the afternoon. It's an incoming call over Paul Dottore's home  
4 telephone and the participants are Paul Dottore and Kenneth  
5 Lombard.

6 May we play 104, Your Honor?

7 THE COURT: You may.

8 MS. SHOEMAKER: Thank you.

9 (Plaintiff's Exhibit No. 104 is played)

10 MS. SHOEMAKER: Your Honor, I'd move for the  
11 admission of Government's Exhibit 105 which is a follow-up  
12 call.

13 MR. PITARO: Same objection, Judge.

14 THE COURT: Overruled.

15 (Plaintiff's Exhibit No. 105 admitted)

16 MS. SHOEMAKER: Pursuant to the stipulation of the  
17 parties, Exhibit 105 is a recorded conversation on December  
18 24th, 1994, at 1648 military time which is 4:48 in the  
19 afternoon. It's an outgoing call to 702-454-5364 from the  
20 defendant's home telephone, and the participants are Kenneth  
21 Lombard and Gerard Bongiovanni.

22 May we play Exhibit 105, Your Honor.

23 THE COURT: You may.

24 (Plaintiff's Exhibit No. 105 played)

25 MS. SHOEMAKER: Your Honor, I'd move for the

1 admission of Government's Exhibit 106 which is the last  
2 follow-up call in this series.

3 THE COURT: Same objection, Mr. --

4 MR. PITARO: Yes.

5 THE COURT: Proceed.

6 MS. SHOEMAKER: Thank you, Your Honor.

7 (Plaintiff's Exhibit No. 106 admitted)

8 MS. SHOEMAKER: Pursuant to the stipulation of the  
9 parties, Exhibit 106 is a recorded conversation on December  
10 24th, 1994, at 1651 military time which is 4:51 in the  
11 afternoon. It is an outgoing call from the defendant's home  
12 telephone to 702-455-3912 and the participants are Gerard  
13 Bongiovanni and a Ginger, last name unknown.

14 May we play tape number 106, Your Honor?

15 THE COURT: You may.

16 MS. SHOEMAKER: Thank you. Exhibit 106, I should  
17 say.

18 (Plaintiff's Exhibit No. 106 is played)

19 MS. SHOEMAKER: At this time I would move for the  
20 admission of Government's Exhibit 113 which is the first of  
21 two calls that are related to one another.

22 THE COURT: 113?

23 MR. PITARO: I'm sorry, what number?

24 MS. SHOEMAKER: 113.

25 THE COURT: Same objection?

1 MR. PITARO: Yes.

2 THE COURT: It'll be received.

3 MS. SHOEMAKER: Thank you, Your Honor.

4 (Plaintiff's Exhibit No. 113 admitted)

5 MS. SHOEMAKER: Pursuant to the stipulation of the  
6 parties, Exhibit 113 is a recorded conversation on December  
7 29th, 1994, at 2020 military time which is 8:20 p.m. It's an  
8 incoming call over the defendant's home telephone and the  
9 speakers are Gerard Bongiovanni and a Ben Spano and an  
10 unidentified female.

11 May we play 113 at this time, Your Honor?

12 THE COURT: You may.

13 MS. SHOEMAKER: Thank you.

14 (Plaintiff's Exhibit No. 113 is played)

15 MS. SHOEMAKER: Your Honor, at this time I would  
16 move for admission of Government's Exhibit 114 which is a tape  
17 recording of a number of calls as a -- all of which are a  
18 follow-up to Exhibit 113 that was just played.

19 MR. PITARO: Same objection.

20 THE COURT: The exhibit will be received.

21 MS. SHOEMAKER: Thank you, Your Honor.

22 (Plaintiff's Exhibit No. 114 admitted)

23 MS. SHOEMAKER: Pursuant to the parties'  
24 stipulation, Exhibit 114 is a recording of seven calls  
25 occurring on December 29th, 1994, at 20 -- Agent Hanford, I'll



1 need you to look at the -- Exhibit 114 in front of you 'cause  
2 my copy is blurred with respect to the time of the first call.

3 THE WITNESS: 2022.

4 MS. SHOEMAKER: Okay. The second call being at  
5 2023, then 2025, 2027, 2119, 2122, and 2126 which is 8:22  
6 p.m., 8:23 p.m., 8:25 p.m., 8:27 p.m., 9:19 p.m., 9:22 p.m.  
7 and 9:26 p.m. The first call is an outgoing call to 702-455-  
8 3912, the second call is an incoming call, third call is an  
9 outgoing call to 702-565-4761, fourth call is an outgoing call  
10 to 702-898-1561, the fifth call is an incoming call, the sixth  
11 call is an outgoing call to 702-565-4761, and the last of  
12 these seven calls is an outgoing call to 702-898-1561, and all  
13 of these calls were intercepted over the defendant's home  
14 telephone.

15 The participants are as marked on the transcripts,  
16 conversations involving Gerard Bongiovanni, a Sam last name  
17 unknown, an unknown male, Ben Spano, an Officer Fuentes and an  
18 Officer Smith.

19 May we play Exhibit 114 at this time?

20 THE COURT: You may.

21 MS. SHOEMAKER: Thank you, Your Honor.

22 (Plaintiff's Exhibit No. 114 is played)

23 MS. SHOEMAKER: At this time I would move for  
24 admission of Government's Exhibit 91.

25 THE COURT: 91?

1 MS. SHOEMAKER: Yes, Your Honor.

2 MR. PITARO: Same objection, Judge.

3 THE COURT: Overruled. 91 will be received.

4 MS. SHOEMAKER: Thank you, Your Honor.

5 (Plaintiff's Exhibit No. 91 admitted)

6 MS. SHOEMAKER: Pursuant to the stipulation of the  
7 parties, Exhibit 91 is a recorded conversation on December  
8 19th, 1994, at 1708 military time, which is 5:08 p.m. It was  
9 an incoming call over one of the chambers telephones and the  
10 participants are Delwin Potter and Gerard Bongiovanni.

11 May we play Exhibit 91, Your Honor?

12 THE COURT: You may.

13 MS. SHOEMAKER: Thank you.

14 (Plaintiff's Exhibit No. 91 is played)

15 MS. SHOEMAKER: At this time, Your Honor, I would  
16 ~~move for the admission of the first of two related calls. The~~  
17 first one's in binder number 1 and is marked as Exhibit 56.

18 THE CLERK: 5-6, Jane?

19 MS. SHOEMAKER: 5-6.

20 (Pause in the proceedings)

21 MR. PITARO: Same objection, Judge.

22 THE COURT: Overruled. 56 will be received.

23 MS. SHOEMAKER: Thank you, Your Honor.

24 (Plaintiff's Exhibit No. 56 admitted)

25 MS. SHOEMAKER: Pursuant to the stipulation of the

1 parties, Exhibit 56 is a recorded conversation on August 3rd,  
2 1994, at 10:36 in the morning. It's an incoming call over one  
3 of the chambers telephones and the participants are Gerard  
4 Bongiovanni and James Jack O'Neill. May we play Exhibit 56 at  
5 this time?

6 THE COURT: You may.

7 (Plaintiff's Exhibit No. 56 played)

8 BY MS. SHOEMAKER:

9 Q Just for clarification purposes, Agent Hanford, is James  
10 Jack O'Neill an attorney?

11 A Not to my knowledge, no.

12 MS. SHOEMAKER: Your Honor, at this time I'd move  
13 for the admission of a related call that is marked  
14 Government's Exhibit 70 and is found in binder number 2.

15 THE COURT: 70?

16 MS. SHOEMAKER: Yes, Your Honor.

17 MR. PITARO: Same objection, Judge.

18 THE COURT: Overruled.

19 (Plaintiff's Exhibit No. 70 admitted)

20 MS. SHOEMAKER: Pursuant to the parties'  
21 stipulation, Exhibit 70 is a recorded call on August 10th,  
22 1994, at 2149 military time, which is 9:49 p.m. It's an  
23 outgoing call to 702-876-0191 over Paul Dottore's home  
24 telephone and the participants are Paul Dottore and James Jack  
25 O'Neill.

1 May we play tape 70 at this time, Your Honor?

2 THE COURT: You may.

3 (Plaintiff's Exhibit No. 70 is played)

4 MR. PITARO: Your Honor, I'd ask to strike that  
5 call.

6 THE COURT: I'm sorry.

7 MR. PITARO: I'm going to ask to strike that. If  
8 you'd look in the middle of page 2, they -- they claim they  
9 minimized it right in the middle of what they're saying is  
10 supposed to be inculpatory testimony leaving impression that  
11 the middle part of that conversation has been left out due to  
12 some minimization that then starts again.

13 THE COURT: Well --

14 MR. PITARO: I mean, it's selective editing.

15 THE COURT: -- we're going to take a recess in a  
16 minute. Why don't you identify -- and they're obligated, of  
17 course, to minimize.

18 MR. PITARO: But, Judge, you can't be obligated to  
19 minimize and then saying it's inculpatory and then minimize in  
20 the middle of a sentence and then pick up as if the sentence  
21 is continuing on.

22 MS. SHOEMAKER: Well, Mr. Pitaro has to be  
23 speculating here. It was minimized so nobody knows what the  
24 person continued to say at that point.

25 THE COURT: Well, I certainly --

1 MR. PITARO: Well, then it -- that's -- I think  
2 that's -- that's exactly the issue, that the way you've done  
3 it is you selectively edited by taking stuff out and that's  
4 why I'm moving to strike it.

5 THE COURT: It's always done, counsel, you know  
6 that.

7 MR. PITARO: It's not, not this way it isn't, Judge.

8 THE COURT: Well, it's --

9 MR. PITARO: I've never seen a tape in the middle of  
10 a sentence minimized and then say it's -- it's a tape that --  
11 to use against somebody.

12 THE COURT: Well, let me suggest during the recess  
13 you take a look and if you want to play the entire thing, I  
14 will deny the motion to strike.

15 MR. PITARO: I don't have it. That's the thing.

16 MS. SHOEMAKER: Your Honor, this was minimized  
17 pursuant to the agent's statutory duty to shut the recorder  
18 off when they believed that something was not pertinent.

19 MR. PITARO: Then why is it here?

20 THE COURT: Well, in any event, I don't know that I  
21 can do anything, but does not create a circumstance where I  
22 would strike the tape. You've made your motion. I've denied  
23 it.

24 Anything further on this particular area?

25 MS. SHOEMAKER: Not on this series, Your Honor.

1 THE COURT: Okay. We'll take our afternoon recess.  
2 We'll be in recess for fifteen minutes. You're to follow all  
3 of the instructions that Court has given you.

4 (Off-record colloquy re heat)

5 (Court recessed at 2:58 p.m. until 3:20 p.m.)

6 (Jury is not present)

7 THE COURT: Go line the jury up, please.

8 (Discussion at sidebar)

9 THE COURT: You can stand wherever you want now.

10 MR. PITARO: Huh? Oh.

11 THE COURT: Okay.

12 MR. PITARO: Judge, they've asked to call a witness  
13 out of order --

14 THE COURT: Okay.

15 MR. PITARO: -- which obviously I have no problem  
16 with assuming --

17 THE COURT: Okay.

18 MR. PITARO: -- that you allow him to testify. This  
19 is a Mr. Russell who was probably an out-of-state attorney who  
20 did the Kutash matter. I don't think -- given your ruling  
21 that I can't get into the decision that --

22 THE COURT: The correctness of the decision?

23 MR. PITARO: The idea that it was reasonably based,  
24 okay?

25 THE COURT: Mm-hmm.

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1 MR. PITARO: That it had a basis in law --

2 THE COURT: Now, that ruling was bifurcated and  
3 there were two questions that we addressed.

4 MR. PITARO: No, I understand that. Well, but I'm  
5 -- but I'm saying is to me they're related, okay?

6 THE COURT: Okay.

7 MR. PITARO: All right. And I don't think the  
8 attorney for the party should be allowed to get up here and  
9 explain the nature of the litigation because he's obviously an  
10 advocate because then I can't ask him -- you know, I can't get  
11 into the merits of the thing and yet we have an advocate up  
12 here, especially a losing advocate getting up here saying,  
13 well, this or that about the nature. It's going to be skewed  
14 and colored. And quite truthfully, I think any evidentiary  
15 value is grossly outweighed by prejudice. I mean, I'm being  
16 forced to call --

17 THE COURT: Well, let me ask. What do you intend to  
18 do?

19 MR. PITARO: -- Jimmerson.

20 THE COURT: Who is it you want to --

21 MR. JOHNSON: This Mr. Russell was Mr. Parson -- Mr.  
22 Parson testified during the Kutash trial --

23 THE COURT: Okay.

24 MR. JOHNSON: -- if you take your memory back to  
25 that.

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1 THE COURT: Yeah.

2 MR. JOHNSON: Mr. Russell will essentially assume  
3 Mr. Parson's role in that there were some issues during the  
4 Kutash trial that Mr. Parsons had --

5 THE COURT: Mr. Parson not at trial or something?

6 MR. PITARO: Well, he wasn't --

7 MR. JOHNSON: No, he -- Mr. Parson wasn't involved  
8 in certain --

9 THE COURT: Okay.

10 MR. JOHNSON: -- aspects of it. Now we got it in  
11 during the last trial on a variety of basises [sic] but Mr.  
12 Russell was directly involved. It will essentially be the  
13 same testimony that Mr. Parsons gave and it's designed to just  
14 say that there was litigation. That it arose out of Mr.  
15 Riklis attempting to assert financial control over the  
16 corporation. That Mr. Kutash and Mr. Riklis filed lawsuits  
17 that got consolidated into one case in front of Mr.  
18 Bongiovanni. There was a request for a TRO. There was a  
19 hearing.

20 THE COURT: You'll explain what a TRO is.

21 MR. JOHNSON: We'll explain what a TRO is. There  
22 was a hearing. Mr. Bongiovanni ruled in favor of Kutash and  
23 set a preliminary injunction hearing date.

24 THE COURT: Well, let me tell you, in my judgment  
25 that lays the framework either way. Why don't you just enter

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1 into some kind of a written stipulation that you can read into  
2 the record. I don't see any reason to -- can you do that? Do  
3 you have any problem with that?

4 MR. PITARO: I'm always willing to discuss it. We  
5 haven't discussed it, but I'm more than willing to take five  
6 minutes to see.

7 THE COURT: Well --

8 MR. JOHNSON: We can't do it. I mean, we aren't  
9 going to be able to put together a stipulation right now. If  
10 that's what -- the way you'd want to prefer it, we'd just have  
11 to --

12 THE COURT: Well, I much prefer it. It doesn't make  
13 any sense at all to take the time to have somebody explain.  
14 As long as you just need to provide the predicate information  
15 to this jury and it's -- I don't think it's disputed.

16 MR. PITARO: Well, the only thing I'm not aware of,  
17 I'm not aware of a Riklis lawsuit being filed before the 15th.

18 MR. JOHNSON: It was filed on the 13th, but it was  
19 filed two hours after the Kutash case, so it eventually was --  
20 they responded in their answer. Their allegation --

21 THE COURT: And this guy is in town now?

22 MR. JOHNSON: He's in town now.

23 THE COURT: And you want to put him on so that he  
24 can get out of town, I take it?

25 MR. JOHNSON: That was the -- that was the idea,

1 yeah. If you would much rather do it by --

2 THE COURT: I would much prefer to do that kind of  
3 thing by stipulation. I don't see a problem at all.

4 MR. JOHNSON: If we can -- if -- what I can do is  
5 are you going to be in your office tonight?

6 MR. PITARO: I'll be -- I can -- I -- well, we'll  
7 get the --

8 THE COURT: See if you can put a stipulation  
9 together.

10 MR. JOHNSON: I'll send him home.

11 THE COURT: If you can't, then --

12 MR. JOHNSON: He said that he could fly back first  
13 thing in the morning.

14 THE COURT: Where is his home?

15 MR. JOHNSON: He's in San Diego. If Mr. Pitaro --  
16 I'll try to get something to Mr. Pitaro by --

17 MR. PITARO: I mean --

18 MR. JOHNSON: -- 6:30.

19 MR. PITARO: -- I don't --

20 MR. JOHNSON: If he'll look at it right away and --

21 MR. PITARO: Well, you can -- you can call me --

22 MR. JOHNSON: -- see if we can reach an agreement.

23 MR. PITARO: I mean if the stipulation is that there  
24 was -- that there was litigation over the control of the hotel  
25 and that --

1 THE COURT: It was the show.

2 MR. JOHNSON: Show.

3 MR. PITARO: I mean -- what did I say? The show  
4 based upon a financial dispute arose among the two and that  
5 pursuant to this financial dispute that there was a matter for  
6 a temporary restraining order --

7 THE COURT: Mm-hmm.

8 MR. PITARO: -- that was heard on whatever date it  
9 was -- the 16th.

10 THE COURT: Was it heard at all or did he just grant  
11 the --

12 MR. PITARO: No, there was a full hearing.

13 THE COURT: There was a hearing on --

14 MR. PITARO: Yeah.

15 THE COURT: -- the TRO?

16 MR. JOHNSON: Yeah, uh-huh.

17 THE COURT: Okay.

18 MR. PITARO: Yeah. They had apparently a --

19 MR. JOHNSON: Well, I'll put something together.

20 MR. PITARO: -- that thick.

21 MR. JOHNSON: It will be a little bit more detailed  
22 than that --

23 THE COURT: Okay.

24 MR. JOHNSON: -- but I'll put something together.

25 MR. PITARO: Well, what I'm -- I guess what I'm

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1 saying is and maybe we're all agreeing or -- is I'm just not  
2 sure we -- it's difficult for an advocate to get on and not  
3 advocate when you're asking him about his own litigation.

4 THE COURT: Well, and -- that's why you can do it  
5 with a stipulation. I think the stipulation will have to  
6 include --

7 MR. PITARO: It'll probably work.

8 THE COURT: -- that indeed Judge Giovanni --  
9 Bongiovanni ruled in favor of --

10 MR. PITARO: Right. That they had a hearing and --

11 THE COURT: Yeah.

12 MR. PITARO: -- they --

13 THE COURT: Set it for a preliminary injunction.

14 MR. PITARO: And --

15 THE COURT: And give some simple explanation of what  
16 a restraining order --

17 MR. JOHNSON: I'll prepare something based upon what  
18 we did the last time.

19 MR. PITARO: Right. The --

20 THE COURT: Make it clear to them, incidentally,  
21 that it's the kind of thing that a judge hears, not a jury.

22 MR. JOHNSON: Okay.

23 THE COURT: Okay?

24 MR. JOHNSON: I'll try to do that on that.

25 MR. PITARO: You want to try it? I'm game.

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1 MR. JOHNSON: I mean I don't have any problem --

2 THE COURT: Okay.

3 MR. JOHNSON: -- sending him back as long -- as long  
4 as we try to get everything --

5 MR. PITARO: I'll either be at my office or --

6 MR. JOHNSON: Okay.

7 MR. PITARO: -- my home.

8 MR. JOHNSON: All right.

9 MR. PITARO: I won't be out -- I won't be out  
10 gambling.

11 (End of discussion at sidebar)

12 (Jury reconvened)

13 THE COURT: Please be seated.

14 The Court notes -- do we have the government  
15 lawyers?

16 MS. SHOEMAKER: Jane Shoemaker's here for the  
17 government, Your Honor.

18 THE COURT: Mr. Johnson is -- okay, you -- you're  
19 adequate.

20 MR. PITARO: We need one --

21 MS. SHOEMAKER: I think Mr. Johnson just went out  
22 to --

23 MR. PITARO: Oh, I'm sorry.

24 THE CLERK: -- excuse the other witness.

25 MR. PITARO: I'm sorry. I looked over and I didn't

1 see anybody.

2 THE COURT: Okay. The Court notes the appearance of  
3 counsel for the government and for the defendant and the  
4 presence of the defendant. And I take it that you'll  
5 stipulate to the presence of the jury.

6 MR. PITARO: Yes -- yes, Your Honor.

7 MS. SHOEMAKER: Yes, Your Honor.

8 THE COURT: Notwithstanding they bend down  
9 occasionally.

10 You may proceed.

11 MS. SHOEMAKER: Thank you, Your Honor.

12 At this time I would move for the admission of the  
13 first of two related calls that are -- I should say they're  
14 related to one another. The first is Exhibit 8 which is in  
15 binder number 1.

16 THE COURT: 8?

17 MS. SHOEMAKER: 8, Your Honor.

18 THE COURT: Okay.

19 MR. PITARO: Your Honor, I'm going to object to the  
20 introduction of this evidence on the grounds and -- and like  
21 any other related exhibit that might be the easiest way.

22 THE COURT: Okay.

23 MS. SHOEMAKER: This one's --

24 THE COURT: Go ahead.

25 MS. SHOEMAKER: I'm sorry, Your Honor.

1 This one is being offered as 801(d)(2)(E). There is  
2 one follow-up call related to it. Part of it is 801(d)(2)(E)  
3 and part of it is being offered for another purpose that I  
4 would probably need to explain at sidebar.

5 THE COURT: Well, why don't -- let me take a look at  
6 it.

7 (Pause in the proceeding)

8 THE COURT: Okay. You want to come to sidebar?

9 (Discussion at sidebar)

10 THE COURT: Okay. I read only the first tape. Tell  
11 me how it's relevant to this.

12 MS. SHOEMAKER: Okay, Your Honor. This is a  
13 situation where a friend of Paul Dottore's called Paul Dottore  
14 to tell him that his sister --

15 THE COURT: Lowe --

16 MS. SHOEMAKER: -- had been arrested -- Leslie Lowe.

17 THE COURT: Mm-hmm.

18 MS. SHOEMAKER: Leslie Lowe is the brother, the one  
19 who called Paul Dottore --

20 THE COURT: Mm-hmm.

21 MS. SHOEMAKER: -- and told him that his sister had  
22 been arrested and was in jail and he was basically --

23 THE COURT: Here?

24 MS. SHOEMAKER: Yes, here, Your Honor. And he was  
25 basically requesting assistance from Paul. Paul said he would

1 see what he could do. He took down the information about  
2 where she was in jail and all and her name and everything.  
3 And then the next call is where Paul Dottore calls him back  
4 and --

5 THE COURT: Calls Lowe back.

6 MS. SHOEMAKER: -- calls Leslie Lowe back and by  
7 that point in time Bongiovanni has arranged for the O/R of the  
8 sister. And Leslie says in the beginning of the call, she got  
9 O/R'd and he -- Paul says, yeah, I figured that. And then  
10 Leslie Lowe goes on -- now that part -- up to that point our  
11 position is it's 801(d)(2)(E). From that point forward in the  
12 conversation, Leslie Lowe starts telling Paul Dottore what the  
13 charges -- in more detail. He found out more about 'em 'cause  
14 initially he didn't think she was really -- had done anything  
15 and it was a mistake and he talked to the DA and he started  
16 saying more about what the charges were about, what kind of  
17 evidence they had against her, and how she has an opportunity  
18 to enter a guilty plea through the DA's office and should he  
19 do it or not. And Paul Dottore refers him to Peter Flangas  
20 and says, you should go there and tell him that you're a  
21 friend of Gerard Bongiovanni's. And then he says -- they go  
22 on and they talk about it a little bit more and whether or not  
23 he should do it. And Paul Dottore says, you know, I can't  
24 tell you that, that's up to her, you know, whether she's going  
25 to need to do it.



1 One of the -- we're offering that as further  
2 801(d)(2)(E), but also we're offering it for a very important  
3 point to show that Paul Dottore, when presented with an  
4 opportunity, if he was really just out there scamming  
5 everybody and saying he had an in with the judge and getting  
6 money out of him when he really couldn't do anything, he could  
7 have offered an -- here was a perfect opportunity for him to  
8 do it and he didn't do it. So this would go to tend to  
9 support his credibility that he's not lying about those  
10 various matters because here he didn't --

11 THE COURT: What's your objection --

12 MS. SHOEMAKER: -- he didn't take that opportunity.

13 THE COURT: -- Mr. Pitaro?

14 MR. PITARO: I'm sorry. Didn't take the opportunity  
15 to what?

16 MS. SHOEMAKER: Well, it's been presented -- it's  
17 been argued that Paul Dottore whenever -- for example, with  
18 the Olejack thing, that whenever given an opportunity, if  
19 somebody who had charges pending that he would just say a case  
20 was pending before his judge so he could rip them off for  
21 money, and he was taking whatever opportunities he could just  
22 to make money off of. And here's an opportunity where he  
23 could have done that, but he didn't do it, which tends to  
24 support our theory that he's not doing it, he's only taking  
25 bribes or soliciting bribes in situations where he really did

1 talk to the defendant.

2 MR. PITARO: What they're trying to do is  
3 rehabilitate a witness.

4 MS. SHOEMAKER: But -- no.

5 MR. PITARO: That's exactly what it is. Let me tell  
6 you what the thing is. We have -- we have a -- what appears  
7 to be a petty larceny, okay. That the guy calls up and  
8 says --

9 THE COURT: This is Lowman.

10 MR. PITARO: Lowe, I guess it is. If -- yeah, they  
11 just identified it as Leslie Lowe. Is Lowe the last name?

12 MS. SHOEMAKER: Leslie Lowe is the brother.

13 MR. PITARO: What's that?

14 MS. SHOEMAKER: Leslie Lowe is the brother who's  
15 talking to Paul Dottore.

16 MR. PITARO: Right. What I'm saying you had him  
17 Leslie now, okay, he's Lowe, so I'm assuming it's the same  
18 person. Then what they get into with this long involved  
19 conversation -- now, remember this guy has said I've already  
20 talked to the DA -- Lowe says I talked to the DA. I think  
21 he's the one that talked to Scott Mitchell. Any of you know  
22 Scott, he's a local prosecutor in the district attorney's  
23 office. And they keep going on and on about how they can --  
24 they can -- that the DA will knock it down, et cetera. And  
25 then Paul starts goes into -- and I think this is -- and then

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1 Paul starts going into, well, she says, she's unassigned, is  
2 she unassigned. You know, I'd never plead guilty unless -- if  
3 I was innocent -- in doing in all this -- I mean this is all  
4 irrelevant to this and it doesn't show anything. It really is  
5 nothing and this case was -- this is another case I got the  
6 certified copies --

7 THE COURT: Well, let me tell you --

8 MR. PITARO: -- was ultimately dismissed, Judge.

9 THE COURT: -- what I'm going to do. I'm going to  
10 keep it out at this point. If it -- if it gets to the point  
11 that there may be an effort -- and you say it's not to  
12 rehabilitate, but we've had so much of this and it really is  
13 getting -- I'm going to keep it out, but without any prejudice  
14 to you to raise it at an appropriate time, but I'm going to  
15 keep it out now.

16 MS. SHOEMAKER: Thank you, Your Honor.

17 MR. PITARO: That's 13 -- is the other one, right?

18 MS. SHOEMAKER: Yes, 12 and 13.

19 (End of discussion at sidebar)

20 MS. SHOEMAKER: May I just have the Court's  
21 indulgence for one moment, please.

22 THE COURT: Yes.

23 (Colloquy between Court and Clerk)

24 MS. SHOEMAKER: Thank you, Your Honor. I'm going to  
25 move into a new area, now. I move for the admission of the

1 first of a series of three calls that relate to each other.  
2 The first one is Exhibit 16.

3 THE COURT: 16?

4 MS. SHOEMAKER: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. PITARO: Your Honor, I'm going to object on the  
7 same grounds.

8 THE COURT: Same grounds as you typically --

9 MR. PITARO: Yes.

10 THE COURT: -- have been objecting to?

11 MR. PITARO: Yes, Judge.

12 THE COURT: Okay.

13 MR. PITARO: The typical objection.

14 THE COURT: Okay. That it's not 801(d)(2)(E).

15 MR. PITARO: Huh?

16 THE COURT: That it's not 801(d)(2)(E) evidence in

17 effect. In effect that it isn't -- it doesn't come in under  
18 801, specifically 801(d)(2)(E). That's your objection, right?

19 MR. PITARO: Yes.

20 THE COURT: Okay. The objection's overruled.

21 MS. SHOEMAKER: Thank you, Your Honor. Is Exhibit  
22 16 received then?

23 THE COURT: It is received.

24 (Plaintiff's Exhibit No. 16 admitted)

25 MS. SHOEMAKER: Thank you.

1 Pursuant to the parties' stipulation, Exhibit 16 is  
2 a recorded conversation on March 16th, 1994, at 1532 military  
3 time which is 3:32 in the afternoon. It's an outgoing call  
4 from Paul Dottore's home telephone to 702-455-4261. And it's  
5 a conversation between Paul Dottore, Del Potter, and at one  
6 point Diane Woofter.

7 May we play Exhibit 16 at this time?

8 THE COURT: You may.

9 MS. SHOEMAKER: Thank you, Your Honor.

10 THE COURT: Let me just tell the jury. I don't want  
11 you to be confused and I think counsel won't have any -- when  
12 a person mentions 801 or 801(d)(2)(E), that's a particular  
13 rule of evidence that -- I just don't want you to be confused,  
14 but there's no reason to go any further than that simply to  
15 tell you. From time to time we'll be referring to statutes,  
16 too, and they will have numbers, but you don't have to worry  
17 about the numbers.

18 MS. SHOEMAKER: Thank you, Your Honor. May we play  
19 Exhibit 16 at this time?

20 THE COURT: Yes, you may.

21 MS. SHOEMAKER: Thank you.

22 (Plaintiff's Exhibit No. 16 is played)

23 MS. SHOEMAKER: At this time I would move for the  
24 admission of Exhibit 17, which is a follow-up call.

25 MR. PITARO: Your Honor, this I'd object to on

1 relevancy and also 801.

2 MS. SHOEMAKER: Your Honor, it is part of the  
3 conspiracy and 1343 charges and it's admissible under  
4 801(d) (2) (E) and it will be tied in to the defendant in the  
5 next follow-up call.

6 MR. PITARO: Your Honor, I think if you look at it  
7 you see that it has nothing to do with Mr. Bongiovanni. You  
8 have other people out there talking.

9 MS. SHOEMAKER: Exhibit 21, which will be the next  
10 follow-up call, does tie it in to the defendant, Your Honor.

11 (Pause in the proceeding)

12 THE COURT: The objection's overruled.

13 (Plaintiff's Exhibit No. 17 admitted)

14 MS. SHOEMAKER: Thank you, Your Honor.

15 Pursuant to the stipulation of the parties, Exhibit  
16 17 is a recorded conversation on March 16th, 1994, at 1538

17 military time which is 3:38 in the afternoon. It's an  
18 outgoing call from Paul Dottore's home telephone to 702-564-  
19 6465. And the participants are Paul Dottore and a Bruce, last  
20 name unknown, and a John, last name unknown.

21 May we play Exhibit 17 at this time?

22 THE COURT: You may.

23 MS. SHOEMAKER: Thank you.

24 (Plaintiff's Exhibit No. 17 is played)

25 MS. SHOEMAKER: At this time I'd move for the

1 admission of Exhibit 21 which is the last final -- or is the  
2 last follow-up call in this series.

3 THE COURT: Okay. And you object for the same --

4 MR. PITARO: Yes.

5 THE COURT: -- reasons, counsel. The objection's  
6 overruled. 21 will be received.

7 (Plaintiff's Exhibit No. 21 admitted)

8 MS. SHOEMAKER: Thank you, Your Honor.

9 Exhibit 21, pursuant to the parties' stipulation, is  
10 a recorded conversation on March 18th, 1994, at 1858 military  
11 time which is 6:58 p.m. It was an outgoing call to 702-433-  
12 1652 from Paul Dottore's home telephone. And the participants  
13 are Paul Dottore and Gerard Bongiovanni.

14 May we play tape 21, Your Honor?

15 THE COURT: You may.

16 MS. SHOEMAKER: Thank you.

17 (Plaintiff's Exhibit No. 21 is played)

18 MS. SHOEMAKER: Court's indulgence for just one  
19 moment, please.

20 At this time I would move for the admission of  
21 Government's Exhibit 37.

22 THE COURT: 37?

23 MS. SHOEMAKER: Yes, Your Honor.

24 (Pause in the proceeding)

25 MR. PITARO: Your Honor, I have a -- my tape 520

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1 which is the complete conversation.

2 THE COURT: Okay. Do you have any problem with 520  
3 coming in? The defendant's exhibit?

4 MS. SHOEMAKER: Yes, Your Honor. We redacted a  
5 portion of the tape that is inadmissible under Rule 608(b).  
6 We also cut out a portion at the beginning of the call where  
7 the daughter answered the telephone, but it was totally  
8 irrelevant.

9 MR. PITARO: Well, we've had the daughter answer the  
10 phone on almost half these calls.

11 THE COURT: That isn't a problem. Let me talk with  
12 you about the rule question.

13 (Discussion at sidebar)

14 MS. SHOEMAKER: On this tape, Your Honor, there's a  
15 portion that we cut out where Paul Dottore -- Jim Barrier,  
16 when they were speaking to each other, Barrier said that he  
17 had a Packard Bell computer and a printer that somebody could  
18 get through Paul Dottore at 33 to 50 percent of the actual  
19 cost. Even assuming that this were stolen property, that  
20 would be something that -- and it appears that it may be from  
21 other conversations we have as well, that it would be  
22 inadmissible under 608(b). This is something that Mr. Pitaro  
23 would only be able to question Paul Dottore about and have to  
24 accept his answer.

25 THE COURT: It's a fairly collateral matter.



1 MS. SHOEMAKER: Yes, Your Honor.

2 THE COURT: Yeah.

3 MR. PITARO: Well, if I may, Judge, what it is is  
4 it's taking it out of the context -- it's more than 50 percent  
5 He was selling hot computers for it was like six fifty (650)  
6 and so if you've looked at -- I don't know if you had a  
7 chance, but you looked at the tape there --

8 THE COURT: I have.

9 MR. PITARO: -- we have the -- we have the  
10 conversation in the context it's in that's admissible under  
11 106 and I'm entitled to not only play -- and it's not a  
12 collateral matter in terms of what they're talking about.

13 THE COURT: Well, does it have -- why do you want to  
14 play this tape?

15 MS. SHOEMAKER: Your Honor, in this particular tape,  
16 Defendant Bongiovanni is there at the house having coffee with  
17 Paul Dottore and Paul Dottore tells Jim Barrier that he has  
18 the situation primed --

19 THE COURT: That he has what?

20 MS. SHOEMAKER: He has the situation primed for him.  
21 And at first, Jim Barrier thinks he's talking about something  
22 else to do with the car and Paul says, no, no, your situation  
23 in district court. And he says I'm getting it primed now and  
24 the judge was sitting right there with him and he repeats it.  
25 The judge is right there with him.

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1 MR. PITARO: No, he says the judge is out, not the  
2 judge is listening in. What we have is we have the one tale  
3 we have here Judge, Jim Barrier is the man --

4 COURT RECORDER: He's shuffling papers, I can't hear  
5 him.

6 MR. PITARO: -- Buffalo. That's on apparently in  
7 some of the tapes he's referred to as "Buffalo" and it appears  
8 that Mr. Dottore and Mr. Barrier are engaging and have engaged  
9 in selling stolen equipment. In this case what they were  
10 talking about is the stolen computers or at least you can make  
11 the inference that when you get brand new computers in sealed  
12 boxes and you can sell them for about a third of what the  
13 value is that they are. And then Dottore and --

14 THE COURT: Well, let me tell you, if you really  
15 want to get it in, you feel it's important, I'll play the  
16 whole thing so that they can see what the entire picture is.

17 MS. SHOEMAKER: Well, Your Honor --

18 THE COURT: It's up to you.

19 MS. SHOEMAKER: All right. We'll play the whole  
20 tape, Your Honor.

21 MR. PITARO: Okay. And then when they got it --  
22 might as well get it out of the way now because they're gonna  
23 then play 38 -- are you going to play 38 next?

24 MS. SHOEMAKER: I'd have to go look at my notes to  
25 be able to tell you that.

1 MR. PITARO: That's the next one with Dottore and  
2 Barrier.

3 MS. SHOEMAKER: I have to go look at my notes to  
4 tell you that.

5 MR. PITARO: Okay. 'Cause if it is, then I have 521  
6 which is the next sequence. I wrote them --

7 THE COURT: What's the difference between the two?

8 MS. SHOEMAKER: If I can go grab my notes real  
9 quick. I'm not even sure if we're going to --

10 MR. PITARO: No, no. What I'm saying it's the --  
11 it's the follow-up call and then that's where they --

12 THE COURT: Oh, I understand it's the follow-up  
13 call, but what's different about it than the one that they  
14 tentatively have proposed --

15 MS. SHOEMAKER: Oh, actually, I'm not going to be  
16 offering the follow-up call.

17 THE COURT: Okay.

18 MS. SHOEMAKER: It's in the binders but I've decided  
19 not to offer that call.

20 MR. PITARO: Oh, I was going say, we might as well  
21 -- instead of doing it and then coming back --

22 THE COURT: Well, she's not going to offer it so I  
23 don't have to worry about it.

24 MR. PITARO: So I get --

25 THE COURT: Get your tape.

1 MR. PITARO: I will.

2 THE COURT: Okay.

3 MS. SHOEMAKER: Okay. And what is the number for  
4 yours for --

5 MR. PITARO: 520.

6 MS. SHOEMAKER: 520, okay.

7 (End of discussion at sidebar)

8 THE COURT: Do you have 520, counsel?

9 MR. PITARO: Yes, Judge.

10 THE COURT: Okay. 520 will be received.

11 (Defendant's Exhibit No. 520 admitted)

12 MS. SHOEMAKER: Thank you, Your Honor.

13 MR. PITARO: Of course, for the record I'm objecting  
14 to anything that didn't we get [sic]; once you overrule that  
15 then I'm under 106, then I'm putting in 520.

16 MS. SHOEMAKER: Pursuant to the parties'  
17 stipulation, this is a conversation that was recorded on May  
18 19th, 1994, at 2054 military time, which is 8:54 p.m.. It was  
19 an incoming call over Paul Dottore's home telephone and the  
20 participants are Jim Barrier and Paul Dottore.

21 BY MS. SHOEMAKER:

22 Q Before we play the tape, Agent Hanford, do you know who  
23 Jim Barrier is?

24 A Yes, he owns an auto repair establishment on Industrial  
25 called Auto Marine.

1 Q Do you know whether he's a friend of Paul Dottore's?

2 A Yes, he is.

3 Q Okay.

4 MS. SHOEMAKER: Your Honor, may we play the tape,  
5 Defendant's 520, at this time?

6 THE COURT: Okay. You may.

7 MS. SHOEMAKER: Thank you.

8 (Defendant's Exhibit No. 520 is played)

9 MS. SHOEMAKER: At this time I would move for the  
10 admission of the first of two calls that are related to each  
11 other. The first one is Exhibit 19.

12 THE COURT: What number?

13 MS. SHOEMAKER: 19.

14 THE COURT: Counsel, let me have you come to sidebar  
15 for just a moment.

16 (Discussion at sidebar)

17 THE COURT: Now is the whole reason for that to  
18 simply show that the judge was present when they were talking  
19 about criminal activity?

20 MS. SHOEMAKER: No, it was to show Paul Dottore was  
21 telling Jim Barrier that he had the judge there and that they  
22 -- he was getting his situation in district court -- what he  
23 was doing he was arranging for something to be done for some  
24 matter that Barrier --

25 MR. PITARO: There was nothing --

1 MS. SHOEMAKER: -- had in district court.

2 MR. PITARO: -- that we know of. We've had -- there  
3 is absolutely nothing we can hear; that he was actually  
4 talking on a cellular and there's casino background. There's  
5 nothing to indicate that Bongiovanni was there at all outside  
6 of Dottore saying he's there and you hear -- sounds like in a  
7 casino.

8 THE COURT: I'm not sure that I couldn't hear his  
9 voice in the back --

10 MR. PITARO: Well, I didn't hear anything.

11 THE COURT: -- counsel.

12 MS. SHOEMAKER: It was intercepted over Paul's home  
13 telephone.

14 MR. PITARO: Was it?

15 MS. SHOEMAKER: Yeah.

16 MR. PITARO: Well, I heard background noise.

17 THE COURT: Yeah, I think I did.

18 MR. PITARO: Judge --

19 THE COURT: But in any event you can address that.  
20 If the only reason was to show the presence of the judge  
21 during the talking of criminal activity.

22 MR. PITARO: Now the next one's --

23 MR. JOHNSON: See, that's what we had excluded in  
24 our tape was --

25 THE COURT: Yeah.

1 MR. JOHNSON: -- the criminal activity.

2 MR. PITARO: Well -- they -- well, I understand  
3 that.

4 THE COURT: I don't know why you wanted it in.

5 MR. PITARO: What? That Dottore's out scamming  
6 people?

7 THE COURT: With the judge present.

8 MR. PITARO: Well, I don't -- the judge wasn't  
9 present.

10 THE COURT: Okay.

11 MR. PITARO: Okay. The next one -- now, now -- the  
12 Judge told you not to smirk.

13 MS. SHOEMAKER: Sorry. I'm sorry.

14 MR. PITARO: The -- this next one they're getting  
15 into apparently is this Mesquite case.

16 THE COURT: Is what?

17 MR. PITARO: The Mesquite case. Isn't that what  
18 those are?

19 MS. SHOEMAKER: The next --

20 THE COURT: Mesquite?

21 MS. SHOEMAKER: -- the two tapes we're going to be  
22 offering now it's a solicitation where Paul Dottore was  
23 talking to Lynn Leavitt about a possible solicitation of a  
24 bribe from the mayor in Mesquite who apparently had a criminal  
25 case pending in front of another judge but a civil case

1 pending in front of Bongiovanni. And in the first call he's  
2 soliciting a bribe through Lynn Leavitt and Lynn Leavitt says  
3 I'll get back to him. The second call, Lynn Leavitt calls  
4 back and says that he checked with the guy's father and that  
5 the criminal case is under Mosley and that they -- they're  
6 satisfied, just -- they want to leave it alone. So nothing  
7 ever happens with that and we're not claiming that anything  
8 ever does happen with it, but it's alleged as an overt act.  
9 Just because it didn't go through with it doesn't mean that  
10 the solicitation can't be part of the conspiracy.

11 MR. PITARO: Well --

12 THE COURT: Well, just a minute. And you object to  
13 it?

14 MR. PITARO: -- well, I'm going to object under the  
15 same thing now. Lynn Leavitt's on that call. I mean, I'm --  
16 I'll probably get into --

17 THE COURT: Well --

18 MR. PITARO: -- I'll get into portions of it.

19 THE COURT: -- let me suggest to you that again if  
20 this jury doesn't believe that Paul Dottore is in the business  
21 of soliciting bribes, nothing you can do at this point is  
22 going to convince 'em that he is. And I don't know that this  
23 adds a single thing. If you're objecting to it, I'll sustain  
24 the objection.

25 MR. PITARO: Okay. They're going to strike it from



1 the indictment then?

2 MS. SHOEMAKER: We don't want to. We want -- we  
3 want it to be played 'cause it's alleged as an overt act and  
4 we believe there's another solicitation that was involved here  
5 and we should be able to present that to the jury.

6 THE COURT: Well --

7 MR. JOHNSON: This is significant, also, Your Honor,  
8 in terms of timing in that this was --

9 COURT RECORDER: Eric, I can't hear you.

10 MR. JOHNSON: I'm sorry. This is significant, also,  
11 Your Honor, in terms of timing, in that this was, I believe,  
12 the earliest recorded solicitation that we have in this case  
13 and it is right around the time --

14 THE COURT: By Dottore.

15 MR. JOHNSON: -- of the -- by Dottore, and it is  
16 right around the time of the allegations concerning the

17 Olejack solicitation.

18 MR. PITARO: But see, Dottore says in the discovery  
19 that he never spoke to Bongiovanni about this.

20 MS. SHOEMAKER: Well, the --

21 MR. PITARO: That's what he says in the 302.

22 MS. SHOEMAKER: -- Mr. Pitaro can impeach him on  
23 that, but he has also made different statements that -- in  
24 trial preparation that he has -- that he did speak to him  
25 about it.

1 THE COURT: What's all the talk act? How many overt  
2 acts do you have listed?

3 MS. SHOEMAKER: I think there are about twenty-five  
4 overt acts but most of them --

5 THE COURT: All you need is one.

6 MR. JOHNSON: -- most of them are ours, Your Honor,  
7 but this is still -- it's another -- as Mr. Johnson was  
8 pointing out, it's one of the earliest solicitations that was  
9 going on at the same time period as the Olejack solicitation.  
10 And while they do come back and say the criminal case was  
11 assigned to another judge just like they did with Olejack, as  
12 it turns out, there was a case pending before Mr. Bongiovanni  
13 and this would be another example of, you know --

14 MR. PITARO: Well, no problem --

15 THE COURT: From Mesquite?

16 MS. SHOEMAKER: Yes, it was --

17 MR. PITARO: No. Let me -- let me explain. First,  
18 the Olejack --

19 MS. SHOEMAKER: -- here.

20 MR. PITARO: What they -- about the Olejack -- the  
21 Olejack B.S., and that's what it is and I really don't --

22 THE COURT: Well, I'm -- just a minute. I'm going  
23 to keep it out.

24 MR. PITARO: Okay. Then fine, Your Honor.

25 THE COURT: On rebuttal if anything of that nature