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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) Judge Wells
) Cleveland, Ohio
vs.)
) Criminal Action
JAMES A. TRAFICANT, JR.,) Number 4:01CR207
)
Defendant.)

- - - - -
TRANSCRIPT OF PROCEEDINGS HAD BEFORE

THE HONORABLE LESLEY WELLS

JUDGE OF SAID COURT,

ON THURSDAY, MARCH 7, 2002

Jury Trial

Volume 13

- - - - -

APPEARANCES:

For the Government: CRAIG S. MORFORD,
BERNARD SMITH,
MATTHEW KALL,
Assistant U.S. Attorneys
1800 Bank One Center
600 Superior Avenue, East
Cleveland, Ohio 44114-2600
(216) 622-3600

For the Defendant: Pro Se

Official Court Reporter: Shirle M. Perkins, RDR, CRR
U.S. District Court - Room 539
201 Superior Avenue
Cleveland, Ohio 44114-1201
(216) 241-5622

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

1 Thursday Session, March 7, 2002, at 8:30 A.M.

2 MR. TRAFICANT: Your Honor, I ask permission
3 to take the easel over closer to the display board and do
4 my questioning from there.

5 THE COURT: We have to have it in a place
6 where every one can see it, the witnesses can also get
7 through. So why don't you try something that would
8 accommodate what you're looking for, and we'll see if it'll
9 accommodate all the other persons.

10 MR. TRAFICANT: Would you object to me asking
11 questions since my voice is loud enough to be heard from
12 over here?

13 THE COURT: I don't have an objection to
14 that, Congressman. It's only placing the easel so the jury
15 can see it and also the lawyers can see it and the public
16 can see it. That's what we're trying to accomplish here.

17 MR. TRAFICANT: Fine.

18 Could we ask if the jury can see it? Can the jury
19 see the board?

20 THE JURY: Yes.

21 MR. TRAFICANT: Can the witness see the
22 board?

23 THE WITNESS: If you write large,
24 Congressman, I'll be able to see it.

25 MR. TRAFICANT: We might be able to move the

Sabatine - Cross

1 lamp for you perhaps or --

2 THE COURT: Unfortunately, that's not easily
3 done.

4 MR. TRAFICANT: Well, you can move back, and
5 can the Prosecutor see it?

6 MR. MORFORD: Yes, sir.

7 THE COURT: All right. Very well. Sir,
8 you're still under oath.

9 THE WITNESS: Yes, your Honor.

10 THE COURT: Thank you.

11 THE WITNESS: Thank you.

12 CROSS-EXAMINATION OF JAMES SABATINE CONTINUED

13 BY MR. TRAFICANT:

14 Q. You are familiar with the plea agreement that you
15 signed in conjunction with your attorney that was dated
16 April 23, 2001, are you not?

17 A. I'm familiar with it, Congressman.

18 Q. And who was your attorney?

19 A. Attorney Mark Stanton.

20 Q. Just for the record, would you identify this as the
21 cover sheet of that?

22 MR. MORFORD: Can I see what that is, your
23 Honor?

24 MR. TRAFICANT: Cover sheet dated April 23,
25 2001.

Sabatine - Cross

1 THE COURT: Just show it to the lawyers.

2 MR. TRAFICANT: It deals with the proffer,
3 the plea agreement.

4 MR. MORFORD: That has nothing to do with the
5 plea agreement.

6 MR. TRAFICANT: Do you have a copy of this,
7 sir?

8 MR. MORFORD: Yes, I do.

9 MR. TRAFICANT: Okay.

10 THE COURT: Could I see it please?

11 MR. TRAFICANT: Yes, your Honor.

12 THE COURT: We'll have to use a number to --
13 to let the record know what this is. This is not a plea
14 agreement; this is something date dated April 23.

15 MR. TRAFICANT: Relative to a Government
16 proffer.

17 THE COURT: Yes, it appears to be a proffer
18 letter.

19 MR. TRAFICANT: Could we make it BS-10.

20 THE COURT: That's fine.

21 MR. TRAFICANT: Make it BS-11. There may be
22 a BS-10 already.

23 THE COURT: It's your choice.

24 MR. TRAFICANT: BS-11.

25 THE COURT: Thank you.

Sabatine - Cross

1 MR. TRAFICANT: This is the plea agreement?

2 MR. MORFORD: Yes, it is.

3 THE COURT: Yes, that's the plea agreement.

4 MR. TRAFICANT: Can I show it to the witness?

5 THE COURT: Certainly.

6 BY MR. TRAFICANT:

7 Q. Are you familiar with this document, sir?

8 A. Yes.

9 Q. Could you look at the last page of this?

10 A. The last page or pages?

11 Q. Who signed it?

12 A. That is my signature.

13 Q. Okay. Thank you. And was your attorney with you
14 when you signed this? First, I'd like to label this BS-12.

15 THE COURT: Excuse me. You asked him a
16 question, but he didn't --

17 Q. Yes. Was your attorney with you when you signed
18 this?

19 A. I believe I was at his office when I signed it.

20 MR. TRAFICANT: I would like to label this
21 BS-12.

22 THE COURT: All right.

23 MR. TRAFICANT: Having labeled this BS-12,
24 does your Honor have a copy of it?

25 THE COURT: Yes, I do.

Sabatine - Cross

1 MR. TRAFICANT: I would like to present to
2 you a copy of that plea agreement and ask if you'd follow
3 along with me in this line of questioning.

4 First of all, who were you convicted of having
5 conspired with to violate the RICO Act in which you were
6 charged.

7 A. For me to give you a legal description, I am not an
8 attorney, but, I mean, someone like my attorney would have
9 to answer that question. But I know I was involved in some
10 criminal activities with individuals, and I think we know
11 who those are.

12 Q. Okay. Let's turn to Page 4. You see Roman Numeral
13 IV, sentencing?

14 A. Yes, I do.

15 Q. Do you see where you have violated Title 18, U.S.
16 Code, Sections 1962(c)? You see that?

17 A. I see the sentencing, and I see Section A.

18 Q. And you were charged not on an indictment; is that
19 correct, sir?

20 A. I believe it was an information, plea agreement.

21 Q. So you never really addressed a Grand Jury, did you,
22 sir?

23 A. No, I did not.

24 Q. Now, right underneath that line 3, doesn't it say
25 that that code can have up to 20 years imprisonment?

Sabatine - Cross

1 A. It says as charged in the subject information is 20
2 years imprisonment, \$250,000 --

3 Q. Wait. Let's just stay with the first one. Does it
4 say that according to the charge there could be a maximum
5 of 20 years imprisonment? Yes or no.

6 A. I mean, give me some time to read this, Congressman.

7 Q. Take all the time you want, but don't call me names.

8 A. It says what it says.

9 Q. What does it say?

10 A. Could I read it, Congressman?

11 Q. Read it.

12 THE COURT: Yes. You can read it.

13 THE WITNESS: "James R. Sabatine understands
14 and agrees that the maximum penalty for violating Title 18
15 United States Code Sections 1962(c) as charged in the
16 subject information is 20 years imprisonment with \$250,000
17 fine --

18 Q. Stop right there.

19 20 years imprisonment, right? Now, does it list a
20 fine?

21 A. \$250,000 fine.

22 Q. Stop there. What else does it require?

23 A. Three years of supervised release.

24 Q. Did anyone ever explain to you what supervised
25 release meant?

Sabatine - Cross

1 A. I believe my attorney went over that with me.

2 Q. Now, that was the first count of your charge, was it
3 not?

4 A. I'd have to confer with my lawyer, but this is the
5 first time. I don't know, Congressman. This is the first
6 count.

7 Q. Was there another count listed in the same paragraph?

8 A. No. There's not another count in that paragraph.

9 Q. Well, then, would you read starting with after
10 supervised release, the following, starting with and?

11 A. "And that the maximum penalty for violating federal
12 26 United States Code Sections 7206(1) as charged in the
13 subject information is three years imprisonment, a \$250,000
14 fine, and one year of supervised release."

15 Q. Well, then, there's a violation you agreed to have
16 Title 26, correct?

17 A. That's what it says on -- in the paragraph.

18 Q. Did you sign the plea agreement, sir?

19 A. Yes, I signed the plea agreement.

20 Q. 26 U.S. Code -- could you read the section for me?

21 A. Count 26, United States Code Section 2706(1) as
22 charged in the subject information.

23 Q. Well actually it's 7206, Paragraph(1). You're not
24 nervous or confused, are you --

25 A. No.

Sabatine - Cross

1 Q. -- confused by these numbers?

2 A. No, I'm not, Congressman.

3 Q. Fine.

4 Now, is there an imprisonment attached to this
5 felony?

6 A. As charged in the subject information, it's three
7 years imprisonment.

8 Q. Three years -- let's just put, for sake of
9 expedience, jail. Do we understand that to be
10 imprisonment?

11 A. Yes, sir.

12 Q. And is there a fine?

13 A. A \$250,000 fine.

14 Q. And is there any supervised release required?

15 A. One year.

16 Q. And will you agree then that there were two specific
17 title violations mentioned in your plea agreement only? If
18 you want to read the rest of it, take your time.

19 A. Some of the questions that you're asking I think will
20 require an attorney.

21 Q. No. All they require is for you to read. Is there
22 any other re -- read the rest of it, and tell me if they
23 relate to any other violations of law that you're charged
24 with. Take your time.

25 A. I'm not an attorney, Congressman. I can't dissect

Sabatine - Cross

1 this legal document, to know exactly what it means.

2 Q. Do you know if there were more than two charges of
3 your indictment?

4 A. I believe it was a RICO charge, and there was a tax
5 charge.

6 Q. And RICO would be what, one?

7 A. I believe RICO was a combination of --

8 Q. Were you charged with one RICO count?

9 A. I believe I was charged with one RICO count.

10 Q. Were you charged with one tax count?

11 A. I believe so, sir.

12 Q. Does one and one equal two?

13 A. Yes, it does.

14 Q. Fine. I want to label this as BS-13 for the purposes
15 of the court records?

16 THE COURT: You're labeling what you have on
17 the board there?

18 MR. TRAFICANT: Yes, your Honor. Now, if I
19 don't damage this.

20 MR. MORFORD: I have no objection to it being
21 labeled for purposes of the record as to evidence. It's
22 another matter.

23 THE COURT: Thank you.

24 MR. TRAFICANT: That can be discussed.

25 Q. Now, Mr. Sabatine, as a result of this, the

Sabatine - Cross

1 Prosecutor asked you a number of questions and said you
2 reached a plea agreement, and he said that you could be
3 sentenced up to -- when you made your agreement, how many
4 months, what was the first amount of time that he said you
5 were subject to in your proffer?

6 A. With my acceptance of responsibility, it was 27 to 33
7 months.

8 Q. Okay. Number 1, a proffer meant -- and did you agree
9 and sign the proffer?

10 A. I believe I signed the proffer and agreed to it, yes,
11 I did.

12 Q. Was your attorney with you?

13 A. Yes, he was.

14 Q. And how many months were you subject to, did you say?

15 A. 27 to 33 months, with acceptance of responsibility.

16 Q. On acceptance of responsibility. Number 2, were
17 there any other offers made and agreed to by you and signed
18 by your attorney concerning this first figure?

19 A. Only that there would be a recommendation and
20 recommendation only.

21 Q. And what were the recommendation -- who would make
22 the recommendation?

23 A. The U.S. Attorney's Office would make it to the
24 Court -- the Judge.

25 Q. To the judge. And did they say if the Judge would

Sabatine - Cross

1 accept and if you cooperated, that your sentence could be
2 reduced even further?

3 A. There was never any promises made.

4 Q. I didn't ask you if there was a promise. Did they
5 say specifically if you cooperated, your sentence could
6 literally be reduced further?

7 A. No.

8 Q. Then where did the ten to 16 months come in --

9 A. Well, that -- yeah, if I cooperated with this trial
10 and other trials.

11 Q. Can you see me through the lamp?

12 A. Yes, I can.

13 Q. Can you hear my voice?

14 A. Perfectly.

15 Q. I would like you to speak up, in fact.

16 So if cooperation -- we'll just make it coop -- ten
17 months to 16 months, right?

18 A. Yes.

19 Q. Just for purpose of identification, would I like to
20 make mark this BS-14, your Honor?

21 THE COURT: Fine.

22 BY MR. TRAFICANT:

23 Q. Now, in going back over testimony and documents
24 relative to your activity, we're going to use the term
25 bribes.

Sabatine - Cross

1 Did you bribe Mahoning County Engineer Bill Fergus?

2 A. Yes.

3 Q. Who was Bill Fergus?

4 A. He was a Mahoning County engineer.

5 Q. Who was Bill Fergus? Was he the chief boss?

6 A. He was in charge of the road department for the
7 county.

8 Q. Was he the boss of the engineer's office?

9 A. Yes, he was.

10 Q. Was there a man named Pluchinsky who worked for him?

11 A. Yes. That was an inspector.

12 Q. And did you not, in fact, bribe him?

13 A. Yes.

14 Q. Did you not testify to bribing other Mahoning County
15 engineer inspectors or employees?

16 A. There was other agencies that were in Mahoning
17 County.

18 Q. I'm talking about Mahoning County engineers. Does
19 Dick Smith ring a bell?

20 THE COURT: Excuse me. You need to let him
21 finish an answer. Don't interrupt his answers when you ask
22 a question. You just laid a second question on top of the
23 middle of his answer.

24 MR. TRAFICANT: He wasn't responsive to my
25 question.

Sabatine - Cross

1 THE COURT: Well, that's a different issue,
2 and you can raise that, but let him answer the question
3 that you ask. Do you want to go back and read the question
4 that was asked before the Congressman made his statements
5 across the answer?

6 (Thereupon, the record was read back by the Court
7 Reporter.)

8 THE WITNESS: Yes.

9 Q. Do you remember any of their names?

10 A. Now that you mention it, Dick -- Richard Smith, Dick
11 Smith we talked about yesterday.

12 Q. What was his position?

13 A. He -- he was on the paver as an inspector.

14 Q. Now, to the best of your knowledge, did you tell the
15 FBI that there were any other Mahoning County engineer
16 employees that you, in fact, bribed?

17 A. I believe there was some baseball tickets issued.

18 Q. Baseball tickets?

19 A. Yes.

20 Q. And you considered that a bribe or to influence?

21 A. Depends how the courts look at it.

22 Q. I'm not asking the Court. The Court's not on the
23 witness stand. Did you consider it doing something to gain
24 some influence with them?

25 A. Well, at the time, I didn't, Congressman, but now, I

Sabatine - Cross

1 would never perform such an act ever again.

2 Q. Well, now that you find the Lord, let's look back to
3 when you didn't. Did you, in fact, give baseball tickets
4 for the fact of becoming friendly and knowing these people
5 work for the Mahoning County engineer. Yes or no.

6 A. Yes.

7 Q. What were their names?

8 A. I -- it was some people with the sanitary department.
9 There were some -- one inspector on Meridian said he
10 received tickets from me. His name was -- I can't think of
11 his name. He's still with the county though, Congressman
12 Bob Yanko was his name.

13 Q. Bob who?

14 A. Bob Yanko.

15 Q. And he was not the sanitary department guy though,
16 was he?

17 A. No. He was with the Fergus office.

18 Q. He was in Fergus'.

19 So the sanitation department guy was not with Fergus,
20 right?

21 A. That is correct.

22 Q. Anybody else in the engineer's office?

23 A. We're talking cash or just baseball tickets?

24 Q. Why don't you explain it?

25 A. I know Pluchinsky got baseball tickets along with Tom

Sabatine - Cross

1 O'Nesti, his father-in-law.

2 Q. Just tickets?

3 A. Just tickets.

4 Q. O'Nesti just got tickets. Is that what you're
5 saying?

6 A. Well, he got tickets to the baseball game through his
7 son-in-law but also received cash for other tickets that he
8 was delivering on a monthly basis for myself and other
9 contractors.

10 Q. Was it not your testimony that you gave Mr. Fergus
11 \$20,000 for the Meridian project?

12 A. \$20,000 -- if it all went to him, I can't answer
13 that, but \$20,000 was earmarked for --

14 Q. Who did you hand the money to?

15 A. Some went to a relative of mine, and some went from a
16 person who owed me money to a relative of mine, that ended
17 up -- to the best of my knowledge, with Lenny Strollo.

18 Q. We'll get to Lenny Strollo. Who was Lenny Strollo?

19 A. The Mafia boss of our area.

20 Q. Did you know Fergus as doing business with Lenny
21 Strollo?

22 A. Yes.

23 Q. I'm losing track of numbers, but you said you were
24 giving \$1,000 to \$2000, and what intervals were you giving
25 this \$1,000 to \$2000 to Mr. Fergus?

Sabatine - Cross

1 A. He normally had two to three fund-raisers a year, and
2 he would -- if he would see me, whether it was on a project
3 or saw me on the street or in a restaurant, at another fund
4 raiser, he would hand me, I would say, average ten to 25
5 tickets for a fund raiser.

6 Q. And ask you to sell them?

7 A. Ask me to buy them or sell them.

8 Q. And did you sell them?

9 A. Some, not all.

10 Q. When you talked to the -- did you explain it was
11 completely legal, this \$1,000, \$2000 a month going to, in
12 fact, Mr. Fergus?

13 A. Just explained to him what was happening, how it was
14 done.

15 Q. Did you have any business with the Trumbull County
16 engineer?

17 A. Yes.

18 Q. Who was the Trumbull County engineer?

19 A. There were several of them while I was in the
20 business, first one being --

21 Q. Well, let's start with this question rather than name
22 names, did you bribe any Trumbull County engineers?

23 A. No.

24 Q. Did you bribe any other local engineers and/or
25 supervisors of road activities that did business with the

Sabatine - Cross

1 Mahoning County engineer and ODOT?

2 A. Get back to the last question. It's still in my
3 mind. I think there were baseball tickets given to one of
4 the sons of the engineer's office.

5 Q. What engineer?

6 A. Trumbull County engineer.

7 Q. What was the name?

8 A. His name was John Latell, baseball tickets only.

9 Q. Okay. So Latell, son, got baseball tickets. You
10 know to what game, to who, what tickets?

11 A. I don't know who they were playing.

12 Q. The Indians tickets?

13 A. Yes.

14 Q. How many times did you do that?

15 A. I believe that was one occasion.

16 MR. TRAFICANT: For purposes of
17 identification, BS-15.

18 THE COURT: Fine.

19 Q. Did you conspire with the Mahoning County engineer to
20 get Mahoning County projects?

21 A. No.

22 Q. You never met with the Mahoning County engineer to
23 get projects?

24 A. Every project I ever got was the Meridian Road
25 project.

Sabatine - Cross

1 Q. Why did you need to give \$20,000 for the Meridian
2 Road project?

3 A. It's the way business was done in Youngstown, Ohio.

4 Q. Did you report that?

5 A. I didn't report it at the time, but I reported it to
6 the authorities when I was investigated.

7 Q. I see. When and what was the date when you knew you
8 were being officially investigated?

9 A. I couldn't give you an exact date, Congressman, but
10 I'd say '97, '97, '96, '97.

11 Q. 1996, '97. Did you get what is known as a target
12 letter?

13 A. No.

14 Q. Did you make campaign contributions to Jim Traficant
15 throughout his career in excess of \$3,000 totalling checks
16 and cash?

17 A. Yes.

18 Q. -- when you say campaign contributions, the \$2400
19 I'm putting that in there?

20 A. I should be adding that up, Congressman.

21 Q. I'm not asking you about the \$2400. I'm asking you
22 about campaign contributions over my career of
23 approximately \$3,000. Would that be a fair estimate or --

24 A. I don't believe I gave you that much of campaign.

25 Q. How much do you think it would have been then?

Sabatine - Cross

1 A. I would say more or less around \$1500 maybe, \$1200.

2 Q. Isn't it a fact, Mr. Sabatine, that you wrote between
3 '96 and '99 three checks alone to the Traficant for
4 Congress campaign?

5 A. I don't recall, Congressman. I know I wrote checks.
6 I don't know how many.

7 Q. Well, we'll come back to that if I can find it. I
8 don't want to waste the jury's time, but I will.

9 Now, getting back to the questions, you said \$1500,
10 right?

11 A. Certainly a guess, Congressman; could be \$800, \$1600.
12 I don't know for sure.

13 Q. Could it be \$1600, \$1500?

14 A. \$800.

15 Q. Could be \$800. Good.

16 Now, did you tell the FBI between 1993 and 1996 you
17 made \$900 worth of contributions?

18 A. I can't recall the exact dates, but I gave you the
19 contributions.

20 Q. Could your memory be refreshed on that?

21 A. If you showed me the cancelled checks with my
22 signature, it would definitely be refreshed.

23 Q. I'll ask you to look at a 302 dated 4-26 --

24 THE COURT: Just show the other side, which
25 part of what you're using.

Sabatine - Cross

1 MR. TRAFICANT: Page 10, third paragraph.

2 THE COURT: Fine, Page 10.

3 MR. TRAFICANT: Paragraph 3, your Honor.

4 THE COURT: Okay.

5 Q. Do you remember being interviewed by Mr. Pikunas and
6 Mr. Denholm of the FBI?

7 A. I remember being interviewed by Mr. Pikunas. I don't
8 know any of the other names.

9 Q. Do you recall having told them that between '93 and
10 '96 you gave \$300 to \$400 a year to the Traficant campaign?

11 A. The golf outing, I can't remember exactly how much it
12 was, but I know I bought a ticket to that. I wasn't a
13 golfer. I didn't play golf much; I sponsored.

14 Q. And you know how much that cost?

15 A. I can't recall, Congressman.

16 MR. TRAFICANT: Mark this BS-16.

17 Q. Are you familiar with James Philomena?

18 A. Yes.

19 Q. Do you know if Mr. Philomena was under investigation?

20 A. Yes, he was.

21 Q. Who was Mr. Philomena?

22 A. He was a local attorney, and then he became the
23 Prosecutor of Mahoning County.

24 Q. You know where Mr. Philomena is now?

25 A. I believe he's in Florida in a prison.

Sabatine - Cross

1 Q. Do you know when the Philomena investigation broke?

2 A. I'm not exactly sure, Congressman.

3 Q. Would you say the mid to late '90s?

4 MR. MORFORD: Your Honor, he just said he
5 doesn't know.

6 THE COURT: That's right.

7 Q. Do you know if Mr. Philomena was, in fact,
8 incarcerated before you were investigated?

9 A. I don't know when, the exact time frame.

10 Q. Did you know for that he was being investigated?

11 A. I just from reading the newspapers. I didn't have
12 conversations with him about it.

13 Q. Did you ever do any work for him?

14 A. Yes.

15 Q. What did you do for Mr. Philomena?

16 A. We did several jobs for him. When I say several,
17 we -- he had a little pizza shop that he built along with
18 some partners, and we paved the parking lot at the pizza
19 shop.

20 Q. Okay. What else did you do for Mr. Philomena?

21 A. We hauled some aggregate, which is slag, to put on
22 the driveway of a home that he has in Mahoning County.

23 Q. What else did you do for Mr. Philomena?

24 A. That's all that I could recall, Congressman.

25 Q. Didn't do any paving?

Sabatine - Cross

- 1 A. I said that I did the paving at the pizza shop.
- 2 Q. Oh? But you knew Mr. Philomena was under
3 investigation. Is that your testimony?
- 4 A. When I did the paving for him, I don't believe that
5 he was under investigation, and the paving I did for him
6 was handled through the superintendent from a construction
7 company who contacted me. I knew it was Philomena's
8 business, but it was handled through a contractor, and I
9 got paid for that paving. I didn't get paid for the slag
10 that went to his home, but I did get paid for the paving
11 that was done on the --
- 12 Q. You got paid for the paving?
- 13 A. Yes, I did.
- 14 Q. Fine. You said you didn't get paid for the slag?
- 15 A. No, Congressman. I didn't pay for the slag. I just
16 did the hauling. Our truck picked up the material.
- 17 Q. You just hauled it?
- 18 A. And hauled it, that's correct.
- 19 Q. Where did you get it from?
- 20 A. From a company called SME, and then it was later
21 changed to, I believe it was called, Standard Lafarch.
- 22 Q. You know who paid for that?
- 23 A. Not exactly, no; just went out there --
- 24 Q. Did you maintain records?
- 25 A. At the time we had tickets, I believe, but I don't

Sabatine - Cross

1 believe we still have them.

2 Q. And there's nothing else you did for Mr. Philomena?

3 A. Not that I could recall, Congressman. There may have
4 been times -- he used to call up, have somebody call from
5 his office and want truck loads periodically delivered to
6 his cottage.

7 Q. But you did not bribe Mr. Philomena?

8 A. No.

9 Q. This will be BS-17 for purposes of identification.

10 Now, at some point, sir, are you still in business?

11 A. We didn't file bankruptcy, but we're no longer in
12 business.

13 Q. Are you still incorporated under the laws of the
14 State of Ohio?

15 A. Yes, we are.

16 Q. Could you go to work tomorrow if you chose to?

17 A. No.

18 Q. After your sentencing is over, can you go to work?

19 A. After my sentencing, I have other businesses. I have
20 a woman's health club, and I have a real estate business,
21 also.

22 Q. So in other words, you do not have the paving
23 business now, right?

24 A. No paving business.

25 Q. Do you have any other businesses that you operate

Sabatine - Cross

1 right now while you're seated on that chair?

2 A. Yes.

3 Q. Name them.

4 A. Lady of America.

5 Q. Please, again?

6 A. Lady of America.

7 Q. Lady of America?

8 MR. MORFORD: Your Honor, I thought this was
9 going to be a demonstrative chart of numbers or something.
10 It's like an outline of the testimony, and I object to it.
11 The jurors have notebooks.

12 THE COURT: All right. The -- the jurors are
13 taking notes, and they can take them or not as they wish to
14 take them. The Congressman is writing things down up
15 there, but they're just being identified by number. I
16 don't know what his use may end up -- what his request may
17 be as to using it, but I am not going to stop him from
18 doing this.

19 This is not even really demonstrative at this point.
20 It seems to be your outline, but it's okay.

21 MR. TRAFICANT: I'm just memorializing his
22 testimony.

23 THE COURT: If you were taking these notes on
24 a smaller pad, it would be okay, and so go ahead and do
25 them here. But this is not evidence.

Sabatine - Cross

1 BY MR. TRAFICANT:

2 Q. So Lady of America?

3 THE COURT: Wait, while I've interrupted, let
4 me point out one other thing. Before you ask this
5 question, you asked another question. I am trying to hear
6 what the witness says, and so is the jury, and again, you
7 interrupted him before he finished his sentence.

8 And so what's happening is you're eliciting
9 information and then interfering with our ability to hear
10 what it is. The jury and I need to hear the evidence, so
11 let's go back. We'll have the Court Reporter do it, but
12 I'll ask you to remember that and not keep interrupting so
13 we have to go backwards. It would be the one before he
14 asked this last series of questions.

15 THE WITNESS: Your Honor, I have a question.

16 THE COURT: I can't answer your question
17 right now. Let's get this first.

18 I think the question was: So in other words,
19 you do not have the paving business now, right? I could
20 not hear the answer to that.

21 THE WITNESS: That's correct.

22 THE COURT: Okay. Thank you.

23 THE COURT: And now wait a minute. Let me
24 see if I can answer the witness' question.

25 MR. TRAFICANT: I remember you saying no

Sabatine - Cross

1 paving business.

2 (Court and witness conferring).

3 THE COURT: You have to deal with that. Just
4 say whatever you need to say when you get asked the
5 question if you can answer it.

6 THE WITNESS: Thank you.

7 BY MR. TRAFICANT:

8 Q. But you're still incorporated to do so, are you not?

9 A. I cannot go -- do any type of paving for a minimum of
10 six years.

11 Q. No paving in six years. What is the Lady of America
12 business?

13 A. It's a woman's health club.

14 Q. Are you prohibited from doing business there?

15 A. No, I'm not.

16 Q. What other business do you own?

17 A. Pelican Park Properties.

18 Q. And what is that? To the best, simply describe it.

19 A. We build houses. We build warehouses, small
20 buildings.

21 Q. Are you allowed to do that?

22 A. Yes, I am.

23 Q. Since this action occurred, did the federal
24 government stop you from doing any paving anyway?

25 A. I got out the business before I was charged, formally

Sabatine - Cross

1 charged.

2 Q. Yes. But once you were formally charged, is it not a
3 fact that the federal government debarred you?

4 A. We never really entered into discussions concerning
5 that because our business was already done.

6 Q. Now, other than Pelican Park, you do any commercial
7 buildings on Route 224?

8 A. That would be one of the commercial buildings where
9 Lady of America is located.

10 Q. So you owned the building where the business -- and
11 what is the address of that building?

12 A. 1315 Boardman Canfield Road.

13 Q. Can you describe it as like a strip plaza, a one
14 single little room? What is it?

15 A. A 15,000, 16,000 square foot building, which we have
16 approximately six tenants, one of them being a restaurant,
17 who has several rooms in the retail center. We have a
18 piano store, music store. We have a woman's health club,
19 which takes up three rooms, and we have a beauty salon,
20 specializing in women's hair, and we -- and we have an
21 empty -- and an empty space, also.

22 Q. And how much rent did you derive from Pelican Park
23 activities at 1350 Boardman Canfield road?

24 A. The gross would approximately \$220,000 a year after
25 expenses, taxes, maintenance. I'd say probably around

Sabatine - Cross

1 \$140,000.

2 Q. So \$220,000 gross, \$140,000 net?

3 A. These are all approximate figures, I --

4 Q. Approximately. And you were allowed to maintain that
5 with your plea agreement as well?

6 A. That was built in 1985, 1986. It had nothing to do
7 with any of the other activities.

8 Q. But, that wasn't my question. Were you allowed to
9 keep these businesses with your proffered agreement?

10 A. Yes, I was -- well, it was never talked about.

11 Q. Now, you said your investigation started in 1996,
12 correct?

13 A. It was an estimate. It could have been '97.

14 Q. '97. Now, you admitted to bribing some state
15 officials. Did you bribe any ODOT officials?

16 A. I can't recall the state officials you're talking
17 about. You tell me who they are, please.

18 Q. I'm just asking you if you have, in fact, to the best
19 of your knowledge, bribed any ODOT workers or employees?

20 A. There was a loan made, strictly a loan, never nothing
21 given to me of any value. I believe it was a thousand
22 dollars, probably ten to 12 years ago to a low level lab
23 person, and we've done some work for various inspectors,
24 but we've always received a pay check for the work we've
25 done.

Sabatine - Cross

1 So, no. I can't recall anybody from ODOT that we've
2 ever bribed. It's very possible baseball tickets were
3 issued.

4 Q. Now, being that your investigation started in 1996,
5 did you make campaign contributions to the Traficant
6 campaign up to and including 1999?

7 A. Very possible, Congressman.

8 Q. Did the Government ever ask you to wear a body mike
9 for Jim Traficant?

10 A. Never.

11 Q. Ever suggest that to you?

12 A. It was never talked about, never mentioned.

13 Q. Isn't it a fact you made a public statement that you
14 bribed the Congressman and you had proof?

15 A. In the newspapers.

16 Q. So you did say you had proof?

17 A. All I know is the truth. If you want to, I'd be
18 willing to take a lie detector test.

19 Q. You said you had proof. You have evidence?

20 A. I performed the act, Congressman. I saw it
21 happening.

22 Q. But did you?

23 A. That's all I need.

24 Q. Did you say -- the question is: Did you make a
25 public statement that you had evidence?

Sabatine - Cross

1 A. When you personally perform something, you know you
2 did it, I know -- I know what I did. I know I gave you
3 \$2400.

4 Q. Is that evidence?

5 THE COURT: Stop talking across his answers.

6 BY MR. TRAFICANT:

7 Q. Is that what you meant by evidence when you used the
8 word evidence?

9 THE COURT: No. We're going to go back and
10 get his answer to the question.

11 MR. TRAFICANT: Get your answer.

12 THE COURT: It's not my answer; it's the
13 witness' answer.

14 Can you go back and read the previous question?

15 (Thereupon, the record was read back by the Court
16 Reporter.)

17 BY MR. TRAFICANT:

18 Q. Do you have evidence?

19 A. No, no. I have no evidence.

20 Q. But you said you had evidence.

21 A. You say -- I say evidence. Evidence is something
22 that you could put your hand on. My evidence is I know
23 what I did.

24 Q. Mr. Sabatine, when you said you had evidence, do you
25 have any physical evidence that you bribed Jim Traficant?

Sabatine - Cross

1 Yes or no.

2 A. No physical evidence.

3 Q. Did you say that the Government had physical
4 evidence?

5 A. There was rumors, people talking, that's all. I
6 never said that I had personal evidence. I only know what
7 I know personally.

8 MR. TRAFICANT: I don't know if we're in the
9 right sequence. I'll make this BS-18.

10 THE COURT: That's fine.

11 Q. How many bank accounts do you have?

12 A. Every company -- each company has its own bank
13 account, and my wife has a checking account. My son, my
14 little boy has his own checking account. My daughter has
15 her own savings account. Between the family, just probably
16 eight to ten accounts, could -- you know, if you add them
17 all.

18 Q. But you put most of your business accounts into one
19 account?

20 A. We try to keep everything separate. Pelican Park has
21 had its own account. Lady of America has its own account,
22 businesswise.

23 Q. How many homes do you own, Mr. Sabatine?

24 A. I own one home and one apartment.

25 Q. And where -- you have one home?

Sabatine - Cross

- 1 A. Yes, sir.
- 2 Q. And where is that?
- 3 A. That's located in Canfield, Ohio, which is a suburb
4 of Youngstown.
- 5 Q. And what is its current value?
- 6 A. I believe it is \$425,000.
- 7 Q. You say you have an apartment in Florida?
- 8 A. Yes. I have an apartment in Florida, Ft. Lauderdale
9 Florida.
- 10 Q. Ft. Lauderdale?
- 11 A. Yes, sir.
- 12 Q. And you maintain that year around?
- 13 A. Yes. My daughter goes to school there, and she lives
14 there.
- 15 Q. And how much does that apartment cost you?
- 16 A. As much as I paid for it?
- 17 Q. Yes.
- 18 A. \$500,000.
- 19 Q. Was it an apartment building -- I thought apartment
20 was what you rent?
- 21 A. Well, an apartment is something you buy. I mean you
22 could rent one or buy one. I happened to buy it.
- 23 Q. Okay. You bought it, and it cost \$500,000?
- 24 A. That's correct.
- 25 Q. Do you own any other real estate other than you

Sabatine - Cross

1 mentioned on Canfield Road or have a percentage -- well, I
2 don't know if you have any other real estate that you own.

3 A. On Canfield Road, there's -- we have the -- Pelican
4 Park project is a building on the front, and there's an
5 eight or 9,000 square foot building in the back, and that
6 is all real estate that we own on 224.

7 Q. Well, is the eight or nine thousand square foot,
8 included in the 16,000 square foot you explained earlier?

9 A. No. The building in the front is a retail building.
10 The building in the back is an industrial office building.

11 Q. So you own another building then?

12 A. That's correct.

13 Q. An industrial building?

14 A. It's an office building and industrial building.

15 Q. And that's located on Boardman Canfield Road, is it?

16 A. Yes, it is.

17 Q. What is that valued at?

18 A. I believe that's around \$325,000. That's a guess.

19 I'd have to talk to an accountant on that.

20 Q. What's Pelican Park valued at?

21 A. I'd say that's approximately 850.

22 Q. \$850,000?

23 A. That's correct.

24 Q. And you have gross profits of \$140,000 a year from
25 Pelican Park?

Sabatine - Cross

1 A. It could be \$120,000. That's both buildings
2 combined, Congressman. When I gave you that figure, that
3 was for -- including the back building, also.

4 Q. That would be the two buildings, right?

5 A. That would be the two buildings, right.

6 Q. Fine. Well, let's make this BS-19.

7 THE COURT: Okay. You understand that at this
8 point, these are like your notes, these are not --

9 MR. TRAFICANT: I know they are. I'm not
10 attacking my notes, but I want --

11 THE COURT: I understand.

12 MR. TRAFICANT: I want to put them down
13 though for a reason, your Honor.

14 THE COURT: Okay. Well, we're letting you do
15 that. We're letting you do that, but the jury understands
16 that that's not evidence. The evidence comes from the
17 witness stand.

18 MR. TRAFICANT: I think you told them that
19 several times.

20 THE COURT: Yeah. I'm just reminding them
21 because this is a different approach to keeping your own
22 notes. So I just don't want anybody to get --

23 MR. TRAFICANT: Different?

24 THE COURT: Yeah.

25 MR. TRAFICANT: I'd say so.

Sabatine - Cross

1 BY MR. TRAFICANT:

2 Q. You know if Mr. Ed Pannutti was, in fact, going to be
3 charged by the FBI and the Justice Department for perjury?

4 A. I have no recollection of that whatsoever.

5 Q. Did you hire any politicians, sons or relative in
6 your operations?

7 A. I'm sure we've had some relatives working for us in
8 the past, whether it be for the summer or part-time.

9 Q. Do you know an employee by the name of McKelvey?

10 A. Dave McKelvey is one of my best friends.

11 Q. I didn't ask you is he a friend. Is he an employee?

12 A. No.

13 Q. Was he ever an employee?

14 A. He was never an employee.

15 Q. Did you ever employ anyone by the name of McKelvey?

16 A. We had a McKelvey that worked for us, same name as
17 the mayor of Youngstown, Ohio, but no relation. His name
18 was George McKelvey, and he was a laboratory technician for
19 us for approximately two to three years.

20 Q. Very good.

21 Any other politician family members work for you, the
22 best of your knowledge?

23 A. I'm sure there was some college kids we put up
24 part-time for politicians, Congressman.

25 Q. Did you have any business dealings with a Mr. Joseph

Sabatine - Cross

1 Naples?

2 A. Yes.

3 Q. Will you describe who Mr. Naples was?

4 A. He was the mob boss in Youngstown before Lenny
5 Strollo took over --

6 Q. Well, let's just confine it to the questions I ask.

7 THE COURT: Don't interrupt his answers.

8 Q. Do you know whom, if anybody, succeeded or preceded
9 Naples?

10 A. I don't know, just word on the street.

11 Q. Did you ever have any dealings with a Mr. Prato?

12 A. I attended weddings at his catering home and saw him
13 at a card game. He asked me to give him a glass of water.
14 Other than that, no.

15 Q. Do you know a man named Vince Sermon?

16 A. I don't know him personally, no.

17 Q. Did you do a driveway for him?

18 A. We did a driveway under the direction of Chuck
19 O'Nesti, and one of the sales people that was with us at
20 the time described a gentleman with Chuck O'Nesti as being
21 Mr. Sermon.

22 Q. Do you know if Mr. Prato was present?

23 A. No, he was not present.

24 Q. You know who Mr. Prato was?

25 A. Yes, I do.

Sabatine - Cross

1 Q. Who was he?

2 A. His name was -- nickname was Briar Hill Jimmy, and he
3 was involved in dealings in Youngstown, Ohio, catering
4 business and other doings.

5 Q. Was he a mob boss?

6 A. Supposedly.

7 Q. Did you have any dealings with Lenny Strollo?

8 A. Not personally but through others. I can't say that
9 the dealings were with him, but word on the street was that
10 they were.

11 Q. Your dealings on the street were with him?

12 A. I never personally met with him where we did any type
13 of business one-on-one.

14 Q. Did you define who Lenny Strollo was?

15 A. Could you repeat that, Congressman?

16 Q. Could you define who Mr. Strollo was?

17 A. According to the newspapers and word on the street
18 that he was the mob boss.

19 THE COURT: Page?

20 MR. TRAFICANT: 4.

21 THE COURT: You --

22 MR. TRAFICANT: You want me to just ask
23 questions?

24 THE COURT: You can ask him.

25 MR. TRAFICANT: Or show.

Sabatine - Cross

1 THE COURT: No. You need to ask him
2 questions.

3 BY MR. TRAFICANT:

4 Q. Okay. Is it your testimony that you did not go to a
5 property near Petersburg, to a farmhouse and personally
6 meet with a Mr. Vince Sermon, a Jimmy Prato?

7 A. It was my testimony, as I can recall, I remember
8 Chuck O'Nesti, and there was a gentleman with Mr. O'Nesti
9 who the person I was with described as a first name
10 Mr. Sermon. I had no personal knowledge who the gentleman
11 was other than what I was told. They were associates of
12 Mr. Prato.

13 Q. Did you do a lot of business with Charles O'Nesti in
14 my office?

15 A. Not in your office. We did some business, though.

16 Q. Did you ever tell me you met with Mr. O'Nesti on any
17 of his business ever?

18 A. I can't recall.

19 Q. You know a man by the name of Frank Lentine?

20 A. Yes.

21 Q. Define who he is.

22 A. He's a former boxer, vending business in Canton,
23 Ohio.

24 Q. Is he affiliated with underworld events, to your
25 knowledge?

Sabatine - Cross

1 A. I -- years ago maybe, but we haven't heard anything
2 about him in the last ten years, so I don't know if he
3 still is or not.

4 Q. You ever give him any money?

5 A. His son was working for us, and we met with him, and
6 his son was fired because of a problem, and I gave him I
7 believe it was \$2000.

8 Q. You say \$2000 to Mr. Lentine?

9 A. Yes.

10 Q. Did you also know a man by the name of Joe DeRose?

11 A. There were two Joe DeRose, one was a father and the
12 son. I knew the father.

13 Q. Do you know what happened to the father?

14 A. Yes. He -- he got shot. They thought it was his
15 son, and I guess he was moving his son's car, and I don't
16 know if they shot him with a shotgun or how it was done,
17 but I know he was murdered in his driveway at his home.

18 Q. Now, you said that you were out of town and
19 Mr. Pannutti met with Mr. O'Nesti, and Mr. O'Nesti said
20 just lay off, buddy, because the Buccis are going to get
21 the job. Is that your testimony?

22 A. I wasn't at the meeting, but Mr. Pannutti relayed to
23 me when I came back from vacation was -- the words were
24 rougher than that, but, yes, along those lines.

25 Q. Did you report that to me?

Sabatine - Cross

1 A. At the time that happened, Congressman, we weren't
2 talking.

3 Q. Did you report it to the police?

4 A. No. We didn't report it to the police.

5 MR. TRAFICANT: Mark this as BS-20.

6 Q. Are you sure that Mr. Lentine was only \$2000. I'm
7 giving you a shot at that.

8 A. Could have been a little less, could have been a
9 little more.

10 Q. Did you have occasion to call the Traficant office
11 for help relative to an airport project?

12 A. Yes, we called the office.

13 Q. And what year was that approximately?

14 A. That would have been the spring or summer of 1998.

15 Q. Were you under investigation at that time?

16 A. I wasn't formally under an investigation.

17 Q. But did you know you were being investigated at that
18 time?

19 A. I knew they were talking to people, and I knew that
20 they were dealing with those individuals.

21 Q. Now, what was the reason you called the Congressman's
22 office?

23 A. We were -- we did bid the air base and the airport
24 runways at the Youngstown Municipal Airport, and we were a
25 low bid by approximately \$450,000, and we felt that we were

Sabatine - Cross

1 qualified for the job. We were a local contractor. We had
2 local people working for us, and we felt that we should
3 have got the project.

4 After making several phone calls to the airport and
5 the engineer, RW Armstrong Company, who's from
6 Indianapolis, it just -- I felt that they were trying to
7 take the job off of us and award it to another contractor,
8 who was higher than us.

9 So after about three or four weeks of not hearing
10 anything or hearing any information that we got the job, I
11 called Congressman Traficant's office, and I talked I
12 believe to his secretary, Mrs. Maluso, who I believe at the
13 time put me in touch with Congressman Traficant's aide,
14 Anthony Traficant.

15 So I would have talked to Claire Maluso and
16 Congressman Traficant's aide, Anthony Traficant, concerning
17 that project, and I believe they told me that they would
18 pass the information along to the Congressman.

19 Q. Were you a little bit bitter?

20 A. Yes, we were.

21 Q. Did you get the job?

22 A. Yes. We got the project.

23 Q. Did you know if your Congressman helped you?

24 A. No. I don't know if you helped me or not.

25 THE COURT: Somebody's got a cell phone in

Sabatine - Cross

1 here. Would you please turn it off, whoever it is?

2 MR. TRAFICANT: I'll make this BS-21.

3 Q. You mentioned McKelvey. Is he in partnership with
4 anybody?

5 A. Very good friend of mine, friends since we were seven
6 years old.

7 Q. Does he have a partner in business with anybody?

8 A. You're talking about David McKelvey not the McKelvey
9 that worked for me. You're talking David McKelvey who's my
10 friend?

11 Q. The fellow that worked for you.

12 A. Okay. The fellow that worked for me was George
13 McKelvey.

14 Q. Okay.

15 Now, David McKelvey is your friend, right?

16 A. Dave McKelvey is my friend, that's correct.

17 Q. Do you know if he's in business with anybody?

18 A. He owns some older homes in Youngstown. He was
19 partners with an individual that passed away about two
20 years ago. That's the only partnership I know that he has.

21 Q. Now, at some particular point, you said you came to
22 the farm with a fellow. Is that correct?

23 A. Yes.

24 Q. You know who that fellow was?

25 A. Well, it was a couple different fellows. One was a

Sabatine - Cross

- 1 carpenter.
- 2 Q. You know who the carpenter was?
- 3 A. Yes, Angelo.
- 4 Q. You know his last name?
- 5 A. I'll think of it.
- 6 Q. What, if anything, did Angelo do at the farm?
- 7 A. Please repeat that, Congressman.
- 8 Q. What, if anything, did Angelo do at the farm?
- 9 A. I took him out to the farm to show him some things at
10 your request.
- 11 Q. Isn't it a fact that you told the FBI that this
12 carpentry work was to be paid for by you?
- 13 A. In my mind, you wouldn't -- you wouldn't have
14 received a bill, Congressman.
- 15 Q. And Angelo told you that?
- 16 A. No. Angelo and I never discussed price because he
17 really wasn't satisfied with the condition that the barn
18 was in. He really didn't want to do any work over there.
- 19 Q. So you don't know if Angelo and I had discussed any
20 money or anything like that, do you?
- 21 A. No, I don't know. No, I don't know.
- 22 Q. Now, you mentioned when you supposedly gave me the
23 money, it was in a barn?
- 24 A. It was inside a building that you had horses and
25 shovels, and it was horses mating, you know. It was people

Sabatine - Cross

1 in there working with the horses.

2 Q. Do you recall telling the Government that I was
3 looking at a horse's' shoes?

4 A. Yes.

5 Q. Now, in order to look at a horse's shoes, what would
6 I have had to do?

7 A. You had to flip back the horse's leg and look at the
8 bottom of it.

9 Q. You know if the horse was tied?

10 A. I know I looked at so many horse that day. You had
11 some tied; some weren't; people helping to hold them down.
12 It was a busy place that day, quite a few people there.

13 Q. So you handed me the money in the barn with all the
14 people in it?

15 A. It was in a different part of the barn --

16 Q. Oh?

17 A. -- where people weren't.

18 Q. Roughly how big was the barn?

19 A. There were several buildings like I told you
20 yesterday, Congressman. The whole barn could have been
21 3,000 square foot. I don't know for sure the size of it,
22 because there's different structures on your property.

23 Q. Do you know if there were some old and/or newer
24 buildings?

25 A. Yes. There was old ones, and there were newer ones.

Sabatine - Cross

1 Q. Was the equipment new or old?

2 A. When you say equipment, Congressman --

3 Q. Tractors?

4 A. The tractor -- you told me everything. I can't
5 remember if -- looked like an older piece of machinery.

6 MR. MORFORD: Congressman, we have a bigger .

7 MR. TRAFICANT: I know you do, and after I am
8 done with this, you're allowed to use it.

9 MR. MORFORD: I'm just offering it.

10 MR. TRAFICANT: I want to use this for the
11 purpose at this time. I'm doing the cross-examination.

12 MR. MORFORD: And I know you are.

13 MR. TRAFICANT: Can I show this to him?

14 THE COURT: This picture?

15 MR. TRAFICANT: Yes.

16 THE COURT: Yes.

17 BY MR. TRAFICANT:

18 Q. Will you take a look at that? And you can -- do you
19 see some writing on the bottom left?

20 A. Yes.

21 Q. What does it say?

22 A. It says BS-4.

23 Q. Okay. And does that ring a bell to you, that piece
24 of property?

25 A. This could be an overhitch out at your farm. I'm not

Sabatine - Cross

1 even positive. You know what this is, it looks like your
2 farm.

3 Q. So you'd say that BS-4 looks like my farm?

4 A. Yes.

5 Q. You know who at the time owned that farm?

6 A. You made me to believe that you did. You always said
7 "my farm," you know, so I just thought you owned it.

8 Q. You thought J.T. owned it, right?

9 A. I thought Congressman Traficant owned it.

10 Q. Okay. Let's breakdown some of the building then?

11 MR. TRAFICANT: Can I show it to him?

12 THE COURT: Yes.

13 Q. Will you describe what's written on the bottom?

14 A. Looks like it says BS-1 or BS-6.

15 Q. That's BS-1. Does that building look familiar?

16 A. Be honest with you, Congressman, the way these
17 pictures are and aren't, it could be your neighbor's farm.
18 I mean it's a farm.

19 Q. Well, you have BS-4 there, don't you?

20 A. Yes. I have BS-4, and I have a regular view of BS-1.

21 Q. Okay. Looking at BS-1 and BS-4, does that building
22 look familiar to you? Yes or no.

23 A. This building here looks familiar, this newer
24 building because I remember going out there similar in size
25 to that. I remember there were smaller buildings like you

Sabatine - Cross

1 have clustered over here, but I can't specifically say that
2 that's your farm from these pictures.

3 Q. So BS-1, you're not familiar it?

4 A. Looks like your farm. You know, all farms look alike
5 to me.

6 Q. How about BS-3?

7 A. Looks like a -- I don't know, could be part of a farm
8 or your farm.

9 Q. You've got the document? Let me ask you this: Do
10 you remember the color of the horse?

11 A. No.

12 Q. Was it big, or was it small?

13 A. My mind was on one thing at that time.

14 Q. Was it big, or was it small?

15 A. We looked at so many horses that day, Congressman, it
16 was dozens of horses inside there, and the barns that you
17 have, I can't tell you if it was big or small. That's --

18 Q. Did you not tell the FBI I was holding the horse's
19 hoof?

20 A. When I first walked in the door, you were looking at
21 a horse's shoe, so that's what it appeared to be.

22 Q. What color horse was it?

23 A. I can't recall, Congressman.

24 Q. Was it big, or was it small?

25 A. I can't recall.

Sabatine - Cross

1 Q. You know the difference between a pony and a horse?

2 A. Yeah. I know the difference between a pony and a
3 horse.

4 Q. What is it?

5 A. A pony is a baby horse.

6 Q. From your experience with me, this would be 22. Did
7 I work to help companies in my district?

8 A. Yes.

9 Q. Did I help literally hundreds of companies?

10 A. You helped companies. I can't say it was hundreds.
11 You helped a lot of companies.

12 Q. Did you come to me for help?

13 A. Yes.

14 Q. Did you get it?

15 A. Yes.

16 Q. Did I solve many company problems, such as strikes?

17 A. Yes, you did, Congressman.

18 Q. Did I help get a lot of people jobs?

19 A. Yes, you did.

20 Q. Now, you as a CEO, you were the boss. Did anyone
21 ever come and ask you for welfare?

22 A. I've had a lot of employees who -- we've had several
23 over the years -- and I've had employees come to me for
24 help. I was always there for --

25 Q. I mean, people asked you for jobs, didn't they, not

Sabatine - Cross

1 welfare?

2 A. Yes.

3 Q. When you met with the agents, why, if we were
4 supposedly in a building where there were other people but
5 we were removed, did you say it was a campaign contribution
6 of this supposed money, Jim?

7 A. When I handed you the money, Congressman, at that
8 time, I said here is a little campaign contribution, and I
9 handed you the money in your hand, and I walked away --

10 Q. Go ahead finish?

11 A. I saw you reach for your pocket. I have no idea if
12 you put it in your pocket because I was walking away. You
13 were reaching for your pocket with the money.

14 Q. No discussion. You just walked away?

15 A. Other than the fact that I said here's a little
16 campaign contribution, no, no discussion.

17 Q. Well, let me see if we understand this.

18 You come out to the farm. Did you work for
19 Philomena? He was under investigation.

20 A. As I said earlier, Congressman, when I did the work
21 for Philomena, I don't believe that he was under
22 investigation. That was back probably in the middle --
23 middle '90s.

24 Q. You told the FBI you carried as much as \$4,000 in
25 cash; is that right?

Sabatine - Cross

1 A. At times, even more.

2 Q. And you give a reason why you carried that money?

3 A. Several reasons. We might have got a cash payment
4 from a job that we did. In the business that I'm in, we
5 might be working out of town, and we're out of town. If a
6 truck broke down or get a tow truck, bridge, you always
7 needed cash to pay for those services.

8 Q. Did you tell them you also took clients to dinners,
9 some of them wouldn't accept credit cards?

10 A. Yes, I did, Congressman.

11 Q. Did you tell the FBI that you carried cash because
12 many times you had to pay these contractors unusual things,
13 dinners and things? Do you remember telling them that?

14 A. Could you repeat that question?

15 Q. Did you ever tell them you carried cash for any other
16 reason other than taking your clients to dinners at
17 restaurants where they may not accept credit cards?

18 A. On that specific date that I went to your farm, it's
19 possible that I mentioned to them in my mind before I went
20 over to your farm that I was thinking about giving you
21 something that day in order to keep my people and myself
22 away from doing work at the farm.

23 Q. Look. I'd let that come in, but you're not
24 responding to my question. My question was: Did you tell
25 the FBI anything about cash over and above you taking

Sabatine - Cross

1 clients to restaurants for dinner?

2 A. It's possible.

3 Q. Now, would you take your clients to a McDonald's?

4 A. I have in the past.

5 Q. Normally, where would you take your clients that you
6 would do business with?

7 A. Well, we like Italian food. Usually we'd go to an
8 Italian restaurant so I'd say most of the time I frequented
9 restaurants.

10 Q. And would you not want to take your clients to and
11 provide for them a decent meal?

12 A. Yes. We provided clients with meals.

13 Q. Do restaurants that provide decent meals accept
14 credit cards?

15 A. Most do.

16 Q. Now, then, you tell the FBI that you reluctantly
17 attended a meeting out at a restaurant in Niles with --

18 A. Yes, sir.

19 Q. Yes? Was that where Mr. Petracca?

20 A. No.

21 Q. Was he there?

22 A. No.

23 Q. Where was the meeting held?

24 A. Is it necessary we mention the names of these
25 restaurants?

Sabatine - Cross

1 Q. No. But where in the restaurant was it held?

2 A. We were in the wine cellar.

3 Q. In the wine cellar. There was nothing wrong. But
4 you said you had stepped out, and you had seen a couple
5 people. You told the FBI you saw a couple people. Do you
6 remember who you saw out there?

7 A. It was individuals in the restaurant that I knew who
8 they were.

9 Q. And you know any -- if they had any connection with
10 me?

11 A. Some of them were running against you in the
12 election.

13 Q. And they happened to be in the same restaurant at the
14 same time; is that correct?

15 A. That is correct.

16 Q. Did you tell the FBI that I patted you down?

17 A. I told them that when you greeted me, you came over
18 and give me one hell of a bear hug, and it felt like I was
19 getting patted down.

20 Q. You felt like you were getting patted down for what?

21 A. I have no idea why. I mean, maybe you thought I was
22 wearing something, or I had a recording device. I don't
23 know why you patted me down.

24 Q. Did you, in fact, have conversation with the FBI that
25 you knew that Traficant was under investigation? Did you

Sabatine - Cross

1 tell the FBI maybe that's why you thought he patted you
2 down?

3 A. I just told them what happened. We didn't get into
4 any discussions why these -- I explained to him what
5 happened. I was truthful with him.

6 Q. So you don't recall telling them that Traficant was
7 actually patting me down for a recording device?

8 A. I felt -- I felt that when you hugged me, okay, and
9 squeezed your body against my chest from each side, that it
10 was more than just a hug because when we -- as a greeting
11 like that in the past, it was never that tight if you want
12 me to get it in the words over here, Congressman.

13 Q. But you had no knowledge I was under an investigation
14 at that time, did you?

15 A. You know, I can't remember the exact date, but I
16 believe in my mind, yeah, you positively were under
17 investigation.

18 Q. You recall about what time that would have been?

19 A. I believe you had just won the primary because when
20 we walked -- when you walked in the restaurant, a lot of
21 people were congratulating you.

22 Q. You never ever acknowledged to the FBI that you did
23 make contributions from 1993 to 1996 up to \$400 each year?

24 MR. MORFORD: Objection. Asked and answered.
25 He's already been through that.

Sabatine - Cross

1 THE COURT: We've been through that. You've
2 covered that, sir.

3 Q. Did you ever buy tickets that were sold for any other
4 types of activities for Jim Traficant?

5 A. I mean, years ago you bought fund-raisers at the ball
6 room, but other than golf outings and dances and dinners,
7 that would be the only ones I can remember.

8 Q. But there were many fund-raisers over the years,
9 wouldn't you say?

10 A. Yes, Congressman.

11 Q. And you basically participated, wouldn't you?

12 A. Yes, sir.

13 Q. And you'd, in fact, bring others with you, wouldn't
14 you?

15 A. Yes.

16 Q. And would you pay for their tickets?

17 A. Sometimes I would.

18 Q. Now, you said that Philomena's parking lot was paid
19 for in your earlier testimony?

20 A. That's correct, Congressman.

21 Q. Isn't it a fact --

22 THE COURT: Oops, wait.

23 THE COURT: Is your copy marked up?

24 MR. TRAFICANT: Yes, it is.

25 THE COURT: Then you need to take a clean

Sabatine - Cross

1 copy.

2 MR. TRAFICANT: Can I have him read Paragraph
3 2?

4 THE COURT: Of my copy, yeah. He can read --
5 you give me yours.

6 Q. Read Paragraph 2 only to yourself.

7 A. Okay.

8 Q. Do you now want to change your testimony about having
9 Mr. Philomena pay for the parking lot?

10 A. No. I don't want to change it, but I would like to
11 explain it to the jury, if I could, please.

12 Q. Did Mr. Philomena pay or not pay for the parking lot?

13 A. We did the parking lot for a contractor, as I told
14 you earlier. And yes, there was a check issued from that
15 contractor to Hardrives Parking, Incorporated, which I
16 could furnish you a copy, Congressman.

17 Q. Fine. Did you just read the report?

18 A. The first -- yes, I did.

19 Q. Refer back to Page 11, which I will fold conveniently
20 for you so you can retrieve it expeditiously.

21 Tell me what this document is. Tell the jury what it
22 is.

23 THE COURT: Well, he can't read from this
24 document out loud.

25 MR. TRAFICANT: I'm not telling him to read

Sabatine - Cross

1 from the document. Just tell them what it is.

2 THE COURT: Well, he didn't author this
3 document.

4 MR. TRAFICANT: Okay. Let me have it, your
5 Honor.

6 BY MR. TRAFICANT:

7 Q. Did you just see a FBI report that memorialized your
8 conversations?

9 THE COURT: Don't answer the question,
10 please.

11 MR. MORFORD: Objection.

12 THE COURT: Disregard the question, please.

13 Congressman, it's around break time. This would be a
14 good time for a break?

15 MR. TRAFICANT: Fine with me.

16 THE COURT: Very well. We'll have a morning
17 break. Be 20 minutes long.

18 (Thereupon, a recess was taken.)

19 THE COURT: Sir, you are you're still under
20 oath.

21 THE WITNESS: Yes, your Honor.

22 Q. Jim, at the end of the season, you didn't have any
23 work. Did you tell the Government that your workers would
24 then go back to work under the table, and the company would
25 pay them cash?

Sabatine - Cross

1 A. We had between 80 and 100 people working for us
2 approximately in a season, and they were -- there were key
3 individuals who were with us for 15, 20 years and in the
4 wintertime collected unemployment. They couldn't make ends
5 meet, and we would take them back. They would come in,
6 maybe work three or four hours a day, and we would pay them
7 cash, as the expression is under the table.

8 So they could keep up with their bills and
9 everything, yes, I am guilty of that.

10 Q. Did you tell that to the Government?

11 A. I believe I did.

12 Q. Did you tell the Government you would misclassify
13 workers so you could pay them a lower wage?

14 A. Since I do a lot of parking lots and prevailing wage
15 rate work, which would be roadways, we were using guys, and
16 they would be doing parking lots but get paid regular,
17 moved up to like a Government job, and there were times
18 that, yes, we made mistakes. But any time somebody
19 complained, we always wrote them the check the day after
20 pay day.

21 Q. Did you tell that to the Government?

22 A. I believe we had discussions concerning that.

23 Q. Now, when Hardrives employee would work over 40 hours
24 in one week, would you, in fact, not pay them from
25 Hardrives but pay them from your Superior or Tone accounts?

Sabatine - Cross

1 A. Yes. There were times in the past when that
2 happened.

3 Q. Did you tell the Government that?

4 A. Yes, I did.

5 Q. Have you ever taken union dues out of your employees'
6 checks who were not even union members?

7 A. Not that I can ever recall, Congressman. If we did,
8 we made it good.

9 Q. At some point, did the Government and your attorney
10 and you come to an agreement to reduce the 27 to 33 months
11 even lower?

12 A. It was explained to me that they would recommend --
13 and I want to stress the word "recommend" because they
14 stressed it with me, recommend only and nothing was for
15 sure -- that's what was explained to them.

16 Q. Now, if you took the stand and you said I did not
17 bribe Jim Traficant, what would they do to you?

18 A. They kept telling me that to tell the truth, and
19 that's what I'm up here doing.

20 Q. I didn't ask you that; I said if you -- if you
21 testified that you did not bribe Jim Traficant, what would
22 the Government do for you?

23 A. I probably wouldn't be up here if I didn't bribe Jim
24 Traficant.

25 Q. How old are you, Jim?

Sabatine - Cross

1 A. 50.

2 Q. Isn't it a fact you were up to 23 years, possibly
3 being sentenced to 23 years in prison, losing two homes,
4 all your businesses if you, in fact, did not come to some
5 agreement with this Government?

6 A. I didn't realize that the penalties were that harsh.
7 If you say that's what they were, I just -- I just wanted
8 to --

9 MR. MORFORD: Objection. If he doesn't know,
10 your Honor.

11 THE COURT: You can only testify to your
12 knowledge, and if you don't know something or if you can
13 say yes or no, whatever it is that reflects your knowledge,
14 you're under oath.

15 THE WITNESS: Thank you.

16 BY MR. TRAFICANT:

17 Q. Did you have conversations with your attorneys?

18 A. Yes. We had several conversations.

19 Q. Your attorney competent?

20 A. Hope to think that he is.

21 Q. He know sentencing laws?

22 A. Yes.

23 Q. Did you talk about the consequences of you being
24 convicted on the counts you were charged with?

25 A. Yes.

Sabatine - Cross

1 Q. And you were never told you could be subjected to
2 \$500,000 in fines and 23 years in jail and forfeit all your
3 property. He never told you that?

4 A. There were discussions about my plea agreement.

5 Q. Was it also said that if you didn't enter a plea
6 agreement, you could be charged with those other crimes
7 that I had listed on the boards?

8 A. I was never threatened. It was my own decision to do
9 what I did.

10 Q. Did they say if you didn't cooperate you could even
11 be charged with other crimes in addition to what they
12 charged you with? Yes or no.

13 A. I didn't get charged with other crimes.

14 Q. Isn't it a fact that you have admitted to committing
15 at least 30 similar criminal felony acts?

16 A. I don't know if it's 30, Congressman. It's various
17 acts. I don't know how many there is. I have to count
18 them.

19 Q. And they were all related to RICO or tax offenses,
20 weren't they, sir?

21 A. I believe it was under 15, and I don't know what they
22 were related to.

23 Q. Why was it so necessary for you to see the plea
24 agreement to understand it?

25 A. Repeat that question.

Sabatine - Cross

1 Q. Why was it so necessary for you to have to read the
2 plea agreement to understand it?

3 A. You mean up here today?

4 Q. Yes.

5 A. Well, I haven't looked at that -- I haven't studied
6 that in quite awhile, and I wanted to take a look at it to
7 see what you were talking about, Congressman. The stuff is
8 slow in my head.

9 Q. Did you lie to your employees?

10 A. Concerning?

11 Q. Sometimes wages; sometimes hours?

12 A. We treat our employees good. They been with us for
13 years and years. Any time there was a problem, we made it
14 good. We never had a grievance filed from any union in the
15 25 years we were in business.

16 Q. Did you ever make any loans or bribe any union
17 leaders?

18 A. I made a loan to a labor leader, probably seven or
19 eight years ago for a thousand dollars, which was never
20 paid back.

21 Q. Did you ever tell anyone you did not bribe Jim
22 Traficant and if you did not admit to bribing Jim
23 Traficant, you were going to go to jail for 20 years, they
24 were going to take all your property, all of it?

25 MR. MORFORD: Objection. That's about four

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1 questions in one, your Honor.

2 Q. Did you ever tell anyone you did not bribe Jim
3 Traficant?

4 A. I can't recall if I ever told anybody that before all
5 this started. So I can't recall.

6 Q. Do you recall telling anybody that you were going to
7 lose everything you had if you didn't testify against Jim
8 Traficant?

9 A. No. I never remember telling anybody that.

10 Q. You don't remember?

11 A. I don't remember telling anybody that ever.

12 MR. TRAFICANT: No further questions at this
13 time.

14 THE COURT: You may inquire.

15 REDIRECT EXAMINATION OF JAMES SABATINE

16 BY MR. MORFORD:

17 Q. Mr. Sabatine, you were asked some questions on
18 cross-examination by Congressman Traficant about whether or
19 not you had any evidence of the bribe, and I'd like to
20 follow that up and ask you about questions about evidence
21 of a solicitation of free farm work because of official
22 acts Congressman Traficant was doing for you. And let me
23 ask you this:

24 When you met Government officials, did you give the
25 Government any names of people the Government could contact

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1 regarding the official acts you claim Congressman Traficant
2 was doing for you?

3 A. No. There was no name that I could recall to give
4 the Government.

5 Q. Do you recall giving the Government any names of
6 people from the railroad that you and Congressman Traficant
7 had met with?

8 A. I want to -- yes, I did give you guys names
9 concerning people that were going to possibly do work at
10 Mr. Traficant's farm.

11 Q. Before we get to that, as far as the action you were
12 telling that Congressman Traficant was doing to help you
13 with the railroad, did you give us names of people you
14 recall meeting with and telling us we could call them to
15 confirm that he had done those things for you?

16 A. Yes, I did.

17 Q. And then did you also give us the name of a carpenter
18 who you said he had asked you to bring out to the farm to
19 do free carpentry work?

20 A. Yes, I did.

21 Q. I'd also like to ask you some questions about your
22 plea agreement. The Congressman had a number of questions
23 to you about that. In particular, he asked you a few
24 moments ago about the charge that you pled to and whether
25 it included a lot of acts.

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1 MR. MORFORD: And, your Honor, I only have
2 one copy because I did not know I would have to do this,
3 but I have a copy here of the charging document in which
4 Mr. Sabatine was charged with the RICO offense in this
5 case.

6 MR. TRAFICANT: I'd like to make this a joint
7 exhibit.

8 MR. MORFORD: That's fine, your Honor.

9 THE COURT: Fine. We'll make it a joint
10 exhibit.

11 THE COURT: Can we identify it?

12 MR. MORFORD: Yes. Government's Exhibit
13 4-21, may I show that to the witness?

14 THE COURT: Yes.

15 Q. Mr. Sabatine, I'd like to ask you if you will to read
16 in full Paragraphs 1 and 2 from this charging document, if
17 you would?

18 A. Starts out word enterprise, from on or about June
19 1993, through the end or about December 1999, the exact
20 dates being unknown, James R. Sabatine, the Defendant
21 herein, together with others known and unknown to the
22 United States Attorney, were employed by and associated
23 with an enterprise within the meaning of Title 18 United
24 States Code, Section 1962(1)(4), specifically, Hardrives
25 Paving Construction, Incorporated, 3555 Union Street,

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1 Middle Ridge, Ohio.

2 "Hereinafter Hardrives, which enterprise engaged in
3 and the activities of which affected interstate commerce,
4 the violation from in or about June 1993, through on or
5 about December, 1999, exact dates being unknown in the
6 Northern District of Ohio, James R. Sabatine, the Defendant
7 herein, being a person employed by and associated with the
8 enterprise, did knowingly and unlawfully conduct and
9 participate directly and indirectly in the conduct of the
10 affairs of the enterprise through a pattern of racketeering
11 activity, within the meaning of Title 18 United States Code
12 Section 1962(1)(5).

13 MR. TRAFICANT: Would you read the last
14 number since I don't have a copy?

15 THE WITNESS: 1961, then there's parentheses
16 around number 5.

17 MR. TRAFICANT: That's U.S.C. code what?

18 THE WITNESS: That's U.S. Code Section 1961.

19 Then there's parentheses around numeral 5.

20 BY MR. MORFORD:

21 Q. And if you could read just the first part of
22 Paragraph 2, the first four lines?

23 A. "Number 2. The pattern of racketeering activity as
24 defined by Title 18 United States Code Section 1961,
25 parentheses around the number 1, and 1961(5), "through

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1 which James R. Sabatine knowingly participated directly and
2 indirectly in conduct of the affairs of the enterprise
3 including -- included the following acts.

4 Q. And then did the RICO charge go on to specify three
5 acts, specific acts of bribery in a mail fraud as some of
6 the racketeering acts that were included in this pattern of
7 racketeering through which you operated your business?

8 A. Yes.

9 Q. And did you, in fact, conduct the affairs of your
10 business, Hardrives Paving, through a pattern of
11 racketeering activity that included bribery and fraud?

12 A. Yes.

13 MR. MORFORD: Congressman, can I see what you
14 marked prior as your Exhibit BS-12, please?

15 MR. TRAFICANT: It's right there.

16 MR. MORFORD: No. The plea agreement. I
17 want to have him read from the same one you did.

18 MR. TRAFICANT: There's been so many BS I'm
19 not sure which one you want.

20 MR. MORFORD: I want the plea agreement.
21 Thank you.

22 BY MR. MORFORD:

23 Q. I'm going to hand you what Congressman Traficant
24 showed you earlier and marked BS-12, which you identified
25 earlier as your plea agreement.

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1 And, sir, I would like to ask you to turn to Page 2
2 of that plea agreement. And if you could start with -- on
3 Page 2, the first full sentence that begins "the parties
4 agree," do you see that part?

5 THE COURT: Congressman, would you move your
6 board so they can get a straight projection screen?

7 MR. TRAFICANT: I'll be glad to, but this is
8 BS-12?

9 MR. MORFORD: Yes, it is.

10 THE WITNESS: Attorney, you say Page 2?

11 Q. Here I'll some you on Page 2 of your plea agreement,
12 and --

13 MR. MORFORD: May I put this up on the
14 overhead, your Honor?

15 THE COURT: Yes.

16 BY MR. MORFORD:

17 Q. Would you go ahead and read that section that begins
18 "the parties agree to or agree and understand," you see
19 that?

20 A. Was that A on B? Okay. I see I it. "The parties
21 agree and understand that under Rule 11(e) (1), (B) (1), the
22 stipulations and agreements set forth in Section 4 below
23 are mere recommendations based on the parties'
24 understanding of the facts and Guidelines application to
25 case -- to this case, (2) that the ultimate decision on

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1 these matters rests exclusively with the Court, and that in
2 the event the Court determines any of the matters covered
3 in paragraph 4 differently than the parties'
4 recommendations, the Defendant shall not be permitted to
5 withdraw his guilty plea."

6 Q. Now, Congressman Traficant asked you a whole series
7 of questions about what are called statutory maximum
8 penalties, a 20-year penalty and a three-year penalty.

9 Did you understand based on your discussions with
10 your attorney that your actual sentence would be determined
11 by the federal sentencing Guidelines?

12 A. Yes, I did.

13 Q. Irregardless of what a maximum penalty might be?

14 A. Yes.

15 Q. And is it your understanding those Sentencing
16 Guidelines were created by Congress and binding on the
17 Court?

18 A. Yes.

19 Q. Now, to the extent that the parties make a
20 recommendation as to their understanding of what the
21 guidelines are, based on that paragraph of your plea
22 agreement, what is your understanding who actually makes
23 the call as to what the Guidelines will be?

24 A. The Court, which would be Judge Wells.

25 Q. And that would be whether you pled guilty or went to

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1 trial, correct?

2 A. That is correct.

3 Q. Now, if you could -- if you'd turn to Page 4 and
4 beginning with -- you see Paragraphs D, E, an F and G
5 there, sir?

6 A. Yes, I do.

7 Q. And I'd like to ask you if you could read those
8 paragraphs. Your Honor, I've actually highlighted those
9 paragraphs but not written anything. May I put that on the
10 overhead?

11 THE COURT: Yes.

12 MR. MORFORD: Thank you.

13 Q. Could you read Paragraphs D and E, please?

14 A. "James R. Sabatine and the United States Attorney's
15 Office for the Northern District of Ohio stipulate and
16 agree under Rule 11(e)(1)(b) that the adjusted offense
17 level for the subject racketeering charge is 20 under
18 U.S.S.G.," is that an S?

19 Q. You don't need to read the code numbers.

20 Sir, was it your understanding that a RICO offense --

21 MR. TRAFICANT: I object.

22 THE COURT: Sustained.

23 Q. What was your understanding, sir, as to the
24 sentencing Guideline on the RICO offense you were charged
25 with whether you went to trial or pled guilty. What level

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1 did you understand it would be?

2 A. I understood it to be the -- a Level 21.

3 Q. Okay.

4 And does that include the adjustment for the tax
5 offense, or would it be a 21 automatically?

6 A. I believe that was with the adjustment, but I'm not
7 positive.

8 Q. Could you read on with paragraph E, please?

9 MR. TRAFICANT: Your Honor, he did not
10 complete reading Paragraph D, and he was requested to read
11 Paragraph D.

12 THE COURT: You want him to read the numbers?

13 MR. TRAFICANT: I want him to read the
14 numbers for the record.

15 THE COURT: Very well. Would you go down to
16 the U.S.S.G. And read that symbol you were looking at is a
17 Section, it means Section.

18 THE WITNESS: Yes, your Honor.

19 THE COURT: Read the rest of that. Thank
20 you.

21 THE WITNESS: Symbol there says 2 E 1.1 (A2)
22 and symbol, 2C1.1.

23 Q. Okay. If you could read sub paragraph E, and I'll
24 ask you to go ahead and read the code sections as well.

25 A. James R. Sabatine and the United States Attorney's

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1 Office for the Northern District of Ohio -- in the Northern
2 District of Ohio further stipulate and agree that the false
3 tax return count, Count 2, and racketeering count, Count 1,
4 are not grouped together as provided by U.S.S.G. symbol,
5 3D1.2, but are instead combined together pursuant to
6 U.S.S.G. symbol 3D1.4. The parties agree that pursuant to
7 U.S.S.G. symbol 2T1.1(a)(1) and the tax table located at
8 U.S.S.G. symbol 2T4.1(H), the offense level for the false
9 tax return Count 2 is 13. The parties further agree that
10 this seven-level difference, 20 minus 13, results in an
11 increased combined offense level of one level from 20 to 21
12 under U.S.S.G. symbol 3D1.4.

13 Q. Sir, what was your understanding if you had gone to
14 trial and been convicted of these offenses at Level 21?
15 What was your understanding of the sentence you would have
16 received?

17 A. I was under the understanding that if the Guidelines
18 will be followed, I would be charged as the Court saw fit.

19 Q. Did your lawyer ever show you something called a
20 sentencing table?

21 A. Yes, he did.

22 MR. MORFORD: Your Honor, I've marked a copy
23 of the sentencing table as Exhibit 4-20.

24 THE COURT: Fine.

25 MR. TRAFICANT: I think I should be getting

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1 copies of these things. I shouldn't just be looking at
2 them and trying to recall them from memory here.

3 MR. MORFORD: Well, your Honor, this is
4 redirect. This is not stuff we were planning to get into
5 but for cross.

6 THE COURT: All right. We can give you a
7 copy of the Sentencing Guidelines. Somewhere down there we
8 have a copy.

9 MR. TRAFICANT: I just want the record to
10 reflect Sentencing Guidelines on what he was -- what he
11 pled to, not what he could possibly be charged with if he
12 decided to go to trial.

13 THE COURT: That wouldn't be an accurate
14 statement.

15 MR. MORFORD: Thank you, your Honor.

16 BY MR. MORFORD:

17 Q. I'd like to hand you what has been marked
18 Government's Exhibit 4-20. Do you see that?

19 A. Yes.

20 Q. Can you see the screen from the stand here, sir?

21 A. Barely.

22 Q. Okay. You testified that it was your understanding,
23 based on your conversations with your attorney that if you
24 had gone to trial and been convicted of the RICO and tax
25 offense, that you would have been a Level 21. What was the

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1 months of sentence applicable under the federal Sentencing
2 Guidelines for a Level 21?

3 A. 37 to 46 months.

4 Q. Is that your understanding of what you were looking
5 at absent a plea agreement?

6 A. Yes.

7 Q. If you could next read Paragraph F, please.

8 A. "James R. Sabatine United States Attorney's Office
9 for the Northern District Ohio further stipulate and agree
10 under Rule 11(e) (1) (b) that James R. Sabatine is entitled
11 to a three-level reduction for acceptance of responsibility
12 under U.S.S.G. symbol 3 E 1.1."

13 Q. Okay. Then paragraph G, please?

14 A. "In summary, James R. Sabatine and the United States
15 Attorney's Office for the Northern District of Ohio
16 stipulate and agree under Rule 11(e) (1) (b) of the federal
17 rule rules of criminal procedure that Level 18 is the
18 appropriate total offense level for the subject
19 information.

20 Q. And, sir, was it your understanding that that would
21 be your sentence for admitting your guilt but not
22 cooperating?

23 A. Yes.

24 Q. And under the Sentencing Guidelines, what sentence
25 would you receive if you pled guilty to these offenses and

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1 said no, I don't want to cooperate, I'm not going to
2 testify against anybody?

3 A. 27 to 33 months.

4 Q. Months?

5 A. 27 to 33 months.

6 Q. Okay. Finally, if you could drop down and read sub
7 Paragraph I, please.

8 A. James R. Sabatine understands that should he fully
9 comply with his obligations to cooperate as set forth in
10 Paragraph 2(b), the United States Attorney's Office for the
11 Northern District of Ohio will make a motion recommending a
12 six-level downward departure from the Sentencing Guidelines
13 for substantial assistance pursuant to U.S.S.G. symbol
14 5K1.1. the motion will be based upon James R. Sabatine's
15 offense conduct, his acceptance of responsibility, his role
16 in the offense, and the extent and quality of his
17 cooperation.

18 Q. And if you get -- if our recommendation is followed
19 by the court and you get a full six-level downward
20 departure and you go from a Level 18 to a Level 12. What
21 would your sentence be?

22 A. Ten to 16 months.

23 Q. And, sir, what is your understanding regardless of
24 any of our recommendations as to what we believe the
25 Guidelines are, who actually makes the actual determination

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1 of how the Guidelines apply to your case?

2 A. The criminal -- criminal court system.

3 Q. Would that be a particular position?

4 A. Pardon me?

5 Q. Who --

6 A. I guess that would be up to the judge.

7 Q. Finally, sir, I'd like to turn your attention to Page
8 6, Paragraph Roman Numeral V(A) says "use of information
9 provided by the Defendant." Do you see that?

10 A. Yes.

11 Q. Could you read that paragraph, please?

12 A. "The United States Attorney's Office for the Northern
13 District of Ohio pursuant to U.S.S.G. symbol 1B1.8, agrees
14 that self-incriminating information provided by James R.
15 Sabatine in the course of his cooperation will not be used
16 against him in determining the applicable sentencing
17 guideline range or in any other proceeding, except to the
18 extent provided in Paragraph 2(c) and Paragraph V(b) of
19 this plea agreement.

20 Q. Sir, you testified here in the last two days about a
21 large number of specific bribes and other offenses. Were
22 there a number of those offenses that, to your
23 understanding, the Government didn't even know about until
24 you told us?

25 A. Yes.

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1 Q. And what was your understanding of this provision
2 regarding when you told us about offenses that you and
3 others had committed that we knew nothing about, what was
4 your understanding of what we were telling you we would do
5 with respect to those types of offenses?

6 A. That of those offenses there, that I could not be
7 charged criminally for anything I brought at this point on
8 as long as I was being truthful.

9 Q. Now, you were asked some questions by Congressman
10 Traficant about a man named Chuck O'Nesti, Vince Sermon,
11 and Jimmy Prato in a driveway, do you recall that?

12 A. Yes.

13 Q. And your testimony was that on this day that Vince
14 Sermon was out there, who was it that brought Vince Sermon
15 out, and who was it that told you that was Vince Sermon?

16 A. Back, I think whatever year it was in the '80s, a
17 salesman working for me, he passed away, his name Pete
18 Carbone. Pete was with me, and Pete was an old timer, and
19 those guys were old timers, and he told me it was Vince
20 Sermon.

21 Q. Who brought Vince Sermon out?

22 A. When I got there, he was already there, but he was
23 with Chuck O'Nesti.

24 Q. And what was your understanding and that you've been
25 asked a bunch of questions about people involved in

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1 organized crime regarding Chuck O'Nesti's connection with
2 the organized crime?

3 A. Well, he was affiliated with Lenny Strollo.

4 Q. And what was your understanding of how he was
5 affiliated with Lenny Strollo?

6 A. Well, his reputation in Youngstown was that he was
7 bag man.

8 Q. What did you mean to you, bag man?

9 A. Somebody that would pick up the package and deliver
10 it.

11 Q. What kind of package?

12 A. Normally that would be cash.

13 Q. How widely known was Chuck O'Nesti's reputation as
14 the bag man for Lenny Strollo, the boss of organized crime
15 in Youngstown?

16 A. Everybody that was in business knew that he was the
17 crime boss.

18 Q. Now, how widely known was Chuck O'Nesti's reputation
19 as the mob's bag man? That's my question.

20 A. Could you please repeat that?

21 Q. How widely known was the reputation of Chuck
22 O'Nesti's as the mob's bag man in Youngstown?

23 A. Amongst paving contractors and people doing business,
24 it was positively widely known in our area.

25 Q. How about outside the paving contractors, just within

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1 the general community?

2 A. It was still known that he was -- he had ties with
3 Strollo.

4 Q. Was that Chuck O'Nesti's reputation during the years
5 1984 until he left the employ of Congressman Traficant?

6 A. Yes.

7 Q. Finally, you were asked questions by Congressman
8 Traficant about some of your very early dealings with the
9 Congressman back in 1984 or so when he was running for
10 Congress. Could you go ahead and tell the jury how you
11 first met the Congressman back in 1984?

12 A. A member of my family was working with him, brought
13 him over to my home while they were campaigning, and they
14 spent time in Florida, and I used to cook meals for them.

15 Q. Who was the member of your family?

16 A. It was my brother-in-law, Russ Saadey, Junior.

17 Q. And what was your understanding based on your
18 conversations with Congressman Traficant about the future
19 prospects of your brother-in-law if Congressman Traficant
20 did well in that election?

21 A. My brother-in-law was with him daily, and he worked
22 very hard helping the campaign to be Congressman Traficant,
23 and my brother-in-law was supposed to get the top spot with
24 Congressman Traficant. And after the Congressman Traficant
25 won the election, he totally disregarded my brother-in-law.

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1 Q. He -- I'm sorry. I didn't catch the last one.

2 A. He didn't hire my brother-in-law. He hired
3 Mr. O'Nesti instead.

4 Q. During the time that you were meeting with
5 Congressman Traficant during that election, how would you
6 describe your relationship with the Congressman?

7 A. In 1984?

8 Q. Yes.

9 A. Friendly.

10 Q. Did -- did he ever discuss with you any aspect of
11 your paving business or anything you could do to help your
12 paving business if he was elected?

13 A. Congressman is a very good motivator, and, you know,
14 he stopped over to the house, you know, maybe before we
15 eat, after we ate. He would charge me off -- saying things
16 that if I become Congressman, you'll be doing the roads and
17 you'll be the asphalt king, just things like that.

18 Q. During the same time period, did he ask you to do
19 anything for him?

20 A. I can't remember if it was right before he got
21 elected, right after he got elected. It was right before
22 he got elected. He -- he asked if I would do the driveway
23 over in Ohio.

24 Q. Driveway of his personal residence?

25 A. Yes.

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- 1 Q. Did you discuss price with him?
- 2 A. No.
- 3 Q. Did he ask you for an estimate of price?
- 4 A. No.
- 5 Q. Did you end up doing the work?
- 6 A. Yes.
- 7 Q. Did he pay you for the work?
- 8 A. No.
- 9 Q. What's the approximate value of a job like that at
10 that time?
- 11 A. My cost without making a profit was approximately
12 \$2500.
- 13 Q. Did there come a time where you became disillusioned
14 with the Congressman?
- 15 A. Well, my brother-in-law wasn't too happy with him,
16 and we basically -- I didn't have too many dealings with
17 him from the point -- that point on.
- 18 Q. Did he do anything to help make you the paving king?
- 19 A. No.
- 20 Q. To your understanding, who did he end up hooking up
21 with?
- 22 A. He got involved with the Bucci boys.
- 23 Q. And what affect did that have on your relationship
24 with him?
- 25 A. Very serious problems.

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1 MR. MORFORD: May I have a moment, your
2 Honor?

3 Q. The asphalt work you did on the Congressman's
4 driveway, approximately how long would a job like that last
5 until it needs to be done, asphalt?

6 A. I'd say people usually have driveways that last five
7 or ten years, maybe longer.

8 Q. And then after that time, what happens?

9 A. Well, I mean, you either have to repair them or just
10 seal coat them. They'll be -- they'll still look decent
11 but not have that new look to them.

12 Q. And if you have it seal coated, does there come a
13 time it may need to be redone?

14 A. Yes.

15 MR. MORFORD: Nothing further.

16 THE COURT: You may inquire, Congressman.

17 MR. TRAFICANT: Thank you.

18 RE-CROSS-EXAMINATION OF JAMES SABATINE

19 BY MR. TRAFICANT:

20 Q. Now, I notice the Government used a lot of terms in
21 the plea agreement that they had you read. I don't know
22 how to work that thing, but could I put on Page 2 and have
23 it put on the board here? Or does it only work for the
24 Government?

25 MR. SMITH: It'll work.

Sabatine - Recross

1 MR. MORFORD: It'll work, but I just turned
2 it off so it wouldn't distract the jury.

3 Q. Do you have the plea agreement in front of you, Jim?

4 A. Yes, I do.

5 Q. Okay. Okay.

6 MR. TRAFICANT: Thank you. Would you please
7 put on Page 2 of the plea agreement?

8 THE COURT: You'll have to do that, sir.

9 MR. TRAFICANT: I don't have a clean copy.

10 MR. TRAFICANT: I don't know how to use this,
11 I'm just a --

12 MR. MORFORD: Set it on this.

13 MR. TRAFICANT: On what?

14 MR. MORFORD: The board.

15 MR. TRAFICANT: Oh, I wondered what this was
16 for. I thought it was another one of your ploys and
17 recording devices. See if this is on correctly and if you
18 can see it.

19 MR. SMITH: Flip it over.

20 MR. TRAFICANT: I'll get to be an attorney
21 before I'm done down here.

22 (Laughter.)

23 BY MR. TRAFICANT:

24 Q. I want you to read -- this is not very clear. I want
25 Section A put on. The defendant's obligations.

Sabatine - Recross

1 Thank you, Matthew, and thank you for all your help.

2 Would you read starting with Roman Numeral 2, and
3 then read very slowly?

4 A. "The defendant's obligations.

5 "A. James R. Sabatine shall waive indictment and
6 plead guilty to a two-count information charging violation
7 of Title 18, United States Code Section 1962(c), RICO, and
8 Title 26, United States Code Section 7206(1), filing false
9 tax return. James R. Sabatine admits he is, in fact,
10 guilty of these offenses as charged in the information.

11 Q. Now, let's look at what the Prosecutor asked you. He
12 said let's read Pages -- Paragraph 1 and 2 of -- I don't
13 have all the help you have. What page was it you had him
14 read? Let's help the jury here. Could I use your copy?

15 MR. MORFORD: Sure.

16 MR. TRAFICANT: Thank you. We're starting to
17 get along.

18 BY MR. TRAFICANT:

19 Q. Now, let's start with -- you need to help me,
20 Matthew, I'd be deeply indebted.

21 MR. KALL: You're doing fine.

22 MR. TRAFICANT: I know that.

23 Q. Could you read where it says C?

24 A. "James R. Sabatine further understands that in the
25 events the Court determines that he failed to fulfill his

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1 obligations under this plea agreement or during any
2 criminal proceedings committed perjury, subordinate perjury
3 or obstructed justice not in this plea agreement precludes
4 the United States from prosecuting him fully for those and
5 other crimes and from using any of his sworn and unsworn
6 statements against him including statements given by him
7 during proffer session."

8 THE COURT: You're not on the same page.
9 Let's go -- it's hard to do it when he's got it up there.

10 THE WITNESS: Excuse me. Your Honor.

11 THE COURT: What page is this, Congressman?

12 MR. KALL: I believe it's Page 4, your Honor.

13 THE COURT: Okay.

14 THE WITNESS: I see it, your Honor. Is that
15 paragraph C you want?

16 Q. Tell you what: Why don't you go down to Paragraph D?
17 Are you on Page 4?

18 A. Yes.

19 Q. Why don't you just read D for the jury.

20 A. "James R. Sabatine and the United States Attorney's
21 Office for the Northern District of Ohio stipulate and
22 agree under Rule 11(e)(1)(b) that the adjusted offense
23 level for the subject racketeering charge is 20 under
24 U.S.S.G. 2 -- excuse me symbol, 2 E 1.1(a)(2) and symbol 2
25 C 1.1."

Sabatine - Recross

1 Q. Now, go back to Page 2. Did your attorney know the
2 difference between Page 2, the top paragraph? Can you see
3 it clearly?

4 A. I see Page 2, Congressman.

5 Q. Well, let's look then under that to obligations.
6 Read the first three words after your name.

7 A. We're on Page 2? First paragraph?

8 Q. No. Where it says the defendant's obligations, Roman
9 Numeral 2, sub Paragraph A, read your name and the next
10 five -- six words.

11 A. "James R. Sabatine shall waive indictment and plead
12 guilty."

13 Q. What would you waive -- what charges would be waived?
14 Would you read them? I want you to read now after pleading
15 -- read it again, and read it completely through.

16 A. "James R. Sabatine shall waive indictment and plead
17 guilty to a two-count information charging violation of
18 Title 18, United States Code Sections 1962(c), RICO, and
19 Title 26, United States Code Section 7206(1), filing false
20 tax return. James R. Sabatine admits he is, in fact,
21 guilty of those offenses as charged in the information."

22 Q. Now, when the Government charged you, they waived
23 that, didn't they? You agreed to waive that charge, didn't
24 you?

25 MR. MORFORD: Objection. That's not what it

Sabatine - Recross

1 says at all.

2 THE COURT: No. That's not what it says.

3 Q. It says the -- does it say that you shall waive
4 indictment?

5 THE COURT: But it also says he shall plead
6 guilty to --

7 Q. And plead guilty?

8 THE COURT: All right.

9 Q. Right.

10 A. It says what it says, Congressman.

11 Q. Okay. Fine. What did you end up pleading guilty to?

12 A. To a two-count information charging violations of
13 Title 18 United States Code, Sections 1962(c) RICO and
14 title 26 United States Code Section 2, 7206(1), filing
15 false tax return."

16 Q. And now, let's go to Page 4, and go to the sentencing
17 guideline. Did we not say that Title 18 U.S. Code 1962 C,
18 under RICO is 20 years imprisonment, \$250,000 fine, 20
19 years imprisonment and three years supervised release.
20 Isn't that what you waived?

21 MR. MORFORD: Objection. That's not what he
22 waived. Under an information -- same under an information
23 or an indictment.

24 THE COURT: Right. Those are statutory
25 maximums under the code, and those were set forth in this

Sabatine - Recross

1 agreement as well, but that's not what he's waiving.

2 Q. The bottom line, Mr. Sabatine, you had an attorney,
3 did you not?

4 A. Yes, I did.

5 Q. Is he competent?

6 A. Yes.

7 Q. Does he know the law?

8 A. Yes.

9 Q. Were you charged with 18 U.S.C. Section 1960(c), and
10 was that the final agreement that you worked on?

11 A. I'd have to have my attorney confer with him to find
12 out exactly the correct answer on that, Congressman.

13 Q. Then let's go to the page where you can read. Would
14 you please read D, Page 4?

15 A. "James R. Sabatine and the United States Attorney's
16 Office for the Northern District of Ohio stipulate and
17 agree under Rule 11 E 1 B that the adjudged offense level
18 for the subject racketeering charge is 20 under U.S.S.G.
19 symbol 2E1.1(a)(2) and symbol 2C1.1."

20 Q. So you made a deal to drop from the 23 years to what
21 was the maximum they said?

22 MR. MORFORD: Objection. That's not what
23 this plea agreement says at all.

24 THE COURT: Yeah, I don't understand that.

25 MR. TRAFICANT: Let me clarify it better.

Sabatine - Recross

1 BY MR. TRAFICANT:

2 Q. Do you understand what the word "shall" means?

3 A. Yes.

4 Q. What does shall mean as a contractor who does
5 business with the federal and state Government, whether it
6 says shall in the contract? What does that mean?

7 A. Depends what's before shall and what's after shall.
8 That's an open-ended question, Congressman.

9 Q. If it says the contractor shall do the curbing, what
10 does that mean?

11 A. That means the contractor shall put the curb in.

12 Q. Does the contractor have any discretion? Can the
13 contractor say no?

14 A. Depends what the specifications are after the -- what
15 it says about the curbing.

16 Q. If the contract said the contractor may put in the
17 curbing, would then you be able to make a decision whether
18 you wanted to or not?

19 A. Yes.

20 Q. But it said you shall put in the curbing. What did
21 that mean?

22 A. It means you shall put the curb in.

23 Q. You had to, didn't you?

24 A. Yes, if that's what it says.

25 Q. And you said on Page 2 that you shall waive?

Sabatine - Recross

1 A. This says what it says, Congressman.

2 Q. Well, let's put it on the board again. Read under
3 the defendant's obligations and read A?

4 A. "James R. Sabatine shall waive indictment."

5 Q. Stop there. Read the first line slowly.

6 A. "James R. Sabatine shall waive indictment and plead
7 guilty to a two-count information." Keep reading?

8 Q. No. You read enough.

9 Now, looking at that, on Page -- under your
10 defendant's obligations, it says you shall waive indictment
11 to this charge. You shall waive and plead guilty to this
12 charge?

13 THE COURT: It says to a two-count
14 information. We can all read it.

15 MR. TRAFICANT: Yes.

16 Q. And then you were charged with an agreement between
17 you and your attorney evidently with a lesser charge.
18 Would you agree to that?

19 MR. MORFORD: Objection.

20 THE COURT: Congressman, I don't know where
21 you have that information from. But it is not from this
22 document.

23 MR. TRAFICANT: Well --

24 THE COURT: I think -- I think what we should
25 do is take a lunch break now, and I'll ask you to look

Sabatine - Recross

1 carefully at the document over lunch, and we'll go back and
2 resume with this witness when we come back.

3 MR. TRAFICANT: Thank you.

4 THE COURT: An hour and a half for lunch.
5 See you at 1:30. Remember all your admonitions. Don't let
6 anyone talk to you. Don't talk to anyone. Don't make up
7 your mind about anything. Don't read, watch, or listen to
8 anything about this case. Thank you very much. Enjoy your
9 lunch.

10 (Thereupon, a luncheon recess was had.)

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1 Thursday Session, March 7, 2002, at 1:30 P.M.

2 (Proceedings in the absence of the jury:)

3 THE COURT: Before we bring the jury out I
4 want to go over a couple things. Be seated. At our
5 last -- the last questioning that was going on, there
6 seemed to be some confusion surrounding the questions that
7 were coming off -- coming out of the plea agreement, and if
8 there's anything anybody wants to say or do that will help
9 clarify that so we don't get into continuing difficulties,
10 this would be a good time to do it.

11 MR. TRAFICANT: Yes. I want to pursue and
12 show the difference on whether or not this man would have
13 been indicted or pled to an information, what the
14 difference is between the indictment and information and I
15 believe for defense showing motivation that is relevant to
16 the defense, and I should be allowed to pursue that.

17 THE COURT: Okay. You want to respond?

18 MR. MORFORD: I will not object to that under
19 this condition, that that distinction between information
20 and indictment is a matter of law, and I would ask that the
21 Court instruct the jury as to the legal difference between
22 the two, and then Congressman Traficant can ask questions
23 about that because it's really a matter of law.

24 And then they'll understand the significance of what
25 he's asking.

1 MR. TRAFICANT: Well, I disagree with that.
2 I believe I'm putting on a defense, and I have the right to
3 ask the questions if he knows, and then to, in fact, inform
4 him what are the differences by law, and if those are not
5 the law, then you can certainly object.

6 THE COURT: Well, you wouldn't be informing a
7 witness about what the law is. I think that's one of the
8 areas that we need to explore before the jury comes out.
9 You -- you as a person questioning a witness are not in a
10 position to give the witness a statement of the law.

11 MR. TRAFICANT: No, I'm not, but I think I
12 have and can present to the jury the difference between an
13 information pleading and the difference between an
14 indictment pleading, and I can certainly use the dictionary
15 that defines it, to explain it to the jury and should be
16 allowed to do same.

17 MR. MORFORD: Well, your Honor, what he's
18 talking about is a matter of law. It's the Court's
19 province to instruct the jury as to matters of law. It's
20 very clear from Congressman Traficant's questions that he
21 either does not understand the true difference between an
22 indictment and information or that he does and he's
23 attempting to confuse the jury.

24 I think it's gotten very confusing. This witness has
25 said he's not a lawyer. He doesn't know those kind of

1 legal significances, but the Court is in a position to tell
2 the jury the difference between an indictment is this, an
3 information is this. The difference between the two -- and
4 Congressman Traficant can ask him lot of questions about
5 his understanding of when he waived the indictment -- but
6 anything further would be prohibited under Rule 403(b) as
7 being prejudicial and confusing to the jury, which you're
8 not allowed to do, and what he's' talking about doing now,
9 what he just told the Court is he's going to tell the jury,
10 based on the dictionary, what the law is.

11 MR. TRAFICANT: No, I didn't.

12 MR. MORFORD: That's something he's not
13 entitled to do.

14 MR. TRAFICANT: You're misrepresenting me.

15 THE COURT: I think the Congressman
16 understands it's the Court that instructs the jury.

17 MR. TRAFICANT: I know that.

18 THE COURT: Thank you.

19 MR. TRAFICANT: What I did express to you was
20 I was going to show the legal Black's Law Dictionary to
21 show a difference between what an information pleading is
22 and an indictment is.

23 THE COURT: First of all, I don't know how
24 you're using those terms, but from your inquiry that was
25 going forward, I was not at all confident that the terms

1 could be meaningful, and they certainly -- and certainly
2 was yet confusing to the jury, and so I think -- I think it
3 can be addressed in one of several ways. You can go on and
4 pursue other kinds of questions, but you can't, as part of
5 your question, read to a jury Black's Law Dictionary.

6 That doesn't contain all of the law, and who knows
7 what it is, which parts of it you would read. I give the
8 law to the jury.

9 MR. TRAFICANT: I know that, but there is a
10 tremendous difference between an indictment and an
11 information. And in this case, this speaks directly to a
12 witness under tremendous pressure and the jury. All I plan
13 to do was show a Black's Law brief explanation what an
14 information --

15 THE COURT: I can't permit you to do that,
16 sir. So I'm glad we're having this conversation while the
17 jury's not here. You may not, through Black's Law
18 Dictionary or anything else, try to do what the Judge has
19 to do in a case. We can't exchange places here. Your job
20 is to ask questions, and you need to ask questions, and
21 those questions should -- you're correct -- be based on an
22 understanding of the law. But you can't give the Black's
23 Law Dictionary to the jury.

24 MR. TRAFICANT: You mean to say I can't show
25 to the jury the difference between what an information

1 count pleading is versus pleading to an indictment?

2 THE COURT: Why don't you explain to me what
3 you think that will be, and then we can explore that.

4 MR. TRAFICANT: Let me be very specific. If
5 he didn't waive his right, he was subject to 23 years in
6 jail, \$500,000 fine, and all his forfeiture.

7 THE COURT: That is not a correct statement
8 of the law.

9 MR. TRAFICANT: It is not?

10 THE COURT: No. And I think that's why we're
11 having difficulty.

12 MR. TRAFICANT: Wait a second. Then let's
13 look at it.

14 THE COURT: We have to look at the Guidelines
15 as --

16 MR. TRAFICANT: I've looked at the
17 Guidelines. I haven't looked at the Guidelines. I've
18 looked at the plea agreement.

19 THE COURT: Okay. Look at the plea
20 agreement.

21 MR. TRAFICANT: And let's discuss the plea
22 agreement, and let's see if --

23 THE COURT: Let's try and get this straight
24 before we bring in the jury.

25 MR. TRAFICANT: Let's get it straight now.

1 We're talking Page 2 now of the plea agreement.

2 MR. TRAFICANT: I'm talking about Page, Roman
3 Numeral 2, the defendant's obligations. This is what the
4 obligation is, and this is what the deal is.

5 THE COURT: Okay. Would you keep your voice
6 down a little?

7 MR. TRAFICANT: I'll try, Judge.

8 THE COURT: Thank you.

9 MR. TRAFICANT: James R. Sabatine shall waive
10 indictment.

11 THE COURT: Right.

12 MR. TRAFICANT: And plead guilty to a
13 two-count information.

14 THE COURT: Right.

15 MR. TRAFICANT: Charging violations of Title
16 18.

17 THE COURT: Right.

18 MR. TRAFICANT: Sabatine admits, in fact,
19 he's guilty of these offenses.

20 Now, here's where we are.

21 THE COURT: Okay.

22 MR. TRAFICANT: Under the --

23 MR. MORFORD: May I have a copy back? I want
24 to see something.

25 MR. TRAFICANT: Is this your copy?

1 MR. KALL: I have it. It was on the
2 overhead.

3 THE COURT: Okay.

4 MR. MORFORD: Go ahead.

5 MR. TRAFICANT: It interrupted my train of
6 thought, you know.

7 THE COURT: Okay. It's all written right
8 down here. You're reading the words off the page.

9 MR. TRAFICANT: So the point I'm making is,
10 if you're telling me that under Title 18, U.S. Code
11 sections 1962(c) RICO and Title 26 U.S. Code, Section 7601,
12 filing false tax returns, could not result in a maximum
13 penalty combined of 23 years and a half a million dollars
14 in fines, I want you to say -- just tell me yes or no, and
15 then I won't understand the law.

16 THE COURT: No. It's -- this plea agreement
17 deals with the application of the Guidelines, which binds
18 the Court as well as everybody who's dealing with the
19 Court. That's what it deals with.

20 MR. TRAFICANT: And the plea agreement is
21 part of the document of the court, and it's salient to the
22 testimony and the veracity of the witness and the motive of
23 the witness.

24 THE COURT: Right. Well, you can certainly
25 use the plea agreement.

1 MR. TRAFICANT: I know I can use it, but what
2 is the difference -- and here is the difference.

3 THE COURT: That's what we need to get to.

4 MR. TRAFICANT: The maximum penalty that the
5 Government has brought forward under the charges they have
6 for Mr. Sabatine would be what they said was a Level -- was
7 it a Level 21? That would be 47 months, and that was
8 negotiated down and no -- negotiated down to a Level 18 up
9 to 33 months.

10 THE COURT: Okay.

11 MR. TRAFICANT: That was negotiated and
12 reduced further, not necessarily, but they were going to
13 recommend to the Judge a six-level reduction to a Level 12.

14 THE COURT: That's correct.

15 MR. TRAFICANT: Okay. A Level 12 is ten to
16 16 months. The Judge --

17 THE COURT: I think we're all in agreement
18 about those.

19 MR. TRAFICANT: Let me say this. Is ten
20 months a misdemeanor?

21 THE COURT: That's not the way we deal with
22 it here.

23 MR. TRAFICANT: But the point is, what is a
24 felony? At least 12 months -- wouldn't it be --

25 THE COURT: No.

1 MR. TRAFICANT: They have basically reduced
2 this to technically -- you could rule -- are you the
3 sentencing Judge?

4 THE COURT: I think I am the sentencing judge
5 in this.

6 MR. TRAFICANT: Could you not -- let me ask
7 you the question: Could you not then say I agree, and I
8 sentence this man to ten months, and could you not then
9 agree maybe Jim Traficant might call about his constituent,
10 ask you to put him in a halfway house, could you not agree
11 to put him in a halfway house?

12 THE COURT: That wouldn't be my job. That
13 would be the Bureau of Prisons if he was, in fact, ever --

14 MR. TRAFICANT: I know that, but could you,
15 in fact, decide to agree with the ten-month sentence here?
16 Is that in your province?

17 THE COURT: Yes. But I don't think that was
18 the part that was giving us -- I mean, it might be under
19 some circumstances, but --

20 MR. TRAFICANT: The bottom line is --

21 THE COURT: No. That isn't the bottom line.
22 You're starting out with the assumption about the maximum
23 sentence in this case, and it's -- I need you to pay
24 attention to the entire agreement when you -- when you
25 talk.

1 Let the Government respond. Maybe they can clarify
2 some things.

3 MR. MORFORD: Couple things, your Honor: One
4 of the problems here is that whether this is an information
5 or an indictment, the statutory maximum is the same, the
6 Guidelines are the same and the only significant --

7 THE COURT: That's correct.

8 MR. MORFORD: The only significant
9 difference.

10 THE COURT: Do you understand that, that
11 whether it's an indictment or an information has no bearing
12 on the application of the federal law, including the
13 Guidelines?

14 MR. TRAFICANT: All I know is in order for
15 him to make the deal, the word "shall waive" were required.

16 MR. MORFORD: What he's waiving there.

17 MR. TRAFICANT: He waived indictment.

18 MR. MORFORD: Excuse me, sir.

19 THE COURT: Waiving an indictment is
20 different, I think, than what you're assuming it is. Go
21 ahead and state what we mean.

22 MR. MORFORD: When a defendant waives the
23 right to indictment, and it's a right to the Defendant,
24 what he is waiving is his protection that requires the
25 Government to present the evidence to an independent Grand

1 Jury, who then decides whether there's probable cause to
2 indict or not indict.

3 The Government can take a case, and there have been
4 instances in this district where it's happened, presented
5 the evidence and have a jury come back with a no bill and
6 not indict.

7 THE COURT: That's a constitutional right,
8 Congressman, that, of course, that you have in this
9 country, to go before a group of citizens who are a Grand
10 Jury, who act as a buffer between the state and the
11 citizenry, and it's an ancient and important right that we
12 each have because we're citizens of the United States.

13 But we also are permitted, under certain
14 circumstances, in other words, if it's knowing and
15 voluntary and somebody understands all their rights, they
16 can give up that right, which is what waiving the right
17 means. This particular right is to appear before -- or is
18 to have the case presented for the Government, to present
19 the case to a Grand Jury, to see whether or not there's
20 probable cause to go forward.

21 But people do this day in and day out in America, but
22 it doesn't change the application of the Guidelines or the
23 law.

24 MR. TRAFICANT: Your Honor, I am not an
25 attorney.

1 THE COURT: No. And that's why you can't
2 instruct.

3 MR. TRAFICANT: No, hear me, hear me.

4 THE COURT: Well, that's why you can't
5 instruct.

6 MR. TRAFICANT: But I do understand the law
7 and have drafted some of the laws.

8 THE COURT: Right.

9 MR. MORFORD: And the Guidelines.

10 MR. TRAFICANT: What was that?

11 MR. MORFORD: I said, and the Guidelines.

12 THE COURT: Congress passed the Guidelines as
13 well.

14 MR. TRAFICANT: Yes, and the bottom line is
15 this: You are now again limiting the Defense to show that
16 a witness could have been subject to full forfeiture and
17 could have been put under tremendous pressure and now ends
18 up with what could be a ten-month sentence, which
19 technically, if we were to evaluate it, is a misdemeanor,
20 wouldn't even be classified as a felony.

21 Now, how do we know he'd even serve ten months? I
22 think this speaks to motivation. Now, if Jim Traficant --

23 THE COURT: Stop yelling in the courtroom.
24 Just don't do it anymore. It's disrespectful. Just talk
25 in a normal tone.

1 MR. TRAFICANT: I apologize. I do not mean
2 to be disrespectful.

3 THE COURT: We have a jury who we are trying
4 to keep separate from these kinds of discussions, and it
5 makes it very difficult to do that in this courtroom when
6 the jury room is adjacent to it. So don't yell. Okay?

7 MR. TRAFICANT: I agree. But I also say
8 this. I apologize if --

9 THE COURT: Thank you.

10 MR. TRAFICANT: If I have yelled, and I
11 would -- I would appreciate if some of the people wouldn't
12 yell at some of my assistants.

13 Now, having said that for the record, let me say
14 this.

15 THE COURT: Okay.

16 MR. TRAFICANT: I think this jury don't know
17 what's going on, and I --

18 THE COURT: That's a problem for all of us.

19 MR. TRAFICANT: No. And I think they should
20 know the difference between an information and --

21 THE COURT: Good.

22 MR. TRAFICANT: And a waiving of an
23 indictment and what the significance of those are and the
24 ramifications it has relative to a witness.

25 THE COURT: Okay. I will tell you what I'm

1 going to do. We'll take a few moments and see whether you
2 and the Government -- and I think this may actually be the
3 case -- can agree on a statement. If you would like me to
4 talk to the jury right now about the difference between --
5 what did you say; a waive of an indictment plea, and an
6 information plea?

7 MR. TRAFICANT: Yes.

8 THE COURT: All right. We'll take a recess
9 for five minutes and see if the two of you can come up with
10 a simple statement that you agree to go to the jury.

11 MR. TRAFICANT: Before we take that break,
12 I'd like to offer this for the record taken from Black's
13 Law Dictionary.

14 THE COURT: Don't offer that to me. Work
15 with the Government with that, and see if you can come
16 up -- this is the way we run trials. The lawyers can work
17 out some of these issues, and then we don't have problems
18 with them later.

19 So we'll just take a five-minute recess, and you work
20 on this together. Okay?

21 MR. TRAFICANT: I'd like first to read this
22 into the record.

23 THE COURT: Well, we'll have it marked if you
24 want to have it marked.

25 MR. TRAFICANT: I'd like -- it's already

1 marked BS-111.

2 THE COURT: BS-111. Now, please work with
3 the Government. See if you can come up with --

4 MR. TRAFICANT: And BS-112.

5 THE COURT: Thank you.

6 (Thereupon, a recess was taken.)

7 THE COURT: All right. Have you reached any
8 kind of an agreement?

9 MR. TRAFICANT: I'll agree with the
10 Government's position but still place an objection on the
11 record for not being able to show the definition of the
12 Black's Law Dictionary information exhibit.

13 THE COURT: Okay.

14 MR. TRAFICANT: But I will go along with the
15 Government pursuant to the Judge denying me to be allowed
16 to show that information explanation on the board.

17 THE COURT: Okay. There was something else I
18 asked you to work on because there was a request that we
19 instruct the jury. And so I went ahead and did one. I'll
20 read it to you now before we bring the jury in, so we'll be
21 sure we are, in fact, all understanding this area of the
22 law together. So you can stand if you'd like, but you
23 don't have to stand.

24 MR. TRAFICANT: Thank you.

25 THE COURT: This is what I propose to read to

1 the jury: Under federal law, there is a difference between
2 a maximum sentence for a crime under a statute and the
3 sentence a defendant would receive under the Sentencing
4 Guidelines.

5 For each federal crime then, there is a statutory
6 maximum sentence, and there is a sentencing range from the
7 Sentencing Guidelines. The purpose of the Sentencing
8 Guidelines was to make sure the law was applied fairly
9 throughout the United States.

10 When a judge sentences a defendant, the Judge must
11 sentence within the Sentencing Guidelines range unless
12 there are special circumstances. For example, the
13 statutory maximum sentence for a RICO violation is 20
14 years. However, a Judge could not simply sentence a person
15 convicted of a RICO violation to 20 years in prison.

16 Instead, the Judge would have to follow the
17 Sentencing Guidelines, and sentence the person within the
18 range of months given by the Guidelines.

19 Now, there have been references to a waiver of
20 indictment. When a defendant waives or gives up
21 indictment, he or she gives up the constitutional right all
22 of us enjoy to have the charges against him or her
23 presented to a Grand Jury. Instead, the Government may go
24 forward on an information, which is a notice to a person
25 charged of what crimes he or she is charged with. A waiver

1 of indictment does not mean the charges are dropped or that
2 the penalties are any different.

3 Now, does that seem clear enough to you? Does that
4 seem clear, Congressman?

5 MR. TRAFICANT: Yeah. It seems like you're
6 saying there's not any difference from 23 years to ten
7 months to me, and I object. But I place it on the record.
8 So no offense to you so --

9 THE COURT: No, no. I'm going to hand this
10 down to you and ask you to make the change that would make
11 that clearer to you.

12 MR. TRAFICANT: I object to it under any
13 circumstances and I do not want to write on the document.

14 THE COURT: Okay. Well, this isn't going to
15 go to the jury. This is just so we can get --

16 MR. TRAFICANT: I object to it going to the
17 jury under those --

18 THE COURT: It's not going to the jury, sir.
19 This is an instruction in law that you just heard read, and
20 you say that there's something about it that --

21 MR. TRAFICANT: The thing that bothers me is
22 we're minimizing the difference between a person who knows
23 he's dead bang convicted and then the attorney sitting down
24 with the prosecutors and making a deal. This happens
25 everyday. It's called plea bargaining. This a plea

1 bargain agreement, or is this a real estate transaction?

2 THE COURT: It's not a real estate
3 transaction, but the idea that people know that they're
4 dead bang convicted is not an idea we are familiar with in
5 the system of justice in this country. People have a right
6 to go to trial.

7 They also have a right, if they wish to do it, to
8 give up some of their constitutional rights. One is the
9 right to appear before a Grand Jury, and another is a right
10 to go to trial, and before they do that, they have to make
11 knowing and voluntary waivers of it.

12 MR. TRAFICANT: I agree with that.

13 THE COURT: Okay. Thank you.

14 MR. TRAFICANT: However, having said that --

15 THE COURT: Yeah.

16 MR. TRAFICANT: After all that has come out,
17 I think it would be clearly evident that any prudent
18 attorney would advise a client to take a plea bargain.

19 THE COURT: Well, that's some idea you have,
20 and this is not the time for that. We have a jury waiting
21 to come out and hear testimony.

22 MR. TRAFICANT: Bring them out. I agree and
23 go along, but I object to the fact that I'm not allowed to
24 show that definition of what an information pleading is.

25 THE COURT: Thank you.

1 MR. MORFORD: Your Honor, just to run up the
2 record, we went over with Congressman Traficant the
3 Sentencing Guideline table and showed him under the plea
4 agreement what the base offense level for the RICO and tax
5 were, what the base offense level was if he pled and
6 accepted responsibility and what level he would get to if
7 the Court -- if the Government made the full six-level
8 recommendation of the court, adopted that recommendation.

9 And it's my understanding what we've agreed he's
10 going to put that on the overhead screen and take them
11 through the three differences, and we have no objection to
12 that.

13 THE COURT: That's fine.

14 MR. TRAFICANT: We've come to that agreement,
15 your Honor.

16 THE COURT: Thank you very much. Okay.
17 We'll bring the jury in now.

18 (Proceedings resumed in the presence of the jury:)

19 THE COURT: Ladies and gentlemen, I would
20 like to apologize for the slight delay here, but I think it
21 will in the long run make our day go smoothly. I'm going
22 read you to you an instruction of law at this point. You
23 can sit back and listen to this.

24 This is an instruction -- an instruction on
25 sentencing basically.

1 Under federal law, there's a difference between the
2 maximum sentence for a crime under a statute and the
3 sentence a defendant would receive under the Sentencing
4 Guidelines. For each federal crime, there is a statutory
5 maximum sentence, and there is a sentence range from the
6 Sentencing Guidelines. The purpose of the Sentencing
7 Guidelines was to make sure that the law was applied fairly
8 throughout the United States. When a Judge sentences a
9 defendant, the Judge must sentence within the Sentencing
10 Guidelines range unless there are special circumstances.

11 For example, the statutory maximum sentence for a
12 RICO violation is 20 years. However, a Judge could not
13 simply sentence a person convicted of a RICO violation to
14 20 years imprisonment. Instead, the Judge would have to
15 follow the Sentencing Guidelines and sentence the person
16 within the range of months given by the Guidelines.

17 Now, there have been references to waiver of
18 indictment. When a defendant waives or gives up
19 indictment, he or she gives up the constitutional right all
20 of us enjoy to have charges against him or her presented to
21 a Grand Jury. Instead, the Government may go forward on an
22 information, which is a notice to a person charged of what
23 crimes he or she is charged with.

24 A waiver of indictment does not mean the charges are
25 dropped or that the penalties are any different.

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1 Congressman, you can proceed. You're still under
2 oath, sir.

3 THE WITNESS: Yes, your Honor.

4 BY MR. TRAFICANT:

5 Q. Good afternoon, James.

6 A. Good afternoon, Congressman.

7 Q. What time of the year was it when you came out to the
8 farm and supposedly bribed me, approximately?

9 A. Spring time, earlier spring.

10 Q. And if I were to put this Government's Exhibit that I
11 would like to now make a joint exhibit, 7-33(2) on the
12 overhead, more specific, could you find the barn that you
13 transferred the money in?

14 A. Once you get inside those barns, one leads to
15 another. I don't know if they're -- if I'm not mistaken,
16 some are attached. They're all separate, I can't remember.

17 Q. Are you an asphalt specialist expert?

18 A. I'd say that I'm knowledgeable in the asphalt areas.

19 Q. You're telling me that was -- what? -- four years
20 ago?

21 A. That would have been 1998. That would be four years
22 ago.

23 Q. And you don't remember what the floor was in the
24 building you were in?

25 A. Well, when I was in your barn, I didn't want to get

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1 to this point, but there was horse manure everywhere, and
2 we were dodging the horse manure. I really didn't pay
3 attention to what was on your floor of the barn.

4 Q. I'm now going to put on what is known as Government's
5 Exhibit 4-20, and it has to be made a joint exhibit of the
6 Defense as well. It's pretty hard to see, but can you read
7 what the top says?

8 A. Sentencing table.

9 Q. Yes. Now, I will let -- just go down to show how
10 much of a system this is, but then I will fall within, and
11 I don't know how to work this --

12 MR. TRAFICANT: I'd like to zoom it up a
13 little bit if I could, Matthew, and thank you. Well, make
14 it bigger.

15 BY MR. TRAFICANT:

16 Q. Now, sir, in your plea agreement -- and I want to
17 thank the Prosecutor for letting me use this and disregard
18 from here over, that just happens to be a slip of the hand
19 -- you were at some point at a Level 21 in the Sentencing
20 Guidelines. Were you not?

21 A. If convicted of all those charges, that is correct.

22 Q. If convicted?

23 A. Right.

24 Q. And you did have a chance to sit through and hear
25 much of the commentary relative to this, did you not?

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- 1 A. Yes, I did.
- 2 Q. Okay. So you have some better understanding now,
3 would that be a correct statement?
- 4 A. That would be a correct statement, Congressman.
- 5 Q. So under Level 21, you'd be subject to how many
6 months of incarceration, if convicted?
- 7 A. The table reads 37 to 46.
- 8 Q. Even if you had gone to a Grand Jury and been
9 convicted on the charges they brought against you; is that
10 correct?
- 11 A. If I'm not mistaken, the Grand Jury, you know, gives
12 you -- sends down an indictment. A Grand Jury can't
13 convict you, I don't think. I am not a lawyer though,
14 answer the best I can.
- 15 Q. Yes. But you pled to an information charge, did you
16 not?
- 17 A. I waived my right to a court hearing and a Grand
18 Jury, I believe.
- 19 Q. And you pled guilty?
- 20 A. And I pled guilty to the charges.
- 21 Q. And the charges you pled guilty to were the charges
22 that the Government agreed to charge you with, correct?
- 23 A. I plead guilty to the charges I was charged with,
24 that I was guilty of.
- 25 Q. Yes, you did.

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1 So when you did that, because of certain
2 circumstances in the Sentencing Guidelines, without boring
3 the jury with time, you then were elevated up to a Level
4 what?

5 A. Because of my acceptance of responsibility, I was not
6 elevated, but it would have been lowered to an 18; 27 to
7 33.

8 Q. So you were reduced from a maximum of 46 to a maximum
9 of 33?

10 A. That is correct.

11 Q. But what was the range now, what was the bottom range
12 reduced from?

13 A. I believe to be the other factors involved.

14 Q. I just asked you what is the bottom range.

15 A. 37.

16 Q. And what is the bottom range on 18?

17 A. 27.

18 Q. Now, after negotiation with your attorney and with
19 the Government, the Government made a promise to you that
20 they would make a recommendation to the Judge that you'd be
21 sentenced, not necessarily. It's up to the Judge, right,
22 at a Level 12; is that correct?

23 A. If I performed according to the plea agreement, that
24 is correct.

25 Q. You did cooperate with them, right?

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1 A. Yes.

2 Q. And how many months would that be, minimum and
3 maximum?

4 A. Minimum would be ten, and maximum would be 16.

5 Q. You know who the sentencing judge is in this case?

6 A. Yes, it's Judge Wells.

7 Q. When we're done, you could have handled your own
8 case. Thank you.

9 THE COURT: I don't believe that was a
10 question. Please disregard those remarks.

11 BY MR. TRAFICANT:

12 Q. When the Prosecution comes back on after I examine
13 you, they talk about evidence, and they talked about
14 solicitations and things like that.

15 Mr. Sabatine, do you have any physical evidence that
16 you passed me money?

17 A. I don't have the money that I gave you.

18 Q. No. I asked you: Do you have any physical evidence
19 of any sort.

20 A. No physical evidence other than the people that I
21 sent out there.

22 Q. I'm talking about the money. Did you have a body
23 mike on? Did you record conversation where we exchanged
24 money?

25 A. No. There was no body mike on, no recordings.

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1 Q. Did you have someone have us under surveillance so
2 when you transferred money I could be arrested on the spot?

3 A. I didn't have any surveillance, Congressman.

4 Q. Yes or no. Do you have any physical evidence other
5 than your word that you gave me the money?

6 A. No. But as I repeated before, I will take a lie
7 detector test.

8 Q. You're entitled to do that.

9 Now, you talked about the railroad, and I intervened.
10 You gave some names; is that correct?

11 A. I gave the names, yes.

12 Q. And did I intervene on your behalf?

13 A. Yes, you intervened on my behalf.

14 Q. And in the final analysis that you get stone in your
15 plant by rail?

16 A. The rail company and myself worked out an agreement
17 where you couldn't get the limestone company that was
18 originally on board to come to this because when we were at
19 the meeting -- shall I get into the --

20 Q. Just briefly.

21 A. Okay. I -- final outcome was I made a deal with the
22 railroad, but the stone company did fall apart.

23 Q. So ultimately, how did you get your limestone?

24 A. We ended up trucking it in because the limestone end
25 of the deal fell apart, not the railroad part of it.

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1 Q. Now, the Government asked you about you participating
2 in enterprise. Whom, if anybody, was identified as being a
3 part of your co-conspirators in this enterprise?

4 A. I mean, Lenny Strollo, Bill Fergus, just people that
5 were involved.

6 Q. Do you know if they were listed in the plea agreement
7 as a co-conspirator?

8 A. No. I -- I just -- I don't know if they were listed.
9 No, they weren't listed in my plea agreement. Fergus was,
10 not -- I don't remember seeing Strollo's name, but it's
11 possible his name was in there, also. I'd have to take a
12 look at it right now if you want me to.

13 Q. Isn't it a fact the sentencing is up to the judge in
14 this case?

15 A. Yes.

16 Q. The Prosecution made you a promise they would make a
17 recommendation to a Level 12?

18 A. I was told that they would make a recommendation.

19 Q. Fine. Now, with all the evidence that you presented
20 here today, it's evident that you and your attorney
21 discussed your chances of trial. Would that be a fair
22 question?

23 A. Yes, we did.

24 Q. And what did you two conclude?

25 A. I thought it was better for myself and my family and

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1 everybody involved that I was guilty, and there was no
2 reason to come in here and go through the motions that I
3 was asking.

4 Q. Now, you were also told in your plea agreement that
5 anything you say in this courtroom, regardless of the
6 outcome, can never be used against you; is that correct?

7 A. I'd have to read the agreement but something to that
8 effect, as long as I was truthful with all my answers.

9 Q. You're familiar with the Youngstown area?

10 A. Many.

11 Q. Many of the people were discussed as mobsters coming
12 from generally one side of town originally?

13 A. I guess most of them, you know, Brial Hill,
14 Eastsiders; could come from anywhere, Congressman.

15 Q. Many of them raised together and, in fact, friends
16 from boyhood days, to the best of your knowledge?

17 A. They could have been.

18 Q. Have you pled guilty to a felony?

19 A. Yes, I have.

20 Q. Do you have friends?

21 A. Yes, I have friends.

22 Q. And you have boyhood friends too, don't you?

23 A. Yes, I do.

24 Q. Now, you said that I made you promise that when I was
25 elected, you were going to be the paving king. Is that

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1 your words?

2 A. When you were in my house, I don't know if you were
3 joking, if you were serious, that you made comments to that
4 effect.

5 Q. As a businessman, how do you get contracts?

6 A. You have to be low bidder.

7 Q. Now, you said at some point, the family was upset
8 because they're under the impression that your
9 brother-in-law, your wife's brother, you're under the
10 impression he was going to get a big job; is that correct?

11 A. I was under the assumption that he was going to be
12 your top man.

13 Q. It was your assumption?

14 A. That's what I was told at various occasions. He was
15 bringing the Congressman over to my house, and I was
16 cooking for him 11:00 at night --

17 Q. Did you ever have conversations with Russell, Junior
18 after he was not on the job to the Congressman?

19 A. I can't remember if we had conversations about it or
20 if I just heard it come from you, Congressman.

21 Q. Did he ever tell you he was offered a job with the
22 congressional staff?

23 A. Was he ever offered a job with your staff?

24 Q. Yes.

25 A. Oh, yes, I heard that at various times.

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1 Q. And he was offered a job?

2 A. I don't know if you formally did it, but I think he
3 was under the assumption that you were going to give him a
4 top job.

5 Q. No. The question I'm asking is, after I was elected,
6 did you have any knowledge that, in fact, Russell, Junior
7 was offered a job to serve on a congressional staff?

8 A. No.

9 Q. Fine. Now, you said you did my driveway. What year
10 was that?

11 A. '84, '85.

12 Q. Did you send me a bill?

13 A. No.

14 Q. Did you maintain any records?

15 A. Not that far back, Congressman, no. We did at the
16 time but not anymore.

17 Q. Wouldn't you have had somebody dispatch, send out
18 asphalt to a particular residence?

19 A. Yes. At that time, there would have been tickets,
20 but it was employees that were there still with me when I
21 got out of the business.

22 Q. Would they not have, in fact -- if a person was there
23 with you at the time or long time employee, would they not
24 memorialize it on an invoice like everybody else?

25 A. We don't keep invoices for that long a period of

Sabatine - Recross

1 time.

2 Q. Well under state law, weren't you required to keep
3 records for a period of time?

4 A. I don't know what the exact law is, but we always
5 kept them for four or five or six years. I don't know how
6 long we kept that particular invoice.

7 Q. So you have no knowledge whether an invoice or bill
8 was sent out; is that correct?

9 A. We always sent bills out when there was materials
10 delivered, and the people that actually put in your
11 driveway are still there, so they could always be called in
12 to testify.

13 Q. Yes, they can. But you're here, and you said you
14 don't know if -- you said you weren't paid?

15 A. Congressman, I was in the driveway myself, I helped
16 put it in.

17 Q. Fine. How do you know you weren't paid?

18 A. Well, we didn't hand you the money, and I never sent
19 you a bill. And I don't think anybody else would have paid
20 me.

21 Q. Let me ask you this: When your truck driver goes out
22 and takes out X amount of tonnage, does he leave a slip
23 with the person buying it or what?

24 A. Normally, a case like that, usually there's somebody
25 on the property that takes the slip from the truck driver.

Sabatine - Recross

1 When I do a job like that, our foreman would have taken it
2 or maybe a slip go out because the driveway was for you.

3 Q. Nevertheless, somebody at the plant had to load up a
4 truck and say take this to the Jones residence, right?

5 A. I would have called the asphalt plant, and I would
6 have said we're doing a driveway on such a such an address.
7 At the time, I really didn't want my plant man to know
8 whose driveway it was, and we went out and looked at the
9 driveway, a couple of the guys that were there. Somebody
10 knew you were home, and word spread at that, you know, we
11 were doing the Congressman's driveway.

12 Q. Now, the word spread you're doing the Congressman's
13 driveway. Wouldn't that have been detrimental to both you
14 and me, and you should sent me, at least, an invoice like
15 you did with the one fellow, Pluchinsky, who wrote a check
16 for \$600, and you returned it to him. Wouldn't that be a
17 way to work it out with the Congressman?

18 A. I mean, it's possible it could have been done like
19 that, I don't remember. I just know that your drive -- I
20 did your driveway and never received payment.

21 Q. Now, were the Buccis in business before you?

22 A. Yes, they were.

23 Q. How many years?

24 A. You want me to guess?

25 Q. Well, to the best of your knowledge, I mean.

Sabatine - Recross

- 1 A. I'd say approximately three or four years.
- 2 Q. Depending upon what company it was, right?
- 3 A. Yes.
- 4 Q. Well, their original company, how many years was it
5 founded before you founded yours?
- 6 A. I couldn't answer that honestly, Congressman. I
7 don't know when they founded the company.
- 8 Q. Were they a bigger company than you?
- 9 A. Yes.
- 10 Q. Did they have more capacity to handle bigger jobs?
- 11 A. They did up until 1991.
- 12 Q. And then you became competitive?
- 13 A. We bought a larger plant.
- 14 Q. And then you started to bid more aggressively?
- 15 A. Yes. We were able to handle larger jobs and more
16 asphalt.
- 17 Q. When you were low bidder, did you get the jobs?
- 18 A. Most of the time, not all the time.
- 19 Q. Are there not at all -- is that not all times
20 unusual, though? Is it that unusual that at times there
21 are mitigating factors that come into yardman work?
- 22 A. As long as you're qualified, you have a performance
23 bond and all the paperwork is filled out properly, there's
24 no reason the Government or any municipality shouldn't give
25 you a contract.

Sabatine - Recross

1 Q. Now, you testified earlier that you had given
2 Mr. Fergus, Mahoning County Engineer \$20,000 cash?

3 A. Yes.

4 Q. Well, weren't you becoming the prince of paving in
5 Mahoning County?

6 A. I'm sure that all the -- I won't say I am sure. It
7 was other contractors that Fergus was working with.

8 Q. That why you gave him a thousand or 2000 every couple
9 months whatever?

10 A. Fergus gave us tickets. He had three fund-raisers a
11 year, and he had guys selling tickets for everything,
12 barbecue chicken, roasts, steak dinners, you name it, they
13 had a fund raiser there for it.

14 Q. And they would have come to you and lobbied you hard
15 for money, didn't they?

16 A. They lobbied myself and other contractors.

17 Q. Did I ever push you hard for campaign contributions?

18 A. No. You never pushed me hard for the campaign
19 contribution.

20 Q. But it was your decision, on the advice of your
21 counsel, to not go to trial. Is that a correct statement,
22 Mr. Sabatine?

23 A. It was my decision not to go to trial on the facts
24 presented in this case. My --

25 MR. TRAFICANT: No further questions.

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1 THE COURT: Thank you. You may inquire.

2 MR. MORFORD: Nothing, your Honor.

3 THE COURT: Thank you, sir, you're excused.

4 MR. SMITH: Your Honor, we call Edwin

5 Romero.

6 EDWIN ROMERO

7 of lawful age, a witness called by the Government,

8 being first duly sworn, was examined

9 and testified as follows:

10 DIRECT EXAMINATION OF EDWIN ROMERO

11 BY MR. SMITH:

12 Q. Sir, would you please state your full name, and spell
13 your last name for the court reporter?

14 A. Edwin Romero, R-O-M-E-R-O.

15 Q. If you could, amove that microphone over so it's
16 right in front of you, sir.

17 Sir, in what city do you reside?

18 A. Youngstown, Ohio.

19 THE COURT: I think you should pick it up, if
20 you don't mind, so everyone can hear you.

21 Q. What's your occupation, sir?

22 A. I'm an attorney.

23 Q. Are you licensed in the State of Ohio to practice
24 law?

25 A. Yes, I am.

Romero - Direct/Smith

1 Q. And how are you now employed?

2 A. I am a senior partner, a shareholder at Manchester
3 Bennett, Powers, and Ullman.

4 Q. And in what city is that firm located?

5 A. In Youngstown, downtown.

6 Q. Were you ever the law director for the City of
7 Youngstown?

8 A. Yes, I was.

9 Q. And what years?

10 A. 1985 through 1994.

11 Q. As law director, were you familiar with the formation
12 and operation of the Youngstown Central Area Community
13 Improvement Corporation?

14 A. Yes, I was. I was its vice-president from its
15 creation in 1988, through the end of my tenure as law
16 director in 1994.

17 Q. And is that entity, the Youngstown Central Area
18 Community Improvement, referred to as CIC?

19 A. Yes.

20 Q. All right. So I will refer to it as CIC for short.
21 Okay?

22 A. Yes.

23 Q. Is CIC a profit or nonprofit entity?

24 A. CIC'S a nonprofit, tax exempt under the Internal
25 Revenue code, nonprofit corporation.

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1 Q. And under what authority was CIC created legally?

2 A. There is an Ohio Revised Code section that allows for
3 community improvement corporations in the State of Ohio.

4 The basis for that is because cities and counties can't do
5 certain things according to the Ohio constitution. So that
6 nonprofit corporations called CIC's can then be created to
7 do things that local Governments cannot do.

8 Q. Under the authority under which CIC was created, what
9 function was it authorized to perform?

10 A. It was shortly after its creation designated as the
11 exclusive downtown development agent for the City of
12 Youngstown.

13 Q. And is CIC a separate legal entity from the city
14 itself?

15 A. Yes, it is.

16 Q. Do you -- do you presently have any professional
17 relationship to the CIC?

18 A. Yes, I am --

19 Q. What is that relationship?

20 A. I am general counsel to the CIC.

21 Q. How long have you been general counsel to CIC, since
22 when?

23 A. Since February of 1995, about six months after I left
24 the law director position.

25 Q. Does the CIC have any sort of board of directors or

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1 executive board of any kind?

2 A. Yes. It has 25 members on its board, and by law, 40
3 percent of those members must be city officials or city
4 official appointed so that four councilmen, the mayor, and
5 the city's board of control -- that's the finance director
6 -- and the law director, all sit on the CIC board.

7 Q. And the other 60 percent of the membership come from
8 where?

9 A. The private sector. There would be an entity called
10 the Youngstown Revitalization Foundation, which evolved
11 upon the creation of the CIC. Those people came over and
12 formed 60 percent of the private sector component of the
13 CIC board.

14 Q. Does the CIC board conduct periodic meetings?

15 A. It has a monthly board meeting. It has an annual
16 meeting to elect officers. It has several committees who
17 meet monthly and report to the board at the board meeting.

18 Q. Is one of those committees a property committee?

19 A. Yes.

20 Q. Do you attend meetings of the CIC board in your
21 capacity as general counsel?

22 A. Not only the board meeting but every committee
23 meeting, also.

24 Q. As general counsel, are you able to identify
25 documents created and maintained in the ordinary course of

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1 business by the CIC?

2 A. Yes.

3 Q. Under the regulations governing the CIC, must it
4 competitively bid certain contracts?

5 A. Yes. As a -- sorry.

6 Q. Which contracts must it competitively bid?

7 A. It has the same requirements as the City of
8 Youngstown does because of its exclusive designation as the
9 agent so that in the People's expenditure over \$15,000 must
10 be competitively bid just as the City of Youngstown would.

11 Q. In connection with competitive bidding of CIC work,
12 does the term lowest, best, and responsible bidder mean
13 anything to you?

14 A. Yes. That's the language that comes from the
15 Youngstown City charter that is applied by the CIC.

16 Q. What does that term lowest, best, and responsible
17 bidder -- would you please explain what that means?

18 A. I think technically or specifically lowest and best
19 bidder who is responsible. There is a variety of
20 determinations that need to be made. There are tabulations
21 that are made as to price, there is, an either
22 prequalification or a consultant that we would hire who
23 then qualifies the bidders so that we can determine best
24 bidder.

25 The word "best" has some different meaning to

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1 different people, so that the bidder's track record about
2 performance, its financial stability, its experience, those
3 kinds of things are factors in determining their best
4 responsibility. Who is most responsible is determined by
5 whether or not they've done other jobs like this and have
6 performed and complied.

7 Q. If a bidder is lowest bidder, price wise, but is
8 regarded as not responsible, would that person get the bid
9 just because they're low bidder?

10 A. No, they would not.

11 Q. And what are some of the factors that could lead to a
12 conclusion that a bidder is not responsible?

13 A. A bad track record, inability to finance the project,
14 to make payroll, to supply equipment when needed to finish
15 the job on time. Those are the kind of factors that are
16 reviewed to determine whether someone is responsible.

17 Q. Sir, do you have personal knowledge about the CIC's
18 involvement with the downtown Youngstown structure called
19 the Higbee building?

20 A. Yes.

21 Q. And are you able to identify and authenticate
22 documents related to that particular project?

23 A. Yes.

24 Q. Approximately when did the CIC first begin dealing
25 with the Higbee building?

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1 A. In the late 1980s when I was vice-president of the
2 CIC, we purchased the Higbee building at the sheriff's sale
3 because of tax delinquencies. We purchased it for, I don't
4 know, \$65,000 or so.

5 Q. And specifically where was the Higbee building
6 located in Youngstown?

7 A. Actually, it's a complex of 11 buildings that are
8 joined together into a department store, former department
9 store, and it's located on -- actually takes up half the
10 block between West Federal and Commerce Street and bounded
11 by Hazel Street on its east side.

12 Q. And at the time that CIC bought the Higbee building,
13 was it occupied at all?

14 A. No, it was not.

15 Q. Was there any, like, boarded up windows and things
16 like that?

17 A. Oh, it was boarded up. Most of the interior had been
18 stripped by the previous occupants.

19 Q. And how tall a building was this approximately?

20 A. Some of the sections were seven stories tall. It
21 encompassed about 300,000 square feet the entire complex
22 did.

23 Q. The late '80s, did CIC make -- attempt to market the
24 building?

25 A. Yes.

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1 Q. Were those attempts successful?

2 A. None were.

3 Q. After the marketing effort was tried, what other
4 alternatives to marketing were considered?

5 A. Well, demolition was an alternative to continued
6 attempts at marketing, but also the county had announced a
7 project to create the Mahoning County Citizens Center at
8 that site, and the CIC deeded the property to them, to the
9 county, along with making available \$1.2 million of federal
10 money for the construction -- development of the Higbee
11 building.

12 Q. Okay.

13 Now, have you ever heard of a structure called the
14 Voinovich Center

15 A. Yes.

16 Q. Where is that located?

17 A. That is on the site where the Higbee building's
18 parking garage had been. While the county was in
19 possession of the Higbee building complex, they demolished
20 the parking garage and realized after about two years that
21 they couldn't proceed with the project. They deeded the
22 building back to us, with the now demolished parking
23 garage, upon which we then, within a year or two of that,
24 built the Voinovich Center, which is a State Office
25 building named after the former governor. It houses nine

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1 state agencies.

2 Q. How was that Voinovich Center funded?

3 A. A \$2 million dollar grant from the capital
4 improvement was started to fund the CIC through its lease
5 arrangements with the director of administrative services
6 for the State of Ohio, then it went to the bond market and
7 borrowed \$6 and a half million to add to the \$2 million and
8 built the building with those funds.

9 Q. Did the funding and building of the Voinovich Center
10 affect the ultimate fate of the Higbee building?

11 A. Yes.

12 Q. What was that effect?

13 A. The director of administrative services at the time
14 insisted during lease negotiations that the monster of a
15 building next door be demolished because its -- its wall
16 was within 25 feet of the Voinovich Center.

17 Q. And after the Higbee building was to be demolished,
18 what was that area upon which the Higbee building stood to
19 be used for thereafter?

20 A. Parking lot.

21 Q. Parking lot for what?

22 A. For the Voinovich Center and its customers and
23 clients.

24 Q. And how was the demolition of the Higbee building to
25 be funded?

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1 A. There was a second grant from the State of Ohio in
2 the next subsequent capital improvement budget funding
3 where a \$1 and a half million dollar grant was awarded to
4 the CIC to make a west end marking facility, which was for
5 the Voinovich Center.

6 Q. Did the CIC hire any firm to develop specifications
7 for contractors to bid on the Higbee building demolition?

8 A. Yes.

9 Q. Which firm did you hire?

10 A. MS Consultants.

11 Q. And what is MS Consultants? If you'd explain
12 generically and briefly the nature of their business?

13 A. MS Consultants is an engineering and architectural
14 firm that many of the local Governments in the Youngstown
15 area use regularly. They have about 80 employees. Most of
16 the Government rely on their -- on the quality of their
17 work.

18 Q. Was there any asbestos issue concerning the
19 demolition of the Higbee building?

20 A. Yes. And we hired a separate entity to do the
21 specifications for the asbestos abatement.

22 Q. Which had to come first, asbestos abatement or
23 demolition?

24 A. Asbestos has to occur before the demolition.

25 Q. Okay. And how would the abatement of the asbestos be

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1 funded?

2 A. Through the same grant. We -- we were able to use
3 that grant for anything that brought about a parking
4 facility.

5 Q. Now, were bids ultimately sought from contractors in
6 connection with the Higbee building demolition?

7 A. Yes.

8 Q. And were there more -- was there a situation
9 involving alternative bids for this particular process?

10 A. Yes.

11 Q. All right. Would you explain to the Grand Jury -- or
12 to the jury what an alternative bid is?

13 A. Without knowing whether we had enough dollars to
14 complete the project, we set about having the building
15 demolished. First, I'll call that the base bid. We then
16 have alternates to that. An alternate would be not only
17 demolishing the building but building a parking lot.

18 Another alternate you might call a shopping list or
19 wish list would be -- there was a historical sign on the
20 side of the building that said McKelvey, Gallagher, 1905, I
21 believe, and we wanted the bidders to give us a price to
22 save that sign so we could later erect it in the parking
23 lot.

24 And yet, another alternative was that the main
25 structure of the Higbee building had a terra-cotta facade.

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1 It's a white clay tile with a very nature design, and it is
2 that facade, that facing of the building that would have
3 made the building eligible or did make the building
4 eligible to be placed on the national register of historic
5 places so that we wanted to see if the terra-cotta could
6 also be saved.

7 Q. With respect to -- sorry.

8 A. So that those were the alternates to the main bid of
9 demolition.

10 Q. So were bids solicited for each of those different
11 stages to see how much each of those different things would
12 cost?

13 A. Yes.

14 Q. Now, this McKelvey sign you referred to, was this
15 attached to the building or actually part of the wall?

16 A. It was part of the wall. It was not attached. It
17 was cut stone. The name McKelvey, Gallagher was cut into
18 stone that was laid in as the brick siding was being
19 constructed.

20 Q. On the Higbee demolition project, was it possible for
21 a different contractor to be the low bidder depending upon
22 which option or alternate the CIC elected to pursue?

23 A. Yes.

24 Q. And would you please explain how that could be?

25 A. Well, the main bid, the demolition, could be at one

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1 price. And make the -- the entity, the third or fourth
2 lowest bidder instead of the lowest. But if that entity
3 bid very low on construction of the parking lot or on
4 taking off the terra-cotta, then you would add those
5 combinations, and you'd come up with a new total.

6 And if you had enough money to do the demolition,
7 parking lot, and the terra-cotta, then you would add up
8 those three totals and see who the lowest bidder would be.

9 Q. When were the bids -- withdrawn.

10 Let's say seal bid process by the contractors?

11 A. Oh, yes. It's a standard Governmental bidding. It
12 must be seal bids opened in a public session, and the
13 advertisement for the bidding would say when and how the
14 bidding would open.

15 Q. And when were those bids opened on the Higbee
16 demolition project?

17 A. The first time it was opened November of 1999. I
18 think it was the 2nd or 3rd of November.

19 Q. Was there any delay in pursuing the project after the
20 bids were open?

21 A. Yes.

22 Q. And would you explain to the jury what the reason of
23 that delay was?

24 A. Well, we -- it had to advertise the bids and send out
25 the bid spec project packages, but in our haste to do that,

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1 we apparently had not advertised up the funds. We had an
2 executive director who left us the month before the bids
3 were to open, and we had assumed he had completed all of
4 the work needed to be done to secure the \$1 and a half
5 million grant from the State.

6 We discovered the money was not yet in, so that we
7 could not award based on the November 1999 bids.

8 Q. For how long are bids normally binding on the
9 contract once the bids are open?

10 A. Usually 60 days.

11 Q. How did you deal with that 60-day deadline, so to
12 speak, in this situation where you could not immediately go
13 forward?

14 A. We asked all the bidders if they would extend their
15 biddings, and they all agreed.

16 Q. If you'd direct your attention to Government's
17 Exhibit 5-10 on the counter before you. Sir, do you
18 recognize that document?

19 MR. TRAFICANT: What number is that?

20 MR. SMITH: 5-10.

21 THE WITNESS: Yes, I do.

22 Q. You see in front of you --

23 A. Yes.

24 Q. You recognize that?

25 A. Yes.

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1 Q. What is it?

2 A. It is a recommendation by MS Consultants to the CIC
3 staff members, recommending award of this project.

4 Q. And who was this letter sent to?

5 A. Reid Dulberger. Reid is one of the staffers of the
6 CIC.

7 Q. All right.

8 When this letter was received, was it then maintained
9 in the ordinary course of the CIC's business?

10 A. Yes.

11 Q. And is it the regular practice of the CIC to keep
12 this type of correspondence in its business records?

13 A. Yes.

14 MR. SMITH: Your Honor, may I put this on the
15 screen?

16 THE COURT: Yes.

17 BY MR. TRAFICANT:

18 Q. Sir, if you would in sum -- if you would describe
19 what it is that this document is informing the --

20 A. It is informing the CIC that Terreri and Sons has the
21 lowest total base bid of \$1,025,000, and that would have
22 included the alternates.

23 Q. Did that include the terra-cotta removal alternate?

24 A. Yes.

25 Q. All right. All right. Let's go through this.

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1 Terreri and Sons, and there's Richard Boccia Construction;
2 is that correct?

3 A. Yes.

4 Q. And Honey Creek is third; is that correct?

5 A. That's correct.

6 Q. All right. Was there difficulty with Boccia as far
7 as being a responsible bidder?

8 A. Yes.

9 Q. Would you please explain to the jury what the problem
10 with them being responsible?

11 A. Boccia Construction was the demolition contractor
12 that Mahoning County used to take down the parking garage
13 next to the Higbee building, and they did not complete the
14 demolition. There were mounds of broken concrete that were
15 there. They also left an old bulldozer that would not --
16 would not move. There was also litigation between Boccia
17 and the county over the state of their performance on
18 demolition.

19 So that I'm -- I'm pretty sure that they would have
20 been dismissed for not being the best bidder or responsible
21 bidder.

22 Q. All right.

23 And so, therefore, for purposes of analyzing this,
24 the Richard Boccia Construction could be basically stricken
25 because they weren't regarded as responsible; is that

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1 correct?

2 A. That's correct.

3 Q. So effectively Honey Creek Contracting becomes Number
4 2; is that right?

5 A. That's right.

6 Q. Now, who was the -- who was the low bidder in the
7 terra-cotta that was to be saved under this project?

8 A. I believe Honey Creek would have been the low bidder
9 if terra-cotta was to be saved.

10 Q. And if the terra-cotta was not saved, who was the low
11 bidder?

12 A. It would have been Terreri.

13 Q. And is the difference reflected in the base bid
14 Number 3 figure in that base bid Number 3 count?

15 A. Yes.

16 Q. So if you -- in other words, the option that was --
17 well, go ahead and read, just start and read the first two
18 paragraphs of that letter, if you would.

19 A. "Based upon review of the bids as tabulated, MS
20 Consultants recommends award of the project to Daniel
21 Terreri and Sons with a total base bid amount of
22 \$1,025,000. It's our understanding that per the State
23 Historical Society requirements, Total Base Bid Item 3,
24 saving face tile for Section 02050, is not required, so
25 Base Bid Item 3 will be a deduct cost."

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1 Q. So under the -- under the bid as accepted, had a
2 decision been made not to bother saving the terra-cotta?

3 A. I'm sorry. Could you --

4 Q. Had a decision been made at this point not to save
5 the terra-cotta?

6 A. At this point, no.

7 Q. All right.

8 But again, if the terra-cotta were not saved, Terreri
9 would have been lowest; is that correct?

10 A. Yes.

11 Q. And if the terra-cotta were saved, Honey Creek was
12 lowest?

13 A. Yes.

14 Q. All right. If the terra-cotta were saved, what would
15 you have to do to the total bid amount with respect to
16 Terreri to figure out how much it would cost under
17 Terreri's proposal if the terra-cotta had been saved?

18 A. If the terra-cotta had been saved, we would have had
19 to add \$100,000 to Terreri's bid in order to cause the
20 saving of the terra-cotta.

21 Q. That would have raised the number from \$1,025,000,
22 correct?

23 A. That's correct.

24 Q. Now, with Honey Creek, the base bid 3, how much money
25 would you have to add if the terra-cotta had been saved?

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1 A. \$5,000.

2 Q. Therefore, would their bid be only raised to
3 \$1,055,040?

4 A. That's correct.

5 Q. So if the terra-cotta is saved, Honey Creek becomes
6 lowest; is that right?

7 A. That's correct.

8 Q. By the way, who was the proprietor of Honey Creek?

9 A. I believe it's David Sugar.

10 Q. In connection with Honey Creek's bid, did the name
11 Harry Maganarro mean anything?

12 A. Yes.

13 Q. And what was -- who is Henry Manganaro?

14 A. Harry Manganaro is a well known demolition contractor
15 in the City of Youngstown. When I was law director, we
16 used various of his entities to demolish residential houses
17 and some smaller commercial or retail buildings. We
18 learned that Harry Manganaro became a partner or employee
19 through a joint venture with David Sugar in forming Honey
20 Creek.

21 Q. Did Mr. Maganarro's involvement with Honey Creek
22 cause CIC any concern?

23 A. Yes.

24 Q. What was that concern?

25 A. If Henry Manganaro was bidding by himself, he would

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1 have also been deemed to be not responsible. Harry's
2 experience and track record had been that he would leave
3 jobs half done, not perform them, only had one or two
4 pieces of demolition equipment, which was constantly
5 breaking down. So that this major structure, this major
6 demolition project, he would not have been considered.

7 Q. Had he been bidding alone?

8 A. Had he been bidding alone, that's correct.

9 Q. In this situation, was he bidding alone?

10 A. No. Because he was associated with David Sugar, who
11 has a pretty good reputation for being a good contractor,
12 for having ample equipment, financial stability, and
13 ability to perform and complete projects, Harry Manganaro's
14 past experiences would probably have been overlooked
15 because of his association with Sugar.

16 Q. All right.

17 If you now direct your attention to Government's
18 Exhibit 5-16 on the counter before you, should be the next
19 document in the stack --

20 MR. TRAFICANT: 5-16.

21 MR. SMITH: 5-16. You have it there, sir?

22 THE WITNESS: Do I?

23 Q. You recognize that document?

24 A. I do.

25 Q. And what is it?

Romero - Direct/Smith

1 A. It's a letter from Congressman Traficant to the new
2 director of the CIC, Alden Sheldon, as a new director
3 because I believe the date on this letter was the date he
4 was hired as the new director.

5 MR. SMITH: Your Honor, this has already been
6 admitted. May I put it up?

7 THE COURT: Yes.

8 MR. TRAFICANT: Please.

9 Q. If you would go ahead and read --

10 MR. TRAFICANT: 5-16?

11 MR. SMITH: Yes, sir.

12 Q. Go ahead and read the first paragraph and the second?

13 A. " Dear Mr. Sheldon: As you know, earlier this month
14 the General Services Administration broke ground on a new
15 Federal Building, U.S. Courthouse in downtown Youngstown.
16 My vision is to have the Battisti Jones building reflect
17 the grandeur of the federal government as well as the proud
18 history of the City of Youngstown.

19 "As such, I believe it would be fitting and proper to
20 have the design of the Battisti Jones building incorporate
21 the impressive terra-cotta from the old Higbee building.
22 It is my understanding that the Higbee building will be
23 demolished. If the building is, in fact, demolished, I
24 would urge that the CIC work closely with GSA to arrange to
25 have the terra-cotta donated by the CIC as an in-kind

Romero - Direct/Smith

1 contribution to GSA for the Battisti Jones building."

2 Q. All right. Who's GSA?

3 A. The General Services Administration of the federal
4 government.

5 MR. TRAFICANT: I ask this be a joint
6 exhibit.

7 MR. SMITH: It's already been admitted, your
8 Honor.

9 THE COURT: I think it is one.

10 Q. In order for the terra-cotta to be incorporated into
11 the new federal courthouse, would it have had to be saved
12 off of the Higbee building?

13 A. Yes.

14 Q. And where was this new courthouse to be located?

15 A. Approximately two blocks, two city blocks west of
16 where the Higbee building was.

17 Q. At what stage were the plans for the new courthouse
18 when this letter appeared suggesting that the terra-cotta
19 from the Higbee building be incorporated into the new
20 courthouse?

21 A. GSA had had a couple of meetings with downtown
22 people, including the CIC. It was our understanding the
23 plans were already completed.

24 Q. And had the terra-cotta been in those plans?

25 A. No.

Romero - Direct/Smith

1 Q. Was the request to use the terra-cotta in the new
2 federal courthouse a request that CIC had expected to
3 receive?

4 A. No, it was a surprise.

5 Q. And if the -- if the terra-cotta was saved off of the
6 Higbee building to be incorporated into the new courthouse,
7 which of those contractors would have been the lowest
8 bidder to do that saving of the terra-cotta?

9 A. Honey Creek Contracting.

10 Q. What position did CIC ultimately take in response to
11 Congressman Traficant's request that the terra-cotta be
12 saved?

13 A. It ended up denying the request but for a separate
14 reason.

15 Q. What were those reasons?

16 A. Well, we noticed in preparing to award -- because we
17 had now secured the money in asbestos abatement was -- had
18 begun in preparing to award the bid for demolition and the
19 parking lot, we noticed that there was a disparity amongst
20 one of the bids, actually amongst one of the alternate
21 bids, and after investigating further, we discovered that
22 there was a typographical error that caused two of the
23 bidders to bid differently than the rest of the bidders
24 did.

25 Q. And the result -- as a result of that typographical

Romero - Direct/Smith

1 error, what happened?

2 A. We felt that there was not that level playing field
3 amongst the bidders because of our error in that
4 typographical event. So that we rejected all of the bids
5 on their previous exhibit and readvertised for new bids.

6 Q. And was there actually a rebid?

7 A. Yes, there was.

8 Q. And in the rebid, did that include the alternative of
9 saving the terra-cotta?

10 A. No. The CIC's executive committee determined when it
11 decided to reject and rebid, determined that since the
12 federal government might be interested in the terra-cotta,
13 that we would respond to the Congressman's letter, advising
14 him that if the terra-cotta could be used for the federal
15 courthouse, feel free to come and get it.

16 It'll be maybe 60 days or so before we're ready to
17 demolish the building. We also thought that the federal
18 government had more money than we did, and they should pay
19 for the removal of the terra-cotta instead of us. So that
20 we responded by not only rejecting and rebidding but
21 responded to the Congressman Traficant's letter by saying
22 if you want the terra-cotta, please come get it.

23 Q. If you'll direct your attention now to Government's
24 Exhibit 5-25 on the counter before you --

25 MR. TRAFICANT: 5-4?

Romero - Direct/Smith

- 1 MR. SMITH: 5-25, that would be the thickest
2 of the documents you have on the counter.
- 3 Q. Do you have that, sir?
- 4 A. Do I?
- 5 Q. Do you recognize this document?
- 6 A. I do.
- 7 Q. What is it?
- 8 A. It is the bid pact for the rebid, dated March 2000.
- 9 Q. All right. Is this also a document made and
10 maintained in the ordinary course of business by the CIC?
- 11 A. Yes, it is.
- 12 Q. And if you would pull it out and direct your
13 attention to Page 2-3 of this exhibit, do you have Page
14 2-3?
- 15 A. I do.
- 16 Q. Would you look to the heading examination of site?
17 Do you see that?
- 18 A. Yes.
- 19 Q. At the end of that Paragraph, is there an entity and
20 a telephone number reflected there?
- 21 A. Yes.
- 22 Q. What is the entity and what's the telephone number?
- 23 A. MS Consultants, Inc., 330-744-1790.
- 24 Q. Next, if you'd turn your attention to Exhibit 5-18?
- 25 A. Shall I put away --

Romero - Direct/Smith

1 Q. Yes.

2 MR. TRAFICANT: Is that 5-3?

3 MR. SMITH: 5-18 is the next.

4 MR. TRAFICANT: The previous was 5-3?

5 MR. SMITH: The previous was 5-25. Page 2-3
6 within the exhibit.

7 MR. TRAFICANT: Thank you.

8 Q. Do you have 5-18, sir?

9 A. I do.

10 Q. Do you recognize that document?

11 A. I do.

12 Q. What is it, sir?

13 A. It is a letter from MS Consultants, recommending the
14 award of the Higbee demolition project, dated April 17th of
15 2000.

16 Q. And is this a document that was also kept as part of
17 the regular business practice of the CIC?

18 A. Yes, it was.

19 Q. And on the back, is there a second page? If you'd
20 flip that over.

21 A. Yes, there is.

22 Q. Is that page part of -- part of the document?

23 A. Yes, it is.

24 Q. And was this entire two-page document kept in the
25 ordinary course of business by CIC?

Romero - Direct/Smith

1 A. Yes, it was.

2 MR. SMITH: May I put this up, your Honor?

3 THE COURT: Yes.

4 Q. When the rebid went out, who was low bidder?

5 A. Mainline Contracting Corp.

6 Q. Who finished second?

7 A. Honey Creek Contracting.

8 Q. Who got the bid ultimately to demolish the Higbee
9 building?

10 A. Mainline Contracting did.

11 Q. And directing your attention to 5-19 on the counter
12 before you.

13 A. Yes.

14 Q. Do you recognize that document?

15 A. Yes, I do.

16 Q. And what is that?

17 A. These are the minutes of the executive committee
18 meeting of April 19, 2000.

19 Q. And is that a document that was made and kept in the
20 ordinary course of business by the CIC?

21 A. Yes, it is.

22 Q. And does that document in any way relate to the
23 awarding of the Higbee building demolition contract?

24 A. Yes, it does.

25 Q. All right.

Romero - Cross

1 And specifically when was this contract awarded?

2 A. It was awarded on that day, April 19, 2000.

3 Q. To Mainline?

4 A. Yes.

5 Q. Do you know what -- do you know where Mainline was
6 from?

7 A. I believe they're corporate headquarters are in
8 Buffalo, but they have a regional office in Cincinnati.

9 Q. Buffalo, New York?

10 A. Yes.

11 Q. All right.

12 MR. SMITH: May I have a moment, your Honor?

13 THE COURT: Yes.

14 MR. SMITH: No further questions, your Honor.

15 THE COURT: Thank you. You can inquire.

16 CROSS-EXAMINATION OF EDWARD ROMERO

17 BY MR. TRAFICANT:

18 Q. How are you doing, Ed?

19 A. Good, Congressman. How are you?

20 Q. How are you doing? Making more money at Manchester?

21 A. Yes.

22 Q. I thought you would.

23 How many federal prisons do we have in Youngstown,
24 Ohio?

25 A. Federal prisons in Youngstown?

Romero - Cross

1 Q. Um-hum -- federal courthouses, federal courthouses.

2 A. Oh. Well, one, and the other is just about
3 completed. So two.

4 Q. The other one is named for Judges Jones and Battisti;
5 is that correct?

6 A. That's correct.

7 Q. Hasn't been approved by Congress, but do you know
8 both Judge Jones and Battisti were both Youngstown natives?

9 A. That's correct.

10 Q. And Youngstown took pride in having those judges?

11 A. Yes.

12 Q. Now, when the whole bidding come up, were there not
13 community groups that raised interest about the historical
14 significance of the fancy terra-cotta stone work?

15 A. Yes.

16 Q. And were there not even lobbying and sometimes groups
17 that get very aggressive and maybe even sometimes might
18 even seem to go overboard on historical aspects?

19 A. There usually are, yes.

20 Q. And the City has to accommodate them through public
21 meetings, et cetera?

22 A. I don't know that they have to, but usually, they do,
23 yes.

24 Q. Yes.

25 And the CIC knew there were groups that wanted to

Romero - Cross

1 save some of the old distinctive Youngstown heritage by
2 preserving this unusual and beautiful terra-cotta stone; is
3 that a fair statement?

4 A. Yes.

5 Q. I can't make a statement. Is that a fair question,
6 Ed?

7 A. Yes.

8 Q. So when you first bid, you realized that, and you
9 tried to incorporate that into your bids?

10 A. Well, that may not have been the reason. I believe
11 the CIC members saw the usefulness and the beauty of the
12 terra-cotta, and they themselves wanted to save it, but,
13 yes.

14 Q. Now, was CIC getting a request from people to save
15 the terra-cotta?

16 A. Not specifically the terra-cotta. They didn't want
17 any part of the building to be torn down.

18 Q. But when it was finally determined it was going, were
19 there, at least, people reaching out asking for some of
20 that stone work to be saved?

21 A. No. By then, those who wanted the history of
22 Youngstown to be preserved apparently felt that the battle
23 had been lost, and there was no specific request, just for
24 the terra-cotta. It was for the entire building, and --

25 Q. But, nevertheless, CIC, when they bid it, included a

Romero - Cross

1 provision to bid to save the terra-cotta?

2 A. That's correct.

3 Q. Why, in fact, did they do that?

4 A. Because they thought it was worthwhile to save.

5 Q. So then you bid it?

6 A. Yes.

7 Q. Correct?

8 A. Yes.

9 Q. And when you bid it, there were typographical errors,
10 and the executive director left, and you didn't have the
11 money in hand; is that correct?

12 A. Well, the sequence is incorrect. The executive
13 director left in October. We discovered in November after
14 we opened the bids that we didn't yet have the money in
15 hand. And -- I'm sorry in the sequence.

16 Q. Sort of like a time window that you had for bidding
17 had expired, and you had to rebid it?

18 A. No, no. We rebid because of the typographical error.
19 That was the third thing in the sequence, which we didn't
20 find until the end of March of 2000.

21 Q. And what was the exact typographical error?

22 A. When we asked the bidders to give us a price on
23 saving the McKelvey Gallagher sign, we told them to refer
24 to subsection -- I'm not exactly sure. Subsection 5-F,
25 which would have referred to the McKelvey Gallagher sign.

Romero - Cross

1 When we asked them to give us a bid on saving the
2 terra-cotta, we should have referred them to 5-G, which
3 would have described what the terra-cotta was and how much.
4 Instead, we ended up saving 5-F again.

5 So that, at least, two of the bidders on that one
6 exhibit you'll notice bid \$3,000 and then \$5,000 on saving
7 the terra-cotta because they read correctly our
8 typographical error.

9 Q. They gave more concern about the McKelvey Gallagher
10 sign and didn't realize -- didn't think the terra-cotta was
11 that big a deal so they bid more on the Gallagher sign; is
12 that correct?

13 A. No. I think they bid twice, using the same McKelvey
14 Gallagher number.

15 Q. I see.

16 A. So that they inserted by our -- because of our
17 mistake, they inserted the McKelvey Gallagher sign number
18 under the terra-cotta number, where the other bidders were
19 as high as \$100,000 of the terra-cotta.

20 MR. TRAFICANT: Your Honor, I don't know what
21 your schedule is. If you want to continue, it's into
22 nearing 4:30. I'll leave that up to you.

23 THE COURT: It's 3:25 and so --

24 MR. TRAFICANT: 3:25.

25 THE COURT: Depends how many more questions

Romero - Cross

1 you have of this witness.

2 MR. TRAFICANT: I do have more questions of
3 the witness.

4 THE COURT: Would you like a break now?

5 MR. TRAFICANT: No. Quite frankly, I -- I
6 have an old watch, and I thought it was 4:30.

7 THE COURT: Okay.

8 MR. TRAFICANT: Sorry about that.

9 THE COURT: We do need to take a break for
10 the afternoon. We got a little bit late start. This might
11 be a good place to take it.

12 MR. TRAFICANT: I agree.

13 THE COURT: All right? Very well. Half an
14 hour break. Thank you.

15 (Thereupon, a recess was taken.)

16 THE COURT: You're still under oath, sir.

17 THE WITNESS: Thank you.

18 BY MR. TRAFICANT:

19 Q. As an attorney, does it seem a little different
20 sitting up there on the witness stand, counselor?

21 A. Yes, it does.

22 Q. Now, you were law director under former Mayor Pat
23 Ungaro, weren't you?

24 A. That's correct.

25 Q. Wasn't it a fact many strides were made successfully

Romero - Cross

1 in attempting to rebid the city?

2 A. I believe so, yes.

3 Q. And wasn't one of the priorities the downtown area,
4 which was and, in fact, the hub of the entire metropolitan
5 region?

6 A. Yes.

7 Q. And if the hub, the city died, the community, even
8 the suburbs would die, would that not be true?

9 A. Yes.

10 Q. So jobs became a top priority with your
11 administration?

12 A. That's correct.

13 Q. And Mr. Manganaro and you worked with the state and
14 federal officials; is that correct?

15 A. Yes.

16 Q. And in doing so, you were successful in attracting
17 money from both the state and the feds?

18 A. Yes.

19 Q. And was it not a fact that I helped to secure many of
20 those federal funds while you were there?

21 A. Yes.

22 Q. And was not one of our common goals to create jobs
23 within our area?

24 A. Yes.

25 Q. And wherever possible to preserve jobs that were

Romero - Cross

1 there?

2 A. Yes.

3 Q. To mitigate strikes so that companies would not close
4 or move?

5 A. Whose job are we talking about?

6 Q. Any jobs.

7 A. I think the city administration felt that helping
8 labor relations would help the city, yes.

9 Q. But CIC's job was to rebuild downtown Youngstown,
10 would you say that?

11 A. Yes.

12 Q. Now, having served as vice-president for all those
13 years, there were many improvements made. Is that a fact?

14 A. Yes.

15 Q. But Youngstown was still very much a blighted city?

16 A. That's also true.

17 Q. Is it not true the City of Youngstown still
18 economically was behind much of the country?

19 A. I don't know that I'm an expert in that area, but I
20 believe so.

21 Q. But it is beginning to come back, is it not?

22 A. Yes.

23 Q. Now, when they would have the subcommittee meetings
24 or you referred to as CIC meetings that were not monthly
25 meetings, would you refer to them as a subcommittee

Romero - Cross

1 meeting?

2 A. They were actual committee meetings. The board met
3 once a month, and the various committees also met once a
4 month and reported to the board.

5 Q. Okay. So would you name the respective committees of
6 CIC?

7 A. There's the property committee, the executive
8 committee. There was a parking committee, a nominating
9 committee, and maybe one or two others.

10 Q. So basically, they were like subcommittees. The full
11 whole committee didn't meet on property issues, for
12 example?

13 A. Well, the whole board did not meet on property
14 issues, but the entire property committee did.

15 Q. This is what I was talking to. So when we refer in
16 the future to a subcommittee, that is so for our mutual
17 understanding. So you had a property subcommittee that
18 dealt with issues such as bids and property and
19 development, correct?

20 A. That's correct.

21 Q. So if there would be, for example a recommendation to
22 buy a piece of property in the City of Youngstown, it would
23 come out of the subcommittee of the property subcommittee,
24 right?

25 A. That's correct.

Romero - Cross

- 1 Q. And then it would go to whom?
- 2 A. To the board.
- 3 Q. And then the board, would they hold a series of
- 4 hearings like City Council had to, or would they vote
- 5 immediately?
- 6 A. They could vote on it immediately.
- 7 Q. And once it was scheduled and placed on their agenda?
- 8 A. That's correct.
- 9 Q. And they met monthly?
- 10 A. Monthly.
- 11 Q. Did they elect officers annually?
- 12 A. That's correct.
- 13 Q. Did you record at that time and memorialize the
- 14 minutes of any meetings?
- 15 A. Oh, yes. All the committee meetings had minutes
- 16 similar to this exhibit, and the board meetings also had
- 17 minutes.
- 18 Q. But you didn't have any audio tapes of those, did
- 19 you?
- 20 A. The typewritten minutes were based on audio tapes
- 21 that the CIC secretary would use, yes.
- 22 Q. And did you save those?
- 23 A. The audio tapes were not saved after the written
- 24 minutes got approved.
- 25 Q. Okay.

Romero - Cross

1 But, now, to the best of your knowledge, now that
2 you are gone, did they maintain a file from day one and
3 keep that file?

4 A. I'm not sure I understand. You say now that I'm
5 gone. I am still general counsel.

6 Q. Oh, you're general counsel, but you're not on the
7 board, right?

8 A. Right.

9 Q. Excuse me. Do they still not maintain their records
10 that go all the way back to their inception?

11 A. Yes, they do.

12 Q. Is that a matter of public record?

13 A. Yes, it is.

14 Q. Now, can the public attend your board meetings?

15 A. Yes.

16 Q. Now, at some particular point, you had this
17 typographical error, and insofar as that typographical
18 error, it forced you ultimately to rebid the contract?

19 A. That is correct.

20 Q. Now, when you rebid the contract, basically, all you
21 did was correct the typographical error or -- was that
22 basically what you did?

23 A. Well, no. We also decided to not save the
24 terra-cotta so there was no alternate bid on saving the
25 terra-cotta.

Romero - Cross

1 Q. But you did notify me, in fact, if your testimony is
2 correct, that if the feds wanted to use it in the building,
3 let the feds pay for it?

4 A. That's not how we responded. We said if the -- if
5 you can use the terra-cotta in the federal courthouse, it's
6 available to you to come and get.

7 Q. Did you know at that time that the new federal
8 courthouse had been appropriated?

9 A. Yes.

10 Q. And that would require going back to Congress and
11 attempting to get more money, wouldn't it?

12 A. More money for what? I'm sorry.

13 Q. If we were, in fact, to go after to get the
14 terra-cotta?

15 A. It -- it may have. I don't know.

16 Q. Well, could it have delayed the project?

17 A. If the project was so far along that they'd have to
18 reverse themselves --

19 THE COURT: Speak from what you know.

20 THE WITNESS: Sorry. I don't know.

21 Q. One thing for sure, the courthouse was approved. It
22 was all in place, and it was ready to go forward, is that
23 your understanding?

24 A. I knew Congress had appropriated the money. I don't
25 know at what stage the designing or construction of the

Romero - Cross

1 courthouse was.

2 Q. Okay. Without getting into the operations of
3 Congress, do you know or would you know if Congress would
4 have approved money for any purchase of any other products
5 that might not have been stipulated in the original deal?

6 THE COURT: Congressman, there is a problem
7 with this particular witness on the stand. You haven't
8 shown how he would know that information. He's not a
9 congressman.

10 BY MR. TRAFICANT:

11 Q. Knowing how the city works, once you approve a
12 project and the council goes ahead and says here's the
13 money and then someone says, well, let's buy the lot next
14 door and let's demolish it in the same project, would you
15 not have to bring it back to the controlling board and
16 amend the original legislating action?

17 MR. SMITH: Objection.

18 THE COURT: The objection is sustained.

19 Q. Okay.

20 You be -- you say you had to take care of the
21 asbestos first?

22 A. Yes.

23 Q. Who handled the asbestos contract?

24 A. Do you mean the abatement?

25 Q. The abatement.

Romero - Cross

1 A. It was Innerscope.

2 Q. Who's Innerscope?

3 A. They're a for profit corporation, based in
4 Austintown, a suburb of Youngstown, and they do asbestos
5 abatement.

6 Q. And Austintown is a suburb of the city of Youngstown,
7 right?

8 A. Yes.

9 Q. You know how big that contract was, best you can
10 recall?

11 A. It was about \$230,000.

12 Q. And that was naturally bid pursuant to the normal
13 standards you followed that the city had set; is that
14 right?

15 A. That is correct.

16 Q. Were there other bidders for that abatement?

17 A. Yes.

18 Q. Were there any out of town bidders for that
19 abatement?

20 A. I don't remember that.

21 Q. So at some particular point, your director is gone,
22 and you find out that the one and a half million dollars
23 wasn't secured, and not all the paperwork was completed, is
24 that your testimony?

25 A. That's correct.

Romero - Cross

1 Q. Then it compounded the fact that you had the
2 typographical error?

3 A. We didn't discover the typographical error until the
4 end of March 2000. We discovered we hadn't secured the one
5 and a half million shortly after the bids were open in
6 November of '99.

7 Q. And when did you actually secure one and a half
8 million dollars to go ahead forward?

9 A. I believe it was some time in January of 2000.

10 Q. What was the total project value, including
11 abatement, and all of the demolition and the construction
12 of the building, to the best of your knowledge?

13 A. About \$1.3 million.

14 Q. Construction, too, final building?

15 A. We didn't build the building. We built the parking
16 lot.

17 Q. Okay.

18 So they gave you the money to build it. You
19 demolished the old one. You built the parking lot, and
20 then the state come in, and how much did the state give you
21 to build what is now known as George Voinovich, a current
22 senator's building?

23 A. The sequence is wrong. The Voinovich building was
24 built and inhabited three months before we went out to bid
25 to demolish the Higbee building. It was built next door.

Romero - Cross

1 Q. Okay. What was the total project -- the total
2 Voinovich project building cost?

3 A. The Voinovich building was eight and a half million.

4 Q. Including -- now, what was the total expenditure for
5 the abatement and the demolition of -- what was it, the
6 parking -- building next to the Voinovich building, the
7 parking garage?

8 A. The Voinovich building was built where the parking
9 garage had been. The abatement and demolition of the
10 Higbee building, which was still standing next to the
11 Voinovich Center, was about \$1.3 million.

12 Q. And that was where you were going to build a parking
13 garage?

14 A. No, just a surface parking lot.

15 Q. Surface parking lot?

16 A. And that was included in this demolition bid.

17 Q. Okay.

18 Now, on the second round of bids, you said that the
19 terra-cotta was out, and that the bids were then let
20 without any terra-cotta, correct?

21 A. Without need for saving the terra-cotta, yes.

22 Q. Okay. MS Consultants then made a recommendation to
23 your property subcommittee; is that correct?

24 A. Well, I believe it was to the executive committee.

25 Q. The executive committee?

Romero - Cross

1 A. Yes.

2 Q. But the property subcommittee would have empowered or
3 authorized MS Consultants to be the project advisors or
4 consultants; is that right?

5 A. The property committee would have recommended to the
6 board to hire MS Consultants. The board would have hired
7 them. MS Consultants would have done the bidding process
8 and then recommend an award to the board's executive
9 committee, not back to the property committee.

10 Q. Okay.

11 So once they -- now made their recommendation,
12 executive committee, the executive committee reviewed it;
13 is that correct?

14 A. That is correct.

15 Q. And then they made a recommendation to the total
16 board, did they not?

17 A. The board had authorized the executive committee to
18 make the award, and the board would later ratify so that
19 the executive committee had the authority to make an award.

20 Q. Now, the Government brought up earlier a man by the
21 name of Harry Manganaro. Did he demolish a lot of
22 properties in Youngstown?

23 A. Yes.

24 Q. Were they mostly residential, old homes, things like
25 that?

Romero - Cross

1 A. Mostly, yes.

2 Q. Now, in his own strength, you felt he wasn't
3 responsible enough or financially capable enough on his own
4 to carry or make a bid?

5 A. Yes.

6 Q. But you felt that Dave Sugar had ample financing and
7 a responsible party that could, in fact, be a bidder in the
8 process?

9 A. Yes.

10 Q. Even though there was a connection with Harry
11 Manganaro?

12 A. Yes.

13 Q. So if you overlook Manganaro because of the fact of
14 the reputation and the ability and the past demonstration
15 of performance, would we say of Sugar and Honey Creek?

16 A. I'm sorry. Could you reask the question.

17 Q. Evidently, even though Manganaro was a liability that
18 you considered, at some point you decided that there was
19 ample financing and capability to perform and met the
20 responsibility of performing, so therefore, Honey Creek was
21 accepted as a bidder?

22 A. Well, we hadn't turned down any bidders so that there
23 was no prequalifications. There may have been someone who,
24 as in Boccia's case, we felt he was not able to --

25 Q. So after the bids were made, you looked at them and

Romero - Cross

1 decided if there was some that you just think couldn't do
2 it, right?

3 A. After the bids were made but we also wouldn't be
4 looking down the entire list. We would only look at the
5 top two or three. In other words, the lowest two or three
6 and start from the lowest to see if they were also
7 responsible.

8 Q. Was Honey Creek Number 2 in the final bid?

9 A. Yes.

10 Q. And what was the difference in the bid numbers, how
11 many thousands?

12 A. \$14,000.

13 Q. Um-hum.

14 Now Mainline, is it Mainline Construction?

15 A. Mainline Contracting.

16 Q. And they were headquartered in Buffalo, New York?

17 A. Yes.

18 Q. Regional office is in Cincinnati?

19 A. Yes.

20 Q. Where was Honey Creek located?

21 A. In the Mahoning Valley. I'm not sure whether it was
22 Youngstown or a suburb of Youngstown.

23 Q. They were a local contractor, weren't they?

24 A. Yes.

25 Q. Did I go to bat for them, Edwin?

Romero - Cross

1 A. Yes.

2 Q. Now, on the contract that was awarded to Mainline,
3 would, in fact, did not the profits or benefits inure to
4 the benefit of Buffalo, New York, and Cincinnati, Ohio?

5 A. I assume so. I don't know what their cash flow would
6 be, but I -- I don't know that.

7 Q. Well, wouldn't you say that they would probably have
8 to hire some local workers? They just wouldn't send
9 workers in, would they?

10 A. Yes.

11 Q. But if there's any profit, where would the profit go?

12 MR. SMITH: Objection. I think he said he
13 didn't know.

14 BY MR. TRAFICANT:

15 Q. Well, who had the contract?

16 A. Mainline Contracting did.

17 Q. So if there's any profit or loss, who would have
18 borne that profit or loss?

19 A. If there was a profit, I believe Mainline would have
20 borne the profit.

21 Q. And if there was a loss?

22 A. It would also have been Mainline's loss.

23 Q. This CIC wasn't responsible for the loss, were you?

24 A. No. We were only willing to pay their bid price.

25 Q. And that was it. They were responsible, and they had

Romero - Cross

1 to meet the terms, right?

2 A. That's correct.

3 Q. Are you aware of the fact that Mainline went
4 bankrupt?

5 A. No. I'm not aware of that.

6 Q. Do you know if Honey Creek went bankrupt?

7 A. I'm not aware of that, either.

8 Q. When you were with the City of Youngstown, did you
9 lobby for city jobs?

10 A. You mean personally? I'm not sure I -- lobby with
11 whom, for --

12 Q. But, I mean, would the city advocate for job
13 opportunities for city people?

14 A. I don't believe that there's been an elected official
15 who hasn't advocated for jobs in his district.

16 Q. District. What was your district when you were law
17 director?

18 A. City of Youngstown.

19 Q. What was my district?

20 A. I think it was the 17th district.

21 Q. You know if Mr. Sugar was my constituent?

22 A. I assume so. I don't know that.

23 Q. Isn't it a fact that I had always endorsed wherever
24 possible lowest and best, give our local people a shot ?

25 A. I've heard you say it. I don't know that you always

Romero - Cross

1 advocated it, but I've heard you say it, yes.

2 Q. And wasn't successful Mayor Pat Ungaro very similar
3 in that attitude?

4 A. I don't know that -- I guess you'd have to define --
5 if you're asking whether the mayor would only give
6 contracts to City of Youngstown contractors, the answer's
7 no.

8 Q. No. I didn't ask you that. But when it was very
9 close and a very close bid and a Youngstown city contractor
10 or it was a New Castle, Pennsylvania, contractor, lowest
11 and best and you had a qualified group, would the City of
12 Youngstown would take a good look at their Youngstown
13 contractor if he could perform and the money wasn't much
14 difference?

15 A. We would look, but we would never have awarded it.

16 Q. You would award to the lowest and best?

17 A. That's correct.

18 Q. At all times?

19 A. Every time.

20 MR. TRAFICANT: No further questions.

21 THE COURT: Thank you.

22 MR. SMITH: No questions.

23 THE COURT: Thank you, sir, you're excused.

24 Ladies and gentlemen, it's 4:20. We're going
25 to send you home. We have a little work we have to do

Romero - Cross

1 here. Tomorrow is a short day for you, and so come in and
2 ready to go at 9:00, and we'll go until noon tomorrow.
3 Okay? Thank you very much. Remember all your admonitions.

4 (Proceedings in the absence of the jury:)

5 THE COURT: I need to get information about
6 the video deposition if it's been scheduled, and also, as I
7 understand it, we should do some exhibit work here today.
8 So we can take care of that. Is there anything else?

9 MR. SMITH: Other than those two, no, your
10 Honor.

11 MR. MORFORD: No, your Honor, and Bernie has
12 the information on the deposition for tomorrow, and I think
13 he has the list of exhibits that are going to be put into
14 evidence as well.

15 MR. SMITH: Right.

16 THE COURT: All right. Congressman?

17 MR. TRAFICANT: Your Honor, I'd like to
18 request that tomorrow we close at 11:45 instead of 12:00
19 and give ample time to meet the schedule. I mean, it's
20 only 15 minutes, but it might beat that lunch traffic.

21 THE COURT: It's very hard on the jury to
22 disrupt that. They know they're coming in at 9:00.
23 They're coming all the way here from many parts far away in
24 order to get here. They need to be able to put in three
25 hours of work so we'll go until noon.

Romero - Cross

1 MR. TRAFICANT: That's fine.

2 MR. SMITH: Your Honor, with respect to the
3 deposition, it has been scheduled for tomorrow afternoon at
4 a location known to the Congressman. I've also given a
5 copy of that to your clerk, I believe earlier today, as to
6 where it will be, when it will be, and what the court
7 reporting service will be.

8 And we've also contacted the witness, and he was
9 agreeable to that location.

10 THE COURT: Okay. Thank you.

11 MR. SMITH: Unless you need to hear more.

12 THE COURT: I don't need to hear more. Let's
13 go over the exhibits.

14 MR. SMITH: Yes, your Honor.

15 Since we're going to be heading out of here tomorrow,
16 we asked to do it today, and we'll pick up Friday's next
17 week. In the Exhibit 2 series, documents relating to the
18 Bucci scenario, we would offer Government's Exhibit 2-31,
19 which is a document authenticated by Wil Baccus and
20 testified in detail by Mr. Baccus, concerning the debarment
21 issue with Bucci and the contact of the Congressman.

22 THE COURT: Okay. Any objection?

23 MR. TRAFICANT: Yeah, I do object to that.

24 THE COURT: Tell me the number again.

25 MR. SMITH: 2-31, your Honor.

Romero - Cross

1 THE COURT: Can you state your objection,
2 please?

3 MR. TRAFICANT: Well, I'm not so sure about
4 the speech and debate clause, but for the record I would
5 like to state it; may not necessarily be appropriate, but I
6 think I will object.

7 THE COURT: Okay. Well, let me look at it so
8 I can get it through that means.

9 MR. TRAFICANT: I don't have the document in
10 front of me. Explain it real quick. I might not object to
11 it.

12 MR. MORFORD: Wil Baccus.

13 MR. TRAFICANT: To who?

14 MR. MORFORD: About the phone call with his
15 notes, his conversation with you and Chuck O'Nesti.

16 MR. SMITH: I can put these on the overhead.

17 MR. TRAFICANT: I think if it was a phone
18 conversation, that I won't object to that.

19 THE COURT: Okay.

20 MR. TRAFICANT: Under speech and debate.

21 THE COURT: Okay. This will be admitted
22 then.

23 MR. SMITH: Next document, your Honor.

24 THE COURT: I take it, Congressman. You
25 don't have your exhibits here, right?

Romero - Cross

1 MR. TRAFICANT: Well, your Honor, I didn't
2 bring the Bucci exhibits today.

3 THE COURT: Okay.

4 MR. SMITH: Your Honor, the next document is
5 Government's Exhibit 2-33, which was authenticated again by
6 Mr. Baccus as being the author of the document, a document
7 he sent to Mr. Geiger, again concerning the Bucci debarment
8 situation, and Mr. Baccus summarizing again issues with
9 Congressman Traficant.

10 MR. TRAFICANT: That was the Federal Highway
11 Administration. So that would not be a letter generated by
12 them, and I don't think it's covered by speech and debate.
13 So I do not object.

14 THE COURT: Thank you very much. No
15 objection; will be admitted.

16 MR. SMITH: Next document 2-35, which is the
17 responsive letter that Mr. Baccus authenticated as having
18 come from the Federal Highway Administration to the
19 Congressman in response to the Congressman's earlier letter
20 to the Secretary of Transportation, Federico Pena.

21 MR. TRAFICANT: I do object to that.

22 THE COURT: Okay. On what basis, sir?

23 MR. TRAFICANT: On the speech and debate
24 context.

25 THE COURT: Would you like to --

Romero - Cross

1 MR. TRAFICANT: If that's a letter to me from
2 Mr. Pena, I object to that.

3 MR. SMITH: No. It's -- it's the letter from
4 the Federal Highway Administration of the Department of
5 Transportation to the Congressman. It's generated by a
6 federal agency and of course --

7 MR. TRAFICANT: I will not object to that.

8 THE COURT: With no objection then, this will
9 be admitted.

10 MR. SMITH: Next one we move to a different
11 witness, I believe. I think Government's Exhibit 2-12,
12 which was a document authored by Mr. Dreger, concerning his
13 context with the Congressman and the Buccis, memorializing,
14 I believe, a breakfast meeting of some sort.

15 MR. TRAFICANT: No objections.

16 THE COURT: It'll be admitted.

17 MR. SMITH: Next is Government's Exhibit
18 2-13, which is another document of -- that is Mr. Dreger's
19 notes that he authenticated during his testimony, again
20 having to do with the Bucci situation and Tom Williams and
21 the Congressman's interactions with Tom Williams.

22 MR. TRAFICANT: No objection.

23 THE COURT: It will be admitted.

24 MR. SMITH: Your Honor, we'll next move to
25 the -- I have to grab another notebook, the series 3

Romero - Cross

1 exhibits.

2 Government's Exhibit 3-1, identify bid,
3 Mr. Sattarelle, which is a picture of Mr. -- or Congressman
4 Traficant, Mr. Tyson, and Mr. Sattarelle standing next to a
5 Capital Ready Mix truck.

6 MR. TRAFICANT: No objection.

7 THE COURT: It will be admitted.

8 MR. TRAFICANT: I ask it be a joint exhibit.

9 THE COURT: It will be a joint exhibit.

10 MR. SMITH: The next one would be
11 Government's Exhibit 3-3, and that is a document that was
12 authenticated by, I believe, Mr. Chickonoski and has to do
13 with the loan terms of the Tyson loan.

14 MR. TRAFICANT: I ask it be made a joint
15 exhibit.

16 THE COURT: We'll make that a joint exhibit,
17 and it will be admitted.

18 MR. SMITH: I just lost my note. May I have
19 a moment, your Honor? I lost my note.

20 THE COURT: It's all right. Just relax. We
21 have time.

22 MR. TRAFICANT: See, I didn't hold you up
23 this time, Judge.

24 THE COURT: We didn't say you did. You don't
25 hold me up here.

Romero - Cross

1 MR. TRAFICANT: I'm trying not to.

2 THE COURT: No, it's good. It's going well.

3 MR. SMITH: Here, I'm sorry. Okay. Sorry
4 about that.

5 The next one is Government's Exhibit 3-5, which is a
6 second document that was authenticated by Mr. Chickonoski
7 having to do with the Tyson loan and as to witness Kavulic,
8 identified the Congressman's handwriting going down the
9 right hand column of the document.

10 MR. TRAFICANT: I ask it be made a joint
11 exhibit.

12 THE COURT: It will be a joint exhibit, and
13 it will be admitted.

14 MR. SMITH: Your Honor, we next move to the
15 Sabatine grouping of documents, Exhibit 4-1, which Witness
16 Rufus Dowe authenticated as being his calendar as to the
17 day that he went to the Youngstown hearing to meet with the
18 Congressman and Mr. Sabatine --

19 MR. TRAFICANT: Ask it be made a joint
20 exhibit.

21 THE COURT: Fine. That will be admitted as a
22 joint exhibit.

23 MR. SMITH: Next one, your Honor, is Exhibit
24 4-3, which Witness Angelo Delucia authenticated as the
25 picture of the shed or barn that he was asked to look at on

Romero - Cross

1 Congressman Traficant's farm.

2 MR. TRAFICANT: Ask it be made a joint
3 exhibit.

4 THE COURT: It will be made a joint exhibit.

5 MR. SMITH: Your Honor, we next move to the
6 Sugar series of documents, which are Exhibit 5 series,
7 starting with Government's Exhibit 5-5, which is a letter
8 from Congressman Traficant, authenticated by Richard Billak
9 of the CCA, relating to David Sugar, Junior, being able to
10 work while he was at the CCA.

11 MR. TRAFICANT: I ask it be made a joint
12 exhibit.

13 THE COURT: It'll be admitted as a joint
14 exhibit.

15 MR. SMITH: Next one is Government's Exhibit
16 5-6, another document that Mr. Billak authenticated as
17 being from their file at the CCA which, is Attorney Mark
18 Colucci's letter to the CCA on behalf of David Sugar,
19 Junior, testimony being Mr. Colucci represented Dave Sugar,
20 Junior.

21 MR. TRAFICANT: I ask it be made a joint
22 exhibit.

23 THE COURT: That'll be a joint exhibit and
24 admitted as such.

25 I need to go back for the record and say what I

Romero - Cross

1 forgot to say, which 4-3 is not only for joint, but it will
2 be admitted. 4-3 I forgot to say it'll be admitted.

3 MR. TRAFICANT: Your Honor, I have the --
4 what I refer to as the generic file of Tom Williams, and I
5 labeled it TW-1, and I ask it be introduced as an exhibit
6 in this case.

7 THE COURT: It is admitted, sir.

8 MR. SMITH: Your Honor, in the series 5
9 grouping, we have Government's Exhibit 5-10, which was
10 authenticated by Mr. Romero as being the initial bids
11 that -- on the Higbee demolition project where Terreri was
12 low and Honey Creek ended up second.

13 MR. TRAFICANT: I ask it be made a joint
14 exhibit.

15 THE COURT: 5-10 will be admitted as a joint
16 exhibit.

17 MR. SMITH: Next one is 5-16, which -- that's
18 already been admitted. I'm sorry. I believe --

19 MR. TRAFICANT: What is it?

20 THE COURT: It is admitted.

21 MR. SMITH: Sorry, your Honor. The next one
22 would be 5-18.

23 MR. TRAFICANT: Is 16 admitted already, your
24 Honor?

25 THE COURT: Yes.

Romero - Cross

1 MR. TRAFICANT: Thank you. Is that a joint
2 exhibit?

3 THE COURT: I think so. Is it?

4 THE CLERK: Originally it was not. You
5 requested --

6 MR. TRAFICANT: On that request, I request it
7 be a joint exhibit.

8 THE COURT: All right. It'll be a joint
9 exhibit.

10 MR. SMITH: Your Honor, the next one then
11 would be Exhibit 5-18, which is --

12 THE COURT: Did you just say 17?

13 MR. SMITH: No. 17 I didn't use, your Honor.

14 THE COURT: Okay.

15 MR. SMITH: I passed on 17.

16 THE COURT: Okay.

17 MR. SMITH: 5-18, your Honor, which is the
18 results of the second bid where Mainline beat out Honey
19 Creek by \$14,000.

20 MR. TRAFICANT: Ask it be made a joint
21 exhibit.

22 THE COURT: Okay. It'll be admitted. 5-18
23 will be admitted as a joint exhibit.

24 MR. SMITH: Next one, your Honor,
25 Government's Exhibit 5-19, which is authenticated by

Romero - Cross

1 Mr. Romero as the April 19, 2000, executive committee
2 meeting minutes, in which the Higbee demolition project was
3 awarded to Mainline.

4 MR. TRAFICANT: Ask it be made a joint
5 exhibit.

6 THE COURT: This will be admitted as a joint
7 exhibit.

8 MR. MORFORD: And Mr. Kall reminds me I
9 missed Government's Exhibit 2-59. So I will offer
10 Government's Exhibit 2-59, which was a letter from the
11 Sabatine company to Mr. Fergus, who is the Mahoning County
12 Engineer regarding the 1996 Mahoning County paving
13 contract, and that was authenticated, I believe, by
14 Mr. Pannutti.

15 MR. TRAFICANT: Ask it be made a joint
16 exhibit.

17 THE COURT: That will be admitted as a joint
18 exhibit.

19 MR. SMITH: And may I have a moment, your
20 Honor?

21 THE COURT: That was 2-59.

22 MR. SMITH: Final one, your Honor,
23 Government's Exhibit 5-25, which Witness Romero
24 authenticated as being the rebid package, which also
25 contained the MS Consultants' phone number on Page 2-3.

Romero - Cross

1 MR. TRAFICANT: Ask it be made a joint
2 exhibit.

3 THE COURT: 5-25 will be admitted as a joint
4 exhibit.

5 MR. SMITH: And that's all the Government has
6 for today, your Honor. Thank you.

7 THE COURT: Thank you. Congressman?

8 MR. TRAFICANT: I am done.

9 THE COURT: Thank you. All right. Well,
10 we'll see you tomorrow morning. I am not aware of any
11 other issues that we have right now. Unless somebody files
12 something on a new issue develops overnight, I'll see you
13 at quarter of 9:00 instead of 8:30. How's that? Okay?

14 (Proceedings adjourned.)

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1 CROSS-EXAMINATION OF JAMES SABATINE CONTINUED..... 2484
2 REDIRECT EXAMINATION OF JAMES SABATINE..... 2544
3 RECROSS-EXAMINATION OF JAMES SABATINE..... 2563
4 DIRECT EXAMINATION OF EDWARD ROMERO..... 2607
5 CROSS-EXAMINATION OF EDWARD ROMERO..... 2634

C E R T I F I C A T E

7 I certify that the foregoing is a correct
8 transcript from the record of proceedings in the
9 above-entitled matter.

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Shirle M. Perkins, RDR, CRR
U.S. District Court - Room 539
201 Superior Avenue
Cleveland, Ohio 44114-1201
(216) 241-5622