

APPENDIX A

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

REPORT

Review No. 13-1064

The Board of the Office of Congressional Ethics (the "Board"), by a vote of no less than four members, on May 31, 2013, adopted the following report and ordered it to be transmitted to the Committee on Ethics of the United States House of Representatives.

SUBJECT: Representative John F. Tierney

NATURE OF THE ALLEGED VIOLATIONS: Representative John F. Tierney's wife managed the daily financial and family obligations of her brother for several years. In exchange for her assistance, her brother paid her monthly. From 2007 to 2010, Mrs. Tierney received approximately \$40,000 to \$160,000 from her brother. Representative Tierney filed financial disclosure statements from 2008 to 2011 that do not disclose that Mrs. Tierney received earned income from her brother. Representative Tierney filed his joint federal income tax returns with his wife from 2008 to 2010 that do not include income from her brother.

If Representative Tierney did not include the source of income earned by his spouse from any person that exceeded \$1,000 in his financial disclosure statements, he may have violated House rules and federal law.

If Representative Tierney did not include income earned by his spouse in his joint federal income tax returns, he may have violated federal law.

RECOMMENDATION: The Board recommends that the Committee on Ethics further review the allegation concerning the financial disclosure statements because there is substantial reason to believe that Representative Tierney's wife earned income from a source that was not disclosed in his financial disclosure statements.

The Board recommends that the Committee on Ethics further review the allegation concerning the federal income tax returns because there is substantial reason to believe that Representative Tierney's wife received income that he did not include in their joint federal income tax returns.

VOTES IN THE AFFIRMATIVE: 6

VOTES IN THE NEGATIVE: 0

ABSTENTIONS: 0

MEMBER OF THE BOARD OR STAFF DESIGNATED TO PRESENT THIS REPORT TO THE COMMITTEE ON ETHICS: Omar S. Ashmawy, Staff Director and Chief Counsel.

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

FINDINGS OF FACT AND CITATIONS TO LAW

Review No. 13-1064

TABLE OF CONTENTS

I.	INTRODUCTION	3
A.	Summary of Allegations	3
B.	Jurisdictional Statement.....	4
C.	Procedural History	4
D.	Summary of Investigative Activity.....	4
II.	REPRESENTATIVE TIERNEY DID NOT DISCLOSE PAYMENTS THAT HIS WIFE RECEIVED FOR SERVICES SHE PROVIDED TO HER BROTHER.....	5
A.	Laws, Regulations, Rules, and Standards of Conduct	5
B.	Mrs. Tierney was Responsible for Managing Her Brother’s Financial and Family Obligations for Several Years.....	6
C.	Mrs. Tierney’s Brother Paid Her for the Services that She Provided.....	10
D.	Representative Tierney Did Not Disclose the Payments in His Financial Disclosure Statements or Federal Income Tax Returns	14
III.	CONCLUSION.....	15
IV.	INFORMATION THE OCE WAS UNABLE TO OBTAIN AND RECOMMENDATIONS FOR THE ISSUANCE OF SUBPOENAS	16

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
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FINDINGS OF FACT AND CITATIONS TO LAW

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On May 31, 2013, the Board of the Office of Congressional Ethics (the “Board”) adopted the following findings of fact and accompanying citations to law, regulations, rules, and standards of conduct (*in italics*).

The Board notes that these findings do not constitute a determination that a violation actually occurred.

I. INTRODUCTION

1. From 2003 to 2010, Representative Tierney’s wife managed her brother’s financial and family obligations because he moved to Antigua.
2. Patrice Tierney’s brother paid her monthly for the assistance that she provided.
3. Representative Tierney did not report the payments that Mrs. Tierney received as earned income in his financial disclosure statements and federal income tax returns.

A. Summary of Allegations

4. Representative Tierney may have violated House rules and federal law by not including the source of income earned by his spouse from any person that exceeded \$1,000 in his financial disclosure statements.
5. Representative Tierney may have violated federal law by not including income earned by his spouse in his joint federal income tax returns.
6. The Board recommends that the Committee on Ethics further review the allegation concerning the financial disclosure statements because there is substantial reason to believe that Representative Tierney’s wife earned income from a source that was not disclosed in his financial disclosure statements for calendar years 2007, 2008, 2009, and 2010.
7. The Board recommends that the Committee on Ethics further review the allegation concerning the federal income tax returns because there is substantial reason to believe that Representative Tierney’s wife received income that he did not include in their joint federal income tax returns for calendar years 2007, 2008, and 2009.

B. Jurisdictional Statement

8. The allegations that are the subject of this review concern Representative John F. Tierney, a Member of the United States House of Representatives for the 6th District of Massachusetts. The Resolution the United States House of Representatives adopted creating the Office of Congressional Ethics (“OCE”) directs that, “[n]o review shall be undertaken . . . by the board of any alleged violation that occurred before the date of adoption of this resolution.”¹ The House adopted this Resolution on March 11, 2008. Because the conduct under review occurred after March 11, 2008, the OCE has jurisdiction in this matter.

C. Procedural History

9. The OCE received a written request for a preliminary review in this matter signed by at least two members of the Board on January 25, 2013. The preliminary review commenced on January 26, 2013.² The preliminary review was scheduled to end on February 24, 2013.
10. At least three members of the Board voted to initiate a second-phase review in this matter on February 22, 2013. The second-phase review commenced on February 25, 2013.³ The second-phase review was scheduled to end on April 10, 2013.
11. The Board voted to extend the second-phase review for an additional period of fourteen days on March 22, 2013. The second-phase review ended on April 24, 2013.
12. Pursuant to Rule 9(B) of the OCE Rules for the Conduct of Investigations, Representative Tierney presented a statement to the Board on May 31, 2013.
13. The Board voted to refer the matter to the Committee on Ethics and adopted these findings on May 31, 2013.
14. This report and findings were transmitted to the Committee on Ethics on June 13, 2013.

D. Summary of Investigative Activity

15. The OCE requested and received testimonial and, in some cases, documentary information from the following sources:
 - (1) Robert Eremian’s Tax Attorney;
 - (2) Robert Eremian’s Criminal Attorney; and

¹ H. Res. 895, 110th Cong. §1(e), as amended (the “Resolution”).

² A preliminary review is “requested” in writing by members of the Board of the OCE. The request for a preliminary review is “received” by the OCE on a date certain. According to the Resolution, the time frame for conducting a preliminary review is thirty days from the date of receipt of the Board’s request.

³ According to the Resolution, the Board must vote on whether to conduct a second-phase review in a matter before the expiration of the thirty-day preliminary review. If the Board votes for a second-phase, the second-phase begins when the preliminary review ends. The second-phase review does not begin on the date of the Board vote.

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

(3) United States Department of Justice.⁴

16. Representative Tierney produced documentary information to the OCE, but he declined to interview with the OCE. He presented a statement to the Board pursuant to OCE Rule 9(B). The Board determined that Representative Tierney was a non-cooperating witness.
17. The following individuals declined to produce documentary and testimonial information in response to OCE requests and the Board determined that they are non-cooperating witnesses:

- (1) Patrice Tierney;
- (2) Robert Eremian; and
- (3) Daniel Eremian.

II. REPRESENTATIVE TIERNEY DID NOT DISCLOSE PAYMENTS THAT HIS WIFE RECEIVED FOR SERVICES SHE PROVIDED TO HER BROTHER

A. Laws, Regulations, Rules, and Standards of Conduct

House Rule 26

18. Pursuant to House Rule 26, "the provisions of title I of the Ethics in Government Act of 1978 shall be considered Rules of the House as they pertain to Members, Delegates, the Resident Commissioner, officers, and employees of the House."

Ethics in Government Act

19. Pursuant to 5 U.S.C. app. 4 §§ 101, 102

Sec. 101. (d) Any individual who is an officer or employee described in subsection (f) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 102(a).

Sec. 102. (e) each report required by section 101 shall also contain information listed in paragraphs (1) through (5) of subsection (a) of this section respecting the spouse or dependent child of the reporting individual as follows . . .

The source of items of earned income earned by a spouse from any person which exceed \$1,000 and the source and amount of any honoraria received by a spouse, except that, with respect to earned income (other than honoraria), if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported

⁴ The OCE requested and received from the Department of Justice certain public documents that were presented in the trial of *U.S. v. Lyons and Eremian, No. 10-10159-PBS (D. Mass.)*.

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

20. Pursuant to 5 U.S.C. app. 4 § 109, “income means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business (and net income if the individual elects to include it)”
21. The House Ethics Manual advises that “[e]arned’ income refers to compensation derived from employment or personal efforts A filer must report the source, but not the amount, of income earned by a spouse when that income exceeds \$1,000.”

Internal Revenue Code

22. “Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.”⁵
23. “Gross income does not include the value of property acquired by gift”⁶

B. Mrs. Tierney was Responsible for Managing Her Brother’s Financial and Family Obligations for Several Years

24. Details concerning Mrs. Tierney’s role in assisting her brother, Robert Eremian, with his personal affairs became public when she entered into a plea agreement in the criminal case of *United States v. Patrice Tierney* (“Plea Agreement”).⁷ Additional details concerning payments that she received for her assistance became public during her trial testimony in the criminal case of *United States v. Lyons and Eremian*.⁸
25. According to her trial testimony, Mrs. Tierney became responsible for managing the financial and family obligations of her brother, Robert Eremian, when he moved from the United States to Antigua to work for a company called Sports Offshore in late 2002 or

⁵ 26 U.S.C. § 7201.

⁶ 26 U.S.C. § 102. The Supreme Court has held that when determining whether a transfer of property is a gift within the meaning of Internal Revenue Code excluding from gross income, “the mere absence of a legal or moral obligation to make such a payment does not establish that it is a gift. And, importantly, if the payment proceeds primarily from the ‘constraining force of any moral or legal duty,’ or from the ‘incentive of anticipated benefit’ of an economic nature it is not a gift. And conversely, ‘(w)here the payment is in return for services rendered, it is irrelevant that the donor derives no economic benefit from it. A gift in the statutory sense, on the other hand, proceeds from a ‘detached and disinterested generosity,’ out of affection, respect, admiration, charity or like impulses.” *Comm’r of Internal Revenue v. Duberstein*, 363 U.S. 278, 285 (1967) (citations omitted). “[I]n making the gift-compensation determination, ‘the proper criterion . . . is one that inquires what the basic reason for [the payor’s] conduct was in fact—the dominant reason that explains his action in making the transfer.’” *Lane v. United States*, 286 F.3d 723, 729 (4th Cir. 2002) (quoting *Duberstein*, 363 U.S. at 286). “It is true, of course, that ‘the donor’s characterization of his action is not determinative’ Rather, ‘there must be an objective inquiry as to whether what is called a gift amounts to it in reality.” *Id.* (quoting *Duberstein*, 363 U.S. at 286).

⁷ Information attached to the Plea Agreement in *United States v. Patrice Tierney*, No. 10-10315-WGY (D. Mass. October 4, 2010) (“Plea Agreement”) (Exhibit 1 at 13-1064_0009-0012).

⁸ Testimony of Patrice Tierney, *United States v. Lyons and Eremian*, No. 10-10159-PBS (D. Mass. Nov. 21, 2011) November 21, 2011 (“Mrs. Tierney Testimony”) (Exhibit 2 at 13-1064_0014-0160).

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

early 2003.⁹ Her Plea Agreement states that Sports Offshore was a gambling business headquartered in Antigua.¹⁰

26. From approximately 2003 to 2010, she: (1) managed his personal bank account; (2) paid his personal bills; (3) prepared his personal income tax returns; (4) managed his baseball season tickets; (5) provided care for his children; and (6) provided care for their mother.¹¹
27. In October 2010, Mrs. Tierney pleaded guilty to aiding and abetting the filing of false tax returns by (1) engaging in a conscious course of deliberate ignorance regarding the true nature of Mr. Eremian's income and his ownership of an off-shore gambling business; and (2) mischaracterizing the deposits of her brother's bank account as "commissions" in documents submitted to Robert Eremian's Tax Lawyer.¹²

Managing Bank Account

28. During the years that Mrs. Tierney was responsible for managing her brother's bank account in Massachusetts (she was a joint account holder¹³), he caused in excess of \$7 million in proceeds from Sports Offshore to be deposited into the bank account.¹⁴
29. Mrs. Tierney handled the daily management of the bank account, which included maintaining detailed records of all of the account's transactions.¹⁵ She learned an accounting computer program, QuickBooks, and recorded the transactions with the program.¹⁶
30. She made deposits into the bank account when her brother sent checks to her from Antigua.¹⁷ She also drafted checks from the account and made wire transfers from the account for various payments.¹⁸
31. She was responsible for reviewing the bank account statements for accuracy, including reviewing to determine whether credit card payments listed were actually credit card payments authorized by Mr. Eremian.¹⁹

⁹ Mrs. Tierney Testimony (Exhibit 2 at 13-1064_0035); Memorandum from Pamela J. Lombardini to U.S. District Judge Joseph L. Tauro, dated November 19, 2002 (Exhibit 3 at 13-1064_0162).

¹⁰ Plea Agreement (Exhibit 1 at 13-1064_0010).

¹¹ Mrs. Tierney Testimony (Exhibit 2 at 13-1064_0065); Disposition, United States v. Patrice Tierney, No. 10-10315-WGY (D. Mass. Jan. 13, 2011) ("Disposition") (Exhibit 4 at 13-1064_0180-0181).

¹² Plea Agreement (Exhibit 1 at 13-1064_0010).

¹³ Mrs. Tierney Testimony (Exhibit 2 at 13-1064_0058).

¹⁴ *Id.*; Although Mrs. Tierney's plea agreement states that \$7 million in proceeds were deposited in the bank account, she testified that \$5 million was deposited in the account. *Id.* at 13-1064_0099.

¹⁵ *Id.* at 13-1064_0099.

¹⁶ *Id.*

¹⁷ *Id.* at 13-1064_0049.

¹⁸ *Id.* at 13-1064_0039, 0041, 0058-0060, 0100.

¹⁹ *Id.* at 13-1064_0123-0124.

Paying Personal Bills

32. According to a statement by the government during the sentencing proceeding of Mrs. Tierney's trial, she acted as her brother's "personal business secretary."²⁰ "A large portion of the expenses that came out of this checking account that she managed would have paid her brother's business expenses, his travel expenses, his credit card bills, [and] expenses related to the operation of this gambling business."²¹
33. Specifically, she paid monthly bills for credit cards and periodic bills for telephones and insurance.²²
34. She also made multiple payments per year from the personal bank account to the U.S. Treasury.²³ These payments were for her brother's income tax. She paid approximately \$2.4 million from the account for taxes during the time period when she managed the account.²⁴
35. She also used the account to pay bills for a residential timeshare property in Nantucket.²⁵

Preparing Tax Returns

36. Mrs. Tierney used the detailed QuickBooks records she compiled to prepare her brother's income tax returns.²⁶
37. She provided the QuickBooks records to Robert Eremian's Tax Lawyer.²⁷ Robert Eremian's Tax Lawyer told the OCE that he used the QuickBooks records to assist with the preparation of Robert Eremian's income tax filing.²⁸
38. According to Mrs. Tierney's plea agreement, "[i]n an effort to conceal the true nature of his income, Robert Eremian falsely represented himself as a consultant to Sports Offshore rather than the principal of Sports Offshore . . . As a result, [Mrs Tierney] mischaracterized the deposits to the [bank account] as 'commissions' in documents submitted to Eremian's tax preparer."²⁹

²⁰ Disposition (Exhibit 4 at 13-1064_0177).

²¹ *Id.*

²² Collection of check payments for credit cards, telephones, and insurance (Exhibit 5 at 13-1064_0194-0216).

²³ Collection of check payments to the United States Treasury (Exhibit 6 at 13-1064_0218-0249).

²⁴ Mrs. Tierney Testimony (Exhibit 2 at 13-1064_0101); Collection of payments to U.S. Treasury (Exhibit 6 at 13-1064_0218-0249).

²⁵ Mrs. Tierney Testimony (Exhibit 2 at 13-1064_0073-0074).

²⁶ Plea Agreement (Exhibit 1 at 13-1064_0011-0012).

²⁷ Mrs. Tierney Testimony (Exhibit 2 at 13-1064_0155-0156); Memorandum of Interview of Robert Eremian's Tax Attorney, April 24, 2013 ("Eremian's Attorney MOI") (Exhibit 7 at 13-1064_0252).

²⁸ *Id.*

²⁹ Plea Agreement (Exhibit 1 at 13-1064_0011).

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

Managing Season Tickets

39. Robert Eremian had baseball season tickets for the Boston Red Sox. Mrs. Tierney managed these tickets.³⁰
40. Specifically, she drafted checks from her brother's bank account to buy the tickets annually.³¹ She also arranged to sell the tickets to potential buyers.³²
41. She was responsible for distributing the tickets to individuals who her brother directed to call her for the tickets.³³

Providing Care for Children

42. Mrs. Tierney stated in the trial of Daniel Eremian, that she took care of Robert Eremian's children when he moved to Antigua.³⁴ Her attorney stated during her sentencing hearing that Mrs. Tierney cared for her nieces and nephews when her brother "left the three of them up here in Massachusetts really in the care of a nanny. The estranged mother, their mother, Mr. Eremian's estranged wife, lives in Florida with very serious, historically [sic], drug and alcohol problems. She's been in and out of rehab. There was nobody who was caring for them. So [Mrs. Tierney] was, if you will, the surrogate mother. You know checking on them, buying them their clothes, paying the credit card bills, taking care of the house in Lynnfield."³⁵
43. Mrs. Tierney stated that she used her brother's bank account to pay for all of their expenses and the house expenses of their home in Lynnfield, Massachusetts.³⁶ These expenses included checks she drafted to pay for the school tuition of the children.³⁷
44. Mrs. Tierney also routinely transferred money from her brother's bank account to a bank account that she shared with the nanny of her brother's children.³⁸ Mrs. Tierney used this account with the nanny to pay for expenses for the children.³⁹

Providing Care for Mother

45. Mrs. Tierney stated that another task that she did for her brother was to take care of their ailing mother.⁴⁰ According to her trial transcript, Mrs. Tierney was "waiting hand and

³⁰ Mrs. Tierney Testimony (Exhibit 2 at 13-1064_0072).

³¹ Collection of check payments for baseball season tickets (Exhibit 8 at 13-1064_0256-0260).

³² Mrs. Tierney Testimony (Exhibit 2 at 13-1064_0072).

³³ *Id.*

³⁴ *Id.* at 13-1064_0065, 0133.

³⁵ Disposition (Exhibit 4 at 13-1064_0184).

³⁶ Mrs. Tierney Testimony (Exhibit 2 at 13-1064_0059).

³⁷ Collection of check payments for school tuition (Exhibit 9 at 13-1064_0262-0264).

³⁸ Mrs. Tierney Testimony (Exhibit 2 at 13-1064_0059).

³⁹ *Id.*

⁴⁰ *Id.* at 13-1064_0065.

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

foot” or her ill mother at the same time that she handled her brother’s other financial and family obligations.⁴¹

46. Mrs. Tierney routinely transferred money from her brother’s bank account to a bank account that she shared with her mother.⁴² Mrs. Tierney used this account to pay for expenses for her mother.⁴³

47. Overall, Mrs. Tierney was responsible for a wide range of her brother’s daily personal affairs, which required an extensive amount of time and effort.

C. Mrs. Tierney’s Brother Paid Her for the Services that She Provided

Payments Directly from Robert Eremian’s Bank Account

48. According to Mrs. Tierney’s trial testimony, from approximately 2004 to 2010, she wrote a \$1,000 check from her brother’s bank account payable to herself every month. She stated that “I was being appreciated” for “taking care of children that were left behind, paying his household bills, his personal bills, and taking care of our mother who had cancer.”⁴⁴

⁴¹ *Id.* at 13-1064_0133.

⁴² *Id.* at 13-1064_0059.

⁴³ *Id.* at 13-1064_0148.

⁴⁴ *Id.* at 13-1064_0065.

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

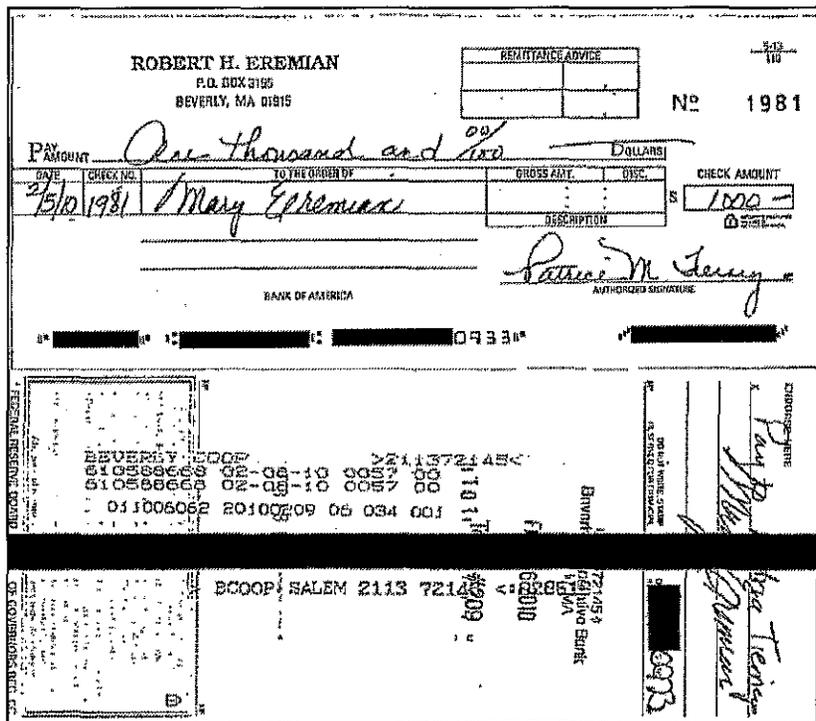
51. During the time that Mrs. Tierney managed her brother's personal affairs she did not have any employment, except with her company, Tierney Designs⁵¹ which generated approximately \$4,000 to \$8,000 of her annual income.⁵²

Payments Indirectly from Robert Eremian's Account

52. Mrs. Tierney stated in her trial testimony that every month she wrote a \$1,000 check from her brother's account payable to her mother. She testified that the checks were "signed over to me by my mom, so that would be put into . . . my account."⁵³

53. Mrs. Tierney stated that the endorsed checks from her mother were "a way to compensate me for all that I did for her."⁵⁴

54. From 2007 to 2010, these monthly payments totaled \$38,000.⁵⁵



Payments Described as Gifts

55. When asked whether the payments were "a lot of money," Mrs. Tierney said "Yes. I did a lot of work."⁵⁶ However, she stated that she was not compensated as an employee.⁵⁷

⁵¹ Mrs. Tierney also wrote checks from her brother bank account to Tierney Designs. See Collection of check payments to Tierney Designs (Exhibit 12 at 13-1064_0308-0316).

⁵² Representative Tierney Financial Disclosure Statements for CY 2007-2009 (Exhibit 13 at 13-1064_0318-0349); Representative Tierney Tax Returns Schedule CY 2007-2009.

⁵³ Mrs. Tierney Testimony (Exhibit 2 at 13-1064_0060).

⁵⁴ *Id.*

⁵⁵ Collection of check payments to Mary Eremian endorsed to Patrice Tierney (Exhibit 14 at 13-1064_0351-0388).

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

56. Mrs. Tierney testified that “I received gifts from my brother for helping him.”⁵⁸
57. None of the legal proceedings involving Mrs. Tierney and her brother concluded whether the payments were gifts or income.
58. For example, the trial court in *U.S. v. Lyons and Eremian* did not make any determination as to whether the payments were gifts or income. Mrs. Tierney’s attorney asked the court to instruct the jury about gift tax consequences, and the judge responded “If you believe it’s a gift. I mean, I’m not getting into that one.”⁵⁹
59. Mrs. Tierney testified at the trial that she had conversations with Robert Eremian’s Tax Attorney about the payments.⁶⁰ Robert Eremian’s Tax Attorney is a friend of Representative Tierney, who went to the same high school, college, and law school as Representative Tierney.⁶¹ Robert Eremian’s Tax Attorney told the OCE that he believes Representative Tierney recommended that Robert Eremian hire him.⁶²
60. Robert Eremian’s Tax Attorney told the OCE that he did not advise Mrs. Tierney that the payments from her brother were gifts.⁶³ He recalled that around 2003 Mrs. Tierney asked him whether the payments she received from her brother were taxable.⁶⁴ He stated that his reply was limited to saying if the payments are gifts they are not taxable.⁶⁵ He did not advise her on how to determine whether the payments were income or gifts.⁶⁶
61. Mrs. Tierney testified that she asked Robert Eremian’s Tax Attorney about the threshold for when gifts became taxable.⁶⁷ Robert Eremian’s Tax Attorney did not recall conversations about the threshold with Mrs. Tierney, but he recalled such conversations with Robert Eremian.⁶⁸ He explained to Mr. Eremian that the gift tax threshold was \$12,000 annually.⁶⁹
62. Robert Eremian’s Tax Attorney told the OCE that he did not advise Mr. Eremian on whether the payments to his sister were gifts.⁷⁰ He stated that Mr. Eremian told him that he wanted to give a gift to Mrs. Tierney for taking care of his children and handling his checking account.⁷¹ Robert Eremian’s Tax Attorney left it up to Mr. Eremian to

⁵⁶ Mrs. Tierney Testimony (Exhibit 2 at 13-1064_0064).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 13-1064_0071.

⁶⁰ *Id.* at 13-1064_0066.

⁶¹ *Id.*

⁶² Eremian’s Attorney MOI (Exhibit 7 at 13-1064_0251-0252).

⁶³ *Id.* at 13-1064_0253.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Trial Testimony (Exhibit 2 at 13-1064_0066).

⁶⁸ Eremian’s Attorney MOI (Exhibit 7 at 13-1064_0253).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

determine whether the payments were gifts.⁷² When Robert Eremian's Tax Attorney received the QuickBooks records to prepare Robert Eremian's taxes, there was a line item for "Gifts for Patrice."⁷³

63. Robert Eremian's Tax Attorney had no recollection of gifts from Mr. Eremian's mother to Mrs. Tierney.⁷⁴
64. When the OCE asked Robert Eremian's Tax Attorney whether he believes in hindsight that the payments from Mr. Eremian to Mrs. Tierney were gifts or income, he stated that that the payments were gifts because, based on the Mrs. Tierney's trial testimony and news articles that he reviewed, Mrs. Tierney took care of Mr. Eremian's children.⁷⁵ He considered this arrangement to have been a familial obligation.⁷⁶ The witness stated that determining whether something is a gift is based on what is in the mind of the donor and he believed that Mr. Eremian thought of it as gifts.⁷⁷
65. The witness stated he had no direct knowledge to inform his legal opinion, only newspaper reports and the trial transcript.⁷⁸
66. When asked about the legal basis of his opinion that the payments were gifts, the witness stated that it was based on his years of experience.⁷⁹ When asked whether he was familiar with the case of *Commissioner of Internal Revenue v. Duberstein*⁸⁰ and the standard of "detached and disinterested generosity," the witness said no.⁸¹ He was shown a copy of *Duberstein* and he stated that he did not consider this standard when he formulated his opinion to the OCE about whether the payments were gifts.⁸²

D. Representative Tierney Did Not Disclose the Payments in His Financial Disclosure Statements or Federal Income Tax Returns

67. Mrs. Tierney stated in her trial testimony that Representative Tierney was aware that she was managing the bank account for Robert Eremian.⁸³
68. On July 3, 2012, Representative Tierney held a press conference to discuss questions about Robert Eremian's off-shore gambling business. According to reports of the press

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 13-1064_0254.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *See supra* n.6.

⁸¹ Eremian's Attorney MOI at 13-1064_0254.

⁸² *Id.*

⁸³ Mrs. Tierney Testimony (Exhibit 2 at 13-1064_0068).

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

conference, Representative Tierney publicly acknowledged that he knew that his wife received payments from her brother for helping out with the family.⁸⁴

69. Representative Tierney reportedly said “his wife thought she was helping her brother and troubled family by paying bills and handling tax payments, and that any payments to her were gifts of gratitude for her efforts.”⁸⁵
70. With respect to the amount of payments received, Representative Tierney “rejected reports that his wife had received about \$220,000 from her brother, saying that the amount was closer to \$12,000, spread out over years. [Representative] Tierney also noted that these gifts would have been non-taxable based on their amounts.”⁸⁶
71. As a result, Representative Tierney apparently knew that his wife received payments from her brother, but these payments were not disclosed as income on his financial disclosure statements or federal income tax returns.
72. The OCE was unable to verify the extent of Representative Tierney’s knowledge of the payments because he declined to interview with the OCE.
73. From 2008 to 2011, Representative Tierney filed his financial disclosure statements from calendar years 2007, 2008, 2009, and 2010.⁸⁷ In each of the financial disclosure statements, Representative Tierney lists the source of his wife’s income as Tierney Designs.⁸⁸ He does not disclose Mrs. Tierney’s brother or mother as sources of income for any year.⁸⁹
74. From 2008 to 2010, Representative Tierney filed his federal income tax returns jointly with his wife for calendar years 2007, 2008, and 2009.⁹⁰ He did not disclose the payments that Mrs. Tierney received from her brother or mother.⁹¹

III. CONCLUSION

75. From 2003 to 2010, Representative Tierney’s wife managed her brother’s daily financial and family obligations, including his personal bank account, personal bills, income tax returns, season baseball tickets, child care, and care for their mother. In exchange for these services, Mrs. Tierney’s brother paid her monthly.

⁸⁴ Glen Johnson, *John Tierney Defends His Wife; Says He Thought In-Laws’ Illegal Gambling Business was Legal*, Boston Globe, July 5, 2012.

⁸⁵ *Id.*

⁸⁶ William Laforme, *Tierney Rebuts Criticism of Relationship with In-Laws*, Salem Patch, July 3, 2012, <http://salem.patch.com/articles/tierney-rebuts-criticism-of-relationship-with-in-laws>.

⁸⁷ Representative Tierney’s Financial Disclosure Statements for Calendar Years 2007 to 2010 (Exhibit 13 at 13-1064_0318-0349).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Representative Tierney did not provide the OCE with his Calendar Year 2010 tax return.

⁹¹ Representative Tierney’s Joint Federal Income Tax Returns CY 2007, 2008, 2009.

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

76. Representative Tierney did not report the payments that his wife received as income on his financial disclosure statements or federal income tax returns.
77. Based on the above findings, the Board recommends that the Committee on Ethics further review the allegation concerning the financial disclosure statements because there is substantial reason to believe that Representative Tierney's wife earned income from a source that was not disclosed in his financial disclosure statements for calendar years 2007, 2008, 2009, and 2010.
78. Based on the above findings, the Board recommends that the Committee on Ethics further review the allegation concerning the federal income tax returns because there is substantial reason to believe that Representative Tierney's wife received income that was not included in their joint federal income tax returns for calendar years 2007, 2008, and 2009.

IV. INFORMATION THE OCE WAS UNABLE TO OBTAIN AND RECOMMENDATIONS FOR THE ISSUANCE OF SUBPOENAS

79. Counsel for Representative Tierney produced documentary evidence in response to the OCE Request, but Representative Tierney declined to interview with the OCE. Pursuant to OCE Rule 9(B), Representative Tierney provided a statement to the Board.⁹²
80. After receiving the OCE Request for Information, counsel for Mrs. Tierney initially agreed to cooperate with the review and informed the OCE that the responsive documents had been compiled and would be delivered.
81. On March 1, 2013, counsel for Mrs. Tierney told the OCE that she would not produce the requested information. Counsel also stated that Mrs. Tierney would not interview with the OCE because on "October 23, 2012, Mrs. Tierney was involved in a serious automobile accident and suffered head and neck injuries, with resulting memory loss."
82. The OCE requested testimonial information from Robert Eremian. On February 7, 2013, and April 12, 2013, OCE staff spoke with Mr. Eremian via telephone and he indicated that he had testimonial information relevant to the review. However, he did not agree to interview with the OCE and provide such information subject to 18 U.S.C. § 1001.
83. The OCE requested testimonial information from Daniel Eremian. Counsel for Daniel Eremian told the OCE that he represented Mr. Eremian, but did not respond to the request.

⁹² Counsel for Representative Tierney wrote a letter to the OCE with the counsel's summary of the facts, but such statements from counsel are not attributed to the subject and are not considered evidence in this review. Counsel for Representative Tierney also referred the OCE to a legal opinion from the counsel for Representative Tierney's campaign committee that cites to a legal treatise to support a legal argument that the payments from Mr. Eremian to his sister for her services are gifts. The Board notes that the legal opinion of the counsel for the campaign committee conflicts with U.S. Supreme Court precedent. See *supra* note 6. The Board also notes that although the opinion from the counsel of the campaign committee explains that determining whether such payments are gifts or income is a fact specific question, the opinion is not based on any facts from interviews with the relevant parties.

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

84. The following individuals, by declining to provide documentary or testimonial information in response to the OCE's Request for Information, did not cooperate with the OCE's review.
- a. Representative Tierney;
 - b. Patrice Tierney;
 - c. Robert Eremian; and
 - d. Daniel Eremian.
85. As a result, the OCE was unable to obtain certain information regarding the payments that Mrs. Tierney received from her brother, Robert Eremian.
86. The Board recommends the issuance of subpoenas to Representative Tierney, Patrice Tierney, and Robert Eremian.

EXHIBIT 1



U.S. Department of Justice

Carmen M. Ortiz
United States Attorney
District of Massachusetts

Main Reception: (617) 748-████

John Joseph Moakley United States Courthouse
1 Courthouse Way
Suite 9200
Boston, Massachusetts 02210

September 20, 2010

Donald K. Stern, Esq
500 Boylston Street
Boston, MA 02116-3736

Re: United States v. Patrice Tierney

cf
10-10 315 WCY

Dear Mr. Stern:

This letter sets forth the Agreement between the United States Attorney for the District of Massachusetts ("the U.S. Attorney") and your client, Patrice Tierney ("Defendant"), in the above-referenced case. The Agreement is as follows:

1. Change of Plea

At the earliest practicable date but in no event later than October 8, 2010, Defendant shall waive indictment and plead guilty to the Information attached to this Agreement charging her with Aiding and Abetting the Filing of False Tax Returns in violation of Title 26, United States Code, Section 7206(2). Defendant expressly and unequivocally admits that she committed the crimes charged in Counts One through Four of the Information, did so knowingly and willfully, and is in fact guilty of those offenses.

2. Penalties

Defendant faces the following maximum penalties on each count of the Information:

- 3 years' imprisonment;
- a fine of \$100,000;
- 1 year of supervised release; and
- a \$100 mandatory special assessment.

3. Sentencing Guidelines

The sentence to be imposed upon Defendant is within the discretion of the District Court ("Court"), subject to the statutory maximum penalties set forth above, and the provisions of the Sentencing Reform Act, and the United States Sentencing Guidelines promulgated thereunder. The Sentencing Guidelines are advisory, not mandatory and, as a result, the Court may impose a sentence up to and including the statutory maximum term of imprisonment and statutory maximum fine. In imposing the sentence, the Court must consult and take into account the Sentencing Guidelines, along with the other factors set forth in 18 U.S.C. §3553(a).

The parties agree with respect to the application of the United States Sentencing Guidelines that in accordance with USSG §2T1.4(a)(2), Defendant's base offense level is 6.

The U.S. Attorney and Defendant agree that there is no basis for a departure from the Sentencing Guidelines or for a sentence outside the Guidelines under the factors set forth in 18 U.S.C. §3553(a). Accordingly, neither the U.S. Attorney nor Defendant will seek a departure from the Sentencing Guidelines or a sentence outside the Guidelines.

Based on Defendant's prompt acceptance of personal responsibility for the offenses of conviction in this case, and information known to the U.S. Attorney at this time, the U.S. Attorney agrees to recommend that the Court reduce by two levels Defendant's Adjusted Offense Level under USSG §3E1.1.

The U.S. Attorney specifically reserves the right not to recommend a reduction under USSG §3E1.1 if, at any time between Defendant's execution of this Agreement and sentencing Defendant:

- (a) Fails to admit a complete factual basis for the plea;
- (b) Fails to truthfully admit her conduct in the offenses of conviction;
- (c) Falsely denies, or frivolously contests, relevant conduct for which Defendant is accountable under USSG §1B1.3;
- (d) Fails to provide truthful information about her financial status;
- (e) Gives false or misleading testimony in any proceeding relating to the criminal conduct charged in this case and any relevant conduct for which Defendant is accountable under USSG §1B1.3;
- (f) Engages in acts which form a basis for finding that Defendant has obstructed or impeded the administration of justice under USSG §3C1.1;
- (g) Intentionally fails to appear in Court or violates any condition of release;

- (h) Commits a crime;
- (i) Transfers any asset protected under any provision of this Agreement; or
- (j) Attempts to withdraw her guilty plea.

Defendant expressly understands that she may not withdraw her plea of guilty if, for any of the reasons listed above, the U.S. Attorney does not recommend that she receive a reduction in Offense Level for acceptance of responsibility.

Defendant expressly understands that, in addition to declining to recommend an acceptance-of-responsibility adjustment, the U.S. Attorney may seek an upward adjustment pursuant to USSG §3C1.1 if Defendant obstructs justice after date of this Agreement.

4. Sentence Recommendation

The U.S. Attorney will recommend the following sentence before the Court:

- (a) two years probation with a period of 90 days home detention;
- (b) a \$2,500 fine; and
- (c) a mandatory special assessment in the amount of \$400.

Defendant agrees that she will provide to the U.S. Attorney expert reports, motions, memoranda of law and documentation of any kind on which she intends to rely at sentencing not later than twenty-one days before sentencing. Any basis for sentencing with respect to which all expert reports, motions, memoranda of law and documentation have not been provided to the U.S. Attorney at least twenty-one days before sentencing shall be deemed waived.

During the period of probation, Defendant must:

- (i) Cooperate with the Examination and Collection Divisions of the Internal Revenue Service;
- (ii) Provide to the Examination Division all financial information necessary to determine Robert Eremian's prior tax liabilities; and
- (iii) Provide to the Collection Division all financial information necessary to determine Robert Eremian's ability to pay.

5. Payment of Mandatory Special Assessment

Defendant agrees to pay the mandatory special assessment to the Clerk of the Court on or before the date of sentencing, unless Defendant establishes to the satisfaction of the Court that Defendant is financially unable to do so.

6. Waiver of Rights to Appeal and to Bring Collateral Challenge.

- (a) Defendant has conferred with her attorney and understands that she has the right to challenge both her conviction and her sentence on direct appeal. Defendant also understands that she may, in some circumstances, be able to argue that her conviction and/or sentence should be set aside or reduced in a collateral challenge, such as pursuant to a motion under 28 U.S.C. §2255 or 18 U.S.C. §3582(c).
- (b) Defendant waives any right she has to challenge her conviction on direct appeal or in collateral challenge.
- (c) Defendant agrees that she will not file a direct appeal nor collaterally challenge any probationary sentence of 24 months or less. This provision is binding even if the Court employs a Guidelines analysis different from that set forth in this Agreement.
- (d) This Agreement does not affect the rights of the United States as set forth in 18 U.S.C. §3742(b). Defendant expressly acknowledges that he understands the U.S. Attorney has retained all appeal rights.

7. Other Post-sentence Events

- (a) In the event that notwithstanding the waiver provision of Paragraph 6(c), Defendant appeals or collaterally challenges her sentence, the U.S. Attorney reserves the right to argue the correctness of the sentence imposed by the Court.
- (b) If notwithstanding the waiver provision of Paragraph 6(c), Defendant seeks re-sentencing, she agrees that she will not seek to be re-sentenced with the benefit of any change to the criminal history category that the Court calculated at the time of Defendant's original sentencing, except to the extent that she has been found actually factually innocent of a prior crime. Thus, for example, Defendant will not seek to be re-sentenced based on the set aside of a prior state-court conviction that occurs after sentencing unless she has been found actually factually innocent of that prior crime.

- (c) In the event of a re-sentencing following an appeal from or collateral challenge to Defendant's sentence, the U.S. Attorney reserves the right to seek a departure from the Sentencing Guidelines and a sentence outside the Sentencing Guidelines if, and to the extent, necessary to reinstate the sentence advocated by the U.S. Attorney at Defendant's initial sentencing pursuant to this Agreement.

8. Court Not Bound by Agreement

The sentencing recommendations made by the parties and their respective calculations under the Sentencing Guidelines are not binding upon the U.S. Probation Office or the Court. Within the maximum sentence which Defendant faces under the applicable law, the sentence to be imposed is within the sole discretion of the Court. Defendant's plea will be tendered pursuant to Fed. R. Crim. P. 11(c)(1)(B). Defendant may not withdraw her plea of guilty regardless of what sentence is imposed. Nor may Defendant withdraw her plea because the U.S. Probation Office or the Court declines to follow the Sentencing Guidelines calculations or recommendations of the parties. In the event that the Court declines to follow the Sentencing Guidelines calculations or recommendations of the U.S. Attorney, the U.S. Attorney reserves the right to defend the Court's calculations and sentence in any subsequent appeal or collateral challenge.

9. Civil Liability

By entering into this Agreement, the U.S. Attorney does not compromise any civil liability, including but not limited to any tax liability, which Defendant may have incurred or may incur as a result of her conduct and her plea of guilty to the charges specified in Paragraph 1 of this Agreement.

10. Rejection of Plea by Court

Should Defendant's guilty plea not be accepted by the Court for whatever reason, or later be withdrawn on motion of Defendant, this Agreement shall be null and void at the option of the U.S. Attorney.

11. Breach of Agreement

If the U.S. Attorney determines that Defendant has failed to comply with any provision of this Agreement, has violated any condition of her pretrial release, or has committed any crime following her execution of this Agreement, the U.S. Attorney may, at her sole option, be released from her commitments under this Agreement in their entirety by notifying Defendant, through counsel or otherwise, in writing. The U.S. Attorney may also pursue all remedies available to her under the law, irrespective of whether she elects to be released from her commitments under this Agreement. Further, the U.S. Attorney may pursue any and all charges which have been, or are to be, dismissed pursuant to this Agreement. Defendant recognizes that no such breach by her of an obligation under this Agreement shall give rise to grounds for withdrawal of her guilty plea.

Defendant understands that, should she breach any provision of this Agreement, the U.S. Attorney will have the right to use against Defendant before any grand jury, at any trial or hearing, or for sentencing purposes, any statements which may be made by Defendant, and any information, materials, documents or objects which may be provided by Defendant to the government subsequent to this Agreement, without any limitation. In this regard, Defendant hereby waives any defense to any charges which Defendant might otherwise have based upon any statute of limitations, the constitutional protection against pre-indictment delay, or the Speedy Trial Act.

12. Who Is Bound By Agreement

This Agreement is limited to the U.S. Attorney for the District of Massachusetts, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.

13. Complete Agreement

This letter contains the complete agreement between the parties. No promises, representations or agreements have been made other than those set forth in this letter and in the letter between the parties dated September 15, 2010. This Agreement supersedes prior understandings, if any, of the parties, whether written or oral with the sole exception of those contained in the letter dated September 15, 2010. This Agreement can be modified or supplemented only in a written memorandum signed by the parties or on the record in court.

If this letter accurately reflects the agreement between the U.S. Attorney and Defendant, please have Defendant sign the Acknowledgment of Agreement below. Please also sign below as Witness. Return the original of this letter to Assistant U.S. Attorney Fred M. Wyshak, Jr.

Very truly yours,

CARMEN M. ORTIZ
United States Attorney

By:


JAMES F. LANG,
Chief, Criminal Division
JOHN T. McNEIL
Deputy Chief, Criminal Division

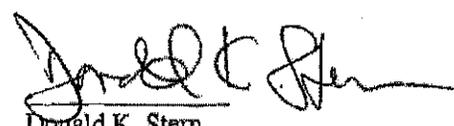
ACKNOWLEDGMENT OF PLEA AGREEMENT

I have read this letter in its entirety and discussed it with my attorney. I hereby acknowledge that it fully sets forth my agreement with the United States Attorney's Office for the District of Massachusetts. I further state that no additional promises or representations have been made to me by any official of the United States in connection with this matter. I understand the crimes to which I have agreed to plead guilty, the maximum penalties for those offenses and Sentencing Guideline penalties potentially applicable to them. I am satisfied with the legal representation provided to me by my attorney. We have had sufficient time to meet and discuss my case. We have discussed the charges against me, possible defenses I might have, the terms of this Plea Agreement and whether I should go to trial. I am entering into this Agreement freely, voluntarily, and knowingly because I am guilty of the offenses to which I am pleading guilty and I believe this Agreement is in my best interest.


Patrice Tierney
Defendant

Date: 10/4/10

I certify that Patrice Tierney has read this Agreement and that we have discussed its meaning. I believe she understands the Agreement and is entering into the Agreement freely, voluntarily and knowingly.


Donald K. Stern
Attorney for Defendant

Date: 10/4/10

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	Crim. No.
v.)	
)	Violations:
PATRICE TIERNEY)	18 U.S.C. § 7206(2)
)	
Defendant.)	

INFORMATION

THE UNITED STATES ATTORNEY charges that:

COUNTS ONE THROUGH FOUR
(Aiding and Abetting the Filing of False Tax Returns)

1. At all times relevant to this Information:

a. Unlicensed and unregulated sports wagering was illegal in all fifty states, and the use of any facility in interstate and foreign commerce to distribute the proceeds of illegal gambling, operating an illegal gambling business, and being a person engaged in the business of betting or wagering using interstate and foreign wire communication facilities to transmit wagers and wagering information violated the laws of the United States, including Title 18, United States Code, §§ 1952(a), 1955, and 1084(a).

b. Sports Offshore, also known as Sports Off Shore and SOS, was an International Business Corporation doing business in St. John's, Antigua. Sports Offshore was in the business of accepting wagers on sporting events. Sports Offshore was ostensibly licensed to conduct "interactive gaming and interactive wagering," however, that license was terminated in July 2009. In truth and fact, Sports Offshore's activities violated the laws of the United States, the laws of the Commonwealth of Massachusetts (Chapter 271, Sections 5, 5A, 16A, 17, and

17A of the General Laws of the Commonwealth of Massachusetts), and violated the terms of its Antiguan license. The illegal gambling business which operated as Sports Offshore had its roots in an illegal gambling business that was based in Lynnfield, Massachusetts. In approximately 1996, Robert Eremian and others known and unknown to the U.S. Attorney moved the business office from Lynnfield, Massachusetts to St. John's, Antigua; however, the U.S. based network of agents and customers remained intact.

c. Robert Eremian was the owner and principal of Sports Offshore. Eremian is a citizen of the United States who resided in the District of Massachusetts until approximately 1996 when he relocated the headquarters for his illegal gambling business to Antigua. Eremian has maintained a residence and other financial and family interests in Massachusetts and elsewhere in the United States while he has resided in Antigua. Eremian managed certain of his U.S. based financial interests and family obligations through bank accounts in Massachusetts funded by the proceeds of his illegal gambling activities.

d. Robert Eremian and others known and unknown to the U.S. Attorney, acted together to operate the business of Sports Off Shore for the purpose of, among other things: (1) to earn money through illegal gambling activities; (2) to launder the proceeds of illegal gambling activities; and (3) to commit various other crimes related to the operation of an illegal gambling business.

e. The defendant **PATRICE TIERNEY** is the sister of Robert Eremian. **TIERNEY** managed certain of Robert Eremian's U.S. based financial and family obligations through a Bank of America bank account in the District of Massachusetts that was funded by Robert Eremian with the proceeds of illegal gambling activities. **TIERNEY** maintained detailed

records of financial transactions involving this account which were used to prepare Robert Eremian's tax returns.

f. Benevolence Funding, Ltd. was an Antiguan business entity used by Sports Offshore to receive the proceeds of illegal gambling from customers in the United States who opted to pay their gambling debts by check or wire transfer. Agents of Sports Offshore operating in the United States also were instructed to make checks payable to Benevolence Funding, Ltd. for the purpose of transferring funds to Sports Offshore. Benevolence Funding, Ltd. was the source of certain funds deposited in the Bank of America account managed by the defendant **PATRICE TIERNEY**. From approximately 2003 through 2009, Robert Eremian caused in excess of \$7 million of proceeds of illegal gambling activity obtained by Sports Offshore to be deposited in the bank account at Bank of America managed by the defendant **PATRICE TIERNEY**.

g. In an effort to conceal the true nature of his income, Robert Eremian falsely represented himself as a consultant to Sports Offshore rather than the principal of Sports Offshore. The defendant **PATRICE TIERNEY** engaged in a conscious course of deliberate ignorance regarding the true nature of Eremian's income and Eremian's ownership of Sports Offshore. As a result, **TIERNEY** mischaracterized the deposits to the Bank of America bank account as "commissions" in documents submitted to Eremian's tax preparer.

2. From in or before 2005 and continuing through December 2009, both dates being approximate and inclusive, within the District of Massachusetts and elsewhere, the defendant herein.

PATRICE TIERNEY

did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the Internal Revenue Service, of U.S. Individual Income Tax Returns, Form 1040, of Robert Eremian for the calendar years set forth below. These returns were false and fraudulent as to a material matter, in that IRS Form Schedule C, prepared by Robert Eremian's tax preparer, concealed the fact that Robert Eremian was the owner of a business, that the source of the income reported was derived from illegal activity, and that certain deductions taken by Robert Eremian in his personal capacity were, therefore, inappropriate and should have been reported as business expenses on a corporate tax return for Sports Offshore.

Count One — 2005

Count Two — 2006

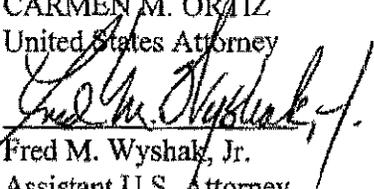
Count Three — 2007

Count Four — 2008

All in violation of Title 26, United States Code, Section 7206(2).

CARMEN M. ORTIZ
United States Attorney

By:


Fred M. Wyshak, Jr.
Assistant U.S. Attorney

Date:

October 4, 2010

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
)	
-VS-)	Criminal No. 10-10159-PBS
)	Pages 13-1 - 13-263
TODD LYONS and DANIEL EREMIAN,)	
)	
Defendants)	

JURY TRIAL - DAY THIRTEEN

BEFORE THE HONORABLE PATTI B. SARIS
UNITED STATES DISTRICT JUDGE

United States District Court
1 Courthouse Way, Courtroom 19
Boston, Massachusetts 02210
November 21, 2011, 9:03 a.m.

LEE A. MARZILLI and VALERIE A. O'HARA
OFFICIAL COURT REPORTERS
United States District Court
1 Courthouse Way, Room 7200
Boston, MA 02210
(617) 345-██████

1 A P P E A R A N C E S:

2 FRED M. WYSHAK, JR., ESQ. and ROBERT A. FISHER, ESQ.,
3 Assistant United States Attorneys, Office of the United States
4 Attorney, 1 Courthouse Way, Boston, Massachusetts, 02210,
5 for the Plaintiff.

6 PETER CHARLES HORSTMANN, ESQ., Partridge, Ankner &
7 Horstmann, LLP, 200 Berkeley Street, 16th Floor, Boston,
8 Massachusetts, 02116, for the Defendant, Todd Lyons.

9 MARC S. NURIK, ESQ., Law Offices of Marc S. Nurik,
10 One East Broward Boulevard, Suite 700, Fort Lauderdale,
11 Florida, 33301, for the Defendant, Daniel Eremian.

12 ALSO PRESENT:

13 DONALD K. STERN, ESQ., Cooley, LLP,
14 Prudential Tower, 46th Floor, 800 Boylston Street, Boston,
15 Massachusetts, 02199, for Patrice Tierney.
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13-3

Page 3

1 I N D E X

2 WITNESS DIRECT CROSS REDIRECT RECROSS

3 PATRICE TIERNEY

4 By Mr. Wyshak: 13-8
 By Mr. Nurik: 13-83
 5 By Mr. Horstmann: 13-124
 By Mr. Wyshak: 13-127
 6 By Mr. Nurik: 13-143
 By Mr. Horstmann: 13-146
 7 By Mr. Nurik: 13-146

8 JOHN OLSEN

9 By Mr. Fisher: 13-147
 10 By Mr. Horstmann: 13-196
 11 By Mr. Nurik: 13-223
 12 By Mr. Fisher: 13-239
 13 By Mr. Nurik: 13-245
 14 By Mr. Horstmann: 13-246

15 MICHAEL CRAFFEY

16 By Mr. Fisher: 13-250

17

18 EXHIBITS PAGE

19 Government:

20 43 13-168
 21 44 13-182
 22 47 13-183
 23 229 13-184
 24 320 13-226
 25 178 13-252

I N D E X (Continued)

1
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EXHIBITS

PAGE

Government:

236 13-253

237 13-254

Defendant:

317 13-118

317-A-for ID 13-118

315 13-123

318 13-125

319 13-127

317-A 13-128

1 PROCEEDINGS

2 THE CLERK: Court calls Criminal Action 10-10159,
3 United States v. Lyons, et al.

4 THE COURT: Thank you. You may be seated.

5 MR. WYSHAK: Good morning, your Honor.

6 THE COURT: We are still waiting on one juror, but I
7 was told that Mr. Wyshak wanted to see me?

8 MR. WYSHAK: Yes. Do you want to do this at sidebar?

9 THE COURT: It's fine with me. I don't know what it's
10 about.

11 SIDEBAR CONFERENCE:

12 MR. WYSHAK: These exhibits, 239 and 175 and 176, are
13 some of the bank records that we've stipulated to the
14 authenticity.

15 THE COURT: Okay.

16 MR. WYSHAK: I intend to show her some.

17 THE COURT: Okay.

18 MR. WYSHAK: Now, the entire exhibit will go in
19 through Special Agent Lemanski later in the day, but I just
20 want to make sure that we're not going to get slowed down by
21 objections. So I want to show some items --

22 THE COURT: Well, I don't know why you have to do
23 this -- why don't you show it to him.

24 MR. WYSHAK: I did.

25 MR. NURIK: Our attitude is, it's an issue of the rule

1 of completeness. If they're going to put anything into
2 evidence, they should put it all into evidence instead of just
3 putting in bits and pieces now.

4 THE COURT: Well, you can put in the rest, or we could
5 do it -- take care of it, but I don't want it slowed down. I
6 mean, if it's authentic and it's a business record, I have no
7 problem with either the whole thing going in with little yellow
8 stickies or part of it.

9 By the way, I got your objections -- we'll work
10 through those -- to the jury instructions. Thank you. That
11 was very helpful. Actually, it's manageable, which is good.
12 It's a tough charge.

13 MR. WYSHAK: And I filed a brief yesterday.

14 THE COURT: Two briefs, three.

15 MR. FISHER: I filed one on Friday for Exhibit 61.

16 THE COURT: Yes, you're 61. You were Antigua, and
17 then you're about their expert.

18 MR. WYSHAK: Their expert, right.

19 THE COURT: I understand that. I'm glad you had such
20 a nice weekend.

21 (Laughter.)

22 THE COURT: All right, so I think we shouldn't be
23 coming to sidebar because it doesn't --

24 MR. NURIK: No, I understand.

25 THE COURT: It feels wrong. Is the last juror here?

1 THE CLERK: I'm going to go check right now.

2 (End of sidebar conference.)

3 THE COURT: Before they walk in, should I introduce
4 Mr. Stern? He's going to sit right next to the witness.

5 MR. WYSHAK: It's fine with me, your Honor.

6 MR. NURIK: No objection.

7 MR. STERN: Your Honor, I wasn't going to sit there.
8 I was just going to sit right here.

9 THE COURT: Wherever you want.

10 MR. STERN: Thank you, your Honor. I'm comfortable
11 right here.

12 THE COURT: Do you want to be introduced?

13 MR. STERN: I may voice an objection at some point, so
14 it might make more sense to introduce.

15 THE COURT: Yes, yes, yes.

16 (Jury enters the courtroom.)

17 THE COURT: Good morning to everybody.

18 THE JURY: Good morning.

19 THE COURT: Why don't you be seated. Did anyone see
20 anything in the press, do any research, or talk to anyone about
21 this case?

22 THE JURY: No.

23 THE COURT: No? All right, I find the jury has
24 complied. And Maryellen, who's my courtroom deputy, is a woman
25 of very many skills, and so she personally got down and

1 spritized the chair with oil, so I'm hoping it is now good for
2 you all.

3 So, all right, we're going to call the government's
4 next witness, please.

5 MR. WYSHAK: The government calls Patrice Tierney.

6 PATRICE TIERNEY

7 having been first duly sworn, was examined and testified as
8 follows:

9 THE CLERK: Could you please state and spell your name
10 for the record.

11 THE WITNESS: Patrice Tierney, P-a-t-r-i-c-e
12 T-i-e-r-n-e-y.

13 THE COURT: Thank you. I just want to also introduce
14 you to -- this gentleman sitting over there is Don Stern, who
15 is her attorney, and if he pops up for something, I just wanted
16 you to know who he was. All right, thank you.

17 DIRECT EXAMINATION BY MR. WYSHAK:

18 Q. Good morning, Mrs. Tierney.

19 A. Good morning.

20 Q. Can you tell us how old you are, ma'am.

21 A. I'm sixty.

22 Q. And tell us about your educational background.

23 A. I went to high school, and I went to massage therapy
24 school.

25 Q. Okay. And where did you go to high school?

1 A. Masconomet in Topsfield.

2 Q. All right. And how about your employment history?

3 A. My employment history, I worked for attorneys. I worked
4 for a travel incentive agency. Then I got married, and I'm now
5 employed at a hotel in Salem.

6 Q. Okay, in what capacity?

7 A. I run banquets and weddings and administrative assistant
8 to the general manager.

9 Q. And at one point you had your own business?

10 A. Yes, I did.

11 Q. And what is that called?

12 A. It was called Tierney Designs.

13 Q. And what kind of business was that?

14 A. It was a -- I made jewelry of my own design, and I gave
15 that up when my mom became ill.

16 Q. Okay. So you no longer have that business?

17 A. No, I do not.

18 Q. And you're married, ma'am?

19 A. Yes.

20 Q. And you're married to John Tierney; is that correct?

21 A. Yes.

22 Q. And he's a Congressman?

23 A. Yes.

24 Q. And a lawyer?

25 A. Yes.

1 Q. And prior to that, you were previously married; is that
2 correct?

3 A. Yes.

4 Q. And that was to John Chew?

5 A. Allen Chew.

6 Q. Allen Chew, okay. And your son, you have a son by that
7 marriage, John Chew?

8 A. Yes.

9 Q. And a daughter?

10 A. Carlin and another son Justin.

11 Q. Okay. And your maiden name is Eremian; is that fair to
12 say?

13 A. Yes.

14 Q. And Robert Eremian is your brother?

15 A. Yes.

16 Q. And Daniel Eremian who's here in court is also your
17 brother; is that correct?

18 A. Yes, yes.

19 Q. I want to show you what's been marked Government
20 Exhibit 174. Take a look at that.

21 (Witness examining document.)

22 Q. Have you seen a copy of that order?

23 A. Yes, I have.

24 Q. All right. And do you understand what it provides?

25 A. Yes, I do.

1 Q. Okay. And can you tell us what you believe it provides.

2 A. Well, I believe this gives me immunity and that I will not
3 be prosecuted for anything I say in this courtroom.

4 Q. Nothing you say can be used against you?

5 A. Right.

6 Q. Is that fair to say?

7 A. Yes.

8 Q. You have been prosecuted, however; is that fair to say?

9 A. Yes.

10 Q. Okay, and in connection with this case?

11 A. Yes.

12 Q. And you pled guilty?

13 A. Yes.

14 Q. And what did you plead guilty to?

15 A. I pled guilty to aiding and abetting and willful blindness
16 in filing false taxes information to my brother.

17 Q. Aiding and abetting your brother --

18 MR. NURIK: Can we just have a clarification which
19 brother.

20 THE WITNESS: Oh, I'm sorry. My brother Robert.

21 Q. You aided and abetted him in filing false tax returns; is
22 that correct?

23 A. Yes.

24 Q. His personal tax returns?

25 A. Yes.

1 Q. And that was related to his operation of Sports Off Shore,
2 his business in Antigua?

3 A. It was his personal taxes.

4 Q. Okay. And what were you sentenced to?

5 A. I was sentenced to 30 months in the house of detention and
6 five years -- five months, I'm sorry, home confinement, two
7 years probation.

8 Q. Thirty days, right?

9 A. Thirty days.

10 Q. Thirty days incarceration and five months home detention?

11 A. Yes.

12 Q. With a period of probation to follow?

13 A. Uh-huh, yes.

14 Q. And you're currently still on probation, correct?

15 A. Yes.

16 Q. All right. Now, just to drill down a little bit, you said
17 that you pled guilty that you were willfully blind; is that
18 correct?

19 A. Yes.

20 Q. And can you tell the jury what you were willfully blind
21 about?

22 A. My understanding is, I was willfully blind to not asking
23 enough questions as to information I was putting into my
24 bookkeeping system.

25 Q. Okay, you were willfully blind regarding the legality of

1 your brother's business, Robert Eremian's business?

2 A. No.

3 Q. Okay. Well, you recorded or you reported to his tax
4 preparer that his income was commissions?

5 A. Yes.

6 Q. Is that correct?

7 A. Yes.

8 Q. And what did you understand those commissions to be from?

9 A. From his consulting SOS.

10 Q. And that was not true, correct?

11 A. It's my belief that it was true, that he was a consultant.

12 Q. Well, what about that were you willfully blind about?

13 A. Could you repeat that, please.

14 Q. Okay, I withdraw it and rephrase it. At the end of the
15 day --

16 A. Yes.

17 Q. -- you admit that he wasn't a consultant to Sports Off
18 Shore; isn't that true?

19 A. I didn't admit that he was not a consultant.

20 Q. As you sit here today on this witness stand, do you admit
21 that he was not a consultant to Sports Off Shore?

22 A. He was a consultant to Sports Off Shore.

23 Q. So you don't -- was he the owner of Sports Off Shore?

24 A. I don't know who the owner was. He was a consultant.

25 Q. You don't know who the owner is?

1 A. No, I don't.

2 Q. Okay, you understand you're testifying here under oath,
3 ma'am, correct?

4 A. Yes, uh-huh.

5 Q. And that the immunity order does not protect you if you
6 lie; you understand that?

7 A. Yes.

8 Q. You haven't met with the government in this case; is that
9 correct?

10 A. Yes.

11 Q. You've refused to meet with the government attorneys? You
12 and I have never spoken before?

13 A. Not except for my trial.

14 Q. Okay, but we've never --

15 A. No.

16 Q. Until today, we've never had a dialogue?

17 A. No.

18 Q. Okay. So when you stood up before a judge like the Judge
19 here in this courtroom -- do you remember that day?

20 A. With Judge Young?

21 Q. Yes, the judge that you -- Judge Young?

22 A. Yes.

23 Q. Okay. You remember you raised your right hand?

24 A. Yes.

25 Q. Okay. And you swore to tell the truth on that date, did

1 you not?

2 A. I did.

3 Q. Okay. And you admitted that you were willfully blind in
4 not ascertaining the true facts about some of the information
5 that appeared on your brother's tax returns, correct? Isn't
6 that what you pled guilty to?

7 A. I'm sorry, could you repeat that. I'm a little nervous.

8 THE COURT: You know what, there's a -- do you have a
9 glass of water there?

10 THE WITNESS: Yes, I do.

11 THE COURT: Sit back, take your time. All right, why
12 don't you ask the question again.

13 Q. When you pled guilty before Judge Young, correct --

14 A. Yes.

15 Q. -- you admitted that you were willfully blind regarding
16 the truth of some of the information that was on your brother
17 Robert Eremian's tax returns, correct?

18 A. Correct.

19 Q. And that was for multiple tax years, 2005 through 2009?

20 A. Yes.

21 Q. For four years?

22 A. Yes.

23 Q. Okay. So wasn't one of the things that you admitted --
24 well, withdrawn. What do you think that you were willfully
25 blind about?

1 A. Questioning the amounts of the commissions that I was
2 recording. I should have asked more questions as to the
3 amounts.

4 Q. Okay. Well, you described the amount of money that was
5 reported on his income taxes as commissions, correct? And is
6 it your testimony that you believe that those amounts were
7 incorrect?

8 A. I did not believe they were incorrect. I trusted they
9 were correct as commissions.

10 Q. You didn't question the amount of money; is that your
11 testimony?

12 A. I didn't question the money. I --

13 Q. And you didn't question the fact that he reported himself
14 as a consultant, a computer specialist, correct?

15 A. Correct.

16 Q. And you didn't question that either?

17 A. I did not, correct.

18 Q. Okay. And you understood that his tax returns did not
19 reflect that his income was from gambling revenue, correct?

20 A. Correct.

21 Q. And you admitted that you engaged in a conscious course of
22 deliberate ignorance?

23 A. Correct.

24 Q. Is that true?

25 A. Correct.

1 Q. Can you explain to the jury what you understand that to
2 mean.

3 A. That I was not paying attention.

4 Q. And you should have?

5 A. Yes.

6 Q. And that was because there are these things called
7 "red flags," right?

8 A. Yes.

9 Q. Things in life that sort of -- it's like a stoplight?

10 A. Yes.

11 Q. You know when you see that stoplight, you know to stop,
12 correct? And you ignored those kind of signals?

13 A. Yes.

14 Q. Correct? Do you remember being stopped by Immigration in
15 December of 2007, Customs?

16 A. Where?

17 Q. Have you been stopped more than once going through
18 Customs?

19 A. Actually, I have.

20 Q. Okay. This was after your trip to Costa Rica?

21 A. Yes.

22 Q. You recall that event?

23 A. With my husband, yes.

24 Q. Yes, your husband was with you?

25 A. It was a business trip, yes.

1 Q. Okay. And you were pulled out of line by Customs,
2 correct?

3 A. Yes.

4 Q. And was that one of those red flags that you missed? It
5 should have put you on notice that there was something amiss?

6 A. No.

7 Q. Well, why did you think that you were stopped by Customs?

8 A. I had learned from my -- even my nephew, he had been
9 pulled. There had been people pulled aside. They pick them
10 out of -- they pick them randomly.

11 Q. Is that what you believed to be the reason that you were
12 stopped, that it was a random stop?

13 A. I did, I did, I did.

14 Q. Isn't it true that your husband had an argument with the
15 Customs officials and demanded to know if the reason that you
16 were pulled out of line was because your maiden name was
17 Eremian? Do you recall that?

18 MR. HORSTMANN: Objection, your Honor.

19 THE COURT: Overruled.

20 A. No. I'm sorry.

21 Q. You don't recall that?

22 A. I do not.

23 Q. So you don't believe that you were stopped at Customs
24 because your brother at that time was under investigation?

25 A. I do not.

1 Q. Your brother Robert --

2 MR. NURIK: Objection.

3 THE COURT: Sustained at this point. She doesn't
4 know.

5 Q. All right, I'd like to show you some bank records. Were
6 you a joint accountholder on a Bank of America account with
7 your brother Robert Eremian?

8 A. Yes, I was.

9 Q. And how many accounts were you jointly on with your
10 brother Robert Eremian?

11 A. I was jointly on his account, just that one.

12 Q. Just that one?

13 A. Uh-huh, yes.

14 Q. Was there an account that was used to run the Lynnfield
15 home?

16 A. Yes.

17 Q. And there was a nanny's name on that account?

18 A. Yes.

19 Q. All right. And your name was on that account?

20 A. Yes.

21 Q. And Robert's name was on that account?

22 A. I wasn't sure if his was on that account. I believe I
23 opened it for the household. I believe I called it "household
24 account" and that Isabella and myself were on the account.

25 It's possible. I mean, they were linked through the bank, but

1 I don't recall if his name was on the statements.

2 Q. And didn't you have an account for your mother in Florida?

3 A. Yes, I did.

4 Q. Okay. And isn't it true that your brother's name was also
5 on that account?

6 A. No.

7 Q. Whose name was on that account?

8 A. My mother's and mine.

9 Q. Did you have an account at Sovereign Bank?

10 A. No, I did not.

11 Q. Did your brother Robert have an account at Sovereign Bank?

12 A. I think initially when he first asked me to take over for
13 the family, I opened one at Sovereign Bank with very little
14 money in it, and then I transferred it to -- I don't even think
15 it was Bank of America at the time. I think it was some other
16 bank.

17 MR. WYSHAK: Your Honor, at this time I'd like to put
18 some documents from Government Exhibit 175 up on the screen.

19 THE COURT: All right.

20 MR. WYSHAK: Can you put the first item up. Let's go
21 to the first item as opposed to the summary.

22 Q. All right, do you see that this account ends, if you look
23 at the deposit slip at the bottom, 0933?

24 A. Yes.

25 Q. And at the time it was a Fleet Bank?

1 A. Yes.

2 Q. And Fleet got purchased by Bank of America ultimately,
3 correct?

4 A. I believe so.

5 Q. And is this the account that you were jointly on with your
6 brother Robert?

7 A. No, because that was a -- no. On the Fleet account?

8 Q. Well, on the account that ultimately was -- at some time
9 Fleet gets bought by Bank of America, correct?

10 A. I agree, and we opened a fresh account when I started
11 doing his personal bookkeeping. This deposit slip is not
12 familiar to me. I don't even remember the -- I don't recognize
13 the address.

14 Q. Okay, can we put up -- do you see that deposit slip?

15 A. I do.

16 Q. Is that your handwriting?

17 A. No. That's my brother's handwriting.

18 Q. Okay, now that says Bank of America, correct?

19 A. It does.

20 Q. All right, and that's that same account number, 0933?

21 A. Yes.

22 Q. And at this period of time, you agree that you were
23 managing this account for him, correct?

24 A. Yes.

25 Q. All right, when did you begin managing the account for

1 him?

2 A. 2003, maybe end of 2002.

3 Q. Okay. And how did that come about?

4 A. It came about when he, uhm, he needed someone who he could
5 trust to pay his bills, to get them to the post office and pay
6 them timely. His children were not responsible enough to go to
7 the post office and get bills. His wife was in rehabilitation
8 in Florida at the time. He knew he would be traveling back and
9 forth with the permission from Judge Tauro to Antigua, Florida
10 to see his wife, and be back and forth to see his children,
11 whoever remained in Lynnfield. So there was not one place he
12 could get his mail, so I was in charge of paying his personal
13 bills and the household bills.

14 Q. Okay. And where did those bills go to?

15 A. His personal bills went to a post office box in Beverly
16 because that's what his probation residence was, Beverly.

17 Q. Okay, but he was not residing in the United States at the
18 time?

19 A. At the time of probation?

20 Q. Yes. In 2003 when you began managing this account --

21 A. Yes.

22 Q. -- was he residing in the United States?

23 A. Part-time.

24 Q. Okay. Well, what was his residence?

25 A. His residence was -- he was required to stay with my mom

1 in Lynnfield -- I mean, in, I'm sorry, Beverly during his
2 probation time, and he was traveling back and forth to Antigua
3 for business and Florida to check on his wife and one of the
4 children that moved down there.

5 Q. Okay, so when you say he was required to stay with his
6 mom, where was that?

7 A. Where was it?

8 Q. Yes.

9 A. It was at Beverly Commons in Beverly. It's a condo.

10 Q. Okay. He wasn't living in the house in Lynnfield?

11 A. If one of his children were here, he might go over there,
12 but he was residing with my mom.

13 Q. Okay. And he had his mail delivered to a post office box;
14 is that correct?

15 A. The family bills went to a post office box so I could keep
16 them separate. His own --

17 Q. Did the checking account information go to his post office
18 box?

19 A. Yes.

20 Q. And who would go to the post office box to pick the mail
21 up?

22 A. I would.

23 Q. I'm going to ask you a question about, if you look at this
24 particular check, which is for \$20,000, do you see that
25 notation in the memo section that says "B/O Benevolence"?

1 A. I do now, yes.

2 Q. Okay. Are you familiar with that entity, Benevolence?

3 A. No.

4 Q. No?

5 A. I was first asked about it by my attorney when --

6 THE COURT: You don't need to tell us what your
7 attorney --

8 THE WITNESS: Oh, I'm sorry.

9 Q. Well, in fact you deposited checks that came from
10 Benevolence Funding, didn't you?

11 A. I don't recall the checks being called from the
12 Benevolence fund.

13 Q. And you in fact drafted a check to Benevolence Funding,
14 didn't you?

15 A. I don't recall.

16 MR. WYSHAK: Can we put 249 up on the screen.

17 Q. Do you see that?

18 A. I do.

19 Q. Okay, so this is a bank check, correct?

20 A. Yes.

21 Q. And do you see at the top it's got your name on it?

22 A. I do see that.

23 Q. And it's dated August 9 of 2004, correct?

24 A. Correct.

25 Q. And that's a check for \$250,000, correct?

1 A. Correct.

2 Q. Made payable to Benevolence Funding?

3 A. Correct.

4 Q. So you went to the bank and bought that check, right?

5 A. I don't know that I bought it. Maybe there were funds in
6 the account that --

7 Q. Well, you --

8 A. It's not a bank check, obviously.

9 Q. You purchased this check -- you used funds from the 0933
10 account, correct --

11 A. Correct.

12 Q. -- which when it was still Fleet? Now do you acknowledge
13 that you were managing the account when it was at Fleet Bank?

14 A. Yes.

15 Q. Okay. And you took \$250,000 from the account and bought
16 this check, correct?

17 A. Yes.

18 Q. All right. And you're the one who made it payable to
19 Benevolence Funding, correct?

20 A. Well, the bank did, but I must have given them the order.

21 Q. All right, you gave the bank instructions?

22 A. I don't recall this check, but, yes.

23 Q. Okay. Well, what did you understand Benevolence Funding
24 to be?

25 A. I didn't understand it to be anything. I was sending a

1 check to my brother.

2 Q. Okay, where did you get the name Benevolence Funding from?

3 A. He must have given it to me. It wasn't a frequent name.

4 Q. Did you have any understanding at all what his connection
5 to Benevolence Funding was?

6 A. I did not.

7 Q. What did you think it was at the time?

8 A. I didn't think much of it.

9 Q. Well, your brother says, "Send me \$250,000." That's a lot
10 of money, right?

11 A. Yes.

12 Q. And make the check payable not to Robert Eremian, correct,
13 but to this entity Benevolence Funding?

14 A. Right.

15 Q. Correct? And you don't question that?

16 A. No.

17 Q. It sounds like some kind of charitable organization?

18 A. It does.

19 Q. Isn't this one of those red flags that you were talking
20 about when you pled guilty, Mrs. Tierney?

21 A. It's possible a red flag. I should have asked what
22 Benevolence fund was.

23 Q. Right, because you knew that your brother had a criminal
24 record, correct?

25 A. Correct.

1 Q. And that he was running an illegal gambling business in
2 Massachusetts before he went to Antigua, correct?

3 A. Correct.

4 Q. And you knew that he was running a gambling business in
5 Antigua, correct?

6 A. Correct.

7 Q. And he wants money now, \$250,000, and he doesn't want the
8 check made out to him, correct?

9 A. Correct.

10 Q. And you don't question that?

11 A. No.

12 Q. Is it because you didn't want to know?

13 A. No, it's not that I didn't want to know. I just wrote the
14 checks that he asked me to write --

15 Q. Okay.

16 A. -- whether it be for charity or school or anything.

17 Q. Is that what you thought it was, for charity, \$250,000?

18 A. Well, Benevolence is not something I would expect my
19 brother to use for a name of something. I didn't know what it
20 was.

21 Q. You didn't think he was donating \$250,000 to charity, did
22 you?

23 A. Uhm, it's possible.

24 Q. It's possible?

25 A. Yes.

1 Q. That's your testimony?

2 A. Yes. He's made large donations to a lot of charities.

3 Q. \$250,000 at a time?

4 A. Uhm, \$100,000 at a time.

5 Q. And what charity did he donate \$100,000 to at one time?

6 A. I believe at one time there was the tsunami fund. I don't
7 recall the name of the fund, and at another time to the Bill
8 Clinton Foundation for -- I believe that was the earthquake --
9 no, the hurricane victims.

10 Q. Did you draft those checks?

11 A. I did.

12 Q. Out of what account?

13 A. Out of my -- out of his personal account.

14 Q. Out of this 0933 account?

15 A. Yes. There were two checks, I believe, for \$100,000 each
16 to the Clinton Foundation.

17 Q. Can we put up -- is that your handwriting on that deposit
18 slip?

19 A. Yes.

20 Q. Okay. So now this is August of 2003, correct?

21 A. Yes.

22 Q. And this is a \$100,000 check, and it's clear that this is
23 coming from Antigua?

24 A. Yes.

25 Q. Correct? And this is some of the income that you would

1 report to the tax preparer that was commission, correct?

2 A. It was either commission or money to pay taxes. Quarterly
3 I would get an amount from the tax attorney that --

4 Q. Try to answer the question.

5 A. I'm sorry.

6 MR. NURIK: Objection. She's answering the question.

7 THE COURT: What's the question again?

8 Q. The money that you were receiving from your brother from
9 Antigua --

10 A. Yes.

11 Q. -- you were reporting as income, correct?

12 A. Yes, correct.

13 Q. To his tax preparer?

14 A. Correct.

15 Q. Correct? And you described this income to his tax
16 preparer as commissions, correct?

17 A. Yes.

18 Q. And that was related to Sports Off Shore, correct?

19 A. His consulting.

20 Q. His consulting for Sports Off Shore?

21 A. Yes.

22 Q. So you knew that this money was related to the gambling
23 business in Antigua, correct?

24 A. For his consulting the gambling business, yes.

25 Q. Okay, do you still believe he's a consultant -- as you sit

1 here today on this witness stand, are you telling this jury
2 under oath that your brother is a consultant to Sports Off
3 Shore?

4 A. Yes.

5 Q. Okay. How many times have you been to Antigua?

6 A. Maybe five.

7 Q. Five? Okay. And have you stayed at the place where the
8 business is operated?

9 A. Yes.

10 Q. All right. And it's clear when you're there what's going
11 on, isn't it?

12 A. No.

13 Q. No? Okay. When you walk in the front door to this
14 building, isn't there a glass wall, behind which are numerous
15 people and computers and television monitors?

16 A. No.

17 Q. No?

18 A. No.

19 Q. What do you think you see when you walk in this building?

20 A. Well, number one, there's no front door. You walk in
21 through the garage and you enter a large enclosed patio, which
22 you can go off either -- there's no doors on it. And there's a
23 room to the front, a kitchen in the back, and a bedroom above
24 the garage and another bedroom in the back.

25 Q. Okay, did you ever see people working there at computer

1 monitors?

2 A. I saw people working at computers.

3 Q. Describe where in the building you think that was.

4 A. That was between the patio where we would socialize and
5 the kitchen.

6 Q. Okay. Is that a room?

7 A. Is it a room?

8 Q. Yeah.

9 A. Yes.

10 Q. Okay. Isn't that the main room when you enter the
11 building?

12 A. No. The main room is an outdoor room. It's an outdoor
13 reception area where we sat.

14 Q. That's a room, an outdoor patio?

15 A. Yes. It had furniture and tables and chairs and --

16 Q. Did it have a roof?

17 A. Yes.

18 Q. At some point do you enter a real building with walls and
19 ceilings off that patio?

20 A. Yes. I considered this a real building, an enclosed patio
21 in someone's home.

22 Q. Mrs. Tierney, can you please describe the area where you
23 saw people on computer monitors.

24 A. It was a room with people with computers and televisions.

25 Q. And how many people? How many people have you seen there

1 on the occasions you've been?

2 A. Maybe four to six.

3 Q. Four to six?

4 A. Uh-huh, yes.

5 Q. No more than that? How many computers did you see?

6 A. They each had a computer.

7 Q. Were there other computer stations that weren't occupied?

8 A. A few.

9 Q. Were there TV monitors?

10 A. There were TVs.

11 Q. Is this where Sports Off Shore, the business, was
12 operating from?

13 A. Excuse me?

14 Q. Is this where your brother Robert Eremian's business was
15 operating from?

16 A. That's -- I believe so.

17 Q. Okay. Was he in charge?

18 A. I never saw him in charge.

19 Q. What did you think his role was?

20 A. He helped with the computers and the software.

21 Q. The computers? Did he reside in the home?

22 A. Yes.

23 Q. In that building?

24 A. Yes, he did.

25 Q. Okay, so that was his personal residence?

1 A. Yes.

2 Q. Okay. And the business is operated out of that personal
3 residence, correct?

4 A. Correct.

5 Q. But he's not the owner of the business according to you?

6 A. I never knew who the owner of the business was.

7 Q. Well, who did you think it was?

8 A. I didn't think too much about it.

9 Q. Did he ever introduce you to his boss?

10 A. No.

11 Q. Did you ever see anybody who was giving him instructions
12 on what to do?

13 A. No.

14 Q. Wouldn't that be a sign that he was not the owner, if
15 somebody else was telling him what to do?

16 A. I thought a consultant could be self-employed. He's -- he
17 didn't have a boss.

18 Q. All right, well, let's talk about that. He's
19 self-employed as a consultant to a business that he runs out of
20 his private home, correct?

21 A. That is in his private home.

22 Q. That is in his private home, but he's not --

23 A. I didn't say that he runs it. You said that.

24 Q. Okay. Well, he's self-employed as a consultant to a
25 business which is operated out of his private home?

1 A. Correct.

2 Q. And you didn't think he owned that business?

3 A. No.

4 Q. But you don't know who did?

5 A. No.

6 Q. And this is your brother, right?

7 A. Yes.

8 Q. Somebody you've known all your life?

9 A. Yes.

10 Q. And you never talked to him about, "Isn't this your
11 business?"

12 A. He said that he owns the software for the business, which
13 I believed. He's very good with software.

14 Q. Did you ever have a conversation with your brother Robert
15 about who owned the business?

16 A. I believe I did at one time ask, and he said, "I don't own
17 the business."

18 Q. Did he tell you who did?

19 A. No.

20 Q. Was there any indication that somebody else owned the
21 business that you could observe?

22 A. No.

23 Q. There's a lot of money going into this 0933 account,
24 correct?

25 A. Yes.

1 Q. Would it surprise you that over the years that you managed
2 the account, there's almost \$5 million deposited in this
3 account?

4 A. Would it surprise me, is that what you said?

5 Q. Yes, \$5 million?

6 A. That's about correct probably.

7 Q. Okay. And is it your testimony that you believe that he
8 earned that money as a software consultant?

9 A. Yes.

10 Q. It's a lot of money for a software consultant, isn't it?

11 A. Yes, it is.

12 Q. All right. I'm going to show you --

13 MR. WYSHAK: Can we put the monitor on, your Honor,
14 the ELMO.

15 Q. Can you see that check, Ms. Tierney?

16 A. Yes.

17 Q. Is that your writing on the face of the check?

18 A. No, it's not.

19 Q. Is that your endorsement on the back?

20 A. It looks like my brother's signature.

21 Q. You think that's your brother's endorsement?

22 A. Well, similar.

23 Q. When these checks would get deposited in the bank --

24 A. Yes.

25 Q. -- how did that occur?

1 A. I'd make a deposit slip out and bring them to the bank.

2 Q. Okay, so how would you get the check?

3 A. It would be sent in an envelope to my house.

4 Q. To your home?

5 A. Yes.

6 Q. Not to the post office box?

7 A. No, because it had to be signed for.

8 Q. All right, so he would send you a check in the mail from
9 Antigua?

10 A. Yes.

11 Q. Already endorsed like this?

12 A. No, not always.

13 Q. Okay, sometimes you'd endorse it?

14 A. Uh-huh.

15 THE COURT: Is that "yes"?

16 THE WITNESS: Yes. I'm sorry.

17 Q. And you would take the check, fill out a deposit slip, and
18 deposit it in the account?

19 A. Yes.

20 Q. And this is another one of those checks with that
21 Benevolence in the memo section, correct?

22 A. I see it now, yes.

23 MR. WYSHAK: Can we put up the summary exhibit.

24 Q. Okay, so this is a summary of the deposits that went into
25 this account that came from Antigua, and I assume that you --

1 if you take a look at those transactions, you don't dispute --
2 if we can go to the second page -- that these were funds that
3 were going into the account that you managed?

4 A. I don't recognize all the dates, but it appears that they
5 all went into that account.

6 Q. Okay. And at some point you can see that the checks from
7 Benevolence Funding seem to stop around 2006?

8 A. Yes.

9 Q. And Mr. Eremian, Robert Eremian, starts using wire
10 transfers?

11 A. Correct.

12 Q. Right? And they're coming from Deutsche Bank?

13 A. I believe they were several banks.

14 Q. Okay. Do you know why in 2006 he stopped sending you
15 checks to be deposited and started transferring money through
16 Europe?

17 A. I have no idea.

18 Q. Did you ever discuss that with him?

19 A. No.

20 Q. Did he ever tell you, "I'm not going to send you these
21 checks anymore"?

22 A. No. I thought he was making it easier for me just wiring
23 it in.

24 Q. Your husband had accompanied you to Antigua?

25 A. Pardon me?

1 Q. Your husband had accompanied you to Antigua?

2 A. Yes.

3 Q. How many times?

4 A. Twice.

5 Q. And he was present and observed the operation at SOS?

6 MR. NURIK: Your Honor, I object as to relevancy of
7 this.

8 THE COURT: Overruled.

9 Q. Yes?

10 A. He dined there.

11 Q. Okay, can you try to answer the question. I asked you,
12 was he present --

13 THE COURT: So based only on what you saw.

14 A. What I saw, he sat down and we had dinner. I couldn't see
15 through a wall.

16 Q. Isn't it a glass wall?

17 A. I don't think it's a glass wall. I haven't been there in
18 many years. Maybe it is a glass wall now. I'm sorry, I don't
19 recall.

20 Q. Would it refresh your recollection if I told you that
21 numerous witnesses have testified it's a glass wall?

22 A. If that's their observance. It just wasn't my focus. I'm
23 sorry.

24 Q. Visible from the dining area, correct?

25 A. (The witness nodded affirmatively.)

1 Q. You have to answer orally.

2 A. Yes. I'm sorry.

3 Q. It was visible from the dining area?

4 A. The wall, yes.

5 Q. The glass wall?

6 A. I'm saying I don't recall it being a glass wall. I'm
7 sorry.

8 Q. Is it your testimony that your husband did not observe
9 people operating computers?

10 MR. NURIK: Objection as to relevance.

11 THE COURT: Sustained. Sustained at this point.

12 Q. Did your husband when he was with you in Antigua observe
13 people working for SOS?

14 MR. NURIK: Objection.

15 THE COURT: Sustained.

16 Q. Were you present with him at a location where you observed
17 people working for SOS?

18 MR. NURIK: Objection. It's the same thing.

19 THE COURT: Overruled.

20 A. Could you rephrase that, please.

21 Q. Sure. You told us you and he dined there?

22 A. Yes.

23 Q. At the time you dined at your brother's house, were there
24 people there working for SOS?

25 A. Not that I observed.

1 Q. Not that you observed.

2 A. I was dining. There was a wall. I was dining.

3 Q. While you were there, did you ever observe people working
4 for SOS?

5 A. I observed people sitting at computers.

6 Q. Okay. Was your husband with you when you made that
7 observation?

8 A. No.

9 Q. In terms of proximity to the dining area, where were those
10 people sitting at computers?

11 A. Probably the distance from me to you.

12 Q. Okay, it's not like it's --

13 A. Maybe further.

14 Q. So it's fairly close proximity, correct?

15 A. I guess it was -- it didn't seem close to me.

16 Q. Okay. And what time do you dine in Antigua?

17 A. We dine at a very early hour because we all go to bed
18 early, probably 6:00, 6:30.

19 Q. And those are prime gambling hours, aren't they?

20 A. I don't know. I don't gamble.

21 Q. You don't know. You do know, Ms. Tierney.

22 A. I don't.

23 MR. NURIK: Objection.

24 THE COURT: Sustained, sustained. I strike the --

25 Q. Your brother has been involved in illegal gambling

1 business for how long?

2 A. I don't know how many years. I'm sorry.

3 Q. Take a guess.

4 MR. NURIK: Objection. Can we just have a
5 clarification, brother.

6 Q. Robert Eremian, correct?

7 A. I don't know how many years. I can't give you the number
8 of years. I'm sorry.

9 Q. About how long do you think?

10 A. Fifteen, twenty years.

11 Q. Your father was involved in that business with your
12 brother before your father passed away?

13 A. I don't believe my father worked with my brother. He gave
14 my father a place to sit. I never observed my dad working.

15 Q. Do you think your mother knew whether or not your father
16 worked?

17 MR. NURIK: Objection.

18 THE COURT: Sustained.

19 Q. Well, did you ever have a conversation with your mother
20 about whether or not your father started this business at a
21 bowling alley in Peabody?

22 MR. NURIK: Objection.

23 A. Never.

24 THE COURT: Sustained.

25 Q. You never had that conversation?

1 A. Never.

2 MR. NURIK: Objection.

3 THE COURT: Sustained.

4 Q. How about your son, did he work for your brother Robert
5 Eremian?

6 A. Yes, he did, my son John.

7 Q. Okay. And how about your brother Dan, did he work for
8 your brother Robert Eremian?

9 A. Not to my knowledge.

10 Q. Not to your knowledge. Never?

11 A. Not to my knowledge. He had a restaurant he ran.

12 Q. Would it surprise you if your son knew that your brother
13 worked --

14 MR. NURIK: Objection.

15 THE COURT: Sustained.

16 MR. WYSHAK: Well, I think I can --

17 Q. Are you aware of the fact that your son knows that your
18 brother works for Robert Eremian?

19 MR. NURIK: Objection.

20 THE COURT: Sustained.

21 MR. WYSHAK: I can ask her if she has --

22 THE COURT: Sustained.

23 Q. Are you aware of the fact that your daughter Carlin knows
24 that your brother works for Robert Eremian?

25 MR. NURIK: Objection.

1 THE COURT: Sustained to this line of questioning.

2 Q. But you don't know, right?

3 A. No.

4 Q. No, you don't know. And you don't know that the prime
5 hours for a gambling office are in the early evening?

6 A. I do not know.

7 Q. Before basketball games began or baseball --

8 THE COURT: She said she doesn't know.

9 Q. Does the house in Lynnfield have a pool?

10 A. Yes, it does.

11 Q. Okay. And do you recall being present at that pool on
12 many occasions with your mother and a woman named Linda
13 Richardson?

14 A. No, I don't.

15 Q. You don't know Linda Richardson either, I guess, huh?

16 A. I know of Linda Richardson.

17 Q. Okay. Is it your testimony that you never were at your
18 house in Lynnfield when she was present?

19 A. I don't remember. I'm sorry, I can't recall that.

20 Q. You don't remember her being present?

21 A. She wasn't a -- she wasn't a close friend. I met her on
22 two or three occasions.

23 Q. Do you remember sitting around the pool while the men were
24 up in the garage?

25 A. No, I do not.

1 Q. You don't remember any of that either?

2 A. No. It could have been my sister. It wasn't me.

3 Q. Excuse me?

4 A. It could have been my sister she remembered, but I don't
5 recall. I was raising my family.

6 Q. It's your parents' house, correct?

7 A. Pardon me?

8 Q. It was your parents'?

9 A. No.

10 Q. In Lynnfield?

11 A. No.

12 Q. Were your parents there on numerous occasions?

13 A. Visiting.

14 Q. You said you didn't frequent the house in Salem Street?

15 A. No.

16 Q. During the '90s?

17 A. No.

18 Q. You did not?

19 A. No.

20 Q. All right.

21 A. My mother lived in Beverly.

22 Q. I want to show you some documents from Government
23 Exhibit 239.

24 MR. WYSHAK: Can we put the first one up on the
25 screen.

1 Q. All right, now, that's a check on this joint account; is
2 that correct?

3 A. Correct.

4 Q. This 0933 account?

5 A. Correct.

6 Q. See the number at the bottom? Is that your handwriting on
7 that check?

8 A. Correct.

9 Q. And that's a check payable to you for \$1,000, correct?

10 A. Yes.

11 Q. And what was that for?

12 A. A gift from my brother.

13 Q. And who wrote "gift" in there?

14 A. I did.

15 Q. So you're managing this account with all this money in it,
16 and you're drafting checks to yourself?

17 A. Yes.

18 Q. How often?

19 A. Once a month.

20 Q. Once a month?

21 A. Yes.

22 Q. Twice a month?

23 A. Once a month.

24 Q. Is that your testimony, it's just once a month?

25 A. Unless there were something I was being repaid for, some

1 expenditures for the children for reimbursement, but a check to
2 me --

3 Q. Well, you had an account with the nanny, right?

4 A. Yes.

5 Q. And you had an account with your mother, correct?

6 A. Yes.

7 Q. And you funded both of those accounts with money from this
8 0933 account, correct?

9 A. Correct.

10 Q. And you used that money coming out of that account to pay
11 all the children's expenses, Mr. Eremian's children's expenses,
12 right?

13 A. Yes.

14 Q. His mother's expenses, correct?

15 A. Some expenses.

16 Q. His household expenses at Lynnfield?

17 A. Correct.

18 Q. All the normal kinds of things that people pay for when
19 they are supporting a family, correct?

20 A. Correct.

21 Q. You used that account to pay taxes for Mr. Eremian,
22 correct?

23 A. Correct.

24 Q. Mr. Robert Eremian, correct?

25 A. Correct.

1 MR. WYSHAK: Can we put the next check up.

2 Q. All right, now, this is a check drawn to Mary Eremian; is
3 that correct?

4 A. Correct.

5 Q. And signed by you, correct?

6 A. Correct.

7 Q. And where does this check get deposited?

8 A. That was signed over to me by my mom, so that would be put
9 into my probably, uhm -- it's now called Beverly Cooperative
10 Bank, but I don't know what it was called then -- my account,
11 one of my accounts.

12 Q. Okay. So you're cutting a check to your mother, correct?

13 A. Yes.

14 Q. And then she endorses it back to you?

15 A. Correct.

16 Q. And this is a way for you to draw out more than a thousand
17 a month?

18 A. No.

19 Q. No?

20 A. It was a way for her to compensate me for all that I did
21 for her.

22 Q. Your mother has to pay you to help her out?

23 A. No, she doesn't have to pay me.

24 Q. She's not paying you; your brother is paying you, isn't
25 he?

1 A. My mother endorsed this check over to me.

2 Q. The money is coming from your brother from Antigua,
3 correct?

4 A. To my mother and my mother to me.

5 Q. In fact you have written hundreds of these checks to
6 yourself and to your mother over the years, haven't you?

7 A. No.

8 Q. No?

9 A. Hundreds of checks?

10 Q. Well, let's talk about it.

11 MR. NURIK: Your Honor, I object to the relevancy of
12 this thing to our case.

13 THE COURT: Overruled.

14 Q. You managed this account from approximately 2003 through
15 2010?

16 A. 2009, yes.

17 Q. Okay. That's six to seven years?

18 A. Yes.

19 Q. Okay. And you admit that at least once a month you drew
20 out a check to yourself, correct?

21 A. The first few years -- the first year I was helping my
22 brother I don't believe I was drawing a check as a gift.

23 Q. Okay. Well, you would admit that if it's five or six
24 years once a month, it's got to be over a hundred checks?

25 A. Well, you said "hundreds."

1 Q. Well, there's also the same amount of checks to your
2 mother, correct?

3 A. Correct.

4 Q. So that would number in the hundreds?

5 A. Twelve checks a year.

6 Q. Yes, okay. So this was a common occurrence, for you to
7 draw money out of this account for yourself?

8 A. As a gift, yes.

9 Q. As a gift.

10 MR. WYSHAK: Can we put the summary chart up.

11 MR. NURIK: Your Honor --

12 MR. WYSHAK: Can we blow that up a little bit.

13 THE COURT: Excuse me. Have you not seen this?

14 MR. NURIK: Oh, I've seen it, but it's not in evidence
15 and she didn't prepare it.

16 THE COURT: Well, what is it? It's a --

17 MR. WYSHAK: A summary of the deposits into her
18 personal account. I mean, I can take the time --

19 THE COURT: Excuse me. Did you offer it? Are you
20 going to offer it?

21 MR. WYSHAK: Yes.

22 THE COURT: What number is this?

23 MR. WYSHAK: This is Exhibit 239.

24 THE COURT: Is there an objection?

25 MR. NURIK: Well, there's no authentication by any

1 witness at this point.

2 THE COURT: So at this point I'm not admitting it. So
3 see if she can authenticate it. If not, it gets taken down.

4 MR. WYSHAK: Okay. Well, we've taken the witness out
5 of turn, your Honor. I could have put the witness on to
6 authenticate this document.

7 THE COURT: I understand. That's why I'm letting you
8 do this, but if she can't identify it, then you have to do it
9 the other way.

10 MR. WYSHAK: Okay.

11 Q. Well, take a look at this, Mrs. Tierney. Would it
12 surprise you if these are the amount of checks that you wrote
13 to yourself out of this 0933 account for the years represented
14 on the left-hand side?

15 A. I've never seen this piece of paper.

16 Q. Okay, try to listen to my question. Let's go year by
17 year. 2004, would you agree that you drew \$5,000 out to
18 yourself? Does that sound about right?

19 A. I don't recall.

20 Q. Okay. And in 2005, \$18,000?

21 A. I don't recall.

22 THE COURT: Well, before we do this all, do any of
23 those numbers ring a bell?

24 THE WITNESS: None ring a bell.

25 Q. Okay, you don't know the exact amounts, correct?

1 A. Correct.

2 Q. But you don't dispute that you were taking sufficient
3 money out of this account for yourself, significant sums?

4 A. Never the sums that I see in front of me.

5 Q. Never \$27,000, \$37,000, \$40,000?

6 A. No.

7 Q. You dispute that, correct?

8 A. I don't recall taking checks in those amounts.

9 Q. What amounts do you recall?

10 THE COURT: Why don't you take it off the screen then.

11 Q. Well, how about the checks to your mother?

12 A. The checks to my mother are a thousand dollars a month.

13 Q. Okay. And you got that money, right?

14 A. My mother endorsed it over to me.

15 MR. WYSHAK: We can take it off.

16 Q. So it's fair to say that you profited from managing this
17 account to a great degree, did you not?

18 A. I received gifts from my brother for helping him.

19 Q. It's a lot of money, correct?

20 A. Yes. I did a lot of work.

21 Q. Well, okay. Did you do work? Were you compensated as an
22 employee?

23 A. No.

24 Q. People normally help out their family without
25 compensation, wouldn't you say?

1 A. Not to the degree that I was helping his family. I'm
2 sorry.

3 Q. So were you in fact earning a living by doing this work?

4 A. No. I was being appreciated. I wasn't just doing
5 bookkeeping.

6 Q. What else were you doing?

7 A. I was taking care of his children that were left behind,
8 paying his household bills, his personal bills, and taking care
9 of our mother who had cancer. I had many balls in the air
10 besides writing checks for his personal business.

11 Q. It sounds like the kinds of stuff we all do for our
12 children and our parents.

13 A. Not really. These were not my children. I had my own
14 family as well.

15 Q. Okay. Well, either it's a job or it's something you're
16 doing because you're a member of the family, correct?

17 A. I was a trusted member of the family to do a good job with
18 his children who had no mother.

19 Q. You didn't report any of this money as income, did you?

20 A. No, I did not.

21 MR. NURIK: Your Honor, I have to object at this
22 point. It's getting far afield from what we're on trial for.

23 THE COURT: Overruled, overruled.

24 Q. And in fact were you aware, since you were assisting your
25 brother's tax preparer, that your brother never filed gift tax

1 returns for any of these funds?

2 A. I was not aware. I didn't see the tax returns.

3 Q. Did you have a conversation with Mr. Flowers, the tax
4 preparer, about these gifts?

5 A. Yes.

6 Q. Okay. And he was aware of the gifts?

7 A. Yes.

8 Q. And did he file gift tax returns on behalf of your brother
9 Robert?

10 A. I don't know. I didn't see the tax return.

11 Q. Isn't it true that the reason that you started writing
12 checks to your mother was to come under the threshold of the
13 gift tax return?

14 A. No.

15 Q. Do you know what the threshold was?

16 A. Yes.

17 Q. Did you discuss that with Mr. Flowers?

18 A. I asked him a question, yes.

19 Q. Okay. So this was a way for you to get more money and
20 avoid the filing of a gift tax return to your mother, correct?

21 MR. NURIK: Your Honor, I would object and ask for a
22 sidebar on that.

23 THE COURT: Sustained on that one.

24 MR. NURIK: I'd ask for a sidebar.

25 THE COURT: Yes. A good time to stand and stretch.

1 SIDEBAR CONFERENCE:

2 MR. NURIK: I would ask for a limiting instruction at
3 this point. Anything that she may have pled to and Mr. Wyshak
4 is bringing up concerning any alleged or proposed or suggested
5 tax improprieties the jury should not consider as to my client.
6 It is not part of the charged --

7 THE COURT: That's fine as far as tax improprieties,
8 but in terms of her being paid to be a member of this
9 conspiracy in Massachusetts, it's right on the mark.

10 MR. NURIK: I'm not talking about that. I'm talking
11 about all these questions that are dealing with tax issues
12 right now.

13 THE COURT: That's fair, that's fair. But can I
14 just -- at some level -- I mean, obviously I've allowed leading
15 at this point. I do think that she's been a hostile witness,
16 but let me also say this: I don't know why you're trying to
17 pull in her husband so much at this point. I mean, to the
18 extent he's present, that's fine, but, I mean, it's just, you
19 know, where it's relevant it's relevant, where it's not it's
20 not.

21 MR. WYSHAK: It goes to her credibility, number one.

22 THE COURT: Maybe, but I'm just simply saying, if it's
23 relevant when he's present, I allowed it in, but it crossed the
24 line at some point, so --

25 MR. WYSHAK: I would also note that defense counsel

1 has asked almost every government witness about their taxes and
2 their tax obligations and their avoidance of tax obligations.

3 THE COURT: I'm not saying you can't ask the question,
4 but it's pretty clear it's not -- how long do you have with
5 her?

6 MR. WYSHAK: Maybe another twenty minutes.

7 THE COURT: How long will you both be?

8 MR. NURIK: Well, if he goes twenty minutes, I'm going
9 to at least take us up to the break at 11:00, maybe longer.

10 THE COURT: That's fine, that's fine, that's fine.

11 (End of sidebar conference.)

12 THE COURT: Let me just make it clear that there are
13 no charges of tax improprieties against Mr. Daniel Eremian, so
14 this discussion only has to do with Mrs. Tierney; and to the
15 extent that there's an allegation of tax improprieties against
16 Mr. Lyons, this line of questioning has nothing to do with it.
17 So I think that captures what we talked about.

18 MR. HORSTMANN: Thank you, your Honor.

19 BY MR. WYSHAK:

20 Q. Was your husband aware that you were managing this bank
21 account for your brother Robert Eremian?

22 A. Yes, he was.

23 Q. Were you aware that in 2006 a legislation was passed by
24 Congress making the kinds of transactions that you were
25 involved in illegal?

1 A. No, I was not aware.

2 Q. Were you aware that your husband voted on that legislation
3 twice?

4 MR. NURIK: Objection.

5 THE COURT: Sustained, sustained.

6 Q. Well, did you ever have a conversation with your husband
7 about the legality of what your brother Robert Eremian was
8 doing?

9 MR. NURIK: Objection.

10 THE COURT: Sustained. Well, actually, actually,
11 overruled from you.

12 MR. STERN: I object, your Honor, on behalf of the
13 witness.

14 THE COURT: Sustained.

15 MR. WYSHAK: I can ask the witness whether the
16 conversation existed.

17 THE COURT: Excuse me. Sustained. It's marital
18 privilege. You cannot --

19 MR. WYSHAK: I'm not going into the substance. I'm
20 just asking whether such a conversation occurred.

21 THE COURT: Sustained on the basis of marital
22 privilege.

23 MR. WYSHAK: Your Honor, may we have a sidebar on this
24 because --

25 THE COURT: No. I think I know what the argument is.

1 If there's something different from what I know -- well, let me
2 ask you this. Well, unless you have any knowledge that a
3 conversation happened in the presence of a third party where
4 the privilege wouldn't apply.

5 MR. WYSHAK: Well, the law in Massachusetts allows --

6 THE COURT: Excuse me. Let me see you.

7 SIDEBAR CONFERENCE:

8 MR. WYSHAK: We actually did some homework on this,
9 your Honor.

10 THE COURT: So did I.

11 MR. WYSHAK: Okay, and this Gallagher against
12 Goldstein case, which is a 1988 case, clearly says that the
13 statute does not bar evidence as to the fact that a
14 conversation took place. I can inquire as to whether or not
15 there was a conversation. I may not be able to go into the
16 substance, but I do think it's relevant to her credibility as a
17 witness whether or not she ever sought advice or counsel from
18 her husband, who's a lawyer.

19 THE COURT: That's exactly -- you're trying to get
20 into the substance of the conversation. Excuse me. The
21 objection is sustained. Now, here's the issue here: It's
22 relevant, so you can't make the objection.

23 MR. NURIK: I understand, I understand.

24 THE COURT: And to the extent that there's an
25 objection, that's why I'm looking to Mr. Stern here, I mean, so

1 I don't know who's doing what but --

2 MR. NURIK: Except that, and I understand --

3 THE COURT: It's a hundred percent relevant.

4 MR. NURIK: The problem is that typically a Mr. Stern
5 is not here, so I'm kind of preconditioned to object to the
6 spousal privilege.

7 MR. STERN: The other thing, your Honor, as long as
8 we're here, some of his question, and I think the objection was
9 properly sustained, but, I mean, if Mr. Wyshak is going to keep
10 banging away trying to insert any kind of, you know, evidence
11 about her husband and --

12 THE COURT: Well, at some level I'm assuming he will
13 act as an officer of the court and try and not do it on
14 irrelevant grounds. And to the extent I think it is, I've
15 sustained it. To the extent I think it's relevant, I haven't.
16 This is relevant; it's just privileged.

17 MR. STERN: The other thing I want to say, your Honor,
18 your Honor made a curative instruction to the jury in terms of
19 the tax. You might want to say there is no tax consequences to
20 a recipient, a donee of a gift that exceeds the limits.

21 THE COURT: If you believe it's a gift. I mean, I'm
22 not getting into that one.

23 (End of sidebar conference.)

24

25 BY MR. WYSHAK:

1 Q. I'd like to talk a little bit more about this 0933
2 account. Were some of the funds that were going into this
3 account, did they come from people who purchased Red Sox
4 tickets?

5 A. On very slim occasion, yes.

6 Q. Okay. And your brother held season tickets to the Red
7 Sox?

8 A. Correct.

9 Q. Four seats?

10 MR. NURIK: Clarification.

11 Q. Robert Eremian?

12 A. Yes.

13 Q. And you, like everything else, managed those Red Sox
14 tickets for him?

15 A. Correct.

16 Q. And you would sell the Red Sox tickets; is that fair to
17 say?

18 A. I didn't sell them. I sold games that he didn't allocate
19 to people.

20 Q. Okay. So if somebody wanted to buy some tickets, they'd
21 contact you and send you a check, and you'd send them the
22 tickets; is that fair to say?

23 A. Most of the instructions came from my brother as to where
24 the tickets would go to, or he would have somebody call me and
25 say, "Bob gave me --"

1 Q. Okay. Do you know a man named William Means?

2 A. I met him at my niece's funeral.

3 Q. Okay. And had you sent him Red Sox tickets in the past?

4 A. Yes.

5 Q. And had he sent you money in payment of those Red Sox
6 tickets?

7 A. I believe he talked directly to my brother about payment.
8 I don't recall receiving a check from Mr. Means.

9 Q. How about a Richard Ducharme?

10 A. Yes.

11 Q. Do you know him?

12 A. I do.

13 Q. Was he a person who also you sent Red Sox tickets to?

14 A. Yes, a few.

15 Q. Did he send you money?

16 A. On occasion.

17 Q. Andrew Pomper, he is a person you sent Red Sox tickets to?

18 A. I did.

19 Q. Did he send you money?

20 A. At one point he did. At other times he sent to my brother
21 or they had some arrangement. I only took -- I believe I took
22 one check from him.

23 Q. All right, all these men had arrangements with your
24 brother because they all worked for him; isn't that true?

25 A. I have no idea who worked for my brother.

1 Q. You have no idea that these men worked for your brother?

2 A. No.

3 Q. And sometimes they didn't have to pay you because this
4 money went on their SOS account; isn't that true?

5 A. I have no knowledge of that.

6 Q. They didn't tell you that? You didn't have that
7 conversation with them?

8 A. Never.

9 Q. Lindsey Perry, wasn't he another one of these people you
10 sent Red Sox tickets to?

11 A. Maybe one or two. No, he was not --

12 Q. Let's talk a little bit more about Lindsey Perry. Who was
13 he?

14 A. Lindsey Perry was a schoolmate of my family's in
15 Masconomet. Lindsey Perry ran a property in Nantucket. I
16 don't know what his job description was.

17 Q. Okay. He was a property manager, correct?

18 A. I guess so, yeah.

19 Q. He managed a timeshare that you used?

20 A. I didn't use it.

21 Q. All right. What did you do with it? Did you manage it?

22 A. I paid the bills that would come from -- it's a timeshare
23 complex, so it would be annual fees that everybody in the
24 complex paid. He would send the bill to my brother's P.O. box,
25 and that's what I would pay.

1 Q. Okay. And sometimes you didn't have to pay it; isn't that
2 true?

3 A. I don't recall when I didn't have to pay it.

4 Q. You don't recall that sometimes you didn't have to pay
5 because he owed SOS money?

6 A. I don't recall.

7 Q. You don't recall --

8 A. It was only a once or a twice year bill. I don't --
9 Nantucket wasn't one of my focuses.

10 Q. So all these people, Mr. Means, Mr. Ducharme, Mr. Pomper,
11 Mr. Perry, would sometimes set off what they owed either for
12 their Red Sox tickets or what you owed Mr. Perry for your condo
13 fees against debts that they had to SOS, and you don't know
14 anything about that?

15 A. I do not. I don't know anything about that.

16 Q. You don't know anything about that. You don't know why
17 you didn't have to pay the condo fees one year to Mr. Perry?

18 A. No.

19 Q. Did you know Mr. Perry was gambling with your brother
20 Robert Eremian?

21 A. No.

22 Q. You didn't know that either, right? This is a school chum
23 of yours who went to Masconomet with you?

24 A. I knew of him. He wasn't a chum.

25 Q. You told us just a minute ago he's a friend of your

1 family.

2 A. He went to school with some of my brothers.

3 Q. And you didn't know that he was betting with your brother
4 Robert Eremian?

5 A. No. He lives on Nantucket.

6 Q. I didn't ask you where he lived. I asked you if you knew
7 he was betting with your brother Robert Eremian?

8 A. I did not know.

9 Q. And you didn't know Andrew Pomper was betting with your
10 brother Robert Eremian?

11 A. I gave Andrew Pomper Red Sox tickets.

12 Q. Try to answer the question.

13 A. No.

14 Q. Did you know Andrew Pomper --

15 A. No.

16 Q. -- was betting with Robert Eremian?

17 A. No.

18 Q. Did you know he worked as an agent for Robert Eremian?

19 A. No.

20 Q. And Mr. Ducharme, did you know that he worked as an agent
21 for your brother Robert Eremian?

22 A. No.

23 Q. Or William Means, you didn't know he worked as an agent
24 for Robert Eremian?

25 A. No.

1 Q. Now, the timeshare in Nantucket, is it your testimony you
2 never used it?

3 A. Correct.

4 Q. Who used it?

5 A. His family, my brother's family.

6 Q. His kids?

7 A. His kids, his wife, his relatives.

8 Q. You never used it?

9 A. I never used his timeshare.

10 Q. Well, he had eight weeks, right? Did you have some other
11 timeshare we're not aware of?

12 A. No. I rented a week from Mr. Perry.

13 Q. Was that one of your brother's weeks?

14 A. No. It was a smaller condo place.

15 Q. In fact, didn't you sell that timeshare? Didn't you?

16 A. I didn't sell it.

17 Q. Okay. You didn't participate in the sale in 2009 of the
18 Nantucket timeshare?

19 A. No.

20 Q. No?

21 A. I knew he sold it.

22 Q. Who did you think owned the time-share?

23 A. I'm sorry?

24 Q. Who owned the time-share?

25 A. I believe my brother owned the time-share.

1 MR. WYSHAK: Can we put the monitor on.

2 Q. Can you see that check?

3 A. Yes.

4 Q. That's a check in September of 2009, correct?

5 A. Correct.

6 Q. To you?

7 A. Correct.

8 Q. For \$73,000?

9 A. Correct.

10 Q. Okay. And who is Islandwide Realty?

11 A. That is Ken Lindsay.

12 Q. Okay, you know Ken Lindsay, right?

13 A. I went to school with him.

14 Q. Did you know he gambled with your brother Robert?

15 A. No.

16 Q. Okay. So how long were you managing this time-share on
17 Nantucket?

18 A. I didn't manage it initially. Uhm, probably for maybe
19 four years, four or five years.

20 Q. Just four or five years?

21 A. Yes.

22 Q. Between what period of time?

23 A. Probably 2004 to 2009.

24 Q. Okay, about five years?

25 A. Yeah, yes.

1 Q. And there were eight weeks, right?

2 A. Yes.

3 Q. And if people wanted to use those weeks, you'd call

4 Mr. Perry and make arrangements?

5 A. No.

6 Q. No?

7 A. I wasn't involved in that.

8 Q. You didn't send him money for the ferry to get from the
9 mainland, Mass. Cape Cod to Nantucket?

10 A. Send money?

11 Q. Money, didn't you send him checks to pay for ferry tickets
12 for people who were going over to use the timeshare?

13 A. No.

14 Q. You don't remember any of this, Mrs. Tierney?

15 A. I don't know who stayed at my brother's timeshare. It was
16 separate from where I stayed. It was a big development.

17 Q. When you say it's your brother's timeshare, is it your
18 testimony you thought he owned it?

19 A. I thought he owned it.

20 Q. Okay. Were you surprised in 2009 to find out that he did
21 not own it?

22 A. I wasn't surprised. I think he was trying to sell it.

23 Q. Well, did he own it?

24 A. Yes.

25 Q. Was title in his name?

1 A. I don't recall. His or his wife's. I never saw a title.

2 Q. You don't recall that there was a problem that title had
3 never been put in his name?

4 A. I had nothing to do with the title.

5 Q. Okay. Well, the check to pay for this comes from
6 Islandwide Realty; is that correct?

7 A. Correct.

8 Q. That's Mr. Lindsay, correct?

9 A. It's --

10 Q. He's sending you a check for this, correct?

11 A. Yes.

12 Q. Did you go to a closing for the sale of this timeshare?

13 A. No.

14 Q. Do you know if your brother Robert Eremian went to --

15 A. No.

16 Q. No. You're getting a lot of money, but you don't know a
17 lot about any of this; is that fair to say?

18 A. This wasn't my money.

19 Q. It's coming to you, correct?

20 A. It's being deposited into my brother's checkbook.

21 Q. Okay, it's coming to you?

22 A. Yes.

23 Q. The check isn't written out to Bob Eremian?

24 A. No.

25 Q. It's written out to Patrice Tierney?

1 A. Correct.

2 Q. Who told Mr. Lindsay to make the check out to Patrice
3 Tierney?

4 A. Probably my brother.

5 Q. And you endorsed the check and deposited it, right?
6 That's your endorsement?

7 A. Yes, into his Bank of America account.

8 Q. Did you know that your brother obtained this timeshare as
9 payment of a gambling debt from Mr. Lindsay?

10 A. No, I did not.

11 Q. You don't know anything about that?

12 A. No.

13 Q. And you don't know that the timeshare was never in your
14 brother's name during that entire period that you managed it?

15 A. I never saw documents. I'm sorry. The bills came to his
16 name.

17 Q. And that when it was sold, Mr. Lindsay was the one who had
18 to sell it because title was still in his name? You don't know
19 anything about that?

20 A. This is a different -- this is Ken Lindsay, not Lindsey
21 Perry. Two different people.

22 Q. I'm aware of that.

23 A. Okay.

24 Q. That's what I asked you, that Mr. Lindsay had to sell it
25 because title was still in his name?

1 A. I didn't know that.

2 Q. Were you surprised when you saw that he was the purchaser,
3 that he's sending you the check here?

4 A. Who was the purchaser?

5 Q. Well, that he's sending you the check? He sold it.

6 A. Yes.

7 Q. He sold it to the purchaser.

8 A. So he sent me the proceeds to put in Bob's account.

9 Q. Correct, correct. Were you surprised by that?

10 A. No. My brother said he was trying to get rid of it.

11 Q. Okay. Have you participated in the sale of any real
12 estate in your life?

13 A. In my life?

14 Q. Yes.

15 A. Yes.

16 Q. Okay. And generally when somebody buys a piece of real
17 estate, you go to a closing?

18 A. Correct.

19 Q. The buyer pays with his own checks, correct?

20 A. Uh-huh, yes.

21 Q. You weren't surprised that Mr. Lindsay was sending you
22 this check?

23 A. No. He wanted to put it in my brother's account.

24 Q. All right, now, you dealt with Mr. Flowers concerning your
25 brother's tax returns; is that correct?

1 A. Correct.

2 Q. Did you assist him in filing a tax return for Sports Off
3 Shore?

4 A. No.

5 Q. Were you aware that no tax returns were filed for Sports
6 Off Shore?

7 A. No.

8 Q. You weren't aware of that?

9 A. No. I only handled my brother's personal.

10 Q. Well, you handled more than his personal. You handled his
11 business, correct? Many of the bills that you were paying --

12 THE COURT: You need to wait for an answer.

13 MR. WYSHAK: Well, withdrawn.

14 Q. You handled some of his business expenses, didn't you?

15 A. I don't believe I did. They were personal credit cards,
16 not business credit cards.

17 Q. Okay, did you use a program called QuickBooks?

18 A. Yes, I did.

19 Q. As a matter of fact, you got trained on how to use
20 QuickBooks?

21 A. I did.

22 Q. And some of the expenses that you were entering into the
23 QuickBooks were expenses that you coded as business expenses,
24 weren't they?

25 A. Correct.

1 Q. Purchase of computers, computer hardware?

2 A. Uh-huh, correct.

3 Q. Software, travel, correct?

4 A. Correct.

5 Q. Okay, so those are business expenses, correct?

6 A. Correct.

7 Q. In connection with the operation of Sports Off Shore, were
8 they not?

9 A. With his consulting business, correct.

10 Q. His consulting. You still believe he's a consultant,
11 right?

12 A. Yes, sir.

13 Q. Okay. You knew that if he were the principal of Sports
14 Off Shore, he'd have to file a corporate tax return or a
15 business tax return?

16 MR. NURIK: Objection. It assumes facts not in
17 evidence, also is a mischaracterization of the law.

18 THE COURT: Sustained.

19 Q. So, Ms. Tierney, even though you've pled guilty to being
20 willfully blind to aiding and abetting him in the filing of
21 false tax returns, you still sit there and tell us you do not
22 think he's the principal of SOS?

23 A. Yes.

24 Q. Correct?

25 A. Yes.

1 Q. Okay. Did you understand that SOS was doing business in
2 the United States?

3 A. At what period?

4 Q. At any period of time.

5 A. In the earlier years.

6 Q. What are the earlier years?

7 A. The late '90s.

8 Q. And how did you have that understanding?

9 A. He was working out of his garage.

10 Q. Okay. I'm talking about Sports Off Shore, the business in
11 Antigua.

12 A. Oh, I'm sorry. It wasn't called that.

13 Q. Did you understand that Sports Off Shore, that your
14 brother when he was in Antigua was doing business in the United
15 States?

16 A. No.

17 Q. You didn't understand that?

18 A. No.

19 Q. Do you recall that he was interviewed by the
20 New York Times in 1998?

21 A. No, I don't.

22 Q. Did you see that interview?

23 A. I never did.

24 Q. You never saw that either?

25 A. No.

1 Q. Your brother gets interviewed by the biggest newspaper in
2 the country, and you don't know anything about that?

3 A. No. I don't see half of my husband's interviews.

4 Q. When did you first become aware that your brother was
5 being investigated, your brother Robert was being investigated
6 by the Federal Grand Jury?

7 A. It was -- I believe it was -- I don't remember the date.
8 I was contacted by an attorney. I don't remember the exact
9 date.

10 Q. Okay, sometime in 2009?

11 A. Yes, probably.

12 Q. And isn't that one of those red flags that you should have
13 been aware of when you knew that the government was
14 investigating your brother's illegal activity?

15 A. Yes.

16 Q. But you continued to take money from Antigua, correct,
17 manage his account, correct?

18 A. Correct.

19 Q. And continued to use the money coming in from this account
20 to pay yourself money, correct?

21 A. Correct.

22 Q. And to cover all of Mr. Eremian's personal and business
23 expenses, correct?

24 A. Correct.

25 Q. Including his family's expenses?

1 A. Correct.

2 Q. And at some point your son John Chew in the fall of 2009
3 is subpoenaed to the Federal Grand Jury; isn't that true?

4 A. Correct.

5 Q. Okay. And you cut a check to his lawyer out of this 0933
6 account, correct?

7 A. Correct.

8 Q. Why did you do that?

9 A. He had to pay his lawyer, and his uncle offered to pay for
10 it.

11 Q. Did you understand that he was being subpoenaed to the
12 Federal Grand Jury in connection with an investigation into
13 Robert Eremian?

14 A. Yes.

15 Q. Okay. And is that why you had Robert Eremian pay for your
16 son's lawyer?

17 A. My brother Robert offered to pay for the lawyer. My son
18 didn't have the money to pay for a lawyer.

19 Q. And at that time you must have been extremely aware that
20 there was something wrong in Denmark, so to speak, correct?

21 A. Correct.

22 Q. And you still continued to manage this account; you still
23 continued to take money out of it, didn't you?

24 A. I did.

25 Q. And you still continued to pay Mr. Eremian's expenses,

1 correct?

2 A. Correct.

3 Q. Until February of 2010?

4 A. Correct.

5 Q. Correct? And can you explain to the jury why, despite
6 having knowledge that your brother was under criminal
7 investigation for his activities in Antigua, you continued to
8 participate in this activity?

9 A. I was advised by my brother's attorney, who was the one
10 who informed me of this case, to continue to pay.

11 Q. Your brother's --

12 MR. HORSTMANN: Objection.

13 THE COURT: Overruled.

14 Q. Your brother's attorney?

15 A. Yes. I asked him if I should stop, and he said, "Continue
16 what you're doing."

17 Q. How about your husband?

18 MR. NURIK: Objection.

19 MR. STERN: Objection, your Honor.

20 THE COURT: Sustained.

21 Q. He's a lawyer, right?

22 A. He was.

23 Q. Well, is he no longer a member of the Bar --

24 A. No, he's a member of the Bar.

25 Q. -- of Massachusetts?

1 A. He's not a practicing lawyer.

2 Q. He's certainly somebody who's available for you to consult
3 with concerning legal matters, correct?

4 A. Correct.

5 Q. Yet you choose to talk to your brother's lawyer, correct?

6 A. Correct.

7 Q. Somebody who's got your brother's interests in mind,
8 correct?

9 MR. NURIK: Objection.

10 THE COURT: Overruled.

11 MR. NURIK: Can we have clarification of which
12 brother.

13 THE COURT: Oh, I keep forgetting that, but I think
14 the context is always Robert Eremian unless you say otherwise
15 at this point.

16 THE WITNESS: Correct, yes.

17 THE COURT: All right.

18 Q. And would that lawyer be Jim Merberg?

19 A. Yes.

20 Q. So Jim Merberg told you to continue managing this account?

21 MR. STERN: Objection. Your Honor, may we approach
22 briefly at sidebar?

23 THE COURT: Let me just ask this: Was he providing
24 legal services to you?

25 THE WITNESS: No. He was just making the suggestion

1 that I continue what I'm doing as if nothing was wrong, and I
2 just did it, until I was told by Mr. Wyshak to discontinue.

3 Q. And you needed me to tell you that, right?

4 A. Yes.

5 Q. You couldn't figure it out on your own?

6 MR. NURIK: Objection.

7 THE COURT: Sustained.

8 Q. Do you feel that your brother Robert Eremian deceived you?

9 A. No.

10 Q. No.

11 A. I don't.

12 Q. So I guess you disagree with your husband's statements to
13 the media that you were deceived by your brother?

14 A. I don't believe either of my brothers would put me in
15 harm's way. I don't believe he deceived me.

16 Q. Try and answer the question. Do you agree with your
17 husband's statement on the courthouse steps --

18 MR. NURIK: Objection, assumes facts not in evidence,
19 your Honor.

20 THE COURT: I'll allow the question to be asked.

21 Q. Do you agree with your husband's statement on the
22 courthouse steps that you were a victim of your brother's
23 deception?

24 A. No.

25 Q. You don't agree with his statement. So you think your

1 brother has been fair and square with you?

2 A. I thought he was.

3 Q. If in fact he is the owner of SOS, he would have lied to
4 you, correct?

5 A. Correct.

6 Q. If in fact the conduct in which he was engaged in was
7 illegal, he would have lied to you, correct?

8 A. Correct.

9 Q. Do you know Todd Lyons?

10 A. I do.

11 Q. Okay. And how do you know Todd Lyons?

12 A. He went to school with both of my boys. I know him from
13 Marblehead.

14 Q. Did you know that Todd Lyons worked for your brother
15 Robert Eremian?

16 A. In the early years when my son did, yes.

17 Q. Again, when you're talking about the early years --

18 A. I'm sorry. In the late '90s.

19 THE COURT: Well, just differentiate. So are you
20 talking about the business in the garage?

21 THE WITNESS: In the garage.

22 Q. Okay. After your brother Robert went to Antigua, did you
23 know that Todd Lyons worked for him?

24 A. No.

25 Q. And what's been the nature of your relationship with

1 Mr. Lyons since your brother went to Antigua?

2 A. I haven't had a relationship with Mr. Lyons.

3 Q. Nothing.

4 A. His cousin dated my daughter, and they opened a food
5 business. I saw him there once or twice, but other than that,
6 I might have seen him at a Red Sox game once.

7 Q. Isn't it true that your daughter Carlin told you that Todd
8 worked for your brother Bob?

9 MR. NURIK: Objection.

10 THE COURT: Sustained.

11 Q. Have you ever received anything from Mr. Lyons to send to
12 Antigua?

13 A. Never.

14 Q. You sent items to Antigua; is that fair to say?

15 A. I believe I sent items to my brother to send to Antigua,
16 my brother Dan.

17 Q. Okay. Why not send them yourself?

18 A. Because he was filling a large container of sorts. It was
19 very expensive to send things to Antigua.

20 Q. Well, from time to time, though, you did ship items to
21 Antigua via FedEx; is that correct?

22 A. Yes.

23 Q. And what were those items?

24 A. I sent some jewelry items that I had made.

25 Q. Anything else?

1 A. Olive oil.

2 Q. Documents, did you ever send documents there?

3 A. I don't recall documents. There might have been some bank
4 statements that came or a credit card bill that I didn't
5 understand, and I sent it to him.

6 Q. And how would you describe your relationship with your
7 brother Dan?

8 A. My brother Dan and I have always been very friendly.

9 Q. And what did you understand he did for a living?

10 A. At what time?

11 Q. The last ten years.

12 A. He owned a restaurant in Florida, which burned to the
13 ground, and it's in litigation.

14 Q. That was a long time ago, right?

15 A. I believe it's still in litigation. I don't know how many
16 years it's been in litigation.

17 Q. The restaurant burnt down in 2003 or thereabouts?

18 A. Possibly.

19 Q. Okay, so since then, what do you understand that he does
20 for a living?

21 A. He's a professional gambler. He files his taxes as a
22 professional gambler.

23 Q. Okay, but you didn't know he had any connection with SOS;
24 is that your testimony?

25 A. No, except to ship supplies to my brother.

1 Q. Okay. And you have constant communication with him, don't
2 you?

3 A. With Dan?

4 Q. With your brother Daniel?

5 A. Constant? No.

6 Q. Well, if I told you there was over a hundred telephone
7 calls between your brother and yourself in 2009, would that
8 surprise you?

9 THE COURT: Your brother Daniel.

10 A. My brother Dan? No, it wouldn't surprise me. My mother
11 was very ill.

12 Q. Did you ever directly ask your brother Robert Eremian
13 regarding the legality of his activities in Antigua?

14 A. No.

15 Q. No? You're sure about that, Ms. Tierney?

16 A. I'm sure.

17 Q. You didn't tell your lawyer that you asked your brother --

18 THE COURT: You can't ask about what she told her
19 lawyer.

20 MR. WYSHAK: I think it's a waiver because it was
21 communicated to me.

22 THE COURT: All right, you can make that proffer.

23 Q. Did you tell your lawyer that you asked your brother about
24 the legality of what he was doing, and he told you you didn't
25 want to know?

1 A. I don't recall that.

2 Q. You deny that you said those words to Mr. Stern?

3 A. I don't recall I said those words.

4 Q. Well, you would recall if you had a conversation with your
5 brother about, "Is this legal?" and he told you, "You don't
6 want to know." That would be one of those red flags, right?

7 A. It would be, but I don't recall.

8 Q. Okay, you don't recall having the conversation with your
9 brother, or you don't recall telling Mr. Stern that?

10 MR. NURIK: Clarification.

11 THE COURT: Daniel Eremian?

12 MR. WYSHAK: I'm sorry.

13 Q. Do you recall --

14 A. I don't recall --

15 MR. NURIK: Which brother?

16 Q. -- having that conversation with Robert Eremian? Is that
17 what you don't recall?

18 A. I do not recall.

19 Q. You don't recall?

20 A. No.

21 Q. And you don't recall telling your lawyer that?

22 MR. STERN: Objection, your Honor.

23 THE COURT: Sustained, asked and answered.

24 MR. WYSHAK: I have nothing further, your Honor.

25

1 CROSS-EXAMINATION BY MR. NURIK:

2 Q. Good morning.

3 A. Good morning.

4 Q. We met outside for the first time just before court today?

5 A. Correct.

6 Q. We've never spoken before?

7 A. Never.

8 Q. May I call you Patrice?

9 A. You may.

10 Q. Patrice, with respect to the bank account that Mr. Wyszak
11 asked you numerous questions, I want to focus on my client who
12 is on trial, Dan Eremian. Did you ever pay him any money out
13 of that account?

14 A. No, never.

15 Q. Did he have anything to do with that account?

16 A. No, nothing.

17 Q. Did he have any records of that account, to your
18 knowledge?

19 A. No.

20 Q. Did you ever send him anything regarding that account?

21 A. Never.

22 Q. As far as you know, did he even know of the existence of
23 that account?

24 A. I believe he knew of the existence because I would have to
25 pay a kid's bill, or, you know, we'd talk about that.

1 Q. In fact you took care of a lot of the children in the
2 family -- specifically, Bob Eremian's children --

3 A. Correct.

4 Q. -- as a result of some difficult family circumstances,
5 correct?

6 A. Correct.

7 Q. And Dan was aware of that, correct?

8 A. Correct.

9 Q. And he knew that as a result, you were making payments for
10 all sorts of things for Bob's kids, correct?

11 A. Correct.

12 Q. In fact this was necessitated as a result of Bob's
13 estranged wife Lauren developing a substance abuse problem,
14 correct?

15 A. Correct.

16 Q. She went into rehab?

17 A. Correct.

18 Q. And as a result, Bob now didn't have anybody to take care
19 of the problems that the family had, correct?

20 A. Correct.

21 Q. For that matter, there were all sorts of payments that
22 needed to be made of family bills?

23 A. Correct.

24 Q. There were all sorts of things that needed to be taken
25 care of for the children?

1 A. Correct.

2 Q. And Bob had four children, correct --

3 A. Correct.

4 Q. -- at the time? He had a daughter Amy?

5 A. Correct.

6 Q. Who has since passed away from a drug overdose?

7 THE COURT: You know, do we have to disclose this
8 personal stuff?

9 MR. NURIK: I think it is necessary, your Honor. I'm
10 not going to spend much time, but I'd like the opportunity.

11 THE COURT: I don't know what other personal things
12 are coming out about the children, so please don't mention
13 names. At some level --

14 Q. Well, needless to say, a number of the children themselves
15 had substance abuse problems, correct?

16 A. Correct.

17 Q. Okay. And Bob was going back and forth between Antigua
18 and the United States?

19 A. Correct.

20 Q. And he needed help with his family?

21 A. Correct.

22 Q. And you were the one that he could trust the most to help?

23 A. Correct.

24 Q. And in that regard, he put you in charge of the bank
25 account that was in Massachusetts?

1 A. Correct.

2 Q. And as a result, you kept very detailed records of that
3 bank account, correct?

4 A. Yes.

5 Q. In fact, you said that you learned QuickBooks?

6 A. Yes.

7 Q. And you kept detailed QuickBooks records, correct?

8 A. Yes.

9 Q. And as a result, you were familiar generally, even as you
10 sit here now, the types of things that you paid out of that
11 account?

12 A. Yes.

13 Q. Now, Mr. Wyshak brought out that close to \$5 million
14 actually went into that account in deposits. Do you recall
15 that?

16 A. Into my brother's account.

17 Q. Yes.

18 A. Yes.

19 Q. Okay, and brother for purposes of this, we'll talk about
20 Bob Eremian.

21 A. My brother Bob. Not the household account.

22 Q. Right. Now, actually, the time that you managed the
23 account and that you kept QuickBook records of that account --
24 that is, the main account -- actually \$4,828,000 went into that
25 account? Does that sound about right?

1 A. About right.

2 Q. Okay, just to aid you, I'm going to show you your
3 QuickBook records. Take a look at that to refresh your
4 recollection.

5 (Witness examining documents.)

6 Q. Okay?

7 A. Uh-huh, yes.

8 Q. Now, there was several sources of money that came into
9 that account, correct? You got checks, correct?

10 A. Right.

11 Q. You also got wires?

12 A. Correct.

13 Q. And these came from Antigua?

14 A. Correct.

15 Q. And the checks came from Antigua?

16 A. Correct.

17 Q. There were also hundreds of thousands of dollars that came
18 in as a result of a settlement because one of Bob Eremian's
19 lawyers, prior lawyers, had stolen money from him, correct?

20 A. Correct, yes.

21 Q. Had stolen about a half a million dollars, correct?

22 A. Correct.

23 Q. And that money was repatriated into the account, correct?

24 A. Correct.

25 Q. Now, what the government asked you about was the money

1 that went in. Let's talk about some of the money that went
2 out. Isn't it a fact that in actuality over \$3 million was
3 paid for taxes to the United States Treasury out of that
4 account?

5 A. Correct.

6 Q. In fact, there were payments made every year by you. You
7 signed the checks to the United States Treasury, which
8 represented payments you were directed to make to pay taxes on
9 the income that Bob Eremian made from his activities in
10 Antigua, correct?

11 A. Correct.

12 Q. And you alone paid \$2.4 million in those checks to the
13 IRS, correct?

14 THE COURT: That's unclear, that question.

15 Q. When I say "you alone," meaning --

16 THE COURT: Her personal taxes?

17 MR. NURIK: No. I apologize, your Honor.

18 Q. You signed checks on behalf of Bob Eremian to pay his
19 taxes to the Internal Revenue Service?

20 A. Correct.

21 Q. And the checks that you signed that you recall during the
22 years that you were involved was \$2.4 million; actually,
23 specifically \$2,403,552.76, correct?

24 A. I don't remember the amount, but --

25 Q. Okay, let me show you this and see if this refreshes your

1 recollection.

2 A. They were quarterly payments, so I --

3 (Witness examining document.)

4 A. Correct.

5 Q. And in addition, you're aware that in 2009, other payments
6 were made, bringing the total amount to \$3.5 million, correct?

7 A. I don't remember the amounts. This is my brother's tax
8 payments? It would be four payments? I don't remember the
9 exact amount.

10 Q. But there were additional amounts?

11 A. Yes.

12 Q. So there were amounts over the \$2.4 million that were
13 paid?

14 A. Yes.

15 Q. Now, in addition to money paid for the Internal Revenue
16 Service out of that account on behalf of Bob Eremian, I believe
17 you told Mr. Wyshak that money was paid to charities.

18 A. Yes.

19 Q. In that regard, you said that money was sent to a Bill
20 Clinton charity?

21 A. Correct.

22 Q. You recall money being paid also for Haitian relief fund?

23 A. Correct.

24 Q. Do you recall money also being paid, over \$60,000 to rehab
25 centers to keep rehab centers open?

1 A. Correct.

2 Q. Hundreds of thousands of dollars were paid to charities?

3 A. Correct.

4 Q. I need more room up here. Cancer research, Dan Farber
5 Foundation?

6 A. Correct.

7 THE COURT: Dana.

8 MR. NURIK: I'm sorry, Dana.

9 Q. 911 Fund?

10 A. Correct.

11 Q. Do you remember that? St. Margaret's Church, do you
12 remember that?

13 A. Correct.

14 Q. Santa's Little Helper donations?

15 A. Correct.

16 Q. Autism Research Foundation?

17 A. Correct.

18 Q. In addition, were you aware that Bob Eremian was making
19 donations to schools in Antigua?

20 A. Yes, I was.

21 Q. That he was helping building up the infrastructure there?

22 A. Yes.

23 Q. Now, initially when you became involved with this account,
24 you spoke to Mr. Flowers, the accountant?

25 A. Correct.

1 Q. And you were aware of a number of things that had been
2 developing which gave you a sense of comfort in getting
3 involved in managing this money?

4 A. Correct.

5 Q. One of those things that I think you told us on direct was
6 that you had learned that your brother Robert Eremian had
7 gotten permission from the Court to go work for SOS, correct?

8 A. Yes. I saw the memorandum.

9 MR. WYSHAK: I object to that characterization.

10 THE COURT: Sustained.

11 Q. Didn't you testify to that on direct examination?

12 A. Yes.

13 MR. WYSHAK: I object. It's hearsay.

14 THE COURT: Sustained.

15 MR. NURIK: Judge, she testified in response to his
16 question.

17 THE COURT: Sustained as to the way that was asked.

18 MR. NURIK: All right. May I have this marked as my
19 next exhibit.

20 THE COURT: Have you shown it to the government? Do
21 you know what it is?

22 MR. WYSHAK: Can we have a sidebar, your Honor?

23 THE COURT: How much longer do you have?

24 MR. NURIK: Oh, I have a while.

25 THE COURT: Good, so why don't we pass this by, and

1 we'll do this at the break. Or do you need to do it right now?

2 MR. NURIK: I was going to do it right now.

3 THE COURT: All right, well, let me see you.

4 SIDEBAR CONFERENCE:

5 THE COURT: You can ask her if she's seen it.

6 MR. WYSHAK: Without identifying what it is, your

7 Honor --

8 THE COURT: Right.

9 MR. WYSHAK: -- because I don't believe there's --

10 THE COURT: It's clearly admissible as a court
11 document, but it's an impermissible inference that that shows
12 that SOS was doing what it was doing here in Massachusetts.

13 MR. WYSHAK: Exactly. Mr. Eremian's representation to
14 Judge Tauro and to the U.S. Attorney's office was, again, that
15 he was just a computer consultant, not the owner, not the
16 operator. He lied to Probation about what he was doing, and
17 they should not be able to profit --

18 THE COURT: Excuse me, excuse me. I'm going to allow
19 him to ask whether she's ever seen this before without your
20 saying what it is. I will deal at another point whether it's
21 admissible for another purpose.

22 MR. NURIK: She did testify on direct examination --

23 THE COURT: I don't know exactly how it's worded, but
24 the way you've asked the question, it was as if Judge Tauro
25 allowed him to do this kind of gambling the way you worded it.

1 I don't remember how it came out, but I'm not going to allow
2 that impermissible inference that a judge of this court
3 permitted the kinds of activities that went on.

4 MR. NURIK: Well, wait. All I am saying is and all
5 this document says, that based upon the representations of what
6 Mr. Eremian and his counsel said he was doing, he was given
7 permission to go. The government obviously has argued and will
8 continue to argue --

9 THE COURT: Excuse me. You're not doing it through
10 this witness unless she's seen it.

11 MR. NURIK: Well, she has seen it.

12 THE COURT: Well, I don't know that.

13 MR. NURIK: Well, that's what I didn't have a chance
14 to --

15 MR. WYSHAK: No. When did she see it? Not at the
16 time it was created. What, did you show it to her?

17 MR. NURIK: No. Wait till you hear the testimony.

18 THE COURT: Well, I will hear what the testimony is
19 and then make certain judgments, but the one thing you are not
20 doing is making an inference to this jury that Judge Tauro or
21 Pamela Lombardini expressly permitted him to do the kind of
22 gambling activities that it is undisputed were happening in
23 this Commonwealth.

24 MR. HORSTMANN: What about willful blindness?

25 MR. NURIK: Hold on. I'm not saying anything other

1 than what is in this document.

2 THE COURT: The way you asked it was misleading.

3 (End of sidebar conference.)

4 MR. NURIK: May I continue?

5 THE COURT: Yes, without -- just show it to her.

6 MR. NURIK: Well, let me have it marked first.

7 THE COURT: For identification.

8 MR. NURIK: Yes.

9 (Document marked for identification.)

10 BY MR. NURIK:

11 Q. Let me show you a document marked for identification and
12 ask you if you have ever seen this document before.

13 (Witness examining document.)

14 A. Yes, I have.

15 Q. When have you seen the document?

16 A. I saw it in 2002 after my brother received it.

17 Q. How did you come to see it?

18 A. He showed it to me.

19 Q. Okay, your brother meaning --

20 A. My brother Bob.

21 Q. Bob Eremian, okay. And you read it back then?

22 A. I did.

23 Q. Okay, do you recall from looking at it now that it is in
24 fact the same document you read back then?

25 A. Correct.

1 MR. NURIK: I'd like to offer it into evidence at this
2 point.

3 THE COURT: All right, I'll take that under
4 advisement.

5 Q. Well, let me ask you this: At the time, were you made
6 aware through your brother that he had been permitted --

7 MR. WYSHAK: Objection.

8 THE COURT: Let me hear the question.

9 Q. -- to return to Antigua to work for SOS as a software
10 consultant?

11 A. Correct.

12 MR. WYSHAK: Objection.

13 THE COURT: Sustained.

14 Q. As a result of receiving this document, did it give you
15 the comfort that you wanted or you needed in order to continue
16 to do the things you did for the account?

17 MR. WYSHAK: I object. It assumes facts in evidence
18 that she needed comfort.

19 THE COURT: Overruled. I'll allow this as to her
20 understanding at the time she was engaging in this banking
21 activity for her brother.

22 A. Yes, it did.

23 Q. Was your understanding that your brother had permission to
24 return to Antigua to operate as a software consultant for
25 Sports Off Shore?

1 A. Yes, it was.

2 THE COURT: Now, remember, that's not for the truth of
3 it. It's as to what her thought process was at the time.

4 Q. Now, you also were aware, were you not, that Sports Off
5 Shore in Antigua was licensed?

6 A. Yes.

7 Q. Okay. And at the time you were led to believe that as a
8 result of being licensed, that the activity that the company
9 was engaging in was legal?

10 A. Yes.

11 Q. And the handling of the account that you were involved in
12 that received money from the activities of Sports Off Shore,
13 you took and kept very accurate records?

14 A. Yes.

15 Q. Other than the issue that you pled guilty to, which was
16 mischaracterizing moneys earned as commissions, was everything
17 else that was put into your records absolutely accurate?

18 A. I tried my best, yes.

19 Q. There was no attempt to hide anything?

20 A. No.

21 Q. Everything was transparent?

22 A. Very transparent.

23 Q. Okay. The checks that were made out to certain places
24 were all properly identified?

25 A. Yes.

1 Q. The money that was received was properly identified?

2 A. Yes.

3 Q. Okay. Was there any attempt to hide the names on the
4 account?

5 A. No.

6 Q. Okay. In fact, the account was opened in the name of
7 Patrice Tierney and Robert Eremian?

8 A. Yes.

9 Q. Okay. Now, you told the ladies and gentlemen of the jury
10 that you were involved in shipping some things to Antigua?

11 A. Yes.

12 Q. You had been to Antigua how many times?

13 A. I believe five.

14 Q. And from what you learned from being there and from your
15 conversations with your brother, is it fair to say that in
16 Antigua --

17 THE COURT: Which brother?

18 MR. NURIK: Very good.

19 Q. Robert Eremian. It's fair to say that just about
20 everything needs to be brought in or imported into Antigua?

21 A. Yes.

22 Q. Okay. Any goods, any appliances, anything you need to
23 live a normal life, you've got to import it in or pay
24 exorbitant prices in Antigua, correct?

25 A. Correct.

1 THE COURT: Just I'm trying to get a sense of
2 scheduling. How much longer do you have?

3 MR. NURIK: Oh, I think we should break now, your
4 Honor.

5 THE COURT: Yes, enough is enough. She's been on for
6 two hours. We'll take our break, 11:00 to 11:30 we'll be back.

7 (Jury excused.)

8 THE COURT: Can I see counsel just on scheduling and
9 that one evidentiary matter.

10 SIDEBAR CONFERENCE:

11 THE COURT: Let me start with the easy part first.
12 How much longer do you have?

13 MR. NURIK: Well, I'd like to be accurate. Twenty
14 minutes.

15 THE COURT: It doesn't have to be precise. And do you
16 have much?

17 MR. HORSTMANN: Not very much.

18 THE COURT: All right. And will you have some
19 redirect?

20 MR. WYSHAK: Very little, but, you know, it's unclear.

21 THE COURT: So say we're done in the vicinity of 12:00
22 to 12:15.

23 MR. WYSHAK: I'm going to have Mr. Olsen.

24 THE COURT: Olsen again is the --

25 MR. WYSHAK: He's a Florida agent who dealt with Dan.

1 THE COURT: I see. So don't forget, we're going to
2 like in the vicinity of 4:00. So who else would you have?

3 MR. WYSHAK: We're going to finish with Mr. Craffey.

4 MR. FISHER: He's the accountant.

5 THE COURT: The accountant, okay.

6 MR. WYSHAK: And then we have Sandra Lemanski. She'll
7 be our last witness.

8 THE COURT: Oh, she's going to be your last witness.

9 MR. WYSHAK: Yes. So we'll probably rest tomorrow.

10 THE COURT: You need some witnesses.

11 MR. NURIK: I don't have anybody till Monday.

12 THE COURT: See what you can get.

13 MR. NURIK: I can't get a soul. They're all from out
14 of town.

15 THE COURT: How about yours?

16 MR. HORSTMANN: My investigator is down in Florida
17 now. She flies back on Saturday.

18 MR. NURIK: Well, we do have a charge conference.

19 THE COURT: Yes, maybe we'll just do the charge
20 conference if we have to.

21 MR. HORSTMANN: And Rule 29.

22 THE COURT: Huh?

23 MR. HORSTMANN: Rule 29. There's a lot to discuss.

24 THE COURT: Let me just put it this way: There's no
25 way on earth I am ruling on the complexity of the issues here

1 on a Rule 29 before the close of all the evidence. You can
2 make the argument, but it's different than my ruling on it. I
3 haven't seen a brief. I just for the first time -- please,
4 I've been begging for your theory of the case. Other than good
5 faith, which is a fact question, I haven't heard it. So if
6 there are legal nitpicks here, I don't know it, and I'm not
7 going to sort of rule off the cuff. That's not going to
8 happen. So, ideally, when can I have a brief on it?

9 MR. HORSTMANN: I will get you something tonight. I
10 was planning on tomorrow, but I'll get it to you tonight.

11 THE COURT: I have little hints for a couple of things
12 on your objections to the jury instructions, but, I mean, even
13 those are fact-based like the safety valve issue, you know,
14 whether or not it was legal in one place and illegal in
15 another.

16 MR. HORSTMANN: I think the big issue is the Internet
17 portion of the gambling and that the government hasn't
18 differentiated between the two as to any count or any better.

19 THE COURT: Can I saying something? Every single time
20 you throw up the SOS card with the big 800 number on it, I'm
21 not sure that helped you, so let me just --

22 MR. HORSTMANN: But I don't have the burden.

23 THE COURT: I'm just -- so we think we're going to be
24 done, Mr. Stern, this morning with her.

25 MR. STERN: Okay, good.

1 THE COURT: Maybe 12:15 or something. But on the
2 document, here's my concern about it: It's an official record
3 of the court. I mean, it's relevant and it's authentic and
4 would normally come in. The concern that I have -- and it sort
5 of places timing and when he went. It's relevant as a business
6 record or a public record. My concern is, any implication that
7 Judge Tauro blessed this by letting him go is inappropriate,
8 and that is essentially the inference you're seeking to leave.
9 So I'm inclined to let it in but with some sort of curative
10 instruction.

11 MR. WYSHAK: Well, your Honor, the bottom line with
12 this is, if that goes in, we're going to have a mini-trial here
13 because Pam Lombardini --

14 THE COURT: Fine, bring her in. I know Pam. I knew
15 her in Essex County, and I knew her here, so --

16 MR. WYSHAK: The members of the U.S. Attorney's office
17 specifically talked to Mr. Merberg. They brought the case that
18 I gave to your Honor last night, the Cohen case, to
19 Mr. Merberg's attention, told Mr. Merberg this SOS business has
20 customers in the United States.

21 THE COURT: You may have to --

22 MR. WYSHAK: So we're going to have a whole trial
23 about this.

24 THE COURT: You may have to. You may have to. But
25 it's good you warned them because then that's going to be their

1 call. But what I'm not going to let happen, especially with
2 the entire press corps out there, is for you to make the
3 argument that Judge Tauro of this court said it was okay or the
4 Probation Office of this court, and that was the implication
5 that was left in how you asked it.

6 MR. WYSHAK: And to the extent that it's relevant for
7 her state of mind --

8 THE COURT: Well, you asked about state of mind. I'll
9 let him ask about state of mind.

10 MR. WYSHAK: Right, but he wants to offer this
11 document, obviously, for the truth of its contents, and part of
12 what's missing in this document is the representations made by
13 Mr. Merberg and Robert Eremian to Judge Tauro and to the U.S.
14 Attorney's office. It's not contained in there, and --

15 THE COURT: That's right. I'm glad you were on that.
16 So you think about whether you really want this in because I
17 will let them put on Ms. Lombardini and I will let them put
18 on -- who's the prosecutor?

19 MR. WYSHAK: Mr. Auerhahn.

20 THE COURT: I think you -- I read that. You gave it
21 to me before trial, and I'm very glad I had it in advance
22 because I thought about it. And I would give some sort of
23 cautionary instruction that that is not evidence as to what was
24 told to Judge Tauro or that he had any knowledge at all about
25 what we've heard because what I've heard here, some of it is

1 plainly illegal, and the notion that Judge Tauro permitted this
2 would be incorrect.

3 MR. NURIK: Well, I would --

4 THE COURT: Some of it. I'm not saying -- I
5 understand you have some technical arguments about the
6 Internet, but a lot of it was over the phone.

7 MR. NURIK: It would not be my intention in any way,
8 shape, or form to disparage the court or misrepresent what the
9 court knew. The document is very specific. The government has
10 its opportunity to argue what it wishes to argue regarding the
11 document, but it is in fact an official court document; and
12 whether we opened the door or not, with every witness that has
13 come into this courtroom that they have called, they have asked
14 about their state of mind and their own belief regarding
15 whether it was legal or not. This document bears on the state
16 of mind and is relevant to that issue.

17 Now, at the end of the day, you should know that the
18 U.S. Attorney's office was fully aware by a memo that was
19 issued by an IRS agent back in the late '90s, actually, back
20 around the time of 2000, in which he identified all of the
21 issues that are of concern to the government in this case; in
22 other words, that the activities were an on-the-ground
23 operation. I have a copy of that memo. I can show it to you.
24 It's Agent Howe's memo.

25 THE COURT: Do you have it?

1 MR. WYSHAK: Yes, and what Mr. Eremian told Agent Howe
2 was, "In 1997 I went down to Antigua and started this business
3 and went bankrupt in the first year. And since that time I'm a
4 computer consultant, and there are other people who I don't
5 know their names who are running this business," and clearly
6 separated himself from the ownership and operation of this
7 business, except to the extent that he had sold them a software
8 package and was maintaining the computer software.

9 THE COURT: I am simply saying this: This is
10 relevant. It is a business record. I will allow this in, but
11 I would do this with a curative instruction that there is no
12 evidence that Judge Tauro understood the full scope of what was
13 happening that you've heard about in this trial, because the
14 one thing that's undisputed is all these hundreds of thousands
15 of dollars of cash collections in paper bags and people placing
16 calls. There is no idea, nothing that I think either Pam
17 Lombardini or Judge Tauro would have known about that based on
18 what you've just told me.

19 MR. NURIK: And I don't have any evidence to the
20 contrary. I will say, however, I do have evidence to the
21 contrary that the U.S. Attorney's office knew about it.

22 THE COURT: I'll leave that for where it is, and we
23 may have to get into a mini-trial.

24 MR. NURIK: And they did not object.

25 THE COURT: But I'm going to tell them that this is

1 not in any way to be construed as Judge Tauro approving the
2 activities that they heard about at this trial. So if you want
3 that curative instruction --

4 MR. NURIK: So we have to decide, if we want to offer
5 it in, you're going to give that curative instruction?

6 THE COURT: Yes, that's exactly right, so --

7 MR. STERN: I have a different question I want to
8 raise.

9 THE COURT: All right, go ahead.

10 MR. STERN: Are you finished with this?

11 MR. HORSTMANN: Yes. Thank you.

12 MR. STERN: This just has to do with the question that
13 Mr. Wyshak asked Mrs. Tierney about conversations with me.
14 Remember that towards the end?

15 THE COURT: Yes, yes.

16 MR. STERN: We have a disagreement as to what
17 representations, if anything, I said.

18 THE COURT: The "You don't want to know"?

19 MR. STERN: Right, right.

20 THE COURT: "You don't want to know."

21 MR. STERN: And I told Mr. Wyshak this morning when we
22 talked about that, that was not my memory of our conversation.
23 It was a different conversation. So I just want to make it
24 clear --

25 THE COURT: So what do I do with that?

1 MR. NURIK: I may have to call Mr. Stern as a witness.

2 MR. WYSHAK: Actually, you know, your Honor, it was
3 very clear to me. When we were discussing whether there was a
4 factual basis for Ms. Tierney to plead to aiding and abetting
5 the filing of false tax returns, I had a very clear
6 conversation with Mr. Stern that he was comfortable with the
7 plea because she had admitted to him she asked her brother
8 about the legality of what he was doing, and she was told, "You
9 don't want to know," and Mr. Stern felt that that amounted to
10 willful blindness. Now, the other day when I told him I was
11 going to ask her about that conversation, he had no
12 recollection of it. This morning he calls me and says, "Yeah,
13 now I recollect, but it had to do with her making payments."

14 MR. STERN: Well, I recollect after talking with my
15 client that there was a discussion about something similar but
16 not that. I have no --

17 THE COURT: Well, do you remember what it --

18 MR. STERN: Yes.

19 MR. WYSHAK: It may have been something similar.

20 THE COURT: Let me just ask, without disclosing an
21 attorney-client privilege, is --

22 MR. STERN: What I said to Mr. Wyshak this morning was
23 that I now recall that we likely had a discussion that she had
24 questioned her brother Bob about certain payments for the kids,
25 whether she should make these payments, and he on several

1 occasions in a very testy way said, "Those are fine. It's none
2 of your business. It has to do with payments for the
3 children."

4 MR. WYSHAK: And that doesn't even make sense.

5 THE COURT: Well, this is the way this can be handled:
6 Either someone asks her to go into greater length as to the
7 context of it -- he's not a lawyer in the case so he can't do
8 it -- or possibly, I don't know if that injects you into the
9 trial.

10 MR. NURIK: Which is the problem in allowing the
11 testimony to begin with.

12 MR. HORSTMANN: Judge, aren't these inadmissible
13 settlement discussions?

14 THE COURT: Well, it's not a civil case. I don't
15 know --

16 MR. HORSTMANN: I don't think the rule is limited.

17 MR. WYSHAK: She's not a defendant in this case.

18 THE COURT: I don't know.

19 MR. WYSHAK: She's a witness being called by the
20 government.

21 THE COURT: I don't know, but the truth is, it came in
22 without objection.

23 MR. NURIK: I request that the Court to strike it and
24 admonish the jury to disregard it.

25 THE COURT: No. At this point I have no basis for any

1 of that. It came in without objection.

2 MR. NURIK: I thought I objected to it.

3 THE COURT: Maybe you did.

4 MR. WYSHAK: And she hasn't even denied it.

5 THE COURT: I don't remember that.

6 MR. WYSHAK: She just said, "I don't remember," like
7 she doesn't remember ninety percent of whatever else went on,
8 so --

9 THE COURT: That goes to the credibility of the
10 witness. I don't remember whether you objected. We could find
11 out. I don't know. That will be for the record.

12 MR. WYSHAK: But I am very concerned about --

13 THE COURT: Mr. Horstmann is quick. He's looking this
14 up.

15 MR. HORSTMANN: It bothered me at the time.

16 THE COURT: Settlement discussions are civil, but I
17 don't know anything about the plea colloquy discussions.

18 MR. WYSHAK: Clearly if during the course of plea
19 discussions with the defendant, if the defendant makes
20 admissions to his lawyer --

21 THE COURT: Is there a proffer letter or something?

22 MR. WYSHAK: I couldn't use it against her if we were
23 prosecuting her and she got up on the witness stand, but this
24 is an entirely different matter where she's a witness in
25 another case. She's not a party.

1 THE COURT: I don't know. Just like that Exhibit 61
2 where I have gained a huge amount of insight after doing legal
3 research and thinking about it and hearing subsequent
4 testimony, I'm not going to shoot from the hip on this one.
5 I've already ruled. I'm leaving it alone. How we deal with it
6 subsequently, I don't know. Maybe you think about that too. I
7 don't know what I do. I mean --

8 MR. STERN: Well, I think it should be -- I certainly
9 don't want to get into a mini-trial. I don't want to be a
10 witness in this case.

11 THE COURT: She said she didn't remember it, right?

12 MR. STERN: Right.

13 THE COURT: So I'll just remind them that questions in
14 a -- what I would propose is just say, "With respect to
15 anything having to do with her attorney, she didn't remember
16 it, and, remember, any information in a question is not
17 evidence in the case and you cannot consider it." That is my
18 proposal. Think about it, take a break, and let's hope we
19 finish this soon.

20 (End of sidebar conference.)

21 (A recess was taken, 11:15 a.m.)

22 (Resumed, 11:44 a.m.)

23 MR. HORSTMANN: Judge, may I be heard briefly at
24 sidebar?

25 THE COURT: Well, can't you just say it so we don't

1 take the -- what's the issue?

2 MR. HORSTMANN: Rule 410, your Honor, precludes the
3 introduction of any plea discussions, and at the time that
4 the --

5 THE COURT: Rule 410? I'll look at it. Thank you.

6 MR. HORSTMANN: I'd move to strike.

7 THE COURT: Well, there's nothing to strike. It was
8 just a question.

9 MR. NURIK: Your Honor, I'd request that you give that
10 curative instruction concerning that.

11 THE COURT: I'm not doing anything until I read it,
12 okay, so let's just get them in here, and then I'll --

13 (Jury enters the courtroom.)

14 THE COURT: Okay, Mr. Nurik.

15 MR. NURIK: Thank you, your Honor.

16 THE COURT: Thank you.

17 BY MR. NURIK:

18 Q. Patrice, when we left off, I believe I was asking you
19 about products in Antigua and the difficulty of getting things
20 and buying things in Antigua. Do you remember that?

21 A. Yes.

22 Q. Okay. And with respect to your job of taking care of that
23 account, did you from time to time see that there were
24 purchases being made by credit cards for things, goods that
25 ultimately had to get shipped to Antigua?

1 A. Yes.

2 Q. And some of these things were tools, correct?

3 A. Yes.

4 Q. Some of these things were equipment, correct?

5 A. Yes.

6 Q. Televisions, appliances?

7 A. Yes.

8 Q. Okay, the types of things that people use when they are
9 living ordinary lives, even here?

10 A. Yes.

11 Q. You also saw that there were times that equipment was
12 being shipped in large containers?

13 A. I didn't see it.

14 Q. But you knew about it?

15 A. Yes.

16 Q. You also knew there were times things were being shipped
17 by FedEx's and other means, correct?

18 A. Yes.

19 Q. And from time to time you would actually look at these
20 expenditures, the credit card expenditures, and question your
21 brother Bob about them, correct?

22 A. Yes.

23 Q. Correct?

24 A. Yes.

25 Q. And the reason was, because you really wanted to keep an

1 accurate reflection of what was going on?

2 A. Yes.

3 Q. And you wanted to make sure that if something was being
4 bought, you knew that it was a legitimate expense that Bob had
5 authorized?

6 A. Yes.

7 Q. And you wanted to know what it was for so you could
8 pigeonhole it in your QuickBooks, correct?

9 A. Yes.

10 Q. Now, you knew that your brother Dan was receiving some of
11 these things directly when they were purchased to be shipped on
12 to Antigua, correct?

13 A. Correct.

14 Q. You also knew that your brother Bob had two other
15 businesses in Antigua besides being involved with SOS, correct?

16 A. Correct.

17 Q. Let's talk about those. First of all --

18 MR. WYSHAK: Objection. Can we ask the basis of the
19 knowledge?

20 MR. NURIK: Well, I'm going to ask her that.

21 THE COURT: He can ask.

22 Q. Were you aware, for example, when you were in Antigua that
23 your brother Bob was setting up a helicopter charter service?

24 MR. WYSHAK: Objection. How? It calls for a --

25 THE COURT: Excuse me. Overruled. Yes or no, and

1 then you will ask how, all right? Are you aware of that one
2 way or another?

3 THE WITNESS: Yes.

4 Q. How were you aware of it?

5 A. I saw the helicopter. I rode in the helicopter with my
6 mom.

7 Q. And you learned from doing that and from your
8 conversations with Bob that Bob had purchased that helicopter,
9 correct?

10 A. Correct.

11 Q. And that that helicopter was going to be used for a
12 business he was setting up to transport people around the
13 island sightseeing?

14 A. Correct.

15 Q. And in fact you went on one of those sightseeing tours
16 yourself?

17 A. Correct.

18 Q. Were you aware of how that helicopter was registered, by
19 the way?

20 A. No.

21 Q. You know for a fact, though, that Bob was the one that
22 purchased that, right?

23 MR. WYSHAK: I object, the basis of knowledge.

24 THE COURT: Sustained, sustained.

25 Q. Were you aware of whether or not that helicopter --

1 THE COURT: Do you know who purchased it?

2 THE WITNESS: No, I don't.

3 Q. Okay. Were you also aware of an individual when you were
4 learning about the helicopter service by the name of Peter
5 Hallam?

6 A. Yes.

7 Q. And Peter Hallam was a pilot?

8 A. Yes.

9 Q. He was going to be involved with that?

10 A. Correct.

11 Q. In addition, were you aware that Mr. Hallam was involved
12 with another business with your brother?

13 A. Yes.

14 Q. And what was that other business?

15 A. Uhm, large construction vehicles, uhm, equipment.

16 Q. Heavy machinery?

17 A. Heavy machinery, yeah.

18 Q. Okay. And how did you learn that?

19 A. I saw the pieces of equipment.

20 Q. You asked your brother about it?

21 A. Uh-huh.

22 MR. WYSHAK: Objection, calls for hearsay.

23 THE COURT: Sustained, sustained.

24 Q. Well, were you aware, for example, that that equipment was
25 being used in Montserrat as a result of the volcano?

1 MR. WYSHAK: Objection. It calls for a hearsay
2 answer.

3 THE COURT: Sustained. I will allow what she saw, not
4 what her brother told her.

5 Q. Well, you saw activity, correct?

6 A. I did see activity.

7 Q. You saw that a business was being geared up for the
8 purpose of providing heavy machinery for construction, correct?

9 A. Correct.

10 Q. And you knew that in fact some of that equipment was being
11 ordered in the United States and being shipped over by Danny?

12 A. Correct.

13 MR. NURIK: May I approach the witness?

14 THE COURT: Yes.

15 Q. Let me show you what we have marked as Defendant's
16 Exhibit 317. Take a look at those photographs.

17 (Witness examining photographs.)

18 Q. And based upon your visits to Antigua, can you say whether
19 or not those photographs fairly and accurately represent the
20 general appearance of SOS's offices or that house where the
21 office were?

22 A. Generally.

23 THE COURT: What about them is different?

24 THE WITNESS: I don't recognize this wall, this clear
25 glass. That looks like it -- that's not familiar to me.

1 Everything else, the garage and the entrance, everything else
2 is but not that.

3 MR. NURIK: Okay, I will offer into evidence all but
4 that one photograph.

5 MR. WYSHAK: No.

6 THE COURT: Excuse me. Go one by one, what it is that
7 you recognize.

8 THE WITNESS: I recognize --

9 THE COURT: First of all, did you take these pictures?

10 THE WITNESS: No.

11 MR. WYSHAK: All right, I'm --

12 THE COURT: Excuse me. Let me just go through them
13 one by one. What exhibit? We are at 317.

14 MR. NURIK: They're all a composite. If you want to
15 mark them A, B, and C, we can do that.

16 THE COURT: Yes, but she doesn't recognize one of
17 them.

18 MR. NURIK: That's right.

19 THE WITNESS: I recognize this as the dining area and
20 the garage that we would enter the house through.

21 THE COURT: Who took these pictures?

22 MR. NURIK: Your Honor, I don't know who took these
23 pictures. I have these pictures, and I believe they to be fair
24 and accurate representations. However --

25 THE COURT: Excuse me. Were they taken back then, or

1 were they taken recently?

2 MR. NURIK: I don't know when they were taken, and I'm
3 asking her to identify whether or not they're fair and accurate
4 representations, and she says there's one she doesn't, so if we
5 separate that, we can offer all the others.

6 MR. WYSHAK: Well, I object to not offering the
7 critical photo. If he wants to put the package in --

8 THE COURT: Excuse me. Overruled. If you have
9 somebody else who was there, you can ask about it, or you can
10 cross-examine based on it. So go ahead.

11 THE WITNESS: Okay, I recognize this as the -- this is
12 a patio that would have been extended, but you entered through
13 the garage to get to the patio. This is the garage that you
14 would enter into the patio. It's a very full garage. Again,
15 this is the garage with another angle of the patio where
16 furniture and dining areas were. This is the outside, the
17 exterior of the house with a gate and the garage. There's not
18 much else you can see there. And this is a fuller view of the
19 different dining areas in the enclosed patio.

20 Q. If you would please separate the one from that pile, the
21 one that you don't recognize.

22 A. Okay.

23 MR. NURIK: And I would offer the other photographs as
24 composite Exhibit --

25 THE COURT: 317, and the one -- what is it called?

1 THE CLERK: It's five photos.

2 THE COURT: Five photos. And the one that isn't make
3 it 317-A for Identification because there may be other people
4 who -- so make the other one 317-A. All right.

5 (Defendant Exhibit 317 received in evidence.)

6 (Defendant Exhibit 317-A marked for identification.)

7 MR. NURIK: May I publish them, your Honor?

8 Q. Let's go through the first photograph. Is this what the
9 outside of the house where the offices are looked like?

10 A. Yes.

11 Q. So you would go through a gate?

12 A. Yes.

13 Q. And then through a garage?

14 A. Yes.

15 Q. Okay. So the garage entrance is here?

16 A. Correct.

17 Q. And this is a view of what?

18 A. The garage.

19 Q. Okay.

20 A. And the patio.

21 Q. So as you enter the garage, you would see this. You would
22 then see an inside patio here?

23 A. Correct.

24 Q. And then you see sliding glass doors there?

25 A. I see them.

1 Q. Okay. And is that where behind that some of the office
2 activity was?

3 A. Correct.

4 Q. Okay. This is another view of what?

5 A. The garage.

6 Q. Okay. And when you were there, there was always things
7 going on like this in the garage?

8 A. Yes.

9 Q. Equipment?

10 A. Yes.

11 Q. And this view is still from the garage?

12 A. Yes.

13 Q. But this gives you a clearer view of the dining area?

14 A. Part of the dining area.

15 Q. Now, that dining area is covered but it's open air. In
16 other words, it's not under air conditioning, correct?

17 A. Correct.

18 Q. And that's the dining room table right there?

19 A. Yes.

20 Q. Okay, is that where you had dinner?

21 A. Yes.

22 Q. Okay. And then this is another view of the dining room
23 table, and then you can see the sliding doors there?

24 A. Correct.

25 Q. Where the office activity took place?

1 A. Correct.

2 Q. Now, the government had shown you a summary chart and
3 asked you questions concerning a large amount of money that
4 they suggested you received from the account. Do you remember
5 that testimony?

6 A. I remember the chart, yes.

7 Q. Okay. Now, in that amount of money that they showed you,
8 is it fair to say that you were paid for things other than
9 gifts? For example, you were reimbursed for expenditures you
10 had made?

11 A. Yes.

12 Q. Now, you were serving essentially as the rock of the
13 family, correct?

14 A. Correct.

15 Q. You were taking care of Bob's kids?

16 A. Correct.

17 Q. Taking care of the household?

18 A. Correct.

19 Q. Trying to help Bob with paying for all of the rehabs that
20 kids were in?

21 A. Correct.

22 Q. Taking care of problems with the estranged wife?

23 A. Correct.

24 Q. Okay. And at the same time you were waiting hand and foot
25 on your mother who was ill, correct?

1 A. Correct.

2 Q. You heard questions from Mr. Wyshak regarding phone calls
3 you had in 2009 with my client, Danny?

4 A. Yes.

5 Q. And it was suggested that in a period of twelve months,
6 you may have spoken to him ten or more times a month?

7 A. Correct.

8 Q. Over a hundred times, correct?

9 A. Correct.

10 Q. And I believe you responded to him by saying that at that
11 time your mother was seriously ill, correct?

12 A. Correct.

13 Q. Did she ultimately pass away?

14 A. Yes.

15 Q. Were you keeping Danny informed of what was going on with
16 your mom?

17 A. Daily almost. I tried to.

18 MR. NURIK: May I have one moment, your Honor?

19 (Pause.)

20 Q. One final thing. When you testified earlier that your
21 brother Bob had pled guilty initially sometime after the raid
22 in Massachusetts, were you aware that he pled guilty to tax
23 charges?

24 A. Yes.

25 Q. So originally he was charged with illegal gambling?

1 MR. WYSHAK: I object to this.

2 MR. NURIK: If she knows.

3 THE COURT: Well, I --

4 MR. WYSHAK: Misleading cross-examination, and there's
5 no basis she knows about plea negotiations.

6 THE COURT: I need the question. What's the question?

7 Q. Was he originally charged --

8 THE COURT: No. I'll allow as to what her
9 understanding was.

10 Q. Your understanding, was he originally charged with
11 gambling charges?

12 THE COURT: Do you know?

13 A. Originally, yes.

14 Q. And do you know that ultimately he was allowed to plead
15 guilty to tax evasion?

16 A. Yes.

17 Q. Okay. And you know that ultimately he paid his tax on
18 that?

19 A. Yes.

20 Q. And ultimately paid his restitution on that?

21 A. Yes.

22 MR. NURIK: Your Honor, I would finally offer that
23 last exhibit, the order, into evidence, acknowledging your
24 instructions.

25 THE COURT: All right, I allow it in. But let me just

1 say this: You're about to see a document that comes from this
2 court having to do with Mr. Eremian's probation, and it speaks
3 for itself, but the bottom line is that he was permitted to go
4 to Antigua to work during the course of his probation.

5 However, there is no evidence that this court or the Probation
6 Office was ever told the nature of what the business was in
7 Antigua or what was happening in Massachusetts. So this will
8 establish timing of certain activities that are relevant to
9 this case, but it should in no way be viewed as the court
10 permitting anything that happened in this case.

11 (Defendant Exhibit X received in evidence.)

12 Q. With respect to this document which you said you saw back
13 when it was generated in 2002, correct --

14 A. Yes, yes.

15 Q. -- in particular, I'd like you to focus on the fact that
16 "Assistant United States Attorney Jeffrey Auerhahn is aware of
17 Mr. Eremian's employment at Sports Off Shore and has no
18 objection to his traveling to Antigua for work purposes."

19 A. Yes.

20 Q. You saw that back then, correct?

21 A. I did.

22 Q. Okay. Now, as a result of reading this document, did that
23 make you feel more comfortable about being involved with the
24 account?

25 A. Yes.

1 Q. Okay. And is it fair to say that Bob Eremian was, from
2 what you saw, providing this information to others?

3 A. Yes.

4 MR. NURIK: Okay, I have no further questions. Thank
5 you.

6 CROSS-EXAMINATION BY MR. HORSTMANN:

7 Q. Good afternoon, Mrs. Tierney. My name is Pete Horstmann,
8 and I represent Todd Lyons. We've never met before, have we?

9 A. No, we have not.

10 Q. Prior to the time that you appeared here in Federal Court
11 for purposes of entering a plea in front of Judge Young, you
12 signed a plea agreement with the U.S. Attorney's office,
13 correct?

14 A. Yes.

15 Q. Okay. And you reviewed that plea agreement before you
16 signed it, right?

17 A. Yes.

18 Q. Okay. And you reviewed it with your attorney, correct?

19 A. Correct.

20 MR. HORSTMANN: May I approach the witness, your
21 Honor?

22 THE COURT: You may.

23 Q. Mrs. Tierney, showing you what's marked for identification
24 as Exhibit 318, I'd ask if you recognize that document?

25 A. Yes.

1 Q. And directing your attention to the second-to-last page,
2 is that your signature on the second-to-last page?

3 A. Yes.

4 Q. Okay. And is that your attorney's signature?

5 A. Yes.

6 Q. And is it signed by the United States Attorney's office
7 for the District of Massachusetts?

8 A. Yes.

9 Q. Okay. And is that the plea agreement that you entered
10 into before agreeing to plead guilty in front of Judge Young?

11 A. Yes.

12 MR. HORSTMANN: I'd offer that as Exhibit 318.

13 MR. WYSHAK: May I see it?

14 (Document shown to Mr. Wyshak.)

15 THE COURT: Well, maybe it would make it subject to
16 any sanitization. Is that what you're saying?

17 MR. WYSHAK: Well, it makes reference to the
18 information which is attached as part of this document, which
19 is not attached, so I would just ask that the information be
20 attached, and then I have no objection.

21 MR. HORSTMANN: The information needs to be redacted
22 in one area, but other than that, I have no objection to that.

23 THE COURT: All right, fine. We'll work on it.

24 (Defendant Exhibit 318 received in evidence.)

25 Q. Mrs. Tierney, you were shown an exhibit on direct

1 examination that related to -- it was a check that was made
2 payable to you by Mr. Kenneth Lindsay, correct?

3 A. Correct.

4 Q. And those were the proceeds from the sale of a timeshare,
5 correct?

6 A. Correct.

7 Q. All right. And what wasn't shown to you, I believe, is
8 the deposit slip that accompanied that. Do you remember the
9 amount of that check?

10 A. Yes.

11 Q. All right. And is that the deposit slip that shows that
12 check going into the account that you managed for Mr. Eremian?

13 A. Yes.

14 Q. All right, you didn't deposit that into your own account,
15 did you?

16 A. No.

17 Q. And that went in on September 17, correct?

18 A. Yes.

19 MR. HORSTMANN: I would offer this as the next
20 exhibit, if it's not in already as part of the government's
21 exhibit.

22 THE CLERK: I don't know if it's in.

23 MR. WYSHAK: No objection.

24 THE CLERK: 319.

25 MR. HORSTMANN: Thank you.

1 (Defendant Exhibit 319 received in evidence.)

2 Q. Now, with respect to the plea agreement that you entered
3 into with the United States Attorney's office, you were not
4 charged with any racketeering offenses, correct?

5 A. No.

6 MR. WYSHAK: Objection.

7 THE COURT: Overruled.

8 Q. You were not charged with any money laundering offenses,
9 correct?

10 A. No.

11 Q. And you were not charged with any violations of the
12 Unlawful Internet Gambling Enforcement Act, correct?

13 A. No.

14 Q. And during this period of time that you were assisting
15 Robert Eremian and the family, you testified that Robert
16 Eremian paid over \$3 million in taxes to the federal
17 government, correct?

18 A. Correct.

19 MR. HORSTMANN: No further questions, your Honor.

20 REDIRECT EXAMINATION BY MR. WYSHAK:

21 Q. Ms. Eremian -- sorry. Ms. Tierney, do you remember when I
22 asked you on direct examination about the glass and the people
23 sitting behind the glass on computers?

24 A. Yes, I do.

25 Q. You denied that, right?

1 A. I denied knowing that the glass was there.

2 Q. Well, okay. You were just shown a photo, at least two
3 photos. Showing you this one here which you said you
4 recognized --

5 A. Uh-huh.

6 Q. -- okay, that's glass, is it not?

7 A. Correct.

8 Q. Okay. And here's a closer one again showing by the dining
9 table, correct, the glass?

10 A. Correct.

11 Q. Correct? And isn't what's depicted in both of those
12 photos the same thing that's depicted in Defendants'
13 Exhibit 317-A, that this is a close-up of those glass doors?

14 (Witness examining photograph.)

15 A. It appears to be.

16 MR. WYSHAK: I offer it, your Honor.

17 THE COURT: All right.

18 (Defendant Exhibit 317-A received in evidence.)

19 Q. All right, so, now, showing you this photo which is
20 Defendants' 317-A, that's what you see if you look through that
21 glass, right?

22 A. That's what I see, yes.

23 Q. And that's what you did see when you were there, correct?

24 A. I saw computers and telephones.

25 Q. Okay. So that's the glass -- pardon me if I described it

1 as a wall previously, but they're sliding doors, correct?

2 A. I don't remember if they slide.

3 Q. Okay.

4 A. It looks like a slider.

5 Q. Whether they slide or not, they appear to be glass visible
6 from the dining area through which you can see people on
7 computers. It appears to be an office area, correct?

8 A. Correct.

9 Q. And that was visible to you when you dined, as is apparent
10 from this photo, at SOS?

11 THE COURT: That's a question.

12 THE WITNESS: Oh, I'm sorry. I didn't --

13 THE COURT: Is that a question?

14 MR. WYSHAK: Yes.

15 A. Your question was?

16 Q. It's visible to you when you dine from the dining room,
17 right?

18 A. Yes.

19 Q. And just so the record is clear, you were there in 1999,
20 correct?

21 A. I don't remember the date, but --

22 Q. Okay. Well, I'll show you this document and see if this
23 refreshes your recollection.

24 A. Okay.

25 Q. You can tell us the years that you visited Antigua.

1 (Witness examining document.)

2 A. For the 2008 where there are two, that must have been me
3 and my mom, correct?

4 Q. I don't know, Ms. Tierney. You would know better than I.

5 A. Okay. Well --

6 Q. So you were there in 2008?

7 A. 2008. I don't have my passport. I would have to check my
8 passport.

9 Q. Okay, well, that's a Customs printout of your travel.

10 A. Okay.

11 Q. You can see that, correct?

12 A. Yes.

13 Q. Okay, so does that refresh your recollection as to the
14 years that you went to Antigua?

15 A. Yes.

16 Q. Okay, so what years were they?

17 A. 1999, 2000, 2008, 2009.

18 Q. Okay. And do you remember on which of those trips your
19 husband was present with you?

20 A. In 1999.

21 Q. Okay. And the other one?

22 A. Probably 2008.

23 Q. I want to show you this document and ask you if it
24 refreshes your recollection.

25 (Witness examining document.)

1 A. Okay.

2 Q. Does it?

3 A. Yes, so I was off a year. It was 2009, not 2008.

4 Q. All right, so he was there --

5 A. Twice.

6 Q. -- twice, once in '99 and the second time in 2009,
7 correct?

8 A. Correct.

9 Q. And I assume on both occasions you and he dined in that
10 dining area?

11 A. Yes.

12 Q. All right, now, you were asked questions about your plea
13 agreement with the government by Mr. Horstmann, correct?

14 A. Yes.

15 Q. And that plea agreement was a result of negotiation
16 between your lawyer and the United States Attorney's office,
17 correct?

18 A. Correct.

19 Q. To achieve a result that everybody thought was fair?

20 A. Correct.

21 Q. Correct? You understood that you could have been charged
22 with more serious charges, did you not?

23 MR. HORSTMANN: Objection.

24 THE COURT: Overruled.

25 A. Correct.

1 Q. Okay, but the United States didn't do that and resolved
2 the case by way of a tax plea; fair to say?

3 A. Correct.

4 Q. All right, now, this letter from Probation, Defendants'
5 Exhibit 315, it's your testimony that your brother actually
6 showed you this document?

7 A. Yes.

8 Q. And I believe that Mr. Nurik asked you if that alleviated
9 some of your apprehension. Were you apprehensive about -- do
10 you recall him asking you that?

11 A. Yeah. I didn't recall him saying "apprehension." It made
12 me feel like I felt I could do the work for him.

13 Q. Well, did you have some concerns prior to that that you
14 shouldn't be involved in what he was involved in?

15 A. Yeah, yes.

16 Q. And then he showed you this document, correct?

17 A. Yes.

18 Q. And you have no idea what he told Judge Tauro about what
19 he was doing in Antigua, do you?

20 A. No, except for what I read here.

21 Q. Well, were you present at any court --

22 A. No.

23 Q. -- sessions?

24 A. No.

25 Q. No? Do you know what his lawyer, Mr. Merberg, told

1 Judge Tauro?

2 A. No.

3 Q. Do you know what Mr. Merberg represented to Pam Lombardini
4 from the Department of Probation?

5 A. No.

6 Q. Or what Mr. Eremian, your brother Robert Eremian,
7 represented to the Department of Probation?

8 A. No.

9 Q. No. So, so far as you know, he told them that he was some
10 kind of computer consultant, correct?

11 A. Correct.

12 Q. Which is what he told you?

13 A. Correct.

14 Q. Right. So you would agree, if in fact he was the owner
15 and operator of an illegal gambling business, that he would
16 have lied to the court?

17 A. Yes.

18 Q. Okay. As he lied to you, correct?

19 A. According to this document, he lied to the court, I guess.

20 Q. Okay. So the fact that he was allowed to go back to
21 Antigua was because he lied?

22 MR. NURIK: Objection.

23 THE COURT: Overruled.

24 Q. Correct?

25 A. I can't say that he lied. I wasn't there. I wasn't

1 present.

2 Q. Okay. But if he did, this would not be something that the
3 court or the Department of Probation or the U.S. Attorney's
4 office could rely upon if they were lied to, correct?

5 A. Correct.

6 MR. NURIK: Objection, calls for speculation.

7 THE COURT: Yes, sustained, sustained.

8 Q. Did you have a conversation with your brother about this
9 document?

10 A. Yes, when he had the document.

11 Q. Okay. Did he tell you that he employed people in
12 Massachusetts --

13 A. No.

14 Q. -- who solicited customers for his business in SOS?

15 A. No.

16 Q. Did he tell you that they collected money from gamblers
17 here in Massachusetts?

18 A. No.

19 Q. Did he tell you that those people who collected that money
20 packed it in FedEx boxes and shipped it overseas to Antigua?

21 A. No.

22 Q. He didn't tell you any of that, right?

23 A. No.

24 Q. And if those were in fact the facts, he lied to you?

25 MR. NURIK: Objection.

1 THE COURT: Overruled.

2 Q. Correct?

3 A. Yes.

4 Q. All right, now, the amount of money that was drawn out of
5 that Bank of America 0933 account by you --

6 A. Yes.

7 Q. -- you were asked on cross-examination whether or not some
8 of that money was to reimburse you for expenses; is that fair
9 to say?

10 A. Yes.

11 Q. All right. Now, clearly you had access to the money in
12 the 0933 account, correct?

13 A. Yes.

14 Q. You had access to money in the nanny account, for a better
15 term, the account that you were using to pay the expenses for
16 the children?

17 A. Correct.

18 Q. And the household in Lynnfield, correct?

19 A. Correct.

20 Q. You had access to an account that was paying some of your
21 mother's expenses, correct?

22 A. Correct.

23 Q. And all those three accounts were funded by your brother
24 Bob Eremian?

25 A. Correct.

1 Q. Correct? So you have access to three accounts that have
2 tons of money in them, correct?

3 A. The three accounts did not have tons of money in them. I
4 would draw from his account for what the family and what the
5 other account needed.

6 Q. You would fund the other two accounts from the 0933
7 account?

8 A. Yes. I would do an internal transfer.

9 Q. Okay. But you kept all those accounts funded?

10 A. Minimally, yes.

11 Q. Minimally?

12 A. Yes.

13 Q. Not sufficient to pay the required expenses for the
14 children or for your mother?

15 A. They were varied. I tried to keep it right to the penny,
16 but there were odd expenses.

17 Q. Odd expenses here and there?

18 A. Yes.

19 Q. Not significant amounts of money, correct?

20 A. No.

21 Q. Okay. So to the extent that you may have been reimbursed,
22 it was for small change?

23 A. A couple thousand dollars.

24 Q. And the reason that you had this obligation to care for
25 Robert Eremian's children, his family, he had a sick wife?

1 A. Yes.

2 Q. And he had children with problems?

3 A. Yes.

4 Q. Correct? And he left them; isn't that fair to say?

5 A. He tried -- I don't think that's fair to say that he left
6 them.

7 Q. He chose not to be with them?

8 A. He chose --

9 Q. He chose not to be a parent?

10 A. He chose to first take care of his wife so that she could
11 be better to take care of the children; and the children, they
12 would also have their own problems to deal with. I didn't -- I
13 don't --

14 Q. For the period from 1996 to today, he's been in Antigua,
15 correct?

16 A. Not solely, but, yes.

17 Q. Pretty much, right?

18 A. Back and forth.

19 Q. Pretty much. He decided to live and stay in Antigua,
20 correct?

21 A. He came back to live in Massachusetts when the children
22 were in the Massachusetts home for weeks at a time.

23 Q. For a few weeks?

24 A. Weeks at a time.

25 Q. Okay, all right. It's not the same as being a full-time

1 hands-on parent, is it?

2 MR. NURIK: Objection, your Honor.

3 THE COURT: Sustained.

4 Q. Okay. And just so the record is clear, you were asked on
5 cross-examination about this helicopter business and this heavy
6 machinery business, correct?

7 A. Yes.

8 Q. It's not your claim, is it, that the money that went into
9 the 0933 account came from those businesses?

10 A. No.

11 Q. No, okay. So the record is clear, the money that went
12 into the 0933 account, which you characterize as commissions --

13 A. Correct.

14 Q. -- came from SOS, correct?

15 A. SOS commissions for consulting, yes.

16 Q. Now, when I asked you questions about some of the details
17 involving account activity, such as selling Red Sox tickets to
18 people and, you know, sometimes getting paid and sometimes not
19 getting paid, you seemed somewhat oblivious. Do you recall
20 that?

21 MR. NURIK: Objection.

22 THE COURT: Sustained.

23 Q. Well, you weren't able to recall with any accuracy?

24 MR. NURIK: Objection, leading.

25 THE COURT: Well, not because it's leading, but I'll

1 overrule that one. Could you remember them one way or another?

2 A. Could you repeat the question?

3 MR. NURIK: Argumentative, your Honor.

4 Q. When I asked you questions on direct about the details of
5 some of these transactions involving the Red Sox tickets,
6 correct --

7 A. Yes.

8 Q. -- you seemed unable to provide any specific information.

9 MR. NURIK: Objection, leading and argumentative.

10 THE COURT: Overruled.

11 Q. Do you agree with that, that you were not very clear about
12 the nature of those transactions?

13 A. I was not clear about large packets of tickets, how they
14 were paid for. I told you that there were some that were paid
15 for, and I would put that money in the bank. I didn't --

16 Q. Some that were paid for and some that weren't?

17 A. They were -- I don't know how they were paid for.

18 Q. I agree, that's what you said, and I'm just asking you
19 because on redirect you seemed to respond to Mr. Nurik's
20 questions --

21 MR. NURIK: Objection.

22 THE COURT: Excuse me. You mean on cross?

23 MR. WYSHAK: I'm sorry.

24 Q. -- on cross-examination you seemed to respond to
25 Mr. Nurik's questions that you were very concerned that all the

1 expenses coming out of the 0933 account were accurately
2 reflected, and it was your concern that you knew exactly what
3 was going on. So which is it?

4 A. I knew what the deposits and the payments were.

5 Q. Well, if you send tickets to somebody --

6 A. Yes.

7 Q. -- and you didn't get paid for it, right --

8 A. Yes.

9 Q. -- you must have had at some point a question, "Where's
10 the money?"

11 A. They had prior arrangements to pay my brother for his
12 tickets.

13 Q. Okay. The same thing with the paying for the expenses of
14 the timeshare, right? You were sent a bill. Sometimes you
15 didn't have to pay the bill, right?

16 A. No. I paid the bill when I was sent the bill. There
17 might have been a time --

18 Q. Is it your testimony that every time --

19 THE COURT: No, no, don't interrupt. There may have
20 been a time. . .

21 A. There may have been a time when there was an extra bill
22 for an extra charge, but it was not a -- I'm not -- I'm saying
23 that the bookkeeping might have been lax on their end, but I
24 paid what came for his particular six-week unit.

25 Q. Do you recall that sometimes you didn't get billed or

1 sometimes you didn't have to pay because Mr. Perry owed your
2 brother money?

3 A. I do not recall that.

4 Q. You don't recall that.

5 A. I did not know he was owing my brother money.

6 Q. So it's your testimony, if we look in this 0933 account,
7 by the way --

8 A. Yes.

9 Q. -- and we compare them with Mr. Perry's billings to you,
10 there will be a check there for every single bill that
11 Mr. Perry sent to you?

12 A. That he sent to me, yes.

13 Q. Okay. Now, you also testified that your brother Bob told
14 you that SOS was licensed and legal. Do you recall Mr. Nurik
15 asking you about that?

16 A. I don't recall him asking, but I -- I do recall the
17 question.

18 Q. Well, I asked you on my direct examination if you ever had
19 a conversation with your brother about the legality of SOS.

20 A. In Antigua.

21 Q. Yes.

22 A. Yes.

23 Q. Well, you told me "no" before. Now it's "yes," you did
24 have a conversation with him about the legality --

25 A. Oh, no, I'm sorry, I misunderstood your question. I

1 didn't have a conversation with my brother.

2 Q. I thought you told Mr. Nurik on cross that you had a
3 conversation with him about SOS, and he told you it was
4 licensed and legal.

5 A. I don't recall that question. I'm sorry.

6 Q. All right. And, again, you paid your brother's taxes out
7 of this 0933 account?

8 A. Yes.

9 Q. And they were substantial, correct?

10 A. Correct.

11 Q. But you have no idea regarding the true amount of his
12 income, correct?

13 A. Correct.

14 Q. As a matter of fact, what you were reporting to
15 Mr. Flowers as his income was based upon all the money
16 deposited into the various accounts that you managed for him?

17 A. Correct.

18 Q. That you described as commission?

19 A. Correct.

20 Q. So it didn't account for any money that he may have kept
21 in Antigua, correct?

22 A. I never saw the tax that was filed.

23 Q. Okay. Well, I think you said on direct, part of what you
24 were willfully blind about was the amount of money he was
25 earning, correct?

1 A. What I observed, yes.

2 Q. So the taxes that he paid, you don't know if those were
3 accurate or not, correct?

4 A. I took it from the accountant as to what he owed.

5 Q. And, as a matter of fact, some of that money that was
6 being paid over the years was being paid because when he pled
7 guilty, he owed a lot of money in interest and penalties, about
8 \$300,000 over and above the tax liability. Were you aware of
9 that?

10 A. I was aware he owed past taxes.

11 MR. WYSHAK: Nothing further, your Honor.

12 RECROSS-EXAMINATION BY MR. NURIK:

13 Q. With respect to the taxes, you actually reported to
14 Mr. Flowers how much money was received in that account that
15 you've been talking about, correct?

16 A. Correct.

17 Q. You have no idea what additional information Mr. Flowers
18 got regarding other earnings in determining what the tax amount
19 should be, correct?

20 A. Correct.

21 Q. And in fact what happened is, Mr. Flowers would then tell
22 you how much you need to pay out of the account for the taxes,
23 correct?

24 A. Correct.

25 Q. And we do know that it's well over \$3 million that you

1 paid over that period of time?

2 A. Correct.

3 Q. And you told Mr. Wyshak that there may have been
4 approximately \$300,000 owed from earlier years?

5 A. I don't remember the figure, but I knew there were past
6 taxes and penalties.

7 Q. But it wasn't the bulk of what you paid. It was just a
8 small amount, correct?

9 A. Well, Mr. Flowers, again, would give me an amount with a
10 payment stub to pay it off. It wasn't paid off all at once.

11 Q. Right. Now, with respect to the order that you saw,
12 Mr. Wyshak asked you questions about whether or not your
13 brother Robert lied to you. You have no idea, do you, what the
14 United States Attorney's office knew at the time about Sports
15 Off Shore and its activities, correct?

16 A. Correct.

17 Q. You have no idea what they knew about Sports Off Shore's
18 activities here in the United States at the time, correct?

19 A. Correct.

20 Q. But you do see, you were aware that it was represented to
21 you that the United States Attorney's office had no objection
22 to your brother's travel?

23 A. Correct.

24 Q. And working at Sports Off Shore, correct?

25 A. Correct.

1 Q. The actual company's name is mentioned, correct?

2 A. Correct.

3 Q. Okay. You didn't ask your brother at the time about the
4 details concerning how payments were being made by the betters,
5 did you?

6 A. No.

7 Q. So when Mr. Wyshak asked you whether or not your brother
8 lied to you about the activities in the United States, it was
9 never even brought up?

10 A. Correct.

11 Q. So in fact what you did know is that it was a sports book
12 operating in Antigua, correct?

13 A. Correct.

14 Q. Okay. Now, just so we are clear here, did you know at the
15 time that it was licensed?

16 A. Yes.

17 Q. Okay. And how did you know that?

18 A. My brother told me it was licensed and legal.

19 Q. Okay. All right, so that we're clear, he did in fact tell
20 you that?

21 A. Uh-huh.

22 Q. Okay.

23 MR. NURIK: May I have the photographs. One moment,
24 your Honor.

25 I have nothing further. Thank you.

1 MR. HORSTMANN: Very briefly.

2 RE-CROSS-EXAMINATION BY MR. HORSTMANN:

3 Q. Mrs. Tierney, one of your nieces lives down in Antigua,
4 correct?

5 A. Yes.

6 Q. Which is one of Bob's children?

7 A. Yes.

8 Q. And she's been down there for fifteen years, right?

9 A. Pretty much.

10 MR. HORSTMANN: No further questions.

11 MR. NURIK: Your Honor, I did have one thing. I
12 apologize, I forgot.

13 FURTHER RE-CROSS-EXAMINATION BY MR. NURIK:

14 Q. Bob's wife at the time was in rehab in Antigua when he was
15 in Antigua, correct?

16 A. She was in Antigua rehab, Florida rehab, then back in
17 Antigua rehab.

18 Q. In fact, Bob had moved his family?

19 A. Yes.

20 MR. NURIK: Thank you.

21 THE COURT: Thank you. Good-bye.

22 THE WITNESS: I'm done?

23 THE COURT: You're done.

24 THE WITNESS: Thank you.

25 (Witness excused.)

1 MR. FISHER: The government calls John Olsen.

2 THE COURT: I'm going to stand and stretch, so you
3 might as well too.

4 How long do you think you have on direct?

5 MR. FISHER: Direct, I may not be done by lunch on
6 direct. I'm hoping to, but I may not be.

7 THE COURT: I'd like to finish the direct by lunch.
8 Then we'll take lunch and cross afterwards, if we can.

9 JOHN OLSEN

10 having been first duly sworn, was examined and testified as
11 follows:

12 THE CLERK: Could you please state and spell your name
13 for the record.

14 THE WITNESS: John Olsen, O-l-s-e-n.

15 MR. FISHER: May I proceed, your Honor?

16 DIRECT EXAMINATION BY MR. FISHER:

17 Q. Good afternoon, Mr. Olser. How old are you?

18 A. Fifty-one.

19 Q. And where do you currently reside?

20 A. Boca Raton, Florida.

21 Q. What do you do for a living?

22 A. I'm a fitness trainer and consultant.

23 Q. And how long have you been doing that?

24 A. 1989, '90.

25 Q. And where are you originally from?

EXHIBIT 3



M E M O R A N D U M

To: U.S. District Court Judge Joseph L. Tauro
From: Pamela J. Lombardini, U.S.P.O.
Re: US v Robert H. Eremian (98-10223-01)
Date: November 19, 2002

On October 8, 2002, Robert H. Eremian, appeared before Your Honor for sentencing. At that time he was sentenced, for Tax Evasion, as follows: 2 years probation, restitution of \$58,422 paid in full the date of sentencing to the IRS, and a \$100 special assessment after pleading guilty to Tax Evasion. That same date he paid his total restitution of \$58,422 to the U.S. District Court Clerks Office.

Mr. Eremian has requested that he be allowed to return to his work in Antigua, which is located in the Caribbean. There, he is employed as a software consultant for "SOS" (Sport Off Shore). On June 20, 2002, after pleading guilty to the counts involved in this indictment, Your Honor granted him permission to travel outside of the country for work purposes, but ordered him to return prior to sentencing.

On July 16, 2002, from Lt. Col. Clyde Walker, Chief Immigration Officer for the Government of Antigua and Bermuda, it is stated that they have "no objections to Mr. Robert Eremian, citizen of the United States, formally a residence of Crosbies Point, Antigua, to return to Antigua and Bermuda."

The U.S. Probation Office contacted Assistant U.S. Attorney Jeffrey Auerhahn regarding subject's request to travel and he reported that the U.S. Attorney's Office is aware of Mr. Eremian's employment at Sport Off Shore and has no objection to his traveling to Antigua for work purposes.

In addition to his request to travel outside of the United States, he has requested that U.S. Probation allow him to travel during the first sixty days of his supervision. The U.S. Probation Policy is that no travel will be granted during the first sixty days unless it is considered to an emergency or extenuating circumstances. U.S. Probation will review this request if the Court allows Mr. Eremian to travel to Antigua.. Mr. Eremian is proposing that he spend every other month in Antigua. While in the United States he will reside with his mother in Beverly, MA. Mr. Eremian reportedly spends time with his children, who reside in Lynnfield, MA with his wife. Mr. Eremian is currently separated from his wife.

Reviewed and Approved,

Effie S. Stewart
Supervising U.S. Probation Officer

Agree
Denied

Handwritten signature of Joseph L. Tauro and date 11/20/02

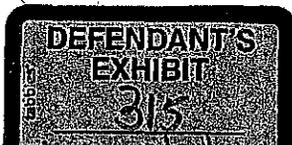


EXHIBIT 4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Criminal No.
10-10315-WGY

* * * * *
UNITED STATES OF AMERICA
v.
PATRICE TIERNEY
* * * * *

DISPOSITION

BEFORE: The Honorable William G. Young,
District Judge

APPEARANCES:

FRED M. WYSHAK, JR. and ROBERT A. FISHER,
Assistant United States Attorneys, 1 Courthouse
Way, Suite 9200, Boston, Massachusetts 02210, on
behalf of the Government

COOLEY LLP (By Donald K. Stern, Esq.),
500 Boylston Street, Boston, Massachusetts
02116-3736, on behalf of the Defendant

1 Courthouse Way
Boston, Massachusetts

January 13, 2011

1 **THE CLERK:** All rise. Court is in session, please
2 be seated.

3 Calling Criminal Action 10-10315, the United States
4 v. Patrice Tierney.

5 **THE COURT:** Good afternoon. Would counsel identify
6 themselves.

7 **MR. WYSHAK:** Good afternoon, your Honor. Fred
8 Wyshak and Rob Fisher for the United States.

9 **MR. STERN:** Good afternoon, your Honor. Donald K.
10 Stern for the defendant, Patrice Tierney.

11 **THE COURT:** Who is present in the courtroom, and if
12 I could address her directly.

13 **MR. STERN:** Yes, your Honor.

14 **THE COURT:** Ms. Tierney, have you read the
15 presentence report that's been prepared in your case?

16 **THE DEFENDANT:** Yes, sir, I have.

17 **THE COURT:** Have you talked it all over with Mr.
18 Stern?

19 **THE DEFENDANT:** Yes, I have.

20 **THE COURT:** Do you think you understand it?

21 **THE DEFENDANT:** Yes, I do.

22 **THE COURT:** Please be seated.

23 Nothing's been withheld from the presentence report
24 under the Rules of Criminal Procedure?

25 **THE PROBATION OFFICER:** No, your Honor.

1 **THE COURT:** Now, this is a sentencing under 18
2 United States Code, Section 3553(a). In this session of the
3 Court sentencing proceeds in four steps. The first step is
4 to calculate the highest constitutionally permissible
5 sentence. And I calculate that in our quasi-determinant
6 sentencing system based upon the advisory sentencing
7 guidelines without regard to any mitigating factors at all
8 and I go to the highest sentence prescribed under those
9 sentencing guidelines, and in the view of this Court that is
10 the highest sentence that under the constitution this Court
11 could impose.

12 Second, I set forth all the average sentences I
13 have from whatever source. And I hasten to say, I don't in
14 any way sentence from any average. Every sentence must be
15 individual to the specific crime and specific offender. But
16 I look at those averages to tell me what weight to give to
17 the advisory sentencing guidelines.

18 Third, I calculate the advisory sentencing
19 guidelines accurately as I am required to do under the law,
20 and in that regard I take into account any mitigating
21 factors.

22 Now, these first three steps are somewhat
23 arithmetic. And counsel, I ask you, would you please
24 interrupt me if you think any of the calculations I'm making
25 are in any way in error, and I'll address it and I'll try to

1 correct it. Once that's set and we know what the advisory
2 sentencing guidelines are, we come to the most important
3 step and that is to fashion a fair and a just sentence in
4 this particular case. And to do that I'll hear first from
5 the government and second from defense counsel, and third,
6 if Ms. Tierney wishes to be heard, she doesn't have to, but
7 if she wishes to be heard, I'll hear from her, and then
8 impose sentence.

9 All right, step one. Now, in this case the
10 adjusted offense level without any mitigating factors is
11 six. The criminal history category is I. And so, the
12 highest offense level -- the highest sentence permitted
13 under the constitution is six months in custody.

14 Looking at --

15 **MR. WYSHAK:** Your Honor?

16 **THE COURT:** Yes.

17 **MR. WYSHAK:** You asked us to interrupt if we
18 disagree?

19 **THE COURT:** I have asked you to do that, yes.

20 **MR. WYSHAK:** And although I think it doesn't matter
21 in this case, and I understand what the Court's theory is on
22 this matter, it is the government's position that the
23 highest sentence that could be applied in this case is three
24 years' incarceration.

25 **THE COURT:** Well, that --

1 **MR. WYSHAK:** Pursuant to the statute.

2 **THE COURT:** -- theoretically may be correct if you
3 make mention of the actual statute. But as I have explained
4 at length in United States v. Kandirakis, if you're going to
5 give real effect to constitutional Booker, based on these
6 facts and the advisory sentencing guidelines, it would
7 simply be unprincipled, as I see it, and Justice Alito has
8 spoken to this in a more recent sentencing case, to go
9 higher than six months. And you're right, I know the
10 government's position. But it doesn't make any difference.
11 There's no way I'm going higher than six months. Six months
12 is what we're talking about. That's what we talked about
13 when she pleaded; that's what we're talking about now.

14 **MR. WYSHAK:** Correct.

15 **THE COURT:** The government may make mention of the
16 statutory maximum, but it doesn't apply to her. She didn't
17 admit to facts that would warrant constitutionally a six
18 month sentence. But I hear you.

19 **MR. WYSHAK:** Okay.

20 **THE COURT:** All right. The average sentence for
21 these offenses, if you look at the publicly available
22 database maintained by the United States Sentencing
23 Commission, is 22 months. That has the problem of grouping
24 all tax offenses together, but that gives you a lot of
25 sentences and the average is 22 months.

1 If you look at the First Circuit average it's 13
2 months. If you look at the confidential database maintained
3 by the Department of Probation, which is the District of
4 Massachusetts, but again it has all tax offenses, the
5 average is 54 months.

6 There is a publicly available database maintained
7 by Mr. Womack, the court reporter in this session, and it
8 has all the sentences imposed by this Court. It has the
9 great advantage of not grouping but looking at the specific
10 offense, which is, here, aiding and abetting, but not only
11 is there not an average, post-Booker I have not had occasion
12 to impose any sentence, so there's nothing there.

13 Now --

14 **MR. STERN:** Your Honor, may I add something to
15 that?

16 **THE COURT:** You may.

17 **MR. STERN:** I've taken a look, and I don't portend
18 that this is exhaustive, but just having in mind what your
19 Honor just said, what I think is the 2009 U.S. Sentencing
20 statistics --

21 **THE COURT:** I have them.

22 **MR. STERN:** -- posted on their website.

23 **THE COURT:** Yes.

24 **MR. STERN:** And if you look at 7206(2) alone, which
25 is the offense that Mrs. Tierney has pled guilty to, there

1 are none in sentencing zone A, which is what she is in. All
2 of the offenses that are in this report in -- now, these are
3 national statistics.

4 **THE COURT:** No, I understand they are.

5 **MR. STERN:** So, all of the ones -- and I mention
6 this because the national statistics that your Honor
7 referred to is a little, by necessity, because it lumps
8 together a lot of things --

9 **THE COURT:** Actually your point is very well taken,
10 Mr. Stern. Have you got the screenshot of that page?

11 **MR. STERN:** I do. And I happen to have -- I do,
12 although I have some scribblings on it, but I'm happy to
13 hand it up.

14 **THE COURT:** I would be pleased to see it because
15 I'm looking for the most discrete data.

16 **MR. STERN:** I think that's accurate. And along
17 those lines, and then I ask myself the question, well, are
18 there any, again, this is national, are there any in 7206 in
19 zone A at all in 2009. And the answer is there are, there
20 are, without regard to which subsection it is, 1, 2 and the
21 others, if you just said 7206, there were eight. Of those,
22 six were probation, one of the eight was one day, and then
23 one of the eight, the sentence imposed was a year, but that
24 apparently was, the defendant was also either convicted or
25 pled guilty of an immigration offense. So it was not a

1 stand-alone 7206. And I couldn't find any, any whatsoever
2 along the lines of what your Honor is saying in this Court.
3 Your Honor is not alone. Apparently there were none in,
4 that I could find, in 2009 under 7206(2), which is the
5 offense the defendant pled guilty, I couldn't find any
6 sentences imposed in zone A around the country.

7 **THE COURT:** That's very helpful, Mr. Stern.

8 **MR. STERN:** I'm happy to, again, with my
9 scribbles on it, I'm happy to give your Honor the document
10 I just referred to.

11 **THE COURT:** I'm happy to receive it. And since
12 we're simply talking about averages and not this offender, I
13 accept it and I thank you.

14 All right. Now let's turn to the sentencing
15 guidelines and what they require in this case. The base
16 offense level is six. I do deduct by two levels because Ms.
17 Tierney has spared the government the burden and expense of
18 a trial. That takes us to an adjusted level four. The
19 criminal history is I. That gives us a guideline range of
20 zero to six months, a period of supervised release of one
21 year, if probation was decreed, a period of probation of not
22 less than one nor more than three years, a fine of between
23 250 and \$5,000, and there must be a mandatory special
24 assessment of \$100 per count, or \$400.

25 Mr. Wyshak, are the guidelines accurately

1 calculated?

2 **MR. WYSHAK:** Yes, sir.

3 **THE COURT:** Mr. Stern?

4 **MR. STERN:** Yes, your Honor.

5 **THE COURT:** All right. Now let's turn to this
6 particular offense, and Mr. Wyshak, I'll hear you.

7 And to guide you, I'll start off by saying that the
8 manner in which the government has proceeded here given the
9 specific facts of this case all make sense and commends
10 itself to the Court. The range of the offense to which she
11 has pleaded guilty, that makes sense to this Court.

12 What I find problematic, and I'll be asking Mr.
13 Stern about that, is that usually in tax offenses the
14 government wants some jail time as a deterrence, as a
15 general deterrence, because our tax system is largely
16 voluntary. But in this case you're not seeking any jail
17 time.

18 So I think that's the explanation that I'm
19 searching for. Why is that so in this case?

20 **MR. WYSHAK:** Well, I think there are several
21 reasons, your Honor. It is obviously the defendant's first
22 offense. And she is, I believe in her late 50's. She has
23 no prior criminal record.

24 **THE COURT:** That, of course, is true of most tax
25 offenders.

1 **MR. WYSHAK:** Okay. This case --

2 **THE COURT:** Not, not her specific age. But most
3 are first offense, no prior convictions.

4 **MR. WYSHAK:** Right. This case also presents
5 certain evidentiary problems for the government,
6 particularly because the business which is the subject of --

7 **THE COURT:** I interrupt only to say I am satisfied,
8 fully satisfied with the propriety of the government's
9 position here. I recognize that. She's pleaded guilty to
10 only aiding and abetting and only on the theory of willful
11 blindness. But she has pleaded guilty to that. My question
12 is just a simple one. Usually tax offenders get some jail
13 time. You're not recommending that.

14 **MR. WYSHAK:** No, your Honor.

15 **THE COURT:** Why? What's unique about this case?

16 **MR. WYSHAK:** Well, I think that it's the
17 government's position that this particular defendant in this
18 particular case and looking at the 3553 factors that, I
19 believe that because of the position of this particular
20 defendant being the wife of a congressman that --

21 **THE COURT:** Well, what difference does that make?

22 **MR. WYSHAK:** Well, I think if you're talking about
23 general deterrence, for example, that this case does have
24 that impact of providing general deterrence despite the fact
25 that there is no, or at least the government is not

1 recommending a sentence of jail just because of her, you
2 know, although she is not herself a public figure, she is
3 certainly linked to a prominent public figure and that
4 obviously there has been some media generated that the
5 government believes will satisfy that particular factor of
6 general deterrence.

7 **THE COURT:** Let me, let me say it back to you,
8 because I'm not sure I understand it.

9 You're saying that because she's married to a
10 congressman, who is not implicated in this in any way, shape
11 or form, but simply because of that marriage, not
12 surprisingly this generates some media interest, and because
13 of that you're saying sort of the shame and the general
14 public awareness that this individual has pleaded guilty and
15 owned up to a crime that warrants probation where someone
16 not in the news at all would get some jail time? That can't
17 be the argument.

18 **MR. WYSHAK:** Well, I'm talking about general
19 deterrence, your Honor.

20 **THE COURT:** Yes, general deterrence.

21 **MR. WYSHAK:** And I think that in this particular
22 case, yes, that, that is general deterrence.

23 If you're talking about specific deterrence
24 regarding this particular individual, again, it's the
25 government's position that based upon the facts as the

1 government understands them this defendant will not violate
2 again.

3 **THE COURT:** Well, I have to say it seems very
4 likely to me that that's absolutely the case. But that is,
5 of course, frequently the case with tax evaders. And she's
6 not a tax evader. This is only willful blindness, aiding
7 and abetting.

8 **MR. WYSHAK:** And the government is --

9 **THE COURT:** But that's usually the case. The whole
10 trauma of having criminal charges brought and having to be
11 involved in the criminal process, people who are guilty of
12 tax crimes are frequently otherwise believed to be
13 upstanding members of the community and the like, and yet
14 the government seeks some jail time, usually.

15 **MR. WYSHAK:** That is the case, your Honor.

16 **THE COURT:** It is.

17 **MR. WYSHAK:** And again, more often than not in tax
18 cases what is behind the government's recommendations and
19 drives those recommendations and supports a basis for the
20 Court to sentence a defendant to a period of incarceration
21 is the amount of loss in these kind of cases.

22 In this case, again, as I started to explain to the
23 Court, because this business is an overseas business and
24 happens to be in Antigua where, quite frankly, the United
25 States has been in some complicated litigation with the

1 World Trade Organization with Antigua, Antigua will not
2 cooperate with the United States.

3 **THE COURT:** But hasn't she gotten the benefit of
4 that by the admissions she's made which lead conceivably,
5 I'm not saying this is where I'm going, to a maximum
6 sentence of six months in custody. That's the benefit. You
7 can't prove in this case a specific loss. A specific loss
8 would drive the sentencing guidelines. I agree with all of
9 that. And again, I don't fault the government. I'm just
10 saying if we're talking zero to six months, I don't see what
11 takes her out of -- and I will say, she should not in any
12 way, not in any aspect have visited upon her a more severe
13 sanction because she is married to a public official. And
14 the reverse is also true. She should not get any less
15 sentence than one who does not have that relationship. She
16 should get the sentence that anyone else would get. And
17 that's why I ask these questions.

18 All right, anything else that the government wants
19 to say?

20 **MR. WYSHAK:** Yes. I mean, I would like to note
21 that we are recommending 90 days of house arrest in this
22 case. We do believe that some punishment is due beyond a
23 sentence of probation which the plea agreement calls for.
24 The government's recommending a sentence of two years'
25 probation, and of course we're also recommending a \$2,500

1 fine. And we urge the Court to provide some punishment
2 beyond a sentence of straight probation, and I would just
3 like to set forth the reasons for that and briefly, and I
4 mean briefly, sort of discuss some of the defendant's
5 objections to the presentence report, which were sort of, in
6 my view, a sentencing memo, so to speak, although in the
7 form of an objection.

8 **THE COURT:** All right, I'll hear you briefly. But
9 we're all in agreement as to what the sentencing guidelines
10 provide, and they're advisory.

11 **MR. WYSHAK:** Well, the reason we believe, the
12 reason we believe a sentence of house arrest is appropriate
13 in this case is basically the theme, and I expect Mr. Stern
14 to say this, the theme that she committed the offense out of
15 some benevolent belief that she was doing this to help her
16 elderly mother and her brother's children who he somewhat
17 abandoned when he went to Antigua.

18 I would also note for the Court that in addition to
19 doing that, she also acted as sort of his, as his personal
20 business secretary. A large portion of the expenses that
21 came out of this checking account that she managed would
22 have paid her brother's business expenses, his travel
23 expenses, his credit card bills, expenses related to the
24 operation of this gambling business.

25 Additionally, while I suggest to the Court it's

1 commendable that she assisted her brother in helping her
2 brother care for her mother and her children, I also note
3 that it would be more commendable if she reached into her
4 own pocket to do this. She didn't do that. She was
5 reaching into her brother's pocket. And I suggest to the
6 Court that that's why she looked the other way. She didn't
7 ask the questions she should have asked. This was easy. I
8 think we all in this life have to care for relatives,
9 especially parents, and most of us have to reach into our
10 own pocket to pay for that. She didn't have to do that.

11 Furthermore, she profited from this. She took an
12 amount of money, whether you want to describe it as a
13 salary, I think she has described it as gifts from her
14 brother, of approximately 20 to \$30,000 a year.

15 She also used money in this account to subsidize
16 her use of a personal automobile, use of personal cell
17 phones. So, we do believe that some punishment beyond a
18 sentence of probation is appropriate in this case, and we
19 urge the Court to sentence, sentence the defendant to 90
20 days' home detention.

21 **THE COURT:** Thank you. Mr. Stern.

22 **MR. STERN:** Thank you, your Honor.

23 I'm going to go over some of the ground that
24 Mr. Wyshak went over, but again let me just start with
25 the point your Honor made.

1 **THE COURT:** Well, let me ask you a question, and I
2 do want you to address that point, but I have a
3 previous point here.

4 On the day that Ms. Tierney pleaded guilty she sat
5 there and she said, after I asked her what I thought was
6 thorough questions about the elements of the offense, and I
7 have very much in mind what it is, to what she pleaded
8 guilty, she pleaded guilty to being willfully blind, aiding
9 and abetting tax evasion, and she said I take total
10 responsibility for my actions. And then later that same
11 day, I don't assert this, I just heard it, it was reported
12 that she said on that same day I was duped by my brother.

13 Now, did she say that? is my first question. And
14 if she did that's inconsistent with a plea of guilty. If
15 one is duped they are not guilty of this crime. So start
16 there and --

17 **MR. STERN:** Okay.

18 **THE COURT:** -- then go to the other.

19 **MR. STERN:** Okay. Can I just make one point,
20 because I'm going to forget to say this.

21 **THE COURT:** Please.

22 **MR. STERN:** I agree with the Court that Mrs.
23 Tierney should get no benefit or no harm because she
24 happened to be married to a congressman.

25 **THE COURT:** That is the Court's view.

1 **MR. STERN:** And as your Honor has indicated it is
2 an irrelevant fact for purposes of sentencing.

3 **THE COURT:** It is.

4 **MR. STERN:** And again, I would note that, and this
5 gets a little bit, I'm going to get to your Honor's question
6 in a moment, but this gets to a little bit as to the
7 uniqueness of this proceeding because there really doesn't
8 seem to be anybody in zone A charged with the aiding and
9 abetting portion of 7206, at least in the last calendar year
10 that we have statistics for in 2009. I didn't go back
11 historically. Maybe, maybe it's happened.

12 So the answer to your question, Mrs. Tierney pled
13 guilty. She pled guilty to aiding and abetting the filing
14 of false tax returns which were not her tax returns or her
15 husband's tax returns but her brother's tax returns. And
16 that was done because her brother falsely represented to
17 her, and as I'll say in a moment to a federal court and to
18 the probation department following on the heels of his
19 earlier conviction in federal court, that he was going back
20 to Antigua to be a consultant for an offshore Internet
21 gambling operation, Sports Offshore, and that he wasn't a
22 principal, he was a consultant. She believed that.

23 Now, how do you get from that, and that is what the
24 duping is, if you will. She recognizes what she's pled
25 guilty to. Between the early request on his part, will you

1 take care of the children, will you help out mom, will you
2 pay the bills, will you handle all the affairs, will you
3 check on the house in Lynnfield, when the kids are in rehab
4 would you make sure that they're okay, between that initial
5 request and stepping foot into federal court there were red
6 flags. There were questions that could have been asked. A
7 more probing inquiry by her part should have been
8 undertaken.

9 So, she started with believing her brother and in
10 the face of what she would say, certainly red flags that
11 should have prompted her to ask more questions, do a more
12 thorough investigation, and that's how we get to the willful
13 blindness.

14 **THE COURT:** But she wasn't duped.

15 **MR. STERN:** Not, not duped when she stood, when she
16 pled guilty in this court.

17 **THE COURT:** Because a reasonable person would have
18 taken action.

19 **MR. STERN:** But, again your Honor, you know,
20 there's a chronology, there's an evolution here. She was
21 certainly -- when her brother went back to Antigua, he
22 obviously had a criminal record. He told others, not just
23 her, that he was going back to work as a consultant, he was
24 going to work on Internet gambling, and he was permitted,
25 you know, to do so. There were facts obviously that came to

1 her attention, including the fact that she was paying some
2 bills and whatnot, which on their face didn't seem
3 inappropriate. She was not duped. She should have -- she
4 was willfully blind at a certain point, and that's how we
5 ended up in this Court, in a very unusual situation.

6 She accepts responsibility. But, again, I'm not
7 trying to argue against the acceptance of responsibility,
8 your Honor. The reason why this case is different and why I
9 would say emphatically not only is no prison time called for
10 here, but I'm going to, when I get to the end urge that your
11 Honor impose a straight probationary sentence. The
12 government's recommendation is probation with some period of
13 home confinement.

14 Because many of these cases, and this may be
15 getting to what your Honor was thinking of in terms of the
16 tax offense, you know, she's not charged with money
17 laundering. She's not charged with being part of the
18 business. Some of these cases involve somebody who is, if
19 you will, an active part of the business. It might be a
20 gambling operation. It might be a drug operation. She's
21 not charged with being part of it. She's not charged
22 with --

23 **THE COURT:** Were any of those -- I have that in
24 mind. Were any of those things the case this would not be a
25 guideline zero to six months case.

1 **MR. STERN:** No. I understand. Nor as a factual
2 matter did she hide her activities. I think as the
3 presentence report indicates this was a bank account in her
4 brother's name. And if you will, and I'm not defending,
5 believe me, her brother in his activities, of which I don't
6 have personal knowledge as to what he was really doing in
7 Antigua. But the point is that often these cases involve
8 some level of, sort of hiding the ball, if you will, the
9 bank account. Her brother was on the account. She had
10 check writing authority and wrote checks over the course of
11 some eight years. But there was nothing that was being
12 hidden in terms of whose account it was. And most of the --

13 **THE COURT:** She provided the information to the tax
14 preparer.

15 **MR. STERN:** Exactly. Exactly. And the key
16 problem, and the reason we're here, is that when she
17 provided that information to the tax accountant, she, as
18 part of the Quick Book kind of computer-based breakdown, she
19 described the money coming into the account as commissions
20 and was willfully blind to the fact that these apparently
21 according to the government's evidence, which says that it
22 intends to prove in the other case, these were not
23 commissions, he was a principal, and these were the proceeds
24 of illegal gambling.

25 But I think it's important, your Honor,

1 Mrs. Tierney provided the raw information to the tax
2 preparer. She neither prepared the tax return. She didn't
3 see the tax return before it was submitted. There's no
4 allegation here in this case that there was a tax loss as a
5 result of that. In fact, many, you know, the lion's share
6 of the checks that she wrote were to pay her brother's
7 estimated taxes to Uncle Sam, to the IRS. So there was a
8 substantial amount of money. I'm not, I'm not saying that,
9 I'm not trying to minimize the conduct. I just think it's
10 important for purposes of your Honor, since you do have a
11 range of zero to six, with a lot of bells and whistles and
12 possibilities in between there, I would urge the fact that
13 this was a, if you will, a transparent activity makes some
14 difference.

15 I think, your Honor, the overriding motivation, if
16 I can call it that, was to care for her nieces and nephews.
17 I know your Honor is aware from the presentence report that
18 each of them, their father moved to Antigua, left them, left
19 the three of them up here in Massachusetts really in the
20 care of a nanny. The estranged mother, their mother, Mr.
21 Eremian's estranged wife, lives in Florida with very
22 serious, historically, drug and alcohol problems. She's
23 been in and out of rehab. There was nobody who was caring
24 for them.

25 So, she was, if you will, the surrogate mother.

1 You know, checking on them, buying them their clothes,
2 paying the credit card bills, taking care of the house in
3 Lynnfield. In the course of that she was also taking care
4 of her ailing elderly mother who I now think is 86 years
5 old. It is true that her brother gave some, gave her some
6 gifts, including paying, I think it was \$250 a month for her
7 WV Beetle car auto lease. That's the auto lease. Not a
8 Cadillac or a Mercedes, it's a VW Beetle. And did pay, if
9 you will, for the cell phone which was part of a family plan
10 that she had with the nieces and nephews. So, these were,
11 these were gifts from her brother. Her brother was by and
12 large paying the bills for the, for the nieces and nephews,
13 and this was part of his, part of the gifts that he was
14 giving not only to Mrs. Tierney but to his mother.

15 So, you know, where does that leave us? You know,
16 I know your Honor wants and will tailor a sentence that
17 deals not only with the underlying conduct but with the
18 context. I don't think that any kind of, quote, deterrence
19 message here for these unique circumstances calls out for
20 any sentence other than probation.

21 She's very sorry that she's in this situation.
22 She's very sorry for what's happened here. She's very sorry
23 for what she's done. It is a deep embarrassment to her.
24 She's never been in trouble before. And frankly, your
25 Honor, when you look at some of the family history, it's

1 remarkable the life that she's lived, I would humbly submit.
2 I mean, she's had, you know, a father and brothers -- two of
3 her brothers are under indictment in this courthouse. And
4 one brother died of a suicide. It is remarkable that she
5 has lived the law abiding, and certainly until this day,
6 until she pled guilty, life that she's had. She is a deeply
7 caring person who kind of leads with her heart and sometimes
8 that is her downfall, leads with her heart.

9 I've been impressed by, if you will, not the big
10 things that Mrs. Tierney has done, not because she's the
11 wife of a congressman, not because, you know, she knows some
12 important people. That's irrelevant. It's some of the
13 small things, your Honor, that Mrs. Tierney has done. You
14 know, visiting the friend in the hospital, the bringing of
15 the meals, the volunteering and the charitable events.
16 Again, not because she's doing it because, as a wife of a
17 congressman, but she cares deeply about some of the things
18 that she cares about in her community.

19 So, I would urge the Court to impose straight
20 probation here. I think the facts of this case are very
21 unique. The prosecution in this case, I'm not saying this
22 critically of the government, but the particular
23 circumstances here, it makes sense why the government
24 arrived at its recommendation in these particular facts for
25 this particular, this particular defendant.

1 I think if your Honor is at all inclined to impose
2 any period of home confinement, for example, I would urge
3 that it be tailored so that she could continue to care for
4 her mother, 86. She's on the Lifeline. She makes meals for
5 her. She puts her in the car and takes her out shopping.
6 She visits her. If there was some way, if your Honor is
7 inclined, I'm hoping your Honor will just impose perhaps a
8 one year or two year straight probationary period, but if
9 your Honor is at all inclined to include in that any period
10 of home confinement, I would ask that it be more really in
11 the nature of a curfew, that she be permitted during sort of
12 regular hours to be visiting her mother and to go about her
13 business. And then in addition, if there was an emergency,
14 at any time of the day or night, that she could be permitted
15 to respond at least to her mother without having to notify
16 the probation department in advance.

17 I know your Honor works hard and successfully to,
18 again to tailor sentences which take account of the
19 guidelines, but at the end of the day it's Mrs. Tierney,
20 Patrice Tierney, who's lived a good life, who is a good
21 person, and has made this mistake and for that she is
22 forever embarrassed and sorry. But I would urge your Honor
23 to impose one year of probation.

24 **THE COURT:** Thank you.

25 Ms. Tierney, you have the right to talk directly to

1 me. You're not required to, but if you want to, I will hear
2 you now.

3 **THE DEFENDANT:** No, thank you, your Honor.

4 **THE COURT:** Very well.

5 Ms. Patrice Tierney, in consideration of the
6 offenses of which you stand convicted, the principles of 18
7 United States Code, Section 3553(a), the information from
8 the United States Attorney, your attorney, and the probation
9 office, this Court sentences you to 30 days in the custody
10 of the United States Attorney General, to be followed by two
11 years of probation. The first five months of that probation
12 will be spent in house arrest. You will be permitted to
13 leave to work. You'll be permitted to leave for religious
14 services, for medical appointments. You'll be permitted to
15 care for your mother at any time throughout the 24 hours.
16 There won't be any electronic monitoring. And should your
17 mother find some emergency you'll be permitted to respond.
18 You may visit her and stay with her outside the home. You
19 may take her shopping for necessities. You may respond to
20 medical emergencies for others in your immediate family,
21 husband and children. Beyond that, for five months you're
22 to be in house arrest.

23 There will be a \$2,500 fine, no restitution, and a
24 special assessment of \$400.

25 The special conditions of your period of supervised

1 release -- I said probation, it's technically supervised
2 release -- you're prohibited from possessing a firearm,
3 destructive device, or other dangerous weapon. Within six
4 months of your release from the 30 days in custody, you will
5 cooperate with the Examination and Collection Divisions of
6 the Internal Revenue Service in all respects. You shall
7 provide that division all financial information necessary to
8 determine the prior tax liabilities of Robert Eremian. You
9 will provide the Collection Division of the IRS all
10 financial information necessary to determine Robert
11 Eremian's ability to pay.

12 You're to participate in a mental health treatment
13 program as directed by the probation office, and the costs
14 of the services for such treatment program you will bear
15 based upon your ability to pay.

16 You are prohibited during the period of your
17 supervised release from disparaging the facts of your
18 conviction. Now, I'm not infringing on your right to free
19 speech. You can say anything you want about the sentence,
20 and I'm going to say that you have the right to appeal, and
21 you do have. But this you may not do and it's a condition
22 of your supervised release. You pleaded guilty to aiding
23 and abetting the filing of false tax returns through your
24 own willful blindness. Willful blindness is a high
25 standard. It's not being duped by someone else. You are

1 not to disparage the admissions you made in open court. If
2 you do, it is a violation of your supervised release.

3 Let me explain the sentence to you. This isn't a
4 mistake. You should have known that the information you
5 were providing was false and it enabled your brother to file
6 false income tax returns. You should have known that. You
7 were willfully blind to it. That means you didn't care
8 whether it was accurate or not. You didn't take those
9 minimal steps to make it accurate. People aren't guilty of
10 tax crimes because they make mistake. They're not guilty of
11 tax crimes because they're negligent. And our tax law is
12 largely voluntary. And the reason, and I don't fault the
13 government, though the sentence of this Court is somewhat
14 different, and I take full responsibility for that, the
15 government has been both sensitive and thorough here and you
16 have been ably represented by skilled counsel.

17 Having said that, it's no mistake. I have read all
18 of these letters. Every single one of them. I don't
19 downplay for a moment the truly humane and wonderful things
20 you've done, out of love, not only for those who are closest
21 to you but also for others in the community. And I am
22 satisfied that that comes not from any position or public
23 notoriety. I am satisfied that comes from the heart. But
24 that said, it cannot excuse the violation of the law of this
25 severity. It simply cannot.

1 But I want to make it clear, as your able counsel
2 has argued and the government agrees. I think it
3 extraordinarily unlikely that you would ever be back here
4 and reoffend in this or in some other respect. But it is
5 the careful judgment of this Court that an offense of this
6 sort requires some jail time. In this case it's minimal.
7 But some actual jail time. Because it must be apparent in a
8 largely voluntary system such as we have in the United
9 States that people must obey the tax laws, and if criminally
10 they do not there must be an actual sanction.

11 You do have the right to appeal from any findings
12 or rulings the Court has made against you. Should you
13 appeal and should your appeal be successful in whole or in
14 part and the case remanded you'll be resentenced before
15 another judge.

16 Mr. Stern, if an appeal is decided on, I direct you
17 to ask for transcript from this session because I'll turn it
18 around right away.

19 Do you understand?

20 **MR. STERN:** I do, your Honor.

21 **THE COURT:** Now, since there is a period of
22 confinement you have no objection, given your
23 recommendations, to self-reporting?

24 **MR. WYSHAK:** No, your Honor.

25 **THE COURT:** She'll report to the place of

1 confinement -- this is the 13th of January -- on the 28th of
2 February. Monday, the 28th of February.

3 That's the sentence of the Court. We'll call the
4 next case.

5 (Whereupon the matter concluded.)
6
7

8 C E R T I F I C A T E
9
10

11 I, Donald E. Womack, Official Court Reporter for
12 the United States District Court for the District of
13 Massachusetts, do hereby certify that the foregoing pages
14 are a true and accurate transcription of my shorthand notes
15 taken in the aforementioned matter to the best of my skill
16 and ability.
17
18
19
20

21 /S/ DONALD E. WOMACK 1-15-2011

22 -----
23 DONALD E. WOMACK
24 Official Court Reporter
25 P.O. Box 51062
Boston, Massachusetts 02205-1062
[REDACTED]@megatran.com

EXHIBIT 5



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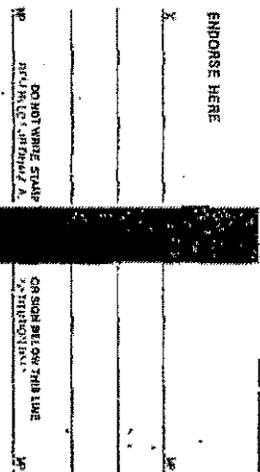
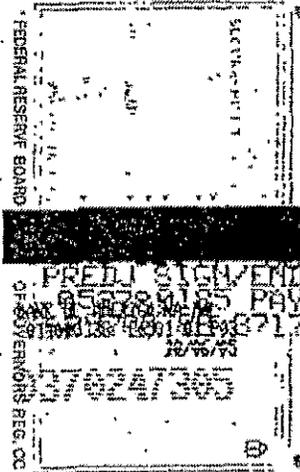
ROBERT H. EREMIAN
P.O. BOX 3195
BEVERLY, MA 01815

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5-13
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BANK OF AMERICA			<i>Patricia M. Tunney</i> AUTHORIZED SIGNATURE			



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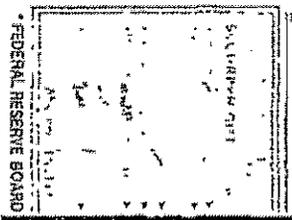
ROBERT H. EREMIAN
P.O. BOX 3195
BEVERLY, MA 01915

REMITTANCE ADVICE	

5-13
110

No 1371

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BANK OF AMERICA			<i>Paul M. J...</i> AUTHORIZED SIGNATURE		



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No 1462

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110

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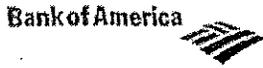
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BEVERLY, MA 01915

REMITTANCE ADVICE	

5-13
110

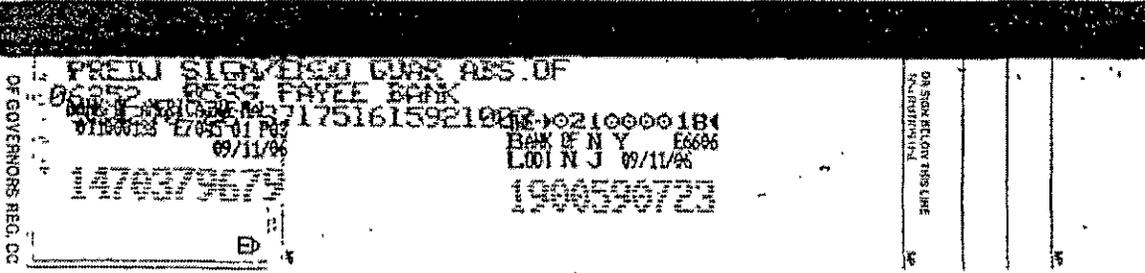
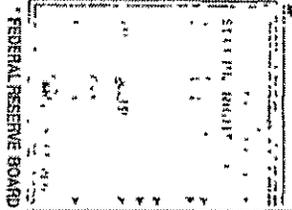
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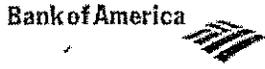
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Capture Date: 20070907 Sequence #: 1170959475

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BEVERLY, MA 01915

REMITTANCE ADVICE	

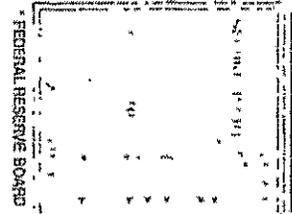
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110

No 1649

PAY AMOUNT	<i>Sixteen thousand six hundred seventy and 44/100</i>		DOLLARS	700
DATE	CHECK NO	TO THE ORDER OF	GROSS AMT	DISC
9/5/07	1649	American Express	16,670.44	0.00
CHECK AMOUNT			\$ 16,670.44	
			DESCRIPTION	

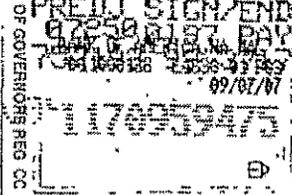
BANK OF AMERICA

Patricia M. Quincy
AUTHORIZED SIGNATURE



GOVERNOR'S STAMP
R. J. ELDER, GOVERNOR

ENDORSE HERE



PREL SIGN/ENDO GUAR ABS OF
 072500187 PAYEE BANK
 09/07/07
 1170959475
 020210000184
 BANK OF N Y E4151
 L001 NJ 09/07/07
 1666666666

OR SIGN HERE ON THIS LINE
FOR ENDORSEMENT

No Electronic Endorsements Found
No Payee Endorsements Found

Bank of America



Capture Date: 20071009 Sequence #: 1170002195

ROBERT H. EREMIAN
P.O. BOX 3195
BEVERLY, MA 01915

REMITTANCE ADVICE	

5-13
110

No 1666

PAY AMOUNT		TO THE ORDER OF		GROSS AMT.	DISC.	CHECK AMOUNT
Eleven thousand four hundred ninety-six and 06/100		American Express		21003		\$ 11,496.00
DATE	CHECK NO			DESCRIPTION		
10/4/07	1666					

BANK OF AMERICA

Patricia M. Tracy
AUTHORIZED SIGNATURE

0933

FEDERAL RESERVE BOARD

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE

ENDORSE HERE

PREDJ SIGN/ENDO GUAR ABS OF
BANK OF AMERICA
1751615921003
10/09/07
181059 454 @ 11600301253

No Electronic Endorsements Found
No Payee Endorsements Found

Amount: \$59,000.00
Account: 0933
Bank Number: [REDACTED]

Sequence Number: 4970224788
Capture Date: 04/18/2008
Check Number: 1750

ROBERT H. EREMIAN
P.O. BOX 3195
BEVERLY, MA 01915

REMITTANCE ADVICE

NO 1750

PAY AMOUNT Fifty-eight Thousand and No/100 DOLLARS
DATE 4/18/08 CHECK NO 1750 TO THE ORDER OF U.S. Treasury
GROSS AMT \$59,000.00
SIGNATURE: Patricia M. Seery
BANK OF AMERICA

Amount: \$20,315.20
Account: 0933
Bank Number: [REDACTED]

Sequence Number: 692633402
Capture Date: 04/24/2008
Check Number: 1751

ROBERT H. EREMIAN
P.O. BOX 3195
BEVERLY, MA 01915

REMITTANCE ADVICE

NO 1751

PAY AMOUNT Twenty thousand Three hundred fifteen and 20/100 DOLLARS
DATE 4/24/08 CHECK NO 1751 TO THE ORDER OF CitiCards
GROSS AMT \$20,315.20
SIGNATURE: Patricia M. Seery
BANK OF AMERICA

02 219 109 06738 8 012430362 EREM 30 200712 0417
04182008 071971048 158189933
4970224788

04200803 04200803 04200803
04160201781024 187
04200803 04200803 04200803
04200803 04200803 04200803
04200803 04200803 04200803
04200803 04200803 04200803
04200803 04200803 04200803

Electronic Endorsements

Date	Sequence	Bank #	BOFD	Bank Name
04/24/2008	804243434710938	042000314	N	FIFTH THIRD BANK
04/24/2008	804243434710938	122401710	Y	CITIBANK (SOUTH DAKO
04/24/2008	000692633402	111012822	N	BANK OF AMERICA, NA

Amount: \$125,000.00
Account: 0933
Bank Number: [REDACTED]

Sequence Number: 8070432153
Capture Date: 06/16/2008
Check Number: 1776

KUMSKI IL. EREMIAN
P.O. BOX 3195
BEVERLY, MA 01915

REMITTANCE ADVICE		NO 1776	
Form 1040 ES		21 Oct 2008	

PAY AMOUNT *One Hundred Twenty Five Thousand & No/100 DOLLARS*

DATE	CHECK NO.	TO THE ORDER OF	GROSS AMT.	DEBIT	CHECK AMOUNT
4/16/08	1776	US Treasury			\$ 125,000.00

Second Quarter 2008
Form 1040 ES

BANK OF AMERICA

Patrice M. Terry
AUTHORIZED SIGNATURE

DEPOSIT INFORMATION CENTER
FEDERAL RESERVE BOARD
1215 G STREET, N.W.
WASHINGTON, D.C. 20540

DEPOSIT INFORMATION CENTER
FEDERAL RESERVE BOARD
1215 G STREET, N.W.
WASHINGTON, D.C. 20540

05 228 167 16158 8 012420862 EREM 30 200812 0614
06152808 0527064851 CANS005 R0614

DEPOSIT INFORMATION CENTER
FEDERAL RESERVE BOARD
1215 G STREET, N.W.
WASHINGTON, D.C. 20540

Amount: \$596.06
Account: 0933
Bank Number: [REDACTED]

Sequence Number: 4592750166
Capture Date: 06/17/2008
Check Number: 1777

ROBERT H. EREMIAN
P.O. BOX 3195
BEVERLY, MA 01915

REMITTANCE ADVICE		NO 1777	
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PAY AMOUNT *Five Hundred ninety six and 100/100 DOLLARS*

DATE	CHECK NO.	TO THE ORDER OF	GROSS AMT.	DEBIT	CHECK AMOUNT
4/16/08	1777	State Farm Ins.	113 7638	43598	596.06

113 7638 43598

06172008
H 37638

Patrice M. Terry
AUTHORIZED SIGNATURE

BANK OF AMERICA

DEPOSIT INFORMATION CENTER
FEDERAL RESERVE BOARD
1215 G STREET, N.W.
WASHINGTON, D.C. 20540

PAY TO THE ORDER OF
STATE FARM

DEPOSIT INFORMATION CENTER
FEDERAL RESERVE BOARD
1215 G STREET, N.W.
WASHINGTON, D.C. 20540

06152808 0527064851 CANS005 R0614
06152808 0527064851 CANS005 R0614

DEPOSIT INFORMATION CENTER
FEDERAL RESERVE BOARD
1215 G STREET, N.W.
WASHINGTON, D.C. 20540

Electronic Endorsements

Date	Sequence	Bank #	BOFD	Bank Name
06/17/2008	084592750166	111012822	N	BANK OF AMERICA, NA
06/17/2008	08500253513	061000052	Y	BANK OF AMERICA, NA

USAO-5657

10-10159-PBS (D.MA)_0009
13-1064_0205

Amount: \$35,788.55
 Account: 0933
 Bank Number: [REDACTED]
 Sequence Number: 1192161993
 Capture Date: 09/30/2008
 Check Number: 1786

ROBERT H. KHEMANN
 P.O. BOX 318
 BERNY, MA 01918

No. 1786

Pay to the order of *Cheri Corda*
 \$35,788.55
 35,788.55
 1229

Paivi M. Tuomi
 AUTHORIZED SIGNATURE

BANK OF AMERICA
 0933

Date	Sequence	Bank #	Bank Name
06/28/2008	062808752965392	11330346	BANK OF AMERICA, NA
06/30/2008	001192161993	11330346	BANK OF AMERICA, NA
06/28/2008	062808752965392	122401710	CITIBANK (SOUTH BRANCH)

Amount: 528,211.06
Account: 0933
Bank Number: [REDACTED]

Sequence Number: 4092416570
Capture Date: 08/05/2008
Check Number: 1809

ROBERT H. BERZELIAN
P.O. BOX 318
BEVERLY, MA 01915

DATE: 08/05/08
AMOUNT: 528,211.06
CHECK NO: 1809

FOR DEPOSIT ONLY
PAY ANY BANK
13 01 00 348481 0000000
8860201711000 199 51000 PEG CITIBANK CH

FOR DEPOSIT ONLY
PAY ANY BANK
13 01 00 348481 0000000
8860201711000 199 51000 PEG CITIBANK CH

FOR DEPOSIT ONLY
PAY ANY BANK
13 01 00 348481 0000000
8860201711000 199 51000 PEG CITIBANK CH

FOR DEPOSIT ONLY
PAY ANY BANK
13 01 00 348481 0000000
8860201711000 199 51000 PEG CITIBANK CH

FOR DEPOSIT ONLY
PAY ANY BANK
13 01 00 348481 0000000
8860201711000 199 51000 PEG CITIBANK CH

FOR DEPOSIT ONLY
PAY ANY BANK
13 01 00 348481 0000000
8860201711000 199 51000 PEG CITIBANK CH

Electronic Endorsements

Date	Sequence	Bank #	Bank Name
08/05/2008	004092416570	111310346 N	BANK OF AMERICA, NA
08/05/2008	086508849675330	111310346 N	BANK OF AMERICA, NA
08/05/2008	086508849675330	222401710 Y	CITIBANK (SOUTH BRK)

Amount: \$10,310.92
 Account: 0933
 Bank Number: [REDACTED]

Sequence Number: 339222608
 Capture Date: 09/03/2008
 Check Number: 1811

ROBERT H. EREMAN
 P.O. BOX 3195
 BEVERLY, MA 01915

RESISTANCE ADVISE

No 1811

PAY AMOUNT Ten thousand three hundred ten and 92/100 DOLLARS

DATE	CHECK NO.	TO THE ORDER OF	GROSS AMT.	DISC.	CHECK AMOUNT
09/03/2008	1811	Citi Cards	10,310.92		10,310.92

PAID BY BANK OF AMERICA

PAID TO ORDER SIGNATURE: *Patricia M. Terry*

0933

For Deposit Only
 12 01 00 226 224 69022608 Pay Any Bank
 60110201781124 018 0000 - REG CITIBANK CH
 090208 091893 C6 122407700

12 01 00 226 224 69022608
 60110201781124 018 0000 - REG CITIBANK CH
 090208 091893 C6 122407700

Electronic Endorsements

Date	Sequence	Bank #	BOFD	Bank Name
09/03/2008	090308925774036	111310346	N	BANK OF AMERICA, NA
09/03/2008	003392222608	111310346	N	BANK OF AMERICA, NA
09/03/2008	090308925774036	122401710	Y	CITIBANK (SOUTH DAKO

Amount: \$518.12
 Account: 0933
 Bank Number: [REDACTED]

Sequence Number: 8892836122
 Capture Date: 09/04/2008
 Check Number: 1813

ROBERT H. EREMAN
 P.O. BOX 3195
 BEVERLY, MA 01915

RESISTANCE ADVISE

No 1813

PAY AMOUNT Five hundred eighteen and 12/100 DOLLARS

DATE	CHECK NO.	TO THE ORDER OF	GROSS AMT.	DISC.	CHECK AMOUNT
09/20/08	1813	Verizon Wireless	518.12		518.12

PAID BY BANK OF AMERICA

PAID TO ORDER SIGNATURE: *Patricia M. Terry*

0933

For Deposit Only
 12 01 00 226 224 69022608 Pay Any Bank
 60110201781124 018 0000 - REG CITIBANK CH
 090208 091893 C6 122407700

12 01 00 226 224 69022608
 60110201781124 018 0000 - REG CITIBANK CH
 090208 091893 C6 122407700

Electronic Endorsements

Date	Sequence	Bank #	BOFD	Bank Name
09/03/2008	005080150344	074909962	N	JPMORGAN CHASE BANK,
09/03/2008	008270326557	021000021	N	JPMORGAN CHASE BANK,
09/04/2008	008892836122	111012822	N	BANK OF AMERICA, NA

USAO-6661

10-10159-PBS (D.MA)_0277
 13-1064_0209

Amount: 9202.00
Account: 0933
Bank Number: [REDACTED]

Sequence Number: 7152484973
Capture Date: 12/17/2008
Check Number: 1849

453285

RESERVE BANK	NO
RESERVE BANK	NO
RESERVE BANK	NO

1849

1849

ROBERT H. EREMIAN
P.O. BOX 385
BREWSTER, MA 01915

PN AMOUNT *Two hundred thirty and 00/100*

DATE	12/17/08	CHECK AMOUNT	2300.00
TO THE ORDER OF	<i>Banknote Bank</i>		
ISSUED BY	<i>Robert H. Eremian</i>		

Robert H. Eremian
AUTHORIZED SIGNATURE

0533

Electronic Endorsements

Date	Sequence	Bank #	ECFD	Bank Name
12/16/2008	017000540	042160146	X	CENTRAL BANK AND TRU
12/17/2008	651690521	041000014	N	FEDERAL RES BANK OF
12/17/2008	007192484870	11012822	N	BANK OF AMERICA, NA

FOR DEPOSIT ONLY

Central Bank and Trust Company

Processed by

Amount: 926,585.03
Account: 0933
Bank Number: [REDACTED]

Sequence Number: 3532590270
Capture Date: 12/18/2008
Check Number: 1850

5766 1801 5637 2722

RESERVE BANK	NO
RESERVE BANK	NO
RESERVE BANK	NO

1850

1850

ROBERT H. EREMIAN
P.O. BOX 385
BREWSTER, MA 01915

PN AMOUNT *Two million four hundred and fifty and 00/100*

DATE	12/18/08	CHECK AMOUNT	2,450,000.00
TO THE ORDER OF	<i>City Cards</i>		
ISSUED BY	<i>Robert H. Eremian</i>		

Robert H. Eremian
AUTHORIZED SIGNATURE

0533

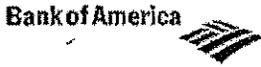
Electronic Endorsements

Date	Sequence	Bank #	ECFD	Bank Name
12/21/2008	13210877425018	111310346	N	BANK OF AMERICA, NA
12/21/2008	13210877425018	122401710	X	CITIBANK (SOUTH BRAN
12/21/2008	003592590270	111310346	N	BANK OF AMERICA, NA

FOR DEPOSIT ONLY

City Cards

Processed by



Capture Date: 03/27/2009 Sequence #: 1692080118

5466 1601 5537 2822

ROBERT H. EREMIAN
P.O. BOX 3185
BEVERLY, MA 01915

REMITTANCE ADVICE	

9-13
110
No 1887

PAY AMOUNT *Fifty thousand nine hundred twenty two and 65/100* DOLLARS

DATE	CHECK NO.	TO THE ORDER OF	GROSS AMT.	DISC.	CHECK AMOUNT
03/09/1887	1887	Citi Cards			\$ 50,922.65
DESCRIPTION					

BANK OF AMERICA

Patricia M. Jerny
AUTHORIZED SIGNATURE

11 0930

For Deposit Only

15 01 00 826258 03272009 Pay Any Bank

032709 087890 C2 >122401710<

DO NOT WRITE, STAMP, OR SIGNIFY IN ANY MANNER

ENDORSE HERE

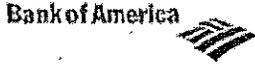
OF GOVERNORS REG. CO.

DO NOT WRITE, STAMP, OR SIGNIFY IN ANY MANNER

Electronic Endorsements

Date	Sequence	Bank #	HOFD	TRN	BankName
03/27/2009	032709826258156	122401710	Y	Y	CITIBANK (SOUTH DAKOTA)
03/27/2009	001692080118	111310346	N	N	BANK OF AMERICA, MA
03/27/2009	032709826258156	111310346	N	N	BANK OF AMERICA, MA

No Payee Endorsements Found



Capture Date: 08/28/2009 Sequence #: 2892360914

5466 1601 1310 6239

ROBERT H. EREMIAN
P.O. BOX 3185
BEVERLY, MA 01915

REMITTANCE ADVISE	

5-13
110

No 1930

PAY AMOUNT		TO THE ORDER OF		GROSS AMT.	DISC.	CHECK AMOUNT
Forty-six thousand two hundred thirty-three ⁹⁹ / ₁₀₀		CitiCards		OH992408049960040		\$ 46,233.90
DATE	CHECK NO.			DESCRIPTION		
8/28/09	1930					

BANK OF AMERICA

Patricia M. Teneig
AUTHORIZED SIGNATURE

0933

FEDERAL RESERVE BOARD		For Deposit Only		DO NOT WRITE ABOVE THIS LINE		ENDORSE HERE	
		15 01 00 804996 08282009		RESERVED FOR BANK			
		66160113106239 020 9000		PAY ANY BANK			
		082709 082667 Q3		PEG CITIBANK OH			
				>122401710<			
				DO NOT WRITE BELOW THIS LINE			

Electronic Endorsements

Date	Sequence	Bank #	BQFD	TRN	BankName
08/28/2009	082809804996040	122401710	Y	Y	CITIBANK (SOUTH DAKO
08/28/2009	002892360914	111310346	N	N	BANK OF AMERICA, NA
08/28/2009	082809804996040	111310346	N	N	BANK OF AMERICA, NA

No Payee Endorsements Found



Capture Date: 01/04/2010 Sequence #: 2192319561

ROBERT H. EREMIAN
P.O. BOX 3195
BEVERLY, MA 01915

REMITTANCE ADVISE

5-19
110

No 1973

PAY AMOUNT *Eleven thousand four hundred twenty and 54/100 DOLLARS*

DATE	CHECK NO.	TO THE ORDER OF	GRUSS AMT.	DISC.	CHECK AMOUNT
12/27/09	1973	Citi Cards	6239		\$ 11,426.54

010000090258420124

BANK OF AMERICA

Patrice M. Keigo
AUTHORIZED SIGNATURE

0933

For Deposit Only

19 01 00 025842 01012010 Pay Any Bank

0010014848200 602 6000 PLS CITIBANK OF

010110 084545 Q1 >122401710<

ENDORSE HERE

DO NOT WRITE IN THESE SPACES

DO NOT WRITE IN THESE SPACES

Electronic Endorsements

Date	Sequence	Bank #	BOFD	TRN	BankName
01/04/2010	002192319561	111310346	N	N	BANK OF AMERICA, NA
01/02/2010	010210925842124	111310346	N	N	BANK OF AMERICA, NA
01/02/2010	01029258420124	122401710	Y	N	CITIBANK (SOUTH DAKO

No Payee Endorsements Found

EXHIBIT 6