

1
2 that money.

3 Congressman Myers returns. Mr. Johanson
4 returns. Mr. Criden's son returns.

5 Mr. Criden's son is carrying the money.
6 And there is a discussion.

7 (Continued on next page.)
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Summation-Puccio

The last minute -- I won't play the tape for you but you can look at it -- the last minute the ground rules are changed. Weinberg said originally \$100,000 and at the last minute it changed to 50. You heard some testimony on it.

In fact, in the second meeting on August 22nd, the meeting where Myers leaves and Errichetti meets with Amoroso and Weinberg, at that second meeting the Mayor says 35 seconds you gave me to change the figure. The figure is changed and changed quickly August 22nd, and drops from \$100,000 to \$50,000.

This caused a little bit of a problem. And let's see if we can see how this problem is resolved. Mr. Criden comes back and has a conversation with Cook and apprises Cook -- Mr. Criden says it was \$50,000 and 15 already went to Mayor Errichetti. 35 left.

But if -- they talk about it a little bit, Myers is coming over here, I have to sit down with him. If we show him 35, he might take more than we want him to take. Let's take 10 out and put it aside and tell him we only got 25. That is what is done.

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Ten thousand is taken out and it's down to \$25,000.

Congressman Myers arrives. He is confronted with \$25,000 and he was told 25 went to somebody and it was only 25 left. So he takes 15. And as you heard from the testimony of Mr. Cook, the 10 that was left after Myers took 15 and 10 taken out from Myers, now how much was there? You add them together, and you get 20, and that is divided among Criden, Johanson, and Cook.

Now, are we dealing here with money that was received properly? First of all, Mr. Criden, Mr. Johanson and Mr. Cook don't exactly go down to Times Square, or whatever the equivalent is in Philadelphia, and announce to all the world that the Congressman picked up the package and we all split up. They don't do that, nor do they go to the bank and deposit it in the savings account to get interest. Right away a safe deposit box routine. Mr. Criden gets his son to open the box, presumably money goes in there; Johanson has never been a signatory on the Bell savings box, all of a sudden Johanson is in need of a box. That makes sense. What is he going to do? So Mr. Johanson is added to the box.

Summation - Puccio

And Mr. Cook testified he already had a box and he promptly used that one too.

You heard testimony from Mr. Criden's son that on that evening he wasn't in a meeting, either was Mr. Cook for that matter, with Congressman Myers, Mr. Johanson, Mr. Criden, behind closed doors in Mr. Criden's office. But he was in the car when Mr. Johanson, as you might recall, and Mr. Criden drove off, I believe if you recall from the testimony, Mr. Johanson had a speaking engagement that evening and Mr. Criden and his son were dropping him off.

As you might recall then, Mr. Johanson when arriving at his destination, said to Michael Criden, "This is sort of a rough neighborhood, I shouldn't be carrying all this money around, why don't you hold it for me, you work in the office this summer, bring it in the next day."

I wonder about that rough neighborhood.

In any event, Mr. Johanson had the money and Mr. Criden's son took custody of it.

Now, talking about Congressman Myers, he told you he took his money and put it in his bureau drawer and spent that money over a period of weeks.

He said it took him two weeks to dispose of it. No questions asked. Proper or improper?

Now, what happened between August 22, 1979 and January 24, 1980? Significantly, around the 24th of January, 1980, Mr. Criden gets in touch with Congressman Myers and says the sheik's representatives are in town; different people, they want to meet.

Congressman Myers goes up to the Barclay Hotel on January 24th.

Now, this Barclay Hotel tape, I submit to you, is extremely interesting. And Congressman Myers' explanation of it stretches our minds beyond the pale. It is difficult enough to think up a way around August 22, 1979 -- I explained to you it was Weinberg's tape -- Williams, Errichetti speaks to Myers, there was a script -- blah, blah, blah, and we end up this wasn't reality.

What do you do about January 24, 1980? That tape runs for about an hour and a half and of course, let there be no mistake about it, Congressman Myers has no idea he's being photographed. And during that meeting he probably tells you in the best possible way what he was about on August 22, 1979.

If you look at January 24, 1980, that resolves

Summations - Puccio

any questions in your mind as to what was going on August 22, 1979.

Again, caught red-handed. In need of a story. Well, it's pretty tough to say you delivered a command performance August 22, 1979 and be rehired or had to get your Actors Equity card for January 24, 1980.

Again, rational, reasonable people are not going to believe that. That is really stretching it to the limit.

What does he do? "I was drunk. I was served tumblers of liquor, McDonald glasses filled with bourbon and I drank and drank before I got to the meeting."

Just in case we had any doubt as to how much he said he drank at the Barclay Hotel, "I had beer, beer, beer before I got there."

How do we prove that, or does it matter? They plied me with liquor. Two drinks. You saw them. And the proof that he was drunk at one point, they replayed a tape, and an icecube got stuck and he spilled something on his tie. I submit that happens with Coca-Cola.

In any event, he was drunk. He was drunk. And said things that were not true. He wouldn't

sell the City Council. He wouldn't sell his office or his influence or the docks with organized crime, introducing Immigration bills, selling his seat, selling his office, he wouldn't do any of those things.

How do we prove he would do any of those things? How do we prove he would use his influence? One way is we play a movie where he said so. He didn't mean that, he was drunk. Of course, when one is drunk one tells nothing but lies. Drinking, as everyone knows, removes inhibitions.

I submit to you the real Michael Myers, the real United States Congressman, was sitting on the couch at the Barclay Hotel just the way he sat there at the Travel Lodge Inn on August 22, 1979.

Can we play the tape, please. Your Honor, can I take two minutes?

THE COURT: Why don't we take a five-minute break.

MR. PUCCIO: Thank you, Judge.

THE COURT: Don't discuss the case, ladies and gentlemen.

(Recess taken at this time.)

THE COURT: Bring in the jury.

(The jury is in the box.)

THE COURT: All right, Mr. Puccio.

MR. PUCCIO: Thank you, Judge.

Before we play the excerpt of the Barclay meeting on January 24th, I think it is, I should put this in context if I may.

In the context with Congressman Myers' testimony, which is something you have to scrutinize and evaluate, as the Judge will tell you.

As I said to you before, the Congressman's position was on the 22nd of July (sic) he was play-acting. But -- he wasn't entirely play-acting on the 22nd of August -- 22nd of August I mean, during cross-examination, to sharpen it further: "I was talking about investments," he said, "in the City of Philadelphia, that was for real. I wasn't play-acting about that."

Investments in Philadelphia, perfectly legal and proper and something that should be encouraged and should be expected.

Of course, if that is the case -- the Congressman says, "I was serious" about that." You have almost a dual personality where to believe Congressman Myers; on August 22nd he was acting one way at one

moment and then switches to the real Congressman Myers. The real Congressman Myers says, "I want to invest for the Port of Philadelphia."

That is two personalities, two people.

When you get into the Barclay Hotel, it gets more complicated if you credit his testimony because then you have somebody who's got different personalities and he's drunk at one point and sober at another and crafty one minute and dull at another.

You get things like, you might recall just about every topic, City Council, Mafia, and everything else that he was selling, going to get money for according to what he said -- and all before he gets his second drink. All that has been touched upon.

Why is he saying all these things? He tells you that he was trying to find out what Mr. Wall was all about. He has mixed emotions about Mr. Wall and is trying to explore or investigate Mr. Wall. Flush him out. Do you believe that?

And this is while he is drunk. He's not to be accepted as what -- the way he presents himself, because he is drunk. He is trying to cat-and-mouse with Mr. Wall to flush him out. For what reason

does he want to flush him out? Why?

He said, and this is particularly pertinent to the part we are going to play right now, you will recall during the meeting Congressman Myers himself brings up the incident in New York on August 22, 1979, where he said, "I got screwed."

And he said, "I got screwed," because there was supposed to be \$100,000 and it turned out to be 50,000.

I'm going to play that in a few minutes for you -- part of it.

On cross-examination: "Why did you bring that up?" "Well, I was trying to find out what Mr. Wall was doing. Trying to flush him out a little bit."

I submit to you, ladies and gentlemen, the United States Congressman was not trying to flush anybody out. He brought up the subject at the Barclay Hotel of what happened in New York for the same reason he attended at the meeting in New York on August 22, 1979. Only he wanted more of it. He wanted more money.

Is that consistent with the tape? Of course it is.

Do you accept the explanation he wanted to

flush Wall out? Do you accept any of that nonsense about how these people on the one hand are my friends and interested in investing in Philadelphia, and on the other hand I am suspicious and I don't trust them.

Do you accept that split personality nonsense? look at the tape on January 24th, page 115 -- can you play that, please?

(Tape played.)

(Continued on next page.)

(The following takes place after the playing of the video tape.)

MR. PUCCIO: Give me a reason is said minutes throughout these tapes.

Congressman Myers says: Now, if you give me a reason I have the F'n, to use Congressman Myers' phrase, balls to do whatever has to be done in congress.

Do you believe him when he said that?

I submit to you, ladies and gentlemen, that somebody who takes the stand and tells the kind of story that hthis gentleman, Mr. Myers, told you on this witness stand, and lies and lies, and lies, and somebody who admits to you --

MR. CACHERIS: Object to the characterization, your Honor.

THE COURT: Overruled.

MR. PUCCIO: And he admits to you that he came to New York to lie about taking some money, I submit to yu that someone in that category is not going to hesitate one moment to introduce a private immigration bill or to do anything else that is necessary in congress.

Puccio-Summation

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I also submit it to you because he says it again: and again and again.

How do you get around this? It seems to be impossible to get around this.

Let's put our thinking caps on again.

Well, our explanation about August 22nd was based upon conversations that Errichetti presumably had with Weinberg, and then Weinberg was out of the picture and then Errichetti told me to put on an act.

What do you do in this situation at the Barkley Hotel where Weinberg is not to be found?

Well, what you do if you are Congressman Myers is you somehow try to import Weinberg, interject Weinberg into this situation, hopefully to make the story believable. And it just doesn't wash.

First of all I ask you, ladies and gentlemen, you have seen the videos, you will have an opportunity to see it again and you heard the testimony, and I ask you to consider how much Mr. Weinberg has to do with this case. I submit to you he has very little to do with this

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2 case.

3 He is a very interesting red herring, a
4 smoke screen, something the defense constantly
5 questions.

6 You have to do things like make stories
7 up here, cross-examine Mr. Weinberg and drop
8 pieces of rug on the floor and play with telephones.
9 You have to do something.

10 Now, let's see if we can put this thing
11 in context. I asked Mr. Myers on cross-examination
12 about this conversation. I was trying to flush out
13 Mr. Wald. I was trying to find out what Mr.
14 Wald was about. I was trying to find out if
15 Mr. Wald knew about Mr Weinberg and was he
16 working with Mr. Weinberg.

17 And did the same act follow?

18 Now, as unbelievable as that may be
19 it gets more and more unbelievable as we go
20 along, because there is a meeting the next day at
21 the Barkley on the 25th, and I asked Congressman
22 Myers, the next day were you drunk?

23 No. I was recuperating from the night
24 before.

25 Were you play-acting?

1
2 Yes, I was play-acting.

3 And again I wanted to find out what Mr.
4 Wald was all about.

5 Now, Mayor Errichetti is someone that
6 Mr. Myers knew, someone he associated with
7 according to the testimony on at least 15 occasions
8 before these events. Mr. Errichetti is the
9 link between Weinberg and the sheik or the sheik's
10 representative.

11 Let's follow along this silly story of
12 Congressman Myers. If Mr. Errichetti was the
13 link, the coach, the one who gave him the story
14 the first time. He goes up to the Barkley
15 Hotel and forget about the fact that after Criden
16 called him he went up. And after the first night
17 he tells you he is probing. He tries to find out
18 what Mr. Wald is all about.

19 Did you ever hear Congressman Myers say,
20 Mayor, on the telephone, did he call, is Wald
21 in kahoots with Weinberg?

22 Why didn't he call Errichetti? Because
23 the testimony was established before Errichetti
24 was out of the case after a certain point, he was
25 not involved, was not involved in the event, he

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2 didn't want to say anything about Mr. Errichetti.
3 But the fact of the matter is that it makes no
4 sense if you think about it. It makes no sense
5 whatsoever that he would try mysteriously trying
6 to find what these things are about, that his
7 teacher, his instructor who is sitting next to him
8 right now, Mr. Errichetti --

9 MR. BROWN: I object, your Honor, the
10 fact that these people are sitting in the court-
11 room in a particular place is not an element in
12 the case. They may sit wherever they wish.

13 MR. PUCCIO: The seating arrangement is
14 not an element, I submit.

15 MR. BROWN: Why say it then?

16 THE COURT: Ladies and gentlemen, with
17 respect to where the defendants sit in their
18 case is largely a matter of convenience. They
19 like to be near their attorneys so they can confer
20 with them as the case goes on. The attorneys
21 may sit at the counsel table. There are not
22 that many seats there so the choice of the seats
23 are somewhat limited and it is certainly not
24 the choice of the defendants.

25 So draw no inference from who is sitting

where.

Proceed, Mr. Puccio.

MR. PUCCIO: Thank you.

Show aMr. Errichetti who I am sure is listed in the phone book, or certainly is someone Mr. Myers can get in touch with, he was not called byMr. Myers to find out about Mr. Wald before Mr. Wald went up there on the 25th at the Brkley and continued his probing.

Now, it gest even more complicated because on the 29th there is a telephone call which you heard. And what is that telephone call about? More money. The \$85,000 which was due to Mr. Myers from the meeting at the Barkley on the 24th.

As you remember there was 35 addition owed to him as a result of the meeting on the 22nd.

And 50 more to cover all these other problems in Philadelphia.

The 29th, was it play-acting? We don't know. Was he drunk? We don't know.

The 31st, he speaks to him again. Congressman Myers speaks to Mr. Wald again. What do they talk about? Money. The congressman

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2 wants his money. He wants his \$85,000.

3 As Mr. Wald testified, an arrangement was
4 made for someone to be at Congressman Myers'
5 house on February 2, 1980. So on February 2 --
6 and this person, Congressman Myers, was told by
7 Mr. Wald, was to deliver to the congressman
8 \$85,000, as you recall from the testimony.

9 So on the 2nd of February Congressman
10 Myers is sitting in his Longport home waiting
11 for money.

12 And what happens? Who arrives?

13 Well, the sheik's emissary does not
14 arrive with \$85,000. But instead agent McMullen
15 arrives with agent Mauer of the FBI. They
16 tell Congressman Myers that are conducting
17 an investigation and they want to ask him some
18 question. And the investigation concerns the
19 activities of certain people. And he is asked
20 if he knows Mr. Amoroso, who was using the
21 name DeVito, does he know Mr. DeVito, does he
22 know Mr. Wald? The answers were no, no, no.

23 He is asked the second time, do you know
24 Mr. DeVito, do you know Mr. Weinberg, do you know
25 Mr. Cohen, I'm sorry, Michael Cohen?

1
2 No.

3 And a third time. Well, he doesn't know
4 any of these people.

5 Now, why does Congressman Myers falsely
6 tell the FBI on February 2, 1980 that he doesn't
7 know any of these people? Very simply because
8 he doesn't know about this. He doesn't know about
9 the video tapes. He doesn't know about the
10 undercover investigation. So he lies, I submit
11 to you, once, twice, three times, i

12 Which is the act and which is reality?

13 That question or those questions might
14 be asked in light of his testimony about this
15 incident.

16 On page 3022 of the transcript:

17 "Question: By the way, you were interviewed
18 by the FBI on February 2, 1980, is that correct?

19 "Answer: Yes.

20 "Question: You were asked during that
21 interview by agents of the FBI if you knew
22 Michael Wald; is that right?

23 "Answer: Yes."

24 Mr Cacheris corrects me. The question was
25 Michael Cohen.

"Question: Was?

"Answer: I said no "

This is after Mr. McMullen has testified
of course.

"Question: You were asked if you knew
Mr. Weinberg?

"Answer; Yes.

"Question: What did you say?

"Answer; I said no.

"Question: You were asked if you knew
Mr. DeVito. You said no to that too?

"Answer; Yes.

"Question: In fact, you denied knowing
them on more than one occasion, is that correct?

"Answer: Yes. At that point in time I
didn't know what he was talking about. The FBI
agent had not instructed me why he was asking the
questions."

(Continued on next page.)

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2 MR. PUCCIO: So Mr. Myers is saying that
3 the reason I lied is because I wasn't told why
4 he was asking the question.

5 "Question: You didn't know who Mr. Cohen
6 was February 2, 1980?

7 "Answer: I didn't know who he was.

8 "Question: That's right.

9 "Answer: Yes, I knew but I was afraid
10 at that point in time."

11 Alice in Wonderland.

12 "Question: Afraid of what?

13 "Answer: Michael Cohen was caught by the
14 Sheik.

15 "Question: I see. Why did that make you
16 afraid?

17 "Answer: Because these people I took as
18 legitimate people, as a friend and I didn't want
19 to see anybody in trouble. I didn't know what
20 was up. When Michael Wald told me about the
21 retaliation, Ernie would have to go do something,
22 I didn't want to see anybody get killed."

23 The Congressman says he didn't want to
24 see anybody get killed. He testified here he heard
25 somebody was going to kill Weinberg. I don't remember

him reporting that to the Police.

"Question: You thought admitting to the FBI you knew the people somebody would get killed?

"Answer: They never told me -- I invited them in. The first question out of the agents mouth before he said anything was: 'Do you know Michael Cohen?' If he had explained to me I was under investigation, explained they were FBI agents, I would have been happy to answer the question if I knew more about it.

"Question: You wanted him to tell you that these were FBI agents who you met before you answered the questions?

"Answer: No, I wanted him to tell me things to properly answer the question.

"Question: They told you that they were conducting an investigation and showed you their credentials?

"Answer: They told me after they first asked me the questions --

"Question: You first said no, I don't know any of these people?

"Answer: Yes. Wait a minute, I told him I knew Howard Criden, Mayor Erichetti, other names.

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2 But the Arab Sheik's representatives I said I
3 didn't know. I didn't know why he wanted to know.*

4 So the Congressman only tells the truth
5 if he knows why the question is being asked.

6 Ladies and gentlemen, I spent more time
7 then I expected in my remarks to you. I would
8 just like to close with these few comments, you
9 are the decision makers in this case not me.

10 You decide the facts. I submit to you
11 when you are selected as a juror to sit on a
12 criminal case or any case for that matter, you
13 don't receive any devine inspiration, no special
14 power or grace. You are selected to use your
15 common sense and reason and experiences. I submit
16 to you if you apply your common sense and use
17 your reasoning you will arrive at the right
18 result in this case. And I submit to you based
19 on the evidence in this case, you should find the
20 defendants Myers, Criden, Errichetti, and Johanson
21 guilty on all three counts of the indictment.

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19 THE COURT: Next, ladies and gentlemen,
20 you are to hear Mr. Ben-Veniste on behalf of the
21 Defendant Criden.

22 Proceed, Mr. Ben-Veniste.

23 MR. BEN-VENISTE: Thank you, your Honor.

24 May it please the Court, fellow counsel,
25 Mr. Puccio, ladies and gentlemen of the jury, it

seems like a long time since I addressed you last when I made my opening remarks and I said no matter how thin you make a pancake it still got two sides.

And I think you know now what I meant by that. I asked you at that time to hold me to what I said this case would be about, and I hope you do that.

I am going to run back to that opening a little bit for you in a few minutes. I told you at that time that I thought that this case would be the story of Mel Weinberg. And I think it is, because Mel Weinberg was the heart and soul of Abscam.

If Abscam had a heart, it is Mel Weinberg's heart. And if it had a soul, it is Mel Weinberg's soul..

Now, this is the only chance I am going to get to talk to you. And there is a good reason for that. Mr. Puccio is going to be able to argue again after all defense counsel has finished.

So he has had a chance to get your attention first and he is going to have the last word before Judge Pratt instructs you on the law.

And it might seem to be a little bit unfair. But there is a reason for it. And that reason is

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2 that under the law in order to convict any
3 defendant, you must find guilt beyond a reasonable
4 doubt -- beyond a reasonable doubt.

5 Now, that is a very substantial standard of
6 proof. And it is a standard that must be complied
7 with if there is to be a guilty verdict.

8 Now, when I sit down I am going to think of
9 six things that I forgot to tell you. And when
10 I go to sleep tonight, I am going to wake up at
11 two o'clock in the morning and I am going to think
12 of 42 things that I didn't tell you. So what I
13 want you to do for me is when you are in the jury
14 room deliberating and you think up an argument that
15 I didn't make or some of my more experienced colleagues
16 didn't make the argument, make it for us.

17 Don't assume that we wouldn't make it.

18 When I opened to you a few weeks ago, I
19 said that I had a responsibility to defend Howard
20 Criden. And it is a big responsibility. And in that
21 connection, I asked you to do something. And in the
22 course of this trial I've made objections. I have
23 deported myself in the way that I have. That is the
24 only way that I know how. What I want you to do is
25 if I have done something that offends you or that

1
2 you think is wrong, don't hold it against Howard
3 Criden. Do that for me. I know that there have
4 been a lot of objections and side bars. And I
5 tell you quite truthfully, if I were a juror, it would
6 be a pain in the neck to me too to see everybody
7 zipping over to the Side Bar, and you are actually
8 a little bit out of it. Although I did peek over
9 there from time to time and sometimes I could see
10 you were having a pretty good time for yourselves.

11 But it would bother me. And with all
12 these television sets in the Courtroom, it occurred
13 to me that since Judge Pratt looks like you know
14 who, and might have said at one of these Side Bars
15 we will be right back, but Judge Pratt will tell
16 you that the objections, and the Side Bars, and all
17 that stuff are not your concern.

18 Your concern is the evidence and your
19 evaluation of that evidence is what is important.

20 Now, the essence of this case is the question
21 of the intent of the defendants, and particularly
22 from my standpoint, the defendant Howard Criden,
23 did the Defendants intend that Ozzie Meyers was
24 going to do something involving his official
25 position in return for the phoney Sheik's petrol

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2 dollars.

3 That is the issue.

4 And I would like you to remember one thing,
5 and by the end of the day I know you are going to be
6 real tired from hearing from everybody, but remember
7 one thing I ask you to do and it is this, don't
8 compromise on your verdict. There are three counts
9 in this indictment. And then there is going to be
10 some sub-divisions of those counts. You will not
11 be doing Howard Criden a favor if you think, well,
12 let's convict him on one and not on two others.
13 If you convict him, you convict him for life as a
14 felon, and I ask you if you think that he violated
15 the law, convict him of everything. But if you
16 don't think he did, then you will hold out and you
17 say "not guilty."

18 That is all I ask for.

19 Now, in my opening statement, I talked a
20 little bit about Mel Weinberg.

21 Do you remember Mel Weinberg? After Mr.
22 Puccio sat down -- I think he mentioned Mel Weinberg
23 once or twice. And it certainly wasn't clear whether
24 he was going to call Mel Weinberg. And I said if
25 he didn't call him we would. And he did eventually

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call Mr. Weinberg.

And I said that Mel Weinberg had pulled a sting that had so many different facets to it that it might be a little confusing for you to follow it. But I think you can follow it up now. I said, number one, step one of the sting, Weinberg convinces the FBI to finance him in his old sting operation, back him up, pay him a salary, knock out the three-year sentence that he had been sentenced to, in Pittsburgh; forget about repaying the \$200,000 that he had swindled those people out of; create Abdul Enterprises as a front; give him limosines to drive around in; planes to fly around in; and a fancy townhouse to live in.

And you must have thought I was nuts when I said that. How could that be? How could the FBI be taken in like that?

Well, you saw it. Was it true or was it not true? And again, he has swindled \$200,000 or more out of the people; been convicted for it; sentenced to three years; and he winds up in this courtroom dressed in three different suits by the FBI because they paid for the suits; paid \$3,000 to \$5,000 a month of your tax dollars.

Number two of the sting, make the Arab the fattest cat there ever was. A billionaire with untold wealth. Four-hundred million dollars on deposit. He has made his billions out of oil and therefore it comes out of the United States tax dollars. Two-hundred million dollars was going to be here for them.

And dangled a multi-million dollar casino deal -- hotel casino deal in front of these defendants.

(Continued next page.)

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2 MR. BEN-VENISTE: While at the same time
3 saying the sheik would like to meet some more people.
4 Well, the Sheik was presented as the goose that
5 laid the golden eggs.

6 I don't think there is any question in any
7 of your minds about this. This was the scenario.
8 But, another part of the scenario was this situation
9 wouldn't last forever and Mel Weinberg was going to
10 sting the Sheik, take a little money on the side,
11 make a dollar along with De Vito and if these people
12 went along, they can share in it too.

13 Mr. De Vito is straight, he was the watchdog,
14 so be a little careful around here.

15 Step four, the Congressman is located.

16 Step five, get them before the cameras.

17 Step six, because Weinberg can't resist
18 stinging them again, get gifts out of them, hi fi's,
19 beta max, whatever it was.

20 Step seven, it sounds like a great movie.
21 Cash in on making a book deal. You heard it.
22 And I told you the only thing that these defendants
23 ever did was take the Arab's money. I said there
24 would be no question they took the money but would
25 you -- what you would have to focus on is whether

they did anything, whether they intended to do anything.

I suggest to you that if the Government were really interested in testing to see whether Mr. Meyers would abuse his office, they would have asked him to do something. Did they ask him to do something between July and February? A phone call to the state department? A letter on official stationery? Any kind of indication which would show that he was willing to do something. To do something. Absolutely not.'

And his Honor will tell you that that is something which you must consider in connection with arriving at your verdict.

Now, let's set the scene for what happens in this FBI investigation. The honeypot, as Mr. Weinberg described it, to his biographer, is set up. Incredibly wealthy Arab shake, Arab oil money. And you think it's just a coincidence that his advisor is Jewish? Why did he make an Arab with a Jewish advisor? To make it all the more plausible, something wasn't on the up and up, this money can be extracted from the oil Sheik. Every time they ran into the problem, something didn't sound exactly

1 right, we are going to build a hotel in six weeks
2 and break ground, but we don't have a site yet,
3 we want to give you all this money but you don't
4 have to do anything -- the Arab mentality is pointed
5 to, they are paranoid about the Mafia, of getting
6 things taken care of, they feel better giving money
7 away. That is a panacea to explain all the incon-
8 sistencies with their scenarios.

9 What is the honeypot? You have to look at
10 it from every standpoint. They wanted to make it
11 as attractive as they could for all the people.
12 You have to look at it like in the Japanese movie,
13 Roshamon, everybody has their own point of view.
14 Mr. Criden, Lou Johanson's point of view, you
15 are talking about a big hotel in Atlantic City where
16 they can all make a lot of money, legitimately,
17 no question about that, but they can make a big fee.

18 You heard Mr. Criden's son testify it was
19 a dream come true for him.

20 Ellis Cook testified about Mr. Johanson
21 and the problems he was having in his family in
22 terms of health and expenses, and this would solve
23 all the problems.

24 This honeypot is laid out there and it's
25

going to solve everybody's problems. It is an appeal to human nature, human weaknesses, frailties.

From Congressman Meyers, what is the honeypot to him? Development of the port where his father and he worked. To put hard-working people out of work back to work. That was the honey pot.

Let's talk about the Government's case. We start with July 14th, which I think is the first time anybody in the case gets involved in terms of this meeting down in Florida.

On the 14th, there is a telephone call. Mr. Johanson talks to Mel Weinberg and says we are representing some people with property in Atlantic City, we are interested, you have financing, come down to Florida. Johanson is asked about himself and says, "Look, I am practically a graduate of the Seminary and so is my partner. You'll have no problem checking us out top to bottom."

They come down to Florida and bring with them the plans for the legitimate project.

Architectural plans which you have all seen, and other books, feasibility studies, and apparently Mel Weinberg threw them over the side because they are not there anymore. But they

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continued to string him on all the way through just like Wenberg writes in the book, when you have a sucker, keep him there promising the hotel is okay, going to recommend to the Sheik to go forward. Go over to London and going to do everything we can do. The Sheik is interested. This is what he said.

Give us a little more time.

And so they go down to Florida. They have a meeting. And on the way back there is a discussion on the airplane concerning the Sheik meeting some political figure.

Let's go to the Government's own case. Ellis Cook, I'm going to tell you a little about him. You have seen him already. I don't think Mr. Puccio gave you the full picture on Ellis Cook. Mr. Cook testified that under his agreement with the prosecution he can't be prosecuted for anything except if he lies.

He said he testified the same way in Court as he did in the Grand Jury and hasn't been prosecuted and Mr. Puccio said he's telling the truth. Let's look at what he said. No quid pro quo. Do you remember that? They sat around discussing the proposition, what was the money to be paid for?

1
2 It was always made very clear that the
3 Congressman would not have to do anything in return
4 for the money. No quid pro quo.

5 So they said, gee, this sounds crazy, like
6 a fantasy. The Sheik has so much money, billions,
7 \$50,000 or \$100,000 doesn't mean anything to him.
8 Money means nothing to the man. They said let's go
9 further.

10 Suppose there is something we should do,
11 are we violating the law, they ask. Would they have
12 to register under the foreign registration act.
13 The answer was no because the Sheik was not a
14 representative of the Government. So they solved
15 that problem. And so they go up to the meeting.

16 And Cook testified how Mr. Criden and
17 Mr. Johanson came back from Florida. They were
18 like school boys. We can get financing for this
19 project. This guy has a tremendous amount of
20 money. This is what they wanted to invest. They
21 were going to take care of their problems. Children's
22 education is paid for, they can practically spend the
23 money.

24 And on top of all that, we can make fees
25 by introducing the Sheik to this Congressman.

1
2 Mr. Cook testified, no, he never had been
3 offered anything like that in his whole career. It
4 sounded impossible but well, let's go and see.

5 Now, Mr. Puccio said that Mr. Cook indicated
6 to you that everybody was squirrelling their money
7 in a safe deposit box. Nobody was going to make
8 an announcement and tell about what happened.

9 But if we look at Mr. Cook's testimony,
10 that is not at all what he said.

11 At page 1154, Mr. Puccio.

12 "What happened to that \$4,500?"

13 "Answer: I eventually put it all or most
14 of it into my Savings account."

15 Savings account.

16 Then there was a question that Mr. Puccio
17 asked you to consider, did Mr. Cook ever hear anything
18 about play acting. Mr. Puccio suggests to you that
19 Mr. Cook didn't know anything about play acting.
20 He testified, of course, that the Congressman was
21 to go up to New York where he would meet with Mr.
22 Errichetti and Mr. Errichetti would tell him just
23 what to say and do.

24 That is page 1162, Mr. Puccio.

25 Moreover, when you suggested that Mr. Cook

1 might not have known anything about play acting,
2 Mr. Puccio must have been on the planet Pinkus when
3 he played the tapes. You remember Mr. Cook, he was
4 the play actor. Mario Noto, or Nopo, or whatever,
5 it was he sure as heck who knew they were play
6 acting.

7
8 What was the whole point of the Ellis
9 Cook -- Mario Noto thing? Mr. Puccio did not play
10 that day. He was prepared for you not to see. We
11 put that tape in evidence.

12 And what did it show? It showed beyond any
13 doubt that these people had in their mind that
14 nothing would ever -- was ever going to be done
15 because Mr. Ellis Cook would not do anything. He was
16 not immigration person. It was quite clear on
17 evidence that can't be refuted that they all believed
18 that Weinberg was setting this thing up just so they
19 could relieve the Sheik of some of his petrol
20 dollars.

21 Is there any question that that Mario Noto
22 impersonation thing was on that basis. You saw
23 Mr. Cook sit in that livingroom furnished by the
24 Smithsonian Institution in Washington, and say to
25 Weinberg, once Tony the straight guy had left,

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well, how old is Mario Noto supposed to be?

Was that how he was going to talk if he was really Mario Noto?

How old is this guy supposed to be?

It's quite clear not only that he knew they were play acting but Mr. Weinberg fully expected a play act. That shows what these defendants also expected, and also believed and also had in their minds about the agent provocateur Mr. Weinberg.

Now, let's go further into the Government's case. Mr. Puccio called to the stand Michael Criden.

Forget about calling a man's son to testify against him in a criminal case and just think about what the testimony was.

Michael Criden testified in the Grand Jury and the testimony was the same in this Courtroom. He drove his father up to New York not for any sinister reason involving Mr. Criden, but because his father has a serious diabetic condition and can't be left alone or drive alone.

What did he tell you, ladies and gentlemen, about Mr. Criden's hopes and aspirations? That this whole proposal was like a dream come true. They would all make enough money and no matter what

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happened Mr. Criden's two sons would have their education taken care of and he would be able to provide for them.

Let's look at the Mario Noto situation from Mr. Weinberg's point of view. The master con man.

He doesn't care if they bring in a ringer who looks like Mario Noto or not. Really, from the one standpoint if the ringer passes muster, if De Vito lets go of the 50 or 25 Grand, he's got a pay day coming back -- Mr. Weinberg.

But, if he's found out to be an imposter, then Weinberg doesn't know anything about that and he can prosecute people for impersonating a federal agent.

Either way he's got it covered because he's got the FBI behind him.

And remember the questioning of Mr. Weinberg on the stand as to why he didn't raise that ruckus. He said, "I didn't face Mr. Errichetti down because I wanted to string him along. I did face Mr. Criden down because -- why did you tell Mr. Errichetti that I had told you I thought the man came from Mr. Errichetti's office -- that was his idea of facing him down."

1
2 I suggest to you all the conversation after
3 the meeting had to do with was who was going to
4 take responsibility to bring a big stiff like
5 Ellis Cook in who was going to pull off the imperson-
6 ation. You didn't fool anybody for a minute. That
7 shows you what state of mind was. Nobody was
8 ever going to have to do anything.

9 Let's get to the heart of it. Why is Mr.
10 Weinberg's credibility crucial? I suggest it is in
11 this case..

12 You won't have to keep those heavy books on
13 your laps while I talk because you won't have to
14 turn any pages. I will give you my recollection of
15 what is on the transcripts. If I am wrong, you've
16 got them and we supplement them for you with
17 material we think is relevant.

18 Indeed, the transcript of the Ellis Cook
19 impersonation is in there now. I think you saw
20 the taps pretty early in the trial when the transcript
21 hadn't been prepared by the Government. They were
22 working on it and working on it and yesterday finally
23 came up and now you have it.

24 Why is Weinberg's credibility crucial?
25 Will you push that button on, please. Here is

1 Mr. Weinberg. Why is this man's credibility crucial?
2 This is the man right in the scene on August 22nd
3 walking out of the meeting and I'm going to dub
4 this scene: "Every dog has his day."

5
6 A big smile, a two-dollar cigar. He perpetrates
7 the sting. He's done what he hoped to do to get
8 Meyers to act before the cameras in that room so that
9 he can go back to his FBI supervisors, if you can call
10 them supervisors in this context, and say I delivered
11 the man to you.

12 Weinberg's credibility is crucial in this
13 case because he is not the one that denies saying
14 to Errichetti, just have Meyers come on strong, he
15 will never be called on to do anything, it's all
16 B.S.

17 It's -- if you believe Mr. Weinberg's denial,
18 then you ought to find Howard Criden guilty. But
19 if you don't believe him, beyond a reasonable doubt,
20 that he had that conversation, then I suggest you
21 ought to find Mr. Criden and all the defendants
22 not guilty. Because what is crucial here is what
23 went on off camera. They had great control of what
24 would happen on camera. What happened off camera?

25 Let's start before this meeting takes place.

Ben-Veniste-summation

what does Weinberg do. He goes downstairs, and briefs Mayor Errichetti.

Now, you remember all the talk about body-recorders. Does Weinberg wear a body recorder? No, he doesn't like them.

Why? You recall the testimony of Agent Amoroso, because on a body-recorder the Agent can fix it so that the wearer can't turn it off.

So there is no record to present to you, ladies and gentlemen, about what he told Mayor Errichetti. If they had said, "Mel, wear this body recorder and go down there and talk to Errichetti, then you would know. But they deliberately didn't do that because Weinberg didn't like body recorders.

I think Mr. Amoroso was sort of candid about what the meeting was all about when Mr. Brown was questioning him. I am sure other defense counsel are going to have something to say about it because it was a very important question and answer, I think the last question Mr. Brown asked, is it not a fact what this was all about was that you wanted there to appear on these video cameras and ultimately on tape for some future jury a scene which would depict people like my client performing supposedly for the

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Sheik but actually so that you could say he was committing a crime, isn't that right? And Mr. Amoroso admitted he was right.

Now, what other evidence do we have to go on about what Mr. Weinberg said to prepare Mr. Meyers for that meeting? We have the Williams analogy, only a few weeks before and we can show you what Weinberg's methods were to bring Senator Williams before the camera, what to say and incidentally there are no charges brought against this Senator Williams.

What did Weinberg say? Weinberg said, you just get in up there, it's 20 minutes, it's all B.S.

Have him act like a tiger. Make him come over strong. It's all play acting. This is on tape. I suggest to you what happened is somebody went through the roof when they played that tape and said, Mel, you can't do that. We can't have that kind of stuff on tape. ~~he . . . of stuff on tape~~

But do you think a person like Mel Weinberg would listen to that kind of an instruction? No. He did something different.

I suggest to you he had the same conversation and we have a part of it, come on strong and so forth, but in the crucial meeting which is before this,

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August 22nd meeting downstairs in the lobby there is no tape recording, and in the crucial telephone calls of July 29th and July 31st, what happens? You have a conversation that starts: "Congressman Meyers."

It's an interesting start for a conversation. And you have the conversation and the gap in the tape.

Now, I think it's kind of ironic that Mr. Puccio plays you the first tape. The first tape he plays you is the one that had a gap in it. The 29th. At least a minute missing, maybe two minutes. That is according to the phone records compared to the length of the conversation. You heard that yesterday.

What does this tell us? The taping instructions given to Mr. Weinberg were unequivocal, they were no exceptions. He was to tape every conversation from start to finish, use a new tape, one cassette per conversation.

What happens? He stops the tape recorder when they came to a part in the conversation. I suggest to you, ladies and gentlemen, what he did was stopped the tape recorder. Then, go on when he got finished talking about the instructions he

had to give, then pushed the button again.

He testified that the reason there are stops and starts is because he dropped it.

Ladies and gentlemen, to a scientific certainty which is a very rare thing in a trial, you heard the evidence which makes Weinberg out to be a liar, if nothing else, convinces you that he is a liar.

Not only he was a liar all his life, but he lied in this courtroom to you.

The way the tapes are handled with every other individual in the case, they are logged in right away and that is why I took some time to show you as the case was going in but the FBI practice is. What good practice is. How to deal with evidence.

With Weinberg, eight to 10 days before tapes got turned in. Why? Because he monkeyed with them.

Mr. Puccio said, and I have to laugh at it, is that the one thing that doesn't change in this case is the tapes. That is the one thing that did change. And you know it changed because the foremost expert in the United States told you so. The man Mark Weiss, together with Mr. Aschkenasy were on the Watergate tape and all selected from all over the

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1
2 United States -- five people -- and he testified
3 that there was absolutely no doubt in his mind that
4 those gaps were made as a result of manually deliber-
5 ately turning the tape recorder off.

6 Is there any question in your minds that Mr.
7 Weinberg was lying to you when he gave that explana-
8 tion?

9 Then we have the question of the lost tapes.
10 Incidentally, all the exhibits will be available
11 to you to show, for example, what it looks like,
12 what the difference is between when a tape is dropped
13 and when it is dropped and when it is stopped man-
14 ually, so you will have all of these in the jury
15 room. But there was no serious contention otherwise.

16 Now, let's talk about the lost tapes. This
17 is so typical of Weinberg because he is a con man.
18 You also -- you always have to throw something in
19 that sounds credible. Not only tapes lost but his
20 cigars were taken. That's what he told the FBI on
21 the 23rd, supposedly.

22 Someone stole some tapes out of his briefcase.
23 In a side pouch with two bundles of 25 cigars each.
24 I know some of you either smoke cigars or have
25 friends who smoke cigars. Is it believable, forgetting

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about everything else, that somebody would check a bag and in an outside pouch put two bundles of cigars that would get smashed to smithereens when they're handled by the baggage handlers at the airport?

Go further. Like what happens when they get there. Supposedly he loses three or four or five tapes, depending on who you believe. Because there is no FBI report for this series of events. Nobody writes up a report. And nobody knows or remembers, did Weinberg have any other tapes in his possession. Weinberg didn't remember. He thought he didn't. Amoroso didn't know. Agent Brady didn't know and he met him at the airport. Agent Good, in charge of the whole investigation, didn't know.

But I knew. How hard was it for me to know? I looked at the exhibit. January 23rd, these two tapes were turned over (indicating).

Now, everybody's recollection has been refreshed. Yes, I remember he must have had it in some other place in his suitcase. Is that what you would expect of the FBI? Is it something fishy about the lost tapes? Certainly something fishy about the gaps.

The law is that if there are missing or

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altered conversations, tape recordings, and their absence or alteration has not been satisfactorily explained to you, then you may legally infer, ladies and gentlemen --

MR. PUCCIO: Your Honor, I object. I understand your Honor turned down this request.

MR. BEN-VENISTE: No, your Honor permitted argument on it.

THE COURT: It's not a matter for any instruction, but I don't think we are talking about the legal inference.

MR. BEN-VENISTE: An inference they may properly draw.

MR. PUCCIO: It's not a legal inference.

MR. BEN-VENISTE: They may properly draw it in this case.

THE COURT: All inferences may be drawn from the evidence, it is up to the jury. I don't think there is a legal inference.

MR. BEN-VENISTE: A proper inference.

You may properly infer on the basis of this record that those missing tapes or unrecorded portions of conversation, which are not produced, would be unfavorable to the prosecution. And I suggest

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that on this record, on this evidence you should draw such an inference.

That explains why we don't have evidence of the instructions given to Mayor Errichetti as to how Congressman Myers is supposed to behave.

First they don't have it because they don't put a body recorder on that man when he goes downstairs; and secondly, Weinberg gets rid of the evidence and that is why he doesn't have it.

I suggest he knew, ladies and gentlemen, that Weinberg's tape recorder was more dangerous than the Son of Sam's .44. Because he was more accurate with it. He pointed it only at the words he wanted to pick up. He only pointed it at what looks incriminating. But it's just as lethal as far as the men's lives are concerned.

As if it wasn't enough that he altered the tapes, and that he disposed of others, he went over the transcript, which I suggest to you in order to do some individual things -- do you remember I caught him on one, the word that said Mikey, Mikey said, I think. Who is Mikey? There is only one Michael in this case, Michael Myers.

What did the tape really say? "Like he said."

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This gives you an idea of what we are dealing with.

Let's evaluate Mel Weinberg. His past life has been entirely consumed with telling lies to people, with doing people out of things. The London Investors, Swiss Bank Associates, the phony gold contracts, breaking windows in stores, swindling his cousin out of \$50,000. Do you remember that? "Did you swindle your uncle?" "No, I didn't. It was my cousin."

Oh, that makes it okay.

The obtaining of millions of dollars over the years from innocent victims. Illegally bugging his car and his office so that people who wanted to have private conversations there would be overheard. The removal of the "perpetual care" sticker from his own uncle's gravesite.

Ladies and gentlemen, would he take candy from a baby? How far would Mel Weinberg go?

(Continued on next page.)

MR. BEN-VENISTE: (Continuing) Is there any limit in your minds, if it was going to help Mel Weinberg, how far would he go? Is there a limit, a man who didn't even have a social security number? A man who told you the truth on one of these tapes, when he said, I am the worlds biggest liar? But then, he lied to you when he denied it under oath.

Let's talk about the crimes that Melvin Weinberg confessed to; failure to file his income taxes, 1978 and '79, both years, when he was paid huge amounts of money by the United States Government. He had the brass not even to pay taxes on the proceeds of the money he had swindled from people in connection with the London investors scheme, over \$200,000.00. No taxes, forgetting about not paying the people back out of the money he had gotten. Not a cent went back to those people, those desperate people who he strung along. Can you say anything other than Melvin Weinberg is a one-man crime wave and he is still at it?

Let's talk about his interest in testifying in this case. He has already got \$100,000.00 out of the government, more than that, I guess, if you figure in this month's \$3,000.00, plus expenses.

Did you ever hear of an expense account where all your clothes are paid for? He has some real suckers here. The \$3,000.00 a month is not going to last, if you blow him out of the water with your verdict. He's got an interest in getting you to convict these men. He's paid no taxes, filed no tax returns for the last two years, at least.

What did he say when I asked him, do you expect to be prosecuted for that? He said, I guess so. Did you believe that? And then, there is a bonus at the end of the case. Here's a bunch of more money; don't bother to pay taxes on it.

Mel, in his shades on the witness stand, three days, three suits, who paid for them? You did. Dimond rings on each pinky finger. Sure, America loves a con man like Mel Weinberg in the abstract, in a movie, "The Sting", but in real life, you don't like the guy who breaks your window or who swindles your neighbors out of their life savings.

It makes a great idea for a movie. Can you see the beginning of the movie of Mel Weinberg, like this cute little face in the nursery, with the little frilly hat and the cigar? And in the crib with him, there are 42 rattles because he

has all the other kids' rattles. That's Mel Weinberg.

It's a great idea for a book, but it's not a great big human being you have seen here. It's funny in the abstract, but not in real life when you have a man like that with the assets of the F.B.I. behind him, whose got the con man's dream, somebody who vouches for him to the tune of 400 million dollars. My God, you don't care if he spells Zurich wrong on his business card; you don't care what he sounds like. He has 400 million dollars in the bank and he can prove it.

Now, you and I, if we meet a guy like this on the street and you shake hands with him, you count your fingers afterwards, then you look for your watch. But this guy was backed up to the tune of 400 million dollars. That's the only think that made him real.

Let's talk about the missing film. His own pals at the F.B.I. said you took some photographs, this is embarrassing to us, you can't use this in your book. So they send some agents back in Florida to get the film back, and the first thing he opens up, the camera, and the camera has some film

Ben-Veniste - summation

in it that has nothing to do with the pictures he took. The agent slaps the camera shut and says leave it to me, puts it in his bookcase, briefcase, and he gets back to New York. No film.

In March, we have Mr. Weinberg's biographer. Weinberg says I have some photographs of the inside W. Street townhouse. February, he supposedly gave the film back. March, he tells his writer that he has the photographs. Is there any question but that he stole the film out of the F.B.I. suitcase? It's just another idea of what we're dealing with.

Was the F.B.I. misled by Mr. Weinberg? He testified he was a stool pidgeon in 1960 and 1970; give a little information and get a few dollars, but it was an insurance policy so that big brother would get him out of trouble if he got caught in one of his real swindles. But all that time, did he tell the F.B.I. what he was up to? No, he misled them.

Filing the tax returns, supposedly, the F.B.I. had no idea that he didn't pay his taxes. Then, the debriefing of Mel Weinberg, up in Pittsburg, three days, he said I sat down and told them everything about myself.

We put all the F.B.I. agents on the stand and in no way, no, he did not. We know nothing about all this other stuff. I called the agent, I think it was Batwell, the agent in charge of contacting all the victims on all these frauds he perpetrated. Did he ever tell you about the franchise holders, all the other con men, did you prosecute them? Oh, no, we didn't know about that.

What about Weinberg's perjuries, proveable under oath false statements. Let me give you a partial list of where he lied to you and where we proved he lied under oath.

He swore to tell the truth. Swearing to tell the truth doesn't mean a thing to a Mel Weinberg. I suggest that to you. First of all, you heard him testify in Philadelphia only one or two days at the most went by in terms of turning over tapes. That was contradicted. No, that's wrong, it's been to ten. He denies providing any Abscam information to his writer, Mr. Green. That's been proved false. He said in Philadelphia that he filed a 1978 tax return, false. He said the reason for the gaps in the tape was because the machine dropped on the floor. False. He testified that he

was debriefed by the F.B.I. for three days in connection with the Pittsburgh case. False. He testified that he never mentioned Congressman Meyers to Mr. Criden in January of 1980, to set up the Barkley Hotel meeting with Cohen. False. He lied about how much he paid for his house. He said it was \$25,000.00. False. It was \$30,000.00. He lied about his involvement in fraudulent activity before 1962. False. He denied having spoken to Agent Good about a bonus after all these cases were over. False.

Who is Mel Weinberg, ladies and gentlemen? The heart and soul of Abscam? I suggest to you that Mel Weinberg makes J. R. Ewing look like Peter Pan. The man has no conscience. The man would do anything.

This is where you have to apply the legal standard of reasonable doubt. Do you believe Mel Weinberg beyond a reasonable doubt, when he denies saying to Mayor Errichetti for passage to Congressman Meyers, at this meeting, that it is all an act, it is just play acting, it's all B.S.; go in there and talk with the people. That's the standard. That's what this case come s down to. Do you believe

Mel Weinberg's denial beyond a reasonable doubt?

Now, sometimes courts give juries instructions about circumstantial evidence. I think it is instructive in thinking about how you would regard a person like Mel Weinberg or the real article, Mel Weinberg. Because, if you saw him on the street tomorrow, I will ask you to apply this test; circumstantial evidence is not direct evidence. And sometimes courts use an example where somebody gets on the subway in Brooklyn and the subway goes over to City Hall stop in Manhattan, two or three people get on the subway and when you went into the subway, the sun was shining outside but now at the City Hall Stop, a couple of people get on and they are all rain splattered, one has a wet umbrella. Normally you could draw the conclusion based on circumstantial evidence that in the time it has taken you to travel from Brooklyn to New York, that there was a rain shower and the people who just got on the subway got caught in it.

All right. Fair enough. Now, if tomorrow that happened to you, and you were in the car and Mel Weinberg got in with those other people, and

Mel Weinberg said to you, Now, is it raining outside, do you want to buy an umbrella, would you believe it was raining or would you have a reasonable doubt that maybe Mr. Weinberg had a couple of people walk on to the train whose clothes were wet for the purpose of selling you an umbrella? Can you believe Mel Weinberg?

Reasonable doubt means a doubt that would cause you to hesitate in an act of importance to yourself like let's say buying a car. Or making an important investment. If Mel Weinberg gave you advice about a car or an investment, would you believe him? Would you have a doubt? Would you follow his advice? Is there any doubt in your mind?

Well, let's talk about the investigation. They employ Mel Weinberg. You have a scenario where Mr. Good comes out of the Happage office in 1977 and he is in charge there and he says, well, I am going to get involved in something terrific. I am going to get a hold of Mel Weinberg and this is just what I need to make my reputation. But, does he find out about Mel Weinberg, who the real Weinberg is? No.

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Nobody, I suggest to you, takes the time to ask him how have you been living for the past 50 years, Mel. They know he has been convicted in one case. I suggest to you every F.B.I. agent who dealt with the answer to the question, No, I didn't ask him about that. I didn't need to know that. I didn't want to know that. I suggest to you that the F.B.I. thought it might be easier to make a case where you had all this stuff prearranged where you make the crime happen yourself than it is to catch the bank robbers that they can't catch. Instead of making the city safe for people who ride on the subway, this is what they are involved with.

I think the F.B.I. reacts like a normal victim of a sting in this case. You know, a con man thinks that one of the things he has going for him is when someone gets stung, they are so embarrassed, they will not go out and say, oh, my God, I have been taken. That's normal.

The F.B.I got taken by Mel Weinberg. Maybe they just realized in the course of this trial. M Maybe they knew it before.

Let's look at the F.B.I. as a typical mark.

Who was the first person who was supposed to supervise Mel Weinberg? Agent McCarthy. When you look in the dictionary for policeman, you see a picture of Mr. McCarthy, because he acts and looks like a policeman, and that's good, because that's what the F.B.I. is supposed to be.

When he says to Weinberg, look, if you get involved in any of your scams, if I catch you out of line, Weinberg, I am going to lock you up. That's what his testimony is, I am going to lock you up again, because he was the one who locked him up the first time.

But before you can say boo to a ghost, goodbye Mr. McCarthy, hello Mr. Amoroso. Somehow Mr. Weinberg had gotten Mr. McCarthy out of the picture.

Now, what does Mr. Amoroso know about Mel Weinberg? Nothing. He had been convicted once. That's all he knows. He never made an inquiry about Mr. Weinberg; saw him continuously for six months. What was his answer? I wasn't interested. Maybe Mr. Amoroso thought what he didn't know wouldn't hurt him. But he didn't know anything about the fraud he had perpetrated. He didn't know

that it was the same sting in the London investors case with the huge amount of Arab oil money that came to be Abscam, and the same thing with the fictitious Lady Knight and the presents that would make her happy. Same sting. Same Mel Weinberg.

Look at the F.B.I.'s tape expert. He didn't want to know what happened. Did he conduct one experiment? Did he do one test himself? Did the whole F.B.I. not know what to do to test a tape like this? Do you think Mr. Ritenour was the one who made the decision, don't test the tapes? Somebody did. Why?

Because they would have agreed with America's foremost expert, Professor Weiss, if they had done the test. Instead, they could come on the stand and say, I don't agree with him, if you drop the machine and it lands exactly on its side, maybe it won't warble, but I won't testify to that.

The only one who had some candor at all, I suggest to you, about testifying about Weinberg, was Agent Best from Philadelphia, who testified we had no use for Mel Weinberg in Philadelphia. But even he didn't know that Weinberg had set up the Ozzi Meyers situation with Mr. Criden until

his recollection was refreshed.

Agent Good didn't know who was in charge of the investigation. Agent Amoroso didn't know. Mr. Weinberg testified, no, I didn't mention Ozzie Meyers to Mr. Criden. Then you have Mr. Best finally conceding, yes, he did.

Let's talk some more about candor in this case. Every F.B.I. agent was called except the one who poured the drinks for Ozzie Meyers. Why? Ask yourselves.

Mr. Puccio talked about one drink. Well, you're not unsophisticated, ladies and gentlemen. He has to give you some credit. One drink is not a tumbler of whiskey, that's not one drink, that's five drinks. Then another one on top of that. But, they didn't call the F.B.I. agent who poured the drink.

Agent Amoroso, from the witness stand, evaluating Mr. Weinberg; he was a skillful con artist. A question by Mr. Brown, he conned everybody but you, right? Answer: No, I could be conned just like anybody else. One of the only quotes, the only quote I am going to give you today, is from Will Rogers who is one of my favorite writers, who

13

Ben-Veniste - summation

said, just be glad you're not getting all the government you're paying for.

Well, this is the case that shows it. It is sad, it really is, that these men are on trial and Mel Weinberg in this Mach IV Continentle is still being chauffeured around by the F.B.I.

But as I said to you, when we first started out a couple of weeks ago, you are going to write the last scene of this sting. You can give it the O'Henry touch. It's in your hands. I hope you do. Sting the stinger. By your verdict, you're going to determine whether Mr. Weinberg is credible or whether he is not.

When you think these men should go to jail and Mel Weinberg shouldn't. I started out saying there was something called an analogy. I tried to draw an analogy in terms of the old movies where you see the poor fellow waking up in the motel room next to a girl he never saw before and they are both undressed and somebody comes in with a flash bulb, because he has been given some knockout drops. A picture is worth a thousand words. If you don't know the background to this, you would say, oh my God, what is this? But in that movie,

if you don't show the knockout drops, you don't understand what happened.

The intoxication in this case was Mel Weinberg in this honeypot. Sure, it was a honeypot. It was the answer to all these peoples' dreams and it was free money. Too good to be true.

You have to prove, if you are Mr. Puccio, beyond a reasonable doubt, that Mr. Meyers intended to be influenced in his official capacity.

I suggest to you that they can't do that. Mr. Puccio argued to you about what is proper, the propriety of Congressman Meyers actions. Well, first of all, your verdict has to deal with guilt as to a criminal charge, just the charges that are here.

When we picked you as jurors, you all promised to do that and I know you are going to do that. I am not talking about what is proper. You ought not concern yourselves with whether Congressman Meyers should be a member of Congress or whether Mr. Criden should continue to be an attorney. There are groups that take care of that. The Bar Association, Congress censors. Those are things that are not for you, the

disciplining of these individuals in their professions. That is not your concern, and His Honor will instruct you on that.

Howard Criden knows that he's probably going to lose his profession as a result of all this.

MR. PUCCIO: I object to this.

THE COURT: It's improper argument.

The jury is not to be concerned with the consequences of what their verdict may be.

MR. BEN-VENISTE: Ask yourselves, why not a single thing was asked about Ozzie Meyers to test him, as to whether he really intended to do anything. Wouldn't that be the fair way?

Ozzie, write a letter to the State Department, just to introduce the sheik. Let's see if you get anything official on stationary. Not done; it's too risky. He would have turned them down, because they knew he wasn't going to do anything. They knew Weinberg's techniques.

I ask you again, not to compromise verdicts. Don't think you will be doing anybody a favor by a split decision here. That's a disaster for Howard Criden. You brand him a felon, if you convict

him, convict him of everything.

Something on those tapes struck me as I listened to them. Mr. Cohen or Mr. Wald, whatever his name is, they talked about the Statue of Liberty. The shape was like the bypass of the Statue of Liberty.

Ladies and gentlemen, don't you bypass the Statue of Liberty. This is still America. Now matter how they make it appear on these tapes, yes, Mr. Criden appears ridiculous on these tapes; yes he appears foolish; yes he has been ridiculed in the press in this courtroom the way he looks.

MR. PUCCIO: I object, Your Honor.

MR. BEN-VENISTE: Probably he is guilty of being greedy.

I ask you, ladies and gentlemen, to consider that these are human frailties. This is not the crime that is charged here. Don't convict Howard Criden because he's foolish, that he made a mistake, that he succumbed to the honeypot, that he took money. Money is not what this is about. This is about the intent of the people.

I ask you not to brand Howard Criden a felon with a guilty verdict because you think he

is a fool or that you think he is avaricious. If you think that he is guilty, if you think that they intended for Ozzie Meyers ever to do anything for this sheik, then find him guilty. If you believe Mel Weinberg, that he denied how that meeting was set up, beyond a reasonable doubt, find Howard Criden guilty.

But if you don't believe him, I ask you, ladies and gentlemen, find him not guilty, on each of the counts of the indictment.

Thank you.

THE COURT: Thank you.

At this time, we'll take a short recess.

Don't discuss the case.

(The jury withdrew from the courtroom at
3:10 P.M.)

1
2 (After recess.)

3 (The following occurred at 3:25 o'clock
4 p.m.)

5 THE COURT: Bring in the jury.

6 (The jury thereupon returned to the
7 courtroom at 3:27 o'clock p.m.)

8 THE COURT: Next, ladies and gentlemen,
9 we are to hear from Mr. Duffy on behalf of
10 the defendant Johanson.

11 MR. DUFFY: Thank you?

12 Members of the axe squad, Mr. Puccio, ladies
13 and gentlemen, my mother says I was vaccinated
14 with a victrola needle, so you can expect me to
15 be a while. I say that up front because when you
16 give an Irishman sixteen people and a captive
17 audience, and the rules say that they have to
18 listen, you don't know when he is going to finish,
19 and I have a lot to talk to you about this afternoon.

20 I said before in this courtroom; I don't
21 know if I said it in your presence, but if I didn't
22 I will say it now, I have a man's life in my hands.
23 And I have to argue to you this afternoon to decide
24 this case the way I see it. I say argue for this
25 reason -- some lawyers say sum up. I think the

Judge put it that way. Some say speech. But it is really an argument. It is an argument because this man, and this man (indicating) and all the rest of the federal agents who are missing now so I can't point at them today, and I disagree over whether we should even be here.

The stuff of tragedy is in this room. Think about it.

We have had two and a half weeks filled with buzz words, sting, mark, hustle, swindle. Words like that. The left hand, the name of the yacht, tells what this whole case is about. Do you know what the word is in Latin for left, sinister. That's what it is about. This case is about sinister. But there are some other buzz words that we haven't used in the courtroom and it is about time that somebody did. Words like tragedy, disgrace, ruin, frame. Words like that.

I want to talk to you first - a little bit about what your duties are in this case. The Judge will tell you. But I want to underscore some of them for you.

You have listened attentively. I don't mean to be patronizing. I do not mean to court

your favor with flattery. But whether you know it or not John Duffy has been watching you for a couple and a half weeks, and I have never seen a more attentive jury. I ask you to hear me out and my two remaining brothers. And I want to talk about some of the things you are going to have to grapple with when you get back in the jury room.

It is pretty tough to follow Mr. Ben-Veniste. I was up all night writing out those cards for him. I thought he would do a good job and he did. I'm going to try not to touch the things that I wrote for him.

I want to talk to you first about what your job is all about. Then I am going to talk to you about what Mel's job is all about.

Concerning your job, when you get in the jury room, you are going to have to decide who told the truth.

It sounds pretty simple.

Maybe the judge will give you some accepted tests that we apply in the courtroom. I'm going to give you some that I think are reliable when you undertake the task to determine credibility.

One is the interest of the witness in the outcome of the case. What I am about to talk about applies to every witness who took the stand. The interest of the witness and the outcome of the case. It cannot be gainsaid, we can't deny, that Ozzie Myers, a congressman, has an interest in the outcome of the case. He has got a great deal to win or lose at your hands. The Judge may have something to say about it.

How about the rest of the cast of characters? How about Mel Weinberg? Does he have something to win or lose at your hands? Is ABSCAM over until his book comes out, the Sting Man?

How about the F.B.I. agents, fellows like John Good. Good ran the whole operation. And the Government didn't call him. We had to call him. Does he have an interest in the outcome of this case?

How about Tony Amoroso?

How about John Mc Carthy?

Do they have an interest in the outcome of the case?

Will the Federal Bureau of Investigation have egg on its face if you by your verdict say

1
2 we have had a belly full. What was done was not
3 right.

4 Interest. The demeanor of the witness on
5 to stand.

6 (continued on next page.)
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The demeanor of the witness on the stand.
How did he act? How did he answer? Think about
Mel Weinberg for a minute.

That's correct.

If it's in the transcript, I said it. I don't
know, Mr. Duffy, unless I look at the transcript.

Juxtaposed his reactions on Ozzie Meyers.

Did he hesitate or did he answer every ques-
tion, not only the questions put on direct examination
but the questions put on cross examination when the
interrogator was from the other side.

Think back to the federal agents who took
the stand. Your FBI. Their reactions. Their
answers. Their demeanor on cross examination.

Did you see Good sit in that chair and look
at that man(indicating) when we cross examined him?

Did you see Amoroso do the same thing? Did
you see McCarthy do the same thing. Did you see the
fellow who was probably the most -- Ritenour do the
same thing?

Were they looking for the prosecutor's
approval? Did they dodge our questions.

When we asked where is the report, did we
get it?

The demeanor of the witness on the stand.

Was he forthright or did he seem to parry ?
Did he seem to dodge. These are the kinds of things
you look at.

There was a fellow in this town named Louis
Nizer, a lawyer, who wrote a book I read when I was
in law school, or right after I got out, when I got
into this unenviable position that led me in front
of you today.

The book was called "My Life in Court."
I always thought it should have been called, "How
great I am."

It was a biography. But Louis Nizer had in
that book a little couplet that was printed in italics
and appeared throughout the book. And it stuck with
me throughout my career and practice of law.
Just two lines:

"How do I know."

The rule of probability tells me so.

Maybe that is the best test when you are
determining if Mel Weinberg told the truth as opposed
to whether Ozzie Meyers told the truth, because
that is what this case is all about. This case is
all about Mel versus Ozzie. It boils down to that.

When you are determining which of these persons told the truth ask yourselves, somebody recite that couplet, "How do I know.

The rule of probability tells me so."

I don't know if there are any horse racing fans among the members of the jury, it is not likely with so many ladies present. They publish a newspaper called the Telegraph. There's a reason.

Do you remember when I told you in my opening about my father and the Grape Nuts. It said on the box "there's a reason." And I never knew what it meant. There's a reason for everything in this case. In fact, Ozzie said, "Give me a reason."

And they publish the Telegraph because thoroughbreds run to form, you see. They are predictable, you see. And I argue to you that Mel Weinberg is a thoroughbred to the first degree.

Why do I say that?

I say that because I want you to perceive his testimony in light of the argument of his entire life, what we have dragged out of him kicking and screaming from that witness stand.

Did he start to tell the truth here? Did we have a preacher back there and did Mel run up and

1 say, "I have been saved. I'm going to tell the
2 truth from now on. I have seen the errancy of my
3 ways and I'm going to keep God's command because I'm
4 going to tell you 16 people the truth," or did he
5 run true to form. That is really what you are going
6 to have to decide.

7
8 The Judge said earlier today that the Govern-
9 ment is not on trial. Maybe the system is not on trial
10 Maybe the establishment is not on trial. And I guess
11 I could disagree with that.

12 But I would rather characterize it a little
13 differently. Who is on trial here? Louis Johanson,
14 Howard Criden, Ozzie Meyers and Angelo Errichetti.

15 But it runs much more deeply than that. I
16 can't help but remember Peter Finch's line in the
17 movie, "Network," "I am mad as hell and I am not
18 going to take it anymore."

19 In your deliberations, you are going to have
20 to decide the question of Mel Weinberg. The caption
21 doesn't say it. I don't know if you have seen the
22 indictment or if you will, but the indictments, as
23 all indictments starts out with four words, "The
24 Grand Jury charges."

25 When I was a kid fairy tales started with

four words, "Once upon a time."

That is what I want to argue to you this afternoon. All I have to say about your duties touches really upon who is credible.

I think the Judge said to you, lawyer's arguments are important because they have lived with the case. And that's true. I have been living with this case for over six months. I want to share with you some thoughts that I have.

I'm going to try not to -- temptation will be great -- but I'm going to try not to tell you what I think. I'm going to try to argue to you what you should think based only on the evidence or the lack of it.

There was a film clip shown on television some years ago, a tragic scene, of a Vietnamese standing in a field, or on a roadway, and I don't know whether it was a policeman, or soldier, or what, and I am sure that some of you saw this film. But he walked up and took a .38 and blew a hole in his head (indicating.)

No, I didn't mean that. I didn't mean to inject any levity. It is a serious analogy that I would like to make to this case.

1
2 When I saw that that stark reality of a murder
3 was something I could hardly stomach. If any of
4 you saw it I think you probably would share my
5 reaction to it. You see I go to the movies and John
6 Wayne shoots Indians. But you all know, everybody
7 knows, when you say "cut", the Indian gets up, and it
8 probably wasn't an Indian anyways.

9 It's there. But nobody really got hurt. But
10 when I saw the Vietnamese get shot in the head and
11 collapse it just arrested my emotions. I froze.
12 I wonder if that feeling would have left me if the
13 film had gone on and I saw him get up. That is what
14 we are dealing with in this case. We have a film, and
15 a Congressman takes money. It is handed to him.
16 He says that I will promise to do -- he would
17 promise almost World War Three if they wanted it.
18 And that is all you have when you get into the case
19 six months ago. You have the Government with a film.
20 And you start to ask questions. And at first maybe
21 like when we opened to you it doesn't make sense.
22 What do you mean a game? I don't know. Tell me
23 about it. And they did.

24 And then you start thinking, my God, what
25 happened here -- let me go look. Let me use the

1 rules. Let me find out if I can dig out anything
2 to support this because if this happened it's wrong.
3 If this happened you have got to get some people
4 from Brooklyn, Queens and Long Island to hear about
5 it. The day is going to come when you have to go
6 into Court and show them what they did to these men.
7 So you work. And you stay up nights. You meet
8 some good lawyers. And you get on a team. And
9 you did, and you scrape.

10
11 You don't take on the United States Government
12 in a frontal attack. You can't do it, a little
13 fat guy from Philadelphia, a couple of fellows from
14 Washington, and the man from Jersey City, as great
15 as he is. You don't do it. It's a street fight.
16 You have to conduct Guerilla warfare. You have got
17 to take a shot here, a shot there. You have got to
18 try to capture a block because they own everything.
19 They have got the films. They have got the audio
20 taps. They have got all the FBI. They have the
21 Department of Justice. They have got Civiletti and
22 all the people in Washington talking about the case.
23 And you take it on. Then you start to find out,
24 wait a minute, look what they did to Williams. My
25 God, they are right. And then they start to provide

1
2 tapes. And transcripts. And you say, hey, look,
3 look what Mel Weinberg says in front of Tony
4 Amoroso, "He's going to have to come on strong."
5 Ozzie is not there. Lou Johanson is not there. Just
6 Errichetti. You start thinking about Errichetti
7 telling Meyers, "It's only an act. Mel has got it
8 fixed. He will go to South America and he will
9 never have to come here."

10 And he says, "Wow, maybe they are right."
11 So you dig some more. You have the good fortune
12 to work with a fellow like Ben-Vaniste who knows
13 some tape people. So you throw some tapes under the
14 microscope and you find out they have been altered.

15 So you get a hearing cooking in Philadelphia
16 and you meet Mel Weinberg. And you get him under
17 oath. And he is Puccio-less. He is in my hometown.
18 And you start firing questions at him. And he says
19 he filed his '78 tax return. And he says he did ..
20 not file a '79. But he's working on it with a
21 lawyer in Mr. Puccio's office. You write it down,
22 and you do some checking. And he tells you in
23 Philadelphia when we are on the boat Criden brought
24 up the stuff about immigration.

25 And you write that down and you check on

1 that. And you get into your discovery and you find
2 out, and so does Mel, that Amoroso wrote a report.
3 And the report says "I" Amoroso wrote that out,
4 not Howard Criden.
5

6 Then you find out that Mel didn't know about
7 the report.

8 So you start sticking those cards up your
9 sleeve until the right day comes along.

10 Now, I am going to share a thought with you
11 that may run afoul of what Mr. Ben-Veniste told
12 you. I do not perceive this case really as turning
13 on whether or not Mel Weinberg paid his taxes. That
14 isn't what is important. If you feel repulsed or
15 indignant that he has been cheating our government,
16 that's up to you. The fact of the matter as regards
17 our taxes is that he lied about it under oath.

18 He took the stand in Philadelphia -- do you
19 know this is a Courtroom story -- this case began
20 in a courtroom in Pittsburgh. The light was turned
21 out in a courtroom in Philadelphia and Mel came to
22 rest in peace in a courtroom in Brooklyn.

23 The reason I raise the taxes question
24 with you has nothing to do with him cheating our
25 Government. It has nothing to do with --

1
2 well, I'll have something to say about our FBI in
3 that connection -- but it has to do with him
4 committing flat-out perjury.

5 The judge may tell you -- let me tell you
6 something about John Duffy. I don't argue the law.
7 You will hear precious little of it from me because
8 I learned in 18 years I don't know a hell of a lot
9 about it. So I leave that up to the Judge. But
10 the Judge may tell you a maxim in the law. It was
11 written originally in the Latin, falsus in uno
12 falsus in omnibus. That is alter boy talk for
13 false in one thing false in everything. And that is
14 part of my argument to you.

15 (Continued summation by Mr. Duffy.)

16 Take this question of the tax return, if
17 Mel Weinberg lied to John Fullam, a federal district
18 court Judge in Philadelphia, about filing his tax
19 return in '78 -- before '78 -- in '79, if he lied to
20 Judge Fullam about that -- and I am only talking about
21 two episodes, about Howard Criden starting the
22 immigration or even participating in the immigration
23 conversation on the yacht Sinister, then you have a
24 right to believe he lies about everything. But
25 it doesn't end there. How do I know?

The rule of probability tells me so.

These people, and you know I say these people, and maybe it is not the Government of the United States. Maybe the Government is not on trial here. Maybe that is carrying it a little too far. But I argue to you that there is a nest of dangerous and criminal men at work here, a nest of dangerous and criminal men, dangerous to the future of our American Society.

I don't usually make political speeches, but I am worried. I am truly worried, and I think you are because of what happened in this case.

Mr. Puccio used the verb this morning, to manufacture, when he referred to whether or not a meeting occurred, whether or not Mel told the Mayor whatever it was that he was speaking about at the time.

And manufacture is a good verb to use in this case. Let's look at it. I do not use any notes because I learned long ago that I am lazy, and if I have notes, I will read to the jury and I will put them to sleep.

Now, Mr. Ben-Veniste said I only get one chance to stand up in this case before you. It's

1
2 a pleasure to get up and argue because anything
3 that -- you see I leave crumbs for Ray Brown and he
4 will make you a cake before it's over.

5 Take a look at what happened in connection
6 with manufacturing. I'm not going to point you to
7 the transcripts because I don't like that. I am
8 pompous enough not to want what I have to say to be
9 interrupted. But there is a place in the transcripts
10 that, and a couple of them in fact, where Mel is
11 talking and one other place where Tony is talking.
12 And the question is where are we going to have the
13 meeting? Where are we going to meet with the Congress-
14 man.

15 Somebody says Jersey. Mel says okay.

16 And then Mel realizes that he is talking
17 about one thing -- and it's in there -- and Erichetti
18 or someone, or whomever is speaking, is talking about
19 something else, he's talking about the Congressman.
20 And Mel immediately picks it up and says, oh, no,
21 not Jersey. Well, why? Why is that important? Wait
22 until you hear the law. We have a law called the
23 Travel Act. And if you are in Longport, New Jersey,
24 and you travel to Camden, New Jersey, or Atlantic
25 City, New Jersey, to do something, whether it is

1 criminal or not, you do not violate the Travel
2 Act. You have got to travel to another state.
3 Manufacture. It is part of the scripted scenario.
4 I was impressed at the commencement of this trial
5 when you got your little books, or your big books,
6 because every time Mr. Puccio was going to do
7 something, what did he do, he gave you a new script
8 to follow a la Mel.
9

10 And I'm going to talk to you about what
11 happened at the Travel Lodge -- Mel's diner. That
12 is where they brought him, Mel's diner.

13 What happened at the Travel Lodge? I ask you
14 to go back to the rule of probability because that
15 is where you are going to find the answer.

16 What does the Government have up front?
17 We had a lot of trappings. We had a lot of innuendo.
18 We had a lot of argument.

19 But what do they really have up front.

20 Turn to the page in your books where someone
21 says to Angelo Errichetti we want a corrupt congress-
22 man. Get us someone who is known for committing crimes.
23 Give us a famous, well-known bribee, not a bit.
24 Because it is not the way they work. They start
25 in a courtroom with Mel Weinberg pulling the

1
2 incipient stage of the greatest scam of his career.
3 He took the FBI. He took Moe Curley and Larry, and
4 now he wants to take you.

5 How did he do it? He got arrested by
6 Agent McCarthy. And he was in trouble. He was a
7 con man, a man who needed a story.

8 And did he come up with the story. Just like
9 when he was 17 years old and his father was in the
10 glass business with the contract with the insurance
11 company, and he started breaking windows.

12 We didn't learn what underworld figures,
13 friends of his or otherwise, he turned in, but he
14 tells you he cracked four cases. And then he started
15 to sell McCarthy the Brooklyn Bridge. And McCarthy
16 and Good bought it. It was later sold to Lou, and
17 Howard, and Angelo and Ozzie. If you come in with
18 a guilty verdict Lou is going to be out there with
19 a little toll gate because he'll need it. And this
20 is where Weinberg really starts to cook. He got
21 his newfound buddies -- and you see here is the
22 problem -- in the case as I perceived it in the
23 beginning the problem I have is not turning Mr.
24 Weinberg into a folk hero. That is the problem.
25 I mean he sold the FBI. They thought he was the

greatest thing, I think somebody said, since sliced bread.

You started off, you have to remember -- and I would like to dispose of this concept of Government. We are dealing with people. And we started off selling people, that people (indicating). And then he got Good. And then he got Amoroso. As Mr. Ben-Veniste told you, McCarthy said that if you step out of bounds I will lean on you. So we have to get rid of him. He started off making nothing. That is what he told us from the stand. And then Weinberg, we uncovered that what he was getting was \$40,000 in the first four months. Thirty from the insurance company and \$10,000 and bonuses from the FBI for some stolen property that he recovered. He even turned in his own kind, ratted them out.

He had to perpetuate his own existence. And it must have been titillating to him on a day-to-day basis to see these "G-men" swallow the bait. The front had to be better, not Mel has to eat steaks and smoke two-dollar cigars, no; but we have to do this in order to reach the marks, the buzz word.

I need to have more money.

When did he get it?

As soon as he got rid of McCarthy -- I'm not going to call him Charlie McCarthy -- but as soon as he got rid of McCarthy he got a raise to \$3,000 a month. And it went on. Automobiles followed. A townhouse in Washington followed. People. And now he had to do something to earn it. He was really, I argue to you, a commission salesman. You know anyone in this room, if you hired on with the New York Life Insurance Company and got a job, and you have a suit, you could be a life insurance salesman at \$200 a week.

But they only give you that as a draw. After a short period of time you have to produce some products. You have to produce some policies. You have to get customers. And that is what Mel started to do.

When does it begin? It started on a golf course. I'm not going to bore you with the details. I will give you a conclusion, an irrefutable conclusion from the testimony. From their side it was a completely legitimate business proposition.

(Continued next page)

Duffy-Summary

1
2 MR. DUFFY: Why do I bring it up? Because
3 Amoroso told us and Mel Weinberg told us that
4 the policy was to discourage, dismiss anyone
5 who brings you an honest fellow.

6 And that is important for this reason,
7 Mel Weinberg knew that Lou Johanson was a City
8 Councilman in Philadelphia and former State
9 Senator. He told you that.

10 So they had to dangle something. Is there
11 anything in the evidence? I am going to repeat
12 myself but it's appropriate in this case, is there
13 anything in the evidence to show anyone said to
14 Lou, get us a crooked Senator? Get us a crooked
15 Senator? No. What they said was, we like your
16 deal, you're going to make five million dollars.
17 You're going to get out of that row house on
18 Franklin Street and you're going to be a rich
19 man. And they think, the testimony went, we
20 would like to meet -- Ellis Cook -- we would like
21 to meet some important people and there is money
22 in that. And they get checked out. And boy do
23 they have a friend at Chase Manhattan. Four
24 hundred million dollars. Someone at Chase Manhattan
25 lies to people and says they have it.

2 So the story goes on. Ossie told you the
3 story, Lou calls him. He says you would have to
4 do absolutely nothing. The truthful witness,
5 he says he was truthful (indicating), you decide
6 if it was truthful, Ellis Cook, who used the
7 Latin expression -- we lawyers like to use Latin
8 expressions -- no quid pro quo. That means this
9 for that.

10 It means you get to do something and when
11 you say no quid pro quo, that means you don't
12 have to do anything.

13 Then what happens? You see the lure. Just
14 let us meet some important people, the lure is
15 out.

16 The first thing you got to do to scam
17 somebody is get somebody to scam. So however you
18 get him in, it doesn't matter. Bring him in, and
19 then you work for Mayor Errichetti and tell Mayor
20 Errichetti -- is this probable in the circumstances?
21 This is what you have to look at. You tell
22 Mayor Errichetti, promise them everything. And
23 this is on the Williams tape, ladies and gentlemen.
24 Promise them everything, come on strong. It's
25 bull shit, bull shit, bull shit.

3 1 Start World War III if he says so. You
2 will never have to do anything. I already arranged
3 for the Sheik to have asylum in South America.
4

5 Do you think Ossie made that up? Who is
6 the maker up here in this case? Does it make
7 sense? Does it fit into a full pattern? Is it
8 the kind of thing Mel Weinberg would do?

9 Ray Brown asked him -- I've got a brother-
10 in-law who wanted to get into the case so he made
11 this up (indicating).

12 Ray Brown asked the question and here it
13 is. This is a blow up of it. Let me bring it
14 up closer. This is a blow up right from the record.
15 It even has a Court Reporter's mistake in it.
16 "Is it a fact that what it was all about was --
17 is that you wanted there to appear on the video
18 camera and ultimately on tape for some future
19 jury would depict my client performing supposedly
20 for the Sheik but actually so that you can say
21 that he committed a crime, is that correct?

22 "Answer: Yes."

23 And Ray Brown was smart enough to quit there.
24 He said, "I have no further questions at this
25 point."

Duffy-Summiton

That is ABSCAM. Because that is what Mel sold to Tony and that is what brings you people to Mel and Tony's hump party.

That is what brings us to Court today. I don't know about Amoroso. I am not sure I can argue to you about Amoroso. I don't know that you know enough about Amoroso and his involvement. It's an enigma to me. I have been trying to figure it out.

You look at some evidence and Amoroso is in up to his teeth. Joey takes three television sets to the Hyatt House, three, for the Board of Directors. And who is there? Mel, Tony, and I think it was Brady. Three guys there. Mel might be greedy enough to want three, I don't know.

I really can't argue sensibly to you about Amoroso. A trial is supposed to be a search for the truth. I don't know if we got it all. I don't know if you have it all. Even whether it's there for you to sift out. If Mel is going to continue with his license to steal, which is what they gave him, with his own personal private secret police, which is what they gave him, then

1
2 he's got to turn out some product. And what better
3 way then to get someone to think it's all a game.

4 There is nothing wrong with it. You will
5 never have to act like a Congressman. This fat
6 cat Arab has so much money we have to take so
7 much from him a month. I think it's on one of the
8 tapes, it ain't going to last long, we've got to
9 get it now.

10 And then you see the rape of a United
11 States Congressman. That is what happened.

12 Let's go back to the boat down in Florida
13 and talk about -- that is where I'm going to start.
14 This might be kind of a shift position, this is
15 new part of the argument. Enough of the philosophy,
16 let's talk about the case and the evidence, about
17 what you heard and about what you didn't hear.

18 Has it struck any of you what is missing?
19 Are any of you curious? Here is your FBI -- not
20 my FBI -- your FBI. The college cops of the country.
21 They are all accountants or lawyers. I asked them
22 on th stand: "Are you a lawyer? Yes, I am a lawyer.
23 I am law trained. What is your speciality, account-
24 ing? Yes, accounting."

25 College cops. They aren't fellows from the

neighborhood. These are the creme de la creme from the American confabulatory and they have rules. And we wormed some of th rule provisions out of some of them early in the case.

When something significant happens in an investigation are you supposed to prepare a report? Yes, Mr. Duffy. Is that report called a 302? Yes, Mr. Duffy. How many of those are missing? Let's just go back to the boat. The business meeting on the boat that was completely legitimate.

Any report about that? Also tells us we filmed it, but we don't have it. The camera broke down. He produces Mel and Tony's bag of tricks, the briefcase, the Negra. He says we recorded the conversation but when we went upstairs to talk about what really is the genesis of ABSCAM, what really got the ball rolling, we couldn't take the briefcase with us.

That sounds all right when you first hear it. When in casual clothes it might look a little untoward to carry a briefcase up on the top deck.

Who says you've got to carry a briefcase on the top deck. If the conversation went the way Amoroso said it went, why --and he intended to

Duffy-Summaton

1
2 bring it up -- why didn't he do it when he knew
3 he could record it? You don't have a recording
4 of that conversation. You don't know what Mayor
5 Errichetti said. But you have the word of an FBI
6 agent. And that always has the ring of truth,
7 doesn't it?

8 College cops never commit any lies.

9 We ask each of you -- I beg your pardon,
10 the Judge asked each of you before you earned the
11 seat which you are sitting in a question on
12 the Voir-Dire examination: "Do you think because
13 a fellow is a cop he is entitled to more belief
14 than another witness?"

15 I don't recall your specific answers, but
16 I know none of you would be in the seat you occupy
17 if you said yes.

18 Because we knew in the beginning that --
19 these fellows (indicating) named me Burl Ives.
20 That gets me to thinking. In a role he once
21 played in a Tennessee Williams film, Cat On A Hot
22 Tin Roof, he was Big Daddy and he would stalk
23 around the mansion in the south and harp about
24 mendacity, mendacity in the room, lying, perjury
25 in the room. Did you think we didn't know what was

Duffy-Summaton

coming? You think we didn't know it was going to come from our FBI?

It's right here in the evidence. Skip ahead from the beginning of the case on the boat and know 302 and you've got to believe Tony down to the 23rd of January this year and you've got to believe Mel. Mr. Ben-Veniste covered that. About the two or three tapes then three or four and then four or five tapes missing. Critical tapes missing. And where they were stolen. How they were stolen.

Was there any report made of them? Doesn't it make sense applying the rule of probability? Doesn't it make sense that somebody in the jury room to tell the rest of you about the time he got something stolen from your baggage or lost a baggage in your travels? Where do you call? What do you do? Do you call the field office or home of your friend in Detroit where you just left? As they called the field office of the FBI? Or do you call the airline? These are part of our snippings.

Henry Furst laid a subpoena on National Airlines. And National Airlines wrote to the Court.

Duffy-Summaton

1
2 They didn't want to send anybody here like
3 a Chevrolet dealer from Florida because we can't
4 fly him up here. They sent a letter, 15 cents
5 is all they needed from Florida. We don't know
6 any Mel Weinberg. We found out a Mel Weinberg
7 bought a ticket -- I read it to you -- for a
8 flight on the 23rd of January from a travel agency
9 but there has never been any claim with us
10 about anything having been stolen.

11 Mr. Puccio didn't even object when I put
12 that letter in. What does that tell you? What
13 does that tell you as regards the rule of
14 probability. It tells you to take a hard look
15 at John Good's testimony for this reason, your
16 FBI supervisor took the stand and said, "I
17 conducted an investigation."

18 Now, the airlines doesn't know about it.
19 And neither do you. Because he didn't do a report.

20 Do you think it was significant to the
21 ABSCAM investigation if five or six tapes were
22 lost? Or was it some sort of cover up? Was there
23 something said in a conversation between Mel
24 Weinberg and Howard Criden that no one was allowed
25 to know about concerning that second meeting? The

Duffy-Summaton

game goes on, Howard, get hold of Ozzie, the goose is still laying. Do your act. God knows what is on those missing tapes.

I like what Mr. Ben-Veniste -- I smoke a cigar from time to time. You know I'm going to ask you to use your common sense. That fellow downstairs at the desk with the uniform on does not make you check your brains when you walk into the Courthouse.

I ask my daughter Jane, the almost pretty soon going to be a lawyer's daughter what I should tell the jury. She said: "Father, they're from New York," she said, "They got common sense."

All I am asking you to do is use it. Did John Good tell you the truth about the cigars or is it as we call in Philadelphia: specious phonous balonous.

Has your FBI told you -- I don't know whether Allen in this Court, when he administers the oath says tell the truth, the whole truth and nothing but the truth, we do that in Philadelphia. Have they told you the truth, the whole truth and nothing but the truth, or the rule of probabilities tells me so? They've got egg on their face because they

Duffy-Summaton

realize that they were Mel's victims as well.

(Continued on next page.)

1
2 Another little kernel, Agent Best, to
3 whom Lou Johanson confessed. Do you remember
4 that? Sobbed out his story of guilt? I will
5 have some things to say about that.

6 Best was asked a question by Mr. Ben-Veniste.
7 When the scene went to Philadelphia -- boy, I wish
8 I had blown this one up -- you didn't employ Mel
9 Weinberg, didn't you? Do you know what Best's
10 answer was? And if you don't believe me --
11 people don't believe lawyers and politicians --
12 get the transcript. I am paraphrasing, but I want
13 to hit the key word. He said; We had no use for
14 Mel Weinberg in Philadelphia.

15 Anybody remember that? "We had no use for
16 Mel Weinberg in Philadelphia."

17 Now, let's play let's pretend, because you
18 don't have the whole story. When I was a boy about
19 this high (indicating) I used to listen to a radio
20 show called "Let's Pretend." Let's Pretend, as
21 John Good told you on the stand yesterday shortly
22 after the meeting with Senator Williams, he lis-
23 tened to that tape and he told you that this man
24 listened to the tape. This isn't the ordinary
25 case, this runs from the courtroom in Pittsburgh

smack through, I don't know how much is known to all the people, smack through to the adjoining building, the organized crime strike force, Mr. Puccio's office. It can't be denied he was in on it early on. Good told you yesterday: I wasn't spinning my wheel when I asked did Mr. Puccio listen to the tapes -- John Good -- I almost lost my train of thought. John Good told us on the witness stand yesterday -- I got so excited about Mr. Puccio that I lost my train of thought. Give me a second.

(Pause.)

MR. DUFFY: It will come back to me. I just can't remember it. Let me go on to another subject, I am sure it will come back to me.

The meeting at the Barclay and the missing tapes. Why did we make such a big thing of tapes being missing? After all there were how many, 220 or thirty different tapes in this case? The only tapes we put before you with the experts were three or two. Why was it so important if those tapes were altered? Why was it so important something done to those and we didn't establish anything was done to the rest of the tapes? The reason is

3
1
2 Mel Weinberg testified under oath in Philadelphia
3 and here. We got him to repeat the testimony here
4 so that the testimony of our experts would be --
5 would have greater impact. He testified to two
6 critical aspects of the making of the tapes. Aspect
7 number one was that he recorded everything from
8 beginning to end. You heard him say that. We
9 confronted him with what he said in Philadelphia
10 as well.

11 Aspect number two, was that he recorded
12 every call. There may be some argument that he
13 said every call that I could, I'm not sure, I
14 don't want to talk about the calls when I could,
15 for example, the ones that may have been made from
16 a phone booth and there is no toll record and
17 maybe he didn't have his pocket Negra with him.
18 But Mr. Brown's office put Mr. Duffy -- no relation,
19 I never knew the man -- put Mr. Duffy on the case
20 to track down the telephone billing. You will have
21 the bills I think they are hardly legible, of the
22 calls made between the phone registered to Weinberg
23 and the phone registered to the Mayor representing
24 conversations that they had. I don't think Mr.
25 Ben-Veniste covered this. I think it's important

4 1
2 for you to remember, think about what Mr. Duffy
3 said, you may have some notes on it, there were
4 fifty-seven such calls. Fifty-seven such calls.
5 I think he also said that six of those telephone
6 calls occurred at a very critical time in these
7 proceedings. That would be between -- I don't know.
8 Some time in late July and end of August. Six
9 of those calls, none of which was recorded.

10 I think I am getting my train of thought
11 back. Good. Good and Mr. Puccio, it has come
12 back to me. I knew if I talked long enough it
13 would come back.

14 Good and Mr. Puccio listened to the Williams
15 tape or someone does. I don't want to point to
16 Mr. Puccio, he's not a witness, he's a prosecutor.
17 But Good did because he told me and you he did
18 yesterday or the day before, he listened to the
19 Williams tape, and now we are back to the "Let's
20 Pretend." I am arguing to you now by inference.
21 If you don't make these inferences, flatly reject
22 the argument but homogenize in your consideration
23 the rule of probability tells me so. All right.

24 Good hears the Williams tape and hears
25 Mel Weinberg tell Williams to put on an act to

5
1
2 come on strong. It doesn't really matter, it's
3 all bullshit, you will never see him again --
4 whatever is on there. You've got that transcript.
5 Good scratches his head and says, we better talk
6 about this. Maybe Good goes to a boss or two.
7 We don't have any evidence of this, but there is
8 something at the end to tie it up. I think these
9 gaps -- no pun intended -- could be filled with
10 inferences. Someone goes to Mel and says: Yo,
11 Mel, don't do that any more. That is not the right
12 way. Maybe even this nest of evil men had a
13 decent one among them and said that is not proper,
14 we should look for crooks. We shouldn't tell
15 someone to put on an act that it doesn't matter.

16 What did Weinberg do? He likely doesn't
17 know any crooked politicians -- inference; likely
18 doesn't have one to whom he can turn and offer
19 a bribe. This is in June. Remember that. That
20 is critical. But he hears Lou is a City Councilman
21 and former State Senator. He starts off by devious
22 means. Remember he called the guys that borrow
23 money DM, desperate men -- devious Mel -- starts
24 off with Mayor Errichetti. It's like Tinkers
25 to Evers to Chance.

Errichetti to Criden to Johanson. There is nothing, you don't do anything, no quid pro quo, nothing is required.

Did you see the movie The Sting? That is the hook. Mel threw out the hook. The hook is out. And they say, you will get your hotel casino and Lou takes the hook. Lou says if it's going to get the casino, I could talk to Ozzie. He's my friend. I backed the election, they had coffee, the next thing you know Ozzie is going to help his friend Lou out and he has been told you don't have to do anything. Nothing about a private bill, immigration, none of that stuff. But the hook is now in. It's set.

How is Mel Weinberg going to perpetuate his scam? He can't call Mayor Errichetti and tape it. Because if he turns the tape in somebody is going to say, Mel, you're doing it again. So he doesn't tape it. So that you don't have the tape. So that we couldn't get the tapes in the discovery part. Williams was part of the Government's package and under the rules -- do you remember we went to great pain with the F.B.I.? There was a reason. I will just grab one here, 21-B. Here

1
2 is a tape in there, August 6, 1979. There is
3 a whole history every time the tape moves it's
4 logged. You see (indicating)? You can't destroy
5 a paper trail. None of the good parts of the
6 F.B.I., they keep paper trails and people like
7 us can snoop.

8 If Mel started a paper trail he would be
9 in trouble. The Williams thing got him in trouble.
10 He either doesn't record or Mayor Errichetti
11 brings something up in a conversation he's got
12 to erase. I'm sorry, he's got to drop the machine.
13 Listen to the tape Mr. Puccio played this morning,
14 the one where I think it's Mayor Errichetti, the
15 tape is of course not altered. The Mayor starts
16 to speak in Arabic clicks, he said five and there
17 is an interruption. We have to show you every
18 tape or isn't an example enough? He stops taping.
19 He alters tapes. And he still accomplished the
20 same thing.

21 The greatest stroke of genius in the case
22 was the South America bit. Ozzie wouldn't have
23 to guess, Mel said I arranged for asylum in South
24 America. He'll never have to come here, bring
25 him in and promise World War III. Mel is still

hungry. They go further. There is a little bit of difficulty and I'm going to challenge you to study two transcripts when you are in the jury room. My argument to you is, they don't absolve Mel Weinberg at all, number one and number two, it really doesn't matter if all the rest is shown to you -- I'm talking about Mario Noto or Ropo. Okay?

The testimony from Ellis Cook, who told the truth, was as I recall it, number one, that Mr. Criden came to him and said, the Mayor and Weinberg have a thing going. There is twenty-five, \$25,000 in it if we produce someone from immigration. We would like to -- we would like you to be that fellow. He told us that Lou Johanson vetoed it. Lou said that is going too far. To put on an act is one thing but to put on an act and not be the fellow who is supposed to be putting on the act is a little too much.

Mr. Criden comes back in a week and says the Mayor has been calling and the Mayor convinces Ellis Cook, Mel is in it, he's a friend, we don't have to have a meeting. The other guy is straight. A hope has to be sent to the Shiek. Just come down,

1
2 free money. \$25,000. Stop there and turn to
3 the tape.

4 What does Amoroso say at the outset of
5 the tape? My name is Agent Anthony Amoroso, I'm
6 putting \$50,000 into these briefcases or envelope,
7 whatever it was. I'm not going to harp on Nopo,
8 except to say this, the October 3rd and 4th tapes
9 and what happened in the room, do you remember?
10 I hope it's in the transcript, if it is not, you
11 say Duffy is specious phonus-bolonus, then ask
12 for the tape because my recollection is when
13 Amoroso gets up and calls the Mayor into the next
14 room what does Mel Weinberg say to Ellis Cook?
15 He said, I'm Mel Weinberg. I'm the Mayor's friend.

16 How do I know. The rule of probability
17 tells me so. You can look at Ellis Cook through
18 that three minutes and twenty-six seconds in which
19 he's about as nervous as a long tailed cat in
20 a room full of rocking chairs and nothing else
21 counts on the tape but Mel Weinberg saying: "I am
22 Mel Weinberg, I am the Mayor's friend."

23 He also said, if you recall, look, you're
24 nervous, we are nervous, do you have any i.d. Mel
25 was in a bind. Because Tony caught on. The

Government's testimony is Amoroso got a picture the day before and that is fine. Except he didn't bring the picture in. You have to believe your F.B.I. agents.

It's pretty tough undertaking to tell twelve or sixteen people, don't believe the F.B.I. but that is what it comes down to. If they had the picture in God's name why don't they solve the thing that exists with the Noto thing and bring the picture in.

Now, the invitation is for you to examine the two phone calls, transcripts, one between Mel and Errichetti, and one between Mel and Criden, and keep in mind that Mel wasn't recording all the calls.

(continued on next page.)

MR. DUFFY: (Continuing) I am not talking about these two calls not being complete. I don't care about that. Just ask yourselves, if he really says on this tape, I didn't know that you were going to bring an imposter, I wasn't in on it, I had no plan to share any of that money, I am not running any scam on the sheik, or is he really covering himself in the fashion of a con man by turning one against the other.

They refer to the fellow on those two tapes, as a ringer. Ask yourselves the question, no, I'm Irish, and I'm slow. I read the tapes. I read the transcripts. You read them and read them with this thought in mind; maybe John Duffy is right. Maybe Mel, on these tapes, is just trying to say to each of them, see, you don't have the other calls, to each of them, the other guy says the blunder was yours, as in you shouldn't have picked Ellis.

Take a look at those transcripts when you get out. Because, Mr. Puccio, if he didn't yet, he will later argue to you those two tapes prove to you that Mel wasn't in on it.

My position is that they really don't, if

1 you examine them. I said at the top that the stuff
2 of tradgedy was in this courtroom. It came to a he
3 head on February 2nd, Lou Johanson was brought into
4 the office of the P.B.I., your F.B.I., in
5 Philidelphia. You heard me examine Agent Bess.
6 The Judge told you at the top of the case, I
7 brought out from Best that he was a lawyer. The
8 Judge told you, I think at the top of the case,
9 that the questions lawyers ask are not evidence.
10 Do you remember that? It's the answers that count.

11 In fact, when we got in the back row,
12 everyone was patting Ray Brown on the back for a good
13 question. He said, any dummy can ask a question,
14 it's the answer that counts. The alleged
15 confession from Lou Johanson, listen to the
16 testimony and in God's name, recall my cross
17 examination, because that's a buss order.

18 He said something about the question
19 being whether Lou understood the ramifications
20 of this kind of an influence peddling. I had
21 to take him back to his report. I think his
22 testimony on his direct examination was that Lou
23 said he understood the ramifications of this type
24 of influence peddling and he had had sleepless
25

I started with him at the bottom, I said, did he have videotapes there in the F.B.I. that night? My God, wasn't he entitled to be on tape? Everybody else got on. Did you have videotape equipment there? Oh yes. Did you have maglars? Oh yes. Well, did you record for a future jury to see the alleged statement of Louis Johanson? No, Mr. Duffy, we forgot that.

I wish you would have been around that night. Think about that, too. Pick these fellows up at 5 o'clock on Saturday. That's when everybody gets picked up, 5 o'clock on Saturday. Common sense. Everybody knows where criminal lawyers are and what they're doing, drinking whiskey at 5 o'clock on Friday or Saturday.

So Louie doesn't have a lawyer, so he sits there and what they get out of him is not an answer, because I went to the report. We had a 302 there. And the report said, not Johanson said he understood - - Do you remember the agent said, he said to me he wanted to make telephonic

Duffy - summation

contact - - I said Louis said that. That's police language. Then I got him from his report and I said, wasn't that in fact what you wrote in your report, a question? It had, I have it memorized by heart, he was asked, Johanson was asked if he understood the ramifications of this kind of influence peddling. The next sentence was, he said that he had had sleepless nights since last July over these kinds of dealings.

Which leads me down to the end of my argument, ladies and gentlemen. These four fellows who are on trial for committing three Federal crimes. Not on trial as Mr. Ben-Vaniste said, for being greedy, as I will say to you for being stupid, for maybe being sucked in by Mel Weinberg to dishonestly bilking a non-existent sheik of money. They are on trial for enumerated crimes that is set forth in statutes in the United States Criminal Code.

Whether Lou Johanson had sleepless nights over the dealings has nothing to do with whether Ozzie Meyers intended to violate the law. Maybe they weren't being - - maybe they weren't acting like the good nuns might have taught them. Maybe

they were, all of them, pretty stupid. Maybe they did get sucked in by Mel and I guess by Amoroso.

The question you have to decide is whether they violated these statutes. And that is going to be tough, because you come into the jury box filled with our own prejudices. I would be less than candid if I told you that I believe that none of you has a prejudice.

All I am going to ask you to do on Louie's behalf is to put it aside and to judge the case fairly and squarely on the evidence, and on the lack of evidence.

You do get to write the last chapter of the book, you do get to write the last line and maybe you get to write the title, instead of the Sting Man, you can turn it to Close, Mel, But No Cigar.

Find him not guilty.

THE COURT: Thank you, Mr. Duffy.

* * *

1
2 MR. CACHERIS: May it please the Court,
3 fellow defense counsel, Mr. Puccio, when I first
4 introduced myself to you some three weeks ago I
5 told you that I was a stranger here in Brooklyn.
6 I now feel like I was born here.

7 I appreciate the courtesies and attention
8 that you have paid to this case because it is an
9 important case. Ozzie Myers is a congressman.
10 But just because he is a congressman, he does not
11 forfeit the right to be tried by you on the same
12 Principles of law that govern every other human
13 being. He is entitled to the presumption of
14 innocence and he can require as the Court will
15 instruct you that the Government prove its case
16 beyond a reasonable doubt.

17 The presumption of innocence is an abiding
18 one. At the end of the arguments of counsel, one
19 of the important things that will be given to you
20 will be the instructions of the Court, and I know
21 you will pay attention.

22 Ozzie Myers is also a human being. He has
23 displayed himself before you. Indeed his whole
24 life has come before you. Had there been anything
25 about him that wasn't right, you can bet that Mr.

1 Puccio would have brought it out. He told you
2 about his humble beginnings, he was one of eight.
3 He is the father of three. He is the son of a
4 longshoreman, and he is a longshoreman himself.

5 He worked his way to being a congressman.

6 Now he is on trial. The Government's burden
7 of proof is to establish that he took a bribe for
8 the performance of an official act. It is their
9 burden.
10

11 While you will be told that there are three
12 counts in this indictment, I believe his Honor
13 is going to explain to you that you should use the
14 second count, the bribery count as your focal point.
15 That is really the heart and soul of this case,
16 and Mr. Myers' testimony on that is the heart and
17 soul of his defense to that case.

18 It is not your function to determine whether
19 Ozzie Myers is a good, bad or indifferent congressman.
20 He was put in office by the voters of Philadelphia.
21 That is their job to determine.

22 Whatever you may think about his ability as
23 a congressman, you must put those aside and judge
24 him on this indictment. The question before you
25 is did he sell his office with a corrupt intent.

That is where the Government's case falls.

The indictment which you will be given is a road map. It is a specific charge that guides you in assessing all of the evidence to come before you.

Count two charges that money was accepted for the purpose of being influenced in official acts and that acceptance was corrupt for the influence in matters involving immigration and state department. That is what is charged.

The Court will tell you that there are four elements to bribery, to the bribery count and I will outline them briefly and remember the Court will give them to you more specifically.

The first element is Mr. Myers was a public official, and of course we do not dispute that.

The second is that money was paid and we do not dispute that.

The third is the criminal intent to be influenced through an official act and fourth that he did so corruptly, knowingly and wilfully.

We dispute that he had any criminal intent or that he intended at any time to be corrupt or sell his office.

1 How do you govern what his intent is?

2 The Court will tell you that words and
3 actions may afford you some guidance to do that.

4 Mr. Puccio of course wants you to limit
5 yourselves to what came over these television
6 screens. I don't think you should do that.

7 You also have the real live person who
8 appeared and testified before you and took these
9 tapes head on.

10 Mr. Puccio wants you to limit yourselves
11 to what came over this tube and not why people
12 were there or what their motivations were. That
13 is where we depart in this case, ladies and gentlemen,
14 and that is what I think you should focus on. What
15 did Mr. Myers tell you on the witness stand?
16 I never was going to do anything. I was told I
17 didn't have to do anything. I never did anything.

18 And while part of the Court's charge will
19 tell you that the fact that he did nothing is
20 not necessarily proof of no crime, you may consider
21 it as proof that he had no intention to ever do
22 anything.

23 That is what he said consistently. Those
24 words have run throughout this courtroom. I never
25

intended to do anything.

Now, Mr. Puccio in his rather vicious cross examination and his audacious, facile characterization of Mr. Myers as a liar, never, never established any proof that Mr. Myers intended to do anything. How did he get involved? How did he get involved in this affair?

He was minding his own business at his summer home when he was approached by an old friend. Was he told there was some scheme afoot?

He was told by Lou Johanson that I am about to get involved in a venture totally lawful involving some hotel, totally lawful whereby my law firm stands to make a lot of money.

In fact Johanson told him it was so appealing and so rewarding that he was contemplating retirement.

He asked Myers to help him.

He asked Myers to help him by going up and meeting this fictitious Shiek. Of course we can say rather initially now, looking back, he should not have gone, but he did go. He thought he was helping a friend and he perceived there was a chance to make some money for nothing.

1
2 So he was told he would be given further
3 instructions by Mayor Errichetti who was familiar
4 with the situation.

5 On the day in question he went up to Kennedy
6 Airport and indeed he was given further instructions
7 and he has testified about them fully before you.

8 Mr. Puccio didn't like them and said, don't
9 pay attention to what went on off camera.

10 But those words that went on off camera
11 have a very familiar ring.

12 What did Mr. Myers tell you that Errichetti
13 told him? He told him come on strong. They're
14 going to discuss immigration. You remember seeing
15 me on T.V. and act tough, talk tough. Don't worry
16 about it, you won't have to do anything. You will
17 probably never see them again.

18 Doesn't that have the ring of truth to when
19 you examine the tapes that were played before you
20 just this morning of a similar import?

21 Of course Mr. Myers never met Mel Weinberg
22 before that day, but he was lying in wait for him
23 on August 22nd because of the script and the scene
24 were set before Ozzie Myers ever got there. On
25 August 5th De Vito, an F.B.I. agent talking to

Errichetti on tape, Exhibit 1-A, speaking of Myers:

"He is going to have to, he is going to have to move through someone in the State Department."

Errichetti: "Who?"

De Vito: "The Congressman."

Errichetti: "He will do anything. He is going to be your F'ing man. He will do anything you want."

Weinberg: "All he has got to tell Yassir is when the time comes I will sponsor anything you want."

Is it so incredible that these are the same words that Errichetti told Ozzie Myers at the Pan Am Terminal before the meeting?

This is what he is given to say to Ozzie Myers.

Errichetti says: "He will say that."

Now, August 7, Exhibit 3-A, Mel Weinberg says, "This, when he meets Yassir, just tell him to come on strong."

This is not the Williams case. This is the Myers case.

"Well, he is going to have to give him a briefing."

1
2 Then he says: "I will give him", --
3 Weinberg says, "The stronger the better. Yassir
4 probably won't even say a word to him. He is
5 very conscious on how he speaks English."

6 Isn't that cynical? The man doesn't speak
7 English, so he has got to come on even stronger
8 for this charade.

9 And what is Mr. Myers talking about when
10 he gets to the meeting of August 22nd: "He ought
11 to learn English."

12 Who planted that on him?

13 Well, Weinberg through Mayor Errichetti.

14 So the script was written back then and
15 delivered to Ozzie Myers to be repeated on tele-
16 vision.

17 That is not all.

18 What else was Errichetti told to tell him
19 to do so the T.V. production would be successful?
20 On August 8, speaking of Myers, De Vito, the F.B.I.
21 agent says: "He would have to introduce some kind
22 of legislation, right, some kind of bill or some-
23 thing?"

24 Errichetti: "Whatever you say."

25 Now, skipping down, Weinberg says; "Yeah,

1
2 let him tell Yassir whatever he had to tell him."

3 That is on tape. Those are the instructions
4 that were issued. That is the performance Ozzie
5 Myers had to go through.

6 And so when he meets on August 22nd, before
7 the videotape he is indeed given those instructions
8 and he is told and he believes, he doesn't have
9 to do anything.

10 He had been told by Johanson that that
11 firm stood to make a fee by the mere introduction,
12 and that they would in turn pay him and that is
13 exactly what happened.

14 So when he goes in, the first words out of
15 his mouth, according to the prepared script, are,
16 how effective and good and functional a congressman
17 he is and how he is very keen, and I am quoting,
18 "with immigration matters."

19 (continued on next page.)
20
21
22
23
24
25

Why would he say immigration matters unless he had been prompted in advance and in accordance with the tapes I have just read to you?

Mr. DeVito to make sure the script moves along, he says, I am sure the Mayor has explained to you that fact that all this started down on the boat, all this started down on the boat.

The cue words, the prompting, this is where is started, you recite the script, but you don't know that you are being video recorded.

You heard Mr. Myers tell you that his state of mind when he went to that meeting, and it's not disputed, was to follow that script, and he followed it faithfully to the extent of boasting and puffing about his influence. And that whole meeting involved itself with that.

At one point you recall he asked him about his State Department connections. And, of course, he had key people in the State Department. Unfortunately when they pressed him for a name he couldn't come up with one. But Errichetti bailed him out and he said, I got that taken care of.

When they discussed green cards, that was also taken care of. And that was the scenerio of

the scene that was played in New York.

In accordance with the question that you have before you, this one here, all this was about is that you wanted them to appear on video cameras, on tape for a future Jury which would depict people performing supposedly being chic, but actually you would say that he committed a crime. That's the whole purpose of that August 22nd. Brief him, give him a script and bring him in. And absolutely no evidence that Ozzie Myers had ever done anything like this in his life before. Because had there been, you would have been hearing about it, you would have heard about it.

(continued on next page)

ollowed by
otes

1
2 After he left the meeting in accordance
3 with his instructions the envelope was passed.
4 And you heard later what happened in the law
5 office. And at that point Mr. Myers is in effect
6 discarded. No one calls him up and says, how
7 about a letter. No one calls him up and says
8 can you really do anything. No one does
9 anything and he in turn does nothing. Because
10 from this witness stand you heard it says, he
11 did absolutely nothing in accordance with what
12 his instructions were and what is intent was all
13 along.

14 That was the end of it as far as he was
15 concerned. Nothing was done. That is a factor
16 you can consider on hearing whether he ever
17 intended to do anything. Nothing was done.

18 The next event, ladies and gentlemen,
19 that involves my client, and in the meantime,
20 by the way, you have heard and seen the commode
21 tape, the Noto tape, where a performance was given
22 to El -- was given by Ellis Cook that just
23 does not match up to the standards and is
24 quickly exposed.

25 Let me talk about Ellis Cook for a second.

Cacheris-Summation

1
2 Mr. Puccio seemed to talk about him
3 heavily. He said Ellis Cook did not know anything
4 about play acting. Ellis Cook play acted himself.
5 Ellis Cook told you that insofar as he was
6 concerned, this was all blowing smoke.

7 Is that play acting, blowing smoke?
8 No intent, never do anything, never have to do
9 anything, never have to do anything.

10 So the mere performance of television
11 does not prove any crime about Ozzie Myers; what
12 his intent was when he got there is the important
13 focus of your consideration, and that intent has
14 been put before you and put squarely in issue.

15 Mr. Puccio did not like his testimony.
16 He has called him a liar, a rather vicious accusa-
17 tion. We dispute it.

18 Ozzie Myers said, I never have to do
19 anything and I won't do anything and there is
20 nothing that contradicts that. That is what the
21 record stands on before you.

22 The reason Mr. Puccio doesn't like
23 his testimony, because he knows that the law
24 requires, although he didn't discuss it with you,
25

1
2 that Mr. Myers must have had a criminal intent
3 to commit this offense, this offense, a specific
4 intend to be corrupted.

5 And the fact that he had none defeats the
6 government's case and that is why he doesn't
7 like his testimony. He would prefer you
8 concentrate your view on the staged performance out
9 of Kennedy Airport. That is not what this case is
10 all about.

11 In January of 1980 Weinberg calls
12 Criden who calls Myers. And they bring him back
13 on stage. A new TV production, WKRP in Philadel-
14 phia.

15 This time they don't want to discuss the
16 same things. This time they want to discuss
17 local issues. This time they have a little bar
18 set up. This time they have FBI agents,
19 prosecutors, planted in the same next room,
20 peering through the screen, watching what is
21 happening. And that whole place is wired for
22 sound except of course for the telephones that the
23 prosecutors are using to call instructions in
24 to the sheik's representatives.

25 Mr. Puccio has criticism and doubts about

1
2 what is not on films and tapes. Ask yourselves
3 why they didn't record the instructions that
4 were given by the prosecutors to the interrogators
5 in that room. Did they say get rid of him? Did
6 they say press this issue? Did they say get him to
7 say this? Did they say get him to say that?
8 All of which I think we all should know.

9 But the only thing that they can remember
10 is that it was getting light and get him out of
11 there.

12 And so the script in Philadelphia
13 is a little different.

14 By the way, you will be told by the
15 court that you should consider what Mr. Myers did
16 in Philadelphia on the screen as bearing on
17 what his intent was back in August.

18 So what concepts were not thrown at him?
19 City counsel, Ozzie said I can do that.

20 Zoning, I can do that.

21 Coal, I can do that.

22 Hotel, I can do that.

23 Poconos, I can do that.

24 Atlantic City, I can do that.

25 And so on down the line.

But realizing that something was amiss, because when they wanted to discuss breaking ground in a hotel in April, how could they do it when they didn't have the zoning completed yet?

And finally, the mafia.

Now they want you to believe that he brought it up. But they use that in the most sinister way, darkening this man's reputation before you. They knew this was all being recorded. And the only thing Ozzie Myers said about the mafia was, I don't go to Atlantic City because of the mafia.

Phone calls. And then Mr. Wald recites the script. The sheik he sees movies, the Godfather, he is paranoid, tells about the mafia. And Myers says there is no mafia problem, there is none.

They keep pusing and pressing. And finally as you heard from the witness stand, he told you since they wanted to hear about it, I told him about it.

So he mentions some names, names that you can get out of a newspape, Angelo Bruno, Chickie

1
2 Narducci and Skinny Razor, who if anything has
3 happened in this case he has been buried in this
4 courtroom four times.

5 Obviously they were trying to get him to
6 discuss his connections with the mafia when he
7 didn't have any, never had any.

8 But they push, they push, they push.
9 They push on every single concept in that meeting,
10 and he tells them that he can do it all. But he
11 never had any intention of doing any of it.
12 And he could not do any of it. And that is the
13 state of mind that you must judge Ozzie Myers on.

14 The one thing that he is interested in,
15 and it is legitimate, is the Port Authority
16 in Philadelphia. That has nothing to do with
17 his job or his office as a congressman.

18 Because of his job, his upbringing, his
19 upraising, the Port of Philadelphia is important
20 to him. And if he thinks there is anything
21 legitimate about this deal that would help the
22 Port of Philadelphia, he responds to it. And that
23 is no crime. That is what was in his heart and
24 soul.
25

1
2 They keep pressing him throughout this
3 meeting for any conceivable thing; Schoolkill
4 County, ou of the area. Every place you imagine
5 they put it in.

6 Ladies and gentlemen, you heard him
7 testify about that. You heard him take that tape
8 almost line for line and tell you whaat he thought
9 about it and why he said it and what was going
10 through his mind.

11 Now, of course, he didn't have to take the
12 drinks but they were very conveniently there.
13 And there they were. And you saw him on television,
14 you saw how his demeanor was, and as Mr. Puccio
15 has told you, the nuances. You saw it for
16 yourselves.

17 There will be another charge the court
18 will give you and that will be called the gratuity
19 charge. That has basically five elements.
20 A public official who received money otherwise than
21 provided by law for an official act to be
22 performed knowingly/ and wilfully to violate the
23 law.

24 That does not require the specific intent
25 that the judge will charge you on under the

bribery statute. However, the intent under the gratuity must also be for the performance of an official act which he never intended to do. As far as he was concerned there was no official act to do, and he did not do anything.

Ladies and gentlemen, this case has been presented to you by video tape. Mr. Myers has come before you personally. I think you can judge for yourselves that the real Mr. Myers was the one that appeared before you on this witness stand, not the one that was play-acting in New York, having been given a script that emanated from Mel Weinberg; not the one that was in Philadelphia pretending a cure from all ills, but the one that was in this courtroom who told you, I never intended to do anything. I was told I would never have to do anything. And I never did anything. That was his intention. That was his state of mind. That is the reason the government has failed to prove this case beyond a reasonable doubt.

Mr. Ben-Veniste reminded you that Wald wanted to bypass the statue of Liberty that sits not far from here. I have been seeing it every morning

1
2 on my way to work. I now call this work and
3 I call my room my home.

4 I don't think you should let the government
5 bypass the Statue of Liberty. Your vote on
6 this case has devastating consequences to Ozzie
7 Myers.

8 On the evidence that has been put before
9 you, he did not commit the crimes that are alleged
10 in this indictment. Whatever else you may think
11 of him he did not sell his office, he did not take
12 a bribe, he had no intention of performing an
13 official act, and he performed no official act.

14 I ask your intelligence to leave him
15 to the voters of the City of Philadelphia.

16 THE COURT: Thank you, Mr. Cacheris.

* * *

EVENING SESSION

THE COURT: Bring in the Jury.

(The Jury enters the Courtroom.)

THE COURT: We will now hear from Mr. Brown representing the defendant Errichetti.

MR. BROWN: If I may, your Honor.

THE COURT: Proceed.

MR. BROWN: Your Honor, Judge Pratt, Mr. Puccio, gentlemen, ladies and gentlemen:

Good Evening.

You heard so much this evening about play acting and that sort of thing, I suppose you know our defense is really routed in Shakespere. You heard the quotation that all the world is a stage and all the men and women are players, their exits and their entrances, and one man plays many parts. And I suppose you know which man we are really talking about.

But more seriously I think I should perhaps try to identify the man whom Mr. Puccio refers to as the Mayor and Senator from New Jersey, Mr. Errichetti. Before you he is just that, Mr. Errichetti, because you know by now, I hope, that there is no charge with respect to him about any misuse of his office, either

2 1 his office as a Mayor of Camden or as the Senator,
2 a Senator from the State of New Jersey. The charge
3 against him is that he allegedly entered into a con-
4 spiracy with Messrs. Johanson and Criden in order to
5 effectuate Congressman Myers violation of his Con-
6 gressional responsibility. And in another part of
7 the indictment you will find where they talk about
8 money, there is no allegation that he received or
9 took any money, but that in those counts he aided
10 and abetted.

11 Now I will not try to tell you what those
12 legal terms mean. Believe me, words like aiding and
13 abetting, words like conspiracy are words of art that
14 have a special meaning in the law. And you know by
15 now who is supreme and final authority in this Court-
16 room. If you don't, I do. And from him alone, of
17 course, the law comes, and in due time during the
18 course of the charge.

19 So please don't think that I am trying to
20 tell you what the law is, but I am trying to put my
21 client's position in this trial in perspective.

22 You heard a great deal, particularly on the
23 tapes, especially the tapes of January 24th, 25th,
24 and certainly the tape of August 22nd, which talks
25 about many things in the context of that encounter.

SUMMATION-BROWN

And you might believe that other things are involved rather than the charge that the Congressman violated his oath in terms of other things than naturalization. That is not so.

I may, with your Honor's permission, in order to establish that perspective I will refer to the indictment and not in any authoritative way, but rather in a sense that it was voted by the Grand Jury I think as an outline of the charges.

You know, of course, that it is no proof whatsoever, but it is the form and manner by which a citizen of the United States is told what the charges are so that he may react to them.

The language which is essential and which defines what I am talking about is found after many of the descriptions which outline the gravamen of the Government's claim that they have a right to the faithful and honest service of the defendant Myers as a member of Congress in relation to matters before the House of Representatives and so forth. And then it talks about the offenses it is alleged my client and others conspired to bring about. And that is to agree to receive a sum of money for the defendant Myers and other persons in return for the

defendant Myers being influenced in his performance of official acts.

And in another charging part it points out that the issue is whether or not that interference would be as follows: In return for his assurances that he would introduce private immigration bills to enable a foreign businessman to remain in the United States and would take such other action as would be necessary to achieve that end.

I tell you this in part, and these are phrases taken out, they are not in total from the indictment. So that it may be clearly understood or as clearly as I can make it understood that the charge here deals only with the immigration matters, not with any violation by my client of his official duties, not with any other violation of prospective acts by the Congressman other than the immigration and the State Department reference.

Now, I opened to you in a rather unusual manner, I thought. I told you this was the first stage of trials in a new electronic age. And I think that you have seen that that is to some extent if not completely, justified. It may have sounded to you a bit presumptuous.

1
2 I may have also talked about some obscenities
3 there are throughout the transcripts and for which I
4 don't believe I have a need to apologize because, as
5 you know, they are part of the warp and wool of the
6 fabric of this case.

7 I said to you that this case is bullshit.
8 That, too, has become a word of definition in this
9 case, very seriously. Although it is considered pro-
10 fanity by some people and by others just a social
11 comment. And in the course of my summation if his
12 Honor permits, I shall play a sequence of the tapes,
13 some of which you have already heard leading up to
14 the noto incident, because I believe that if you were
15 to merely see the electronic marvels as they por-
16 trayed the scenes that were carefully selected and
17 put together, we would all be R2 D2's and we would
18 have a computerized Jury.

19 I don't know if you know what R2 D2 is. I
20 didn't know until I stumbled over my grandson's toy.
21 It's a little thing from Star Wars that wobbles
22 around and always knows where it is going and making
23 the proper sounds.

24 I rather think that if we were to only con-
25 sider the tapes and the electronic displays and the

1 fireworks in this case we would have completely
2 forgotten that there are human beings on trial and
3 to be judged by human beings.
4

5 I only differ from Mr. Puccio with respect
6 to your function in this sense. He says there is no
7 special grace which a Jury has. It merely uses it's
8 common sense and experience.

9 I agree that you must use your common sense
10 and experience, but we all know that in the course
11 of our travels and our entrances and exits, we do
12 many things which we know are quite beyond us in the
13 ordinary sense.

14 For example, you have sat here for days being
15 exposed to individuals and language and equipment
16 and attitudes and words which you would not commonly
17 encounter in a mere three weeks of your life. And
18 for that reason you have been steadily honed and
19 quod in to what it is all about.

20 For example, if you were to just now walk
21 in that door and see the meeting of August 22nd on
22 the television sets, that's what you would see. You
23 would see an envelope and you would say, my God,
24 that's it, this is an atrocity. Why is there a
25 trial?

1
2 But there is a great human story here. And
3 that's why I believe when his Honor charges you he
4 will talk about something called intent. With res-
5 pect to bribery he will put it in one frame work.
6 I think he will say you must have a specific intent.
7 And I think in terms of another lesser included
8 offense he will say there is a different kind of in-
9 tent. But always the words that are so significant
10 and so meaningful to everyone here, knowledge, know-
11 ing, wilful, act. That's the human equation in this
12 case.

13 Actually within a few short weeks, within
14 a few short weeks there was innauguration of the
15 events, the introduction of the concept, the develop-
16 ment of the -- I've been so used to having Judge
17 Pratt say you better not use "script" I just swol-
18 lowed that word and I will say account of events as
19 it developed.

20 You know on television you see lawyers doing
21 amazing things, but I don't think many have had the
22 discipline you have seen in this Court. You do what
23 Judge Pratt lets you do and that's it. And the
24 framework, of course, is our tradition, that believe
25 it or not lawyers are a disciplined class.

SUMMATION-BROWN

For example, I had some Army service, but I don't remember working 16 or 18 hours a day and meeting the commanding officer 8:00 o'clock at night. This is just our way of life.

But as this theme developed, the players exited and entered. For example, I wonder if you have noticed -- and I'm sure you have -- that after August 22nd the gentleman who played so many parts exits and is never heard from again. I wonder why. I wonder why. I wonder why in a very real sense. Because there is a question that I think must be answered in this case in the sense of all of our American experience.

I don't dare and I shall not attempt to say whether the FBI's performance was appropriate, inappropriate, proper or improper. But as you saw these gentlemen come and sit in the witness box, and as you appraised them, did you ever wonder why they needed Mr. Weinberg?

Riddle me this: If a Congressman is to be bribed, is there really a need for 182 pages of colloquy as on the 24th of January incident with Congressman Myers where there are thrusts and parries and counterthrusts, or will you do this or give me

1 a reason. Well, is there anything specific? Well,
2 tell me when. 180 pages. No money passed that
3 second incident. By the way, you certainly heard
4 Mr. Weinberg say that after September Mr. Errichetti
5 was no longer in the ambit or within the scope of
6 this particular ABSCAM adventure.
7

8 So literally as of the 24th, the 25th, and
9 so forth of January, Mr. Errichetti was not there.

10 I think you will learn that those events
11 after August 22nd had no direct bearing on the
12 innocence or guilt of the Congressman because they
13 were not to the heart of this indictment and not
14 direct proof.

15 You will find, ladies and gentlemen, that
16 his Honor allowed that to come in again to go to
17 that very human issue, intent, knowledge and volun-
18 tary act.

19 The dates are fascinating. July 26th is
20 the day when there was a group on a boat in Florida,
21 the Left Hand, I believe it was called.

22 July 25th is the day that Mr. Amoroso con-
23 ceived the scheme. Time passed and then on August
24 22nd there was a meeting which you know about so
25 well. And then on September 19th Mr. Noto walked

1
2 into the trap which apparently list it's ability to
3 spring.

4 Now, I know there are many references to
5 that incident and suggest that it is collateral.
6 But it is just as important as a meeting of the 24th
7 if we are to evaluate what those who are here charged
8 thought and what they did, and indeed what those who
9 work for the Government thought and did. Because
10 without the knowledge, without the intent, ladies and
11 gentlemen, I believe you will hear and beyond that
12 proof and beyond a reasonable doubt there can be no
13 conviction under law, without the knowledge, with-
14 out the intent.

15 Now I want you to understand that when I
16 say intent I do not mean to tell you the law as
17 Judge Pratt will tell you because there will be two
18 versions of that. But there must always be know-
19 ledge and a willingness to do an official act that
20 will violate the Congressman's oath. There must be
21 those elements.

22 How do we arrive at that? We arrive it by
23 the acts which surround the events, which give you
24 the guidelines and the ability to judge. Because
25 without these acts and with that cold picture you

1
2 don't know what the intent, the knowledge, the pur-
3 pose was. It is just impossible. It's like watching
4 a television serial and having it end just as the
5 husband comes home and finds his wife in someone's
6 embrace. You have to wait until next week to find
7 out that she stumbled and fell. And really it comes
8 very close to precisely that kind of evaluation of
9 human nature.

10 Now, Mr. Amoroso, of course, is the gentle-
11 man who succeeded Mr. McCarthy as the Director, the
12 immediate supervisor of Mr. Weinberg. And Mr. Wein-
13 berg, of course, is very frank about some things, and
14 I think his frankness and his candor will guide you
15 to the understanding that the defendants had no in-
16 tention, no wilful purpose in breaking the law.

17 For example, there was much debate about
18 using the words "actor", and restrictions. And yet
19 Mr. Amoroso says we follow at page 1032.

20 "Question: Well, is it true then that you
21 did in the course of this operation act out of your
22 true self and in a sense be an actor or a character?"

23 And the answer is yes.

24 I would think that would end the debate, but
25 I suppose since one plays many parts it will not end

the debate.

But I recall, for example, one very interesting fact in this case which must intrigue you. For example, I shall play some tapes later, but I shall play them in a much more full sense as you have heard them from the prosecution. For example, one of the very critical tapes is a tape that deals with the statement that 15 has to come back. I think perhaps you remember that one.

Well, I will find that particular tape for you later, and I hope that you will listen and pick it out when it is played. But let's have an understanding as to what that \$15 back was about.

Starting from January 26th, as you know, Mr. Amcroso had conceived the idea, and as you also know he on the Left Hand had a Nagra tape running in a little suitcase, it is here somewhere, but I am sure you remember it.

Then he went up to that side and there he reports a very crucial conversation. He reports that because he has read on the 25th about Mr. Somoza in the Newspaper he conceived the idea about throwing out the bait, and I will show you where he says precisely that. Take my word for it at the

SUMMATION-BROWN

1
2 moment, if you will. To throw out the bait hoping
3 someone would bite so that he could proceed with a
4 man to try to invagle some Congressman to do an
5 official act which would allow him to offer money,
6 and so forth.

7 (continued on next page)

1
2 I know some of you may look at this as
3 oratory, but I will show you the precise language
4 in a moment.

5 Then the days roll by and on August 5,
6 there is a tape played for you, it is Exhibit 1-A.
7 I will ask you if you would turn to 1-A, please.

8 Now, you will notice August 5th, Northwest
9 Airlines lounge, Kennedy International Airport.
10 And on the first page there are references by
11 Mr. Weinberg cryptically to getting older. I
12 don't know what preceded that. And, of course,
13 you will judge later on whether parts of the tape
14 were left out or whether there was something about
15 the transmissions that caused them to be left out
16 or whether it was deliberate. That will be your
17 judgment ultimately.

18 But I submit to you my cassette that starts
19 by getting older is a cryptic tape. If you were
20 to receive a tape from anybody and the first thing
21 he said was getting older, you would wonder, well,
22 what is he talking about.

23 Then on the second page we see other language
24 which is pertinent to the present discussion.

25 Mr. Errichetti, ae, says, and before I

1
2 forget there is, um, fifteen coming back. All
3 right. And then laughter.

4 There it hangs unconnected until one
5 remembers that Mr. Weinberg testified as to how
6 that fits into things on page 2286.

7 When I call the numbers, it's for the
8 benefit of the stenographer and for Mr. Puccio
9 if he dares-- if he cares to look at the transcript.

10 "Question: Mr. Weinberg, directing your
11 attention to the Myers matter.

12 Was there any discussion with anyone
13 concerning you or Amoroso receiving a part of
14 the \$50,000?

15 And this is the \$50,000, of course, that
16 is concerned with the meeting of the 22nd. And
17 it is prior to the meeting of the 22nd now. The
18 meeting is being set up.

19 "Answer: Yes, at the meeting at the airport
20 Amoroso told me to meet the Mayor and ask for a
21 ten to fifteen thousand dollar kickback.

22 "Mr. Ben-Veniste: May I have that? I
23 didn't hear it.

24 "Mr. Puccio: Answer the question again.

25 "Mr. Ben-Veniste: I would rather have

1
2 the reporter read it.

3 "Answer: Kickback of ten to fifteen thousand,
4 that he needed money.

5 "Question: Did you in fact meet with the
6 Mayor before the airport meeting on the 5th of
7 August and ask him that?

8 "Answer: I met him downstairs on the main
9 lobby and asked for -- tell him you needed money,
10 we would like to get \$15,000 kickback."

11 And, of course, this is Weinberg's testimony.
12 Now, of course, that's the connection. Our actor,
13 Mr. Weinberg, has said, "Tony and I want \$1,5000
14 kickback."

15 Now, what you read and heard, this is a
16 transmission of August 5th. And you read and
17 heard the words, the laugh and fifteen coming back,
18 ha ha, you will say that's a brazen chap, fifteen
19 coming back and he laughs about it.

20 It is Weinberg who wants the fifteen. It
21 is Amoroso, he says, who wants it. And that's why
22 in this indictment you don't find one dime attributed
23 to my client.

24 Now, as you sit in that jury box I ask you
25 to consider this. If indeed that is so -- and

1
2 apparently it is -- and if indeed as I assure you
3 it is so, Mr. Puccio brought that out from Mr.
4 Weinberg on his redirect. How can one say that
5 Weinberg did not hold himself out as a direct
6 participant in what we will show you is also
7 referred to by other actors as the charade, as
8 the trap.

9 Now, when I say trap, believe me I am not
10 saying to you that here is the gestapo, that our
11 F.B.I. has sunk to new lows. I tell you nothing
12 of that. I talk only about the human interaction.
13 And I suggest to you that perhaps if I had not
14 read that in that fashion you will read this and
15 say Errichetti is asking for \$15,000 just like
16 that. It is not so.

17 But why, how can he come to that point
18 unless Weinberg and Amoroso had encouraged pre-
19 cisely that and insisted on that and so set it
20 up, that there was no intention for the congressman
21 to violate his oath and do any official act, but
22 indeed, but indeed there was this concept of a
23 projection of the idea that Mr. Weinberg was no
24 longer loyal to his employer, the Shiek, and was
25 out to get money in this game.

1
2 Well, if that isn't a play or an act, I
3 would ask you what it is. Because I do not infer
4 and I don't wish to infer and I will not infer
5 that Mr. Weinberg was pocketing this kind of
6 money, no way. Although I was shocked to find
7 that Mr. Amoroso didn't have to sign for this
8 money, no receipt for this money and that Mr.
9 Good, who seems to be in sense the whipping boy
10 of this whole case, was responsible for that
11 money.

12 I have no proof and no right to suggest
13 that the F.B.I. was stealing any money or Mr.
14 Weinberg under these circumstances stole any
15 money. But I do suggest to you this, that the
16 only testimony in this case that relates to what
17 happened after a congressman left that room on
18 the 22nd was that on the same floor he turned an
19 envelope over to Mr. Errichetti, forty feet away
20 from the room where they had all been. That's
21 the physical situation insofar as any proof in
22 this case is concerned.

23 Now, if indeed there was the insistence
24 we want \$15,000 back, I ask you to rack your brains
25 and try to find out if there was any testimony in

1 here if indeed there was \$15,000 given back to
2 Mr. Weinberg and Amoroso for Government purposes,
3 not to steal it, I have no right to suggest that.
4 But again this is a game, and of course, the
5 congressman is not expected to do any official
6 acts.

7 You know, of course, there was nothing done.
8 There was no execution, agreement or not, there
9 was nothing ever done.

10 You know, of course, from August to January,
11 August being the August 22nd meeting that by
12 everyone's testimony the players left the stage
13 and went their way and absolutely nothing happened
14 until there was a phone call in January according
15 to the tapes, according to the testimony from
16 Mr. Criden to Mr. Myers, which caused him to come
17 back again into the stage play. But if there was
18 no intent to violate his oath and do an official
19 act, and if indeed this was the kind of thing
20 that was set up, then I suggest to you that there
21 can be no guilt of the violation under this charge
22 in this Federal Court of the crimes charged. Now
23 let us explore some more of the human conditions,
24 if you will, because I think some of these words
25

as I bring them back to you may very well prove a reminder to you.

In addition to the play acting which caused Weinberg to say to Mr. Errichetti, we want \$15,000, which is reflected in another sense in the August 5th statement, this is what Mr. Weinberg says.

2292 is the page.

"Question: The second conversation you mentioned where you say that -- next conversation you say Mr. Errichetti killed out Mr. Amoroso, do you recall when that took place?

"Answer: Right after the payoff to Congressman Myers."

Now, apparently the reasonable inference is right after the payoff and Errichetti went back and said to Amoroso, you only think of yourself. You don't think of Mel.

Well, in terms of the human condition, what does that mean? Does that mean that Errichetti is conniving to take money under false pretenses or to do other than they tell him to do? And I'm not suggesting to you that he became an agent of the United States, but he was certainly following the directions of a special agent and a special

1
2 employee.

3 There is much said here about the fact
4 that there is an expression that has been repeated
5 and repeated ad nauseum. I know you are sick
6 of hearing it, but forgive me. It's like using
7 bullshit, the word is there and the phrase is
8 there.

9 Come on strong, and there have been many
10 explanations about that.

11 Page 2293.

12 "Answer: Yes, your Honor."

13 Let me get the question, which will be 2292.
14 And they were talking about the purpose in telling
15 Errichetti or someone else to come on strong.

16 "Question: The second conversation you
17 mentioned where you say that -- next conversation
18 you say Mr. Errichetti balled out Mr. Amoroso,
19 do you recall when that took place?

20 "Answer: Right after the payoff to Congress-
21 man Myers.

22 "Question: Now, on one or another of the
23 transcripts, Mr. Weinberg, you used the phrase:
24 'come on strong'. do you recall that?

25 "Answer: I do.

"Question: Can you tell us what your purpose was in telling Mayor Errichetti or anyone else to have someone come on strong?"

There were objections.

"Answer: The purpose, we didn't want to get in a situation like we got into once --"

I objected and the Court said, "Can you tell us without referring to other situations that may have occurred that are not involved in this trial what your purpose was in telling someone to come on strong?"

"Answer: Yes, your Honor. Tell them to come on strong that we get -- we knew that the man was taking the \$50,000, tell us what he was going to do.

"Question: The public official?"

"Answer: The public official.

"Question: And you knew, did you not, that Mr. Errichetti or someone was going to speak to the public official before the meeting?"

"Answer: That is correct.

"Question: Now, do you have any idea or can you approximate for us, how many telephone conversations you recorded during the course of

10¹
2 this entire investigation?

3 "Answer: I think it runs close to a
4 thousand."

5 I want you to put that in the back of your
6 mind, if you will, close to a thousand conversations
7 in the course of this entire investigation. And
8 I suspect that as to this particular indictment
9 it wasn't that many, and it was certainly hundreds.
10 And we shall refer to that later on.

11 But to go back to the point is that here
12 Weinberg admits that he knew that Errichetti would
13 speak to the public official and tell them to say
14 what they thought he would say.

15 But the problem with that is this: If you
16 will examine with me, please, 5-A, which is the
17 August 22nd meeting at Travel Lodge International
18 Hotel at Kennedy Airport, you will find interesting
19 things there.

20 For example, you will find that Mr. Amoroso
21 in the legend says that placed in front of me is
22 \$50,000 in \$100 denominations, ten packages in all,
23 placing them in an envelope, I am not sealing the
24 envelope, placing the envelope in a briefcase to
25 my immediate right.

I think if you remember that T.V. scene you will notice that indeed he does lick it and then doesn't seal it.

Well, \$15,000 coming back. Maybe that was part of the technique.

Then they go on to talk about the congressman from Philly and there are pages and pages and pages. And on page 3 there is a reference there that relates to something that you have heard many times as well. You have heard, of course, that Mr. Weinberg said, don't worry about a thing because the gentleman from abroad is not coming here anyway, he is going to South America.

And if you read there where Myers says absolutely, where I can be of assistance in this type of matter, first of all is private bills that can be introduced. Now, when you, when you are coming from a third world nation, and you have no political support in this country, unless somebody is in saying you don't need, hum, you wouldn't introduce a bill to protect your interests if you had to go in exile somewhere. Now, what you need is the influence to have that done. And then there is more language.

12¹
2 Now, this is clearly a reference to the
3 fact that no private bill ever be introduced.
4 However, I must say this to you, that in dealing
5 with the question of intent, the impossibility
6 of introducing the bill, and you will hear from
7 his Honor, I believe is not the point. The point
8 I want to make is that for thirty pages there,
9 and please place it open for a moment, for thirty
10 pages there is conversation back and forth, which
11 never comes to a head as far as any official act
12 being done. It is the old, old story of a kind
13 of fencing act which reflects what Mr. Amoroso
14 said.

15 He said, look, don't continue to ask me
16 about a script. I really don't have a written
17 script. I kind of played it by ear.

18 And look it, it looks it. The only problem
19 with it is that it misses the mark. This man
20 wants to take \$50,000, ladies and gentlemen, it
21 would take five minutes to say, introduce the
22 bill, will you introduce the bill.

23 Yes.

24 Here is \$50,000.

25 Walk out and turn the cameras off.

13 1 We wasted more electricity in this particular
2 incident.

3
4 Now, if you go on you come to the point
5 where on page 7 Mr. Errichetti says, well, there
6 is no case at this point.

7 Mr. De Vito, Mr. Amoroso says, that's in
8 the middle, if you please, on page 7. Well, yeah,
9 what we are saying is we are insuring that when,
10 when.

11 Mr. Myers says, when the time comes, if
12 it comes.

13 Again I must tell you, because it will be
14 unfair to mislead you that mere impossibility if
15 the thing never happens is not a defense in this
16 case. If you hear his Honor charge you will
17 find that just because it didn't happen and,
18 however, in assessing the fact that there was
19 an intent to really do the official act, in one
20 instance the bribery, a corrupt motive, and the
21 second instance, with full knowledge that you
22 were really going to do it as opposed to a misun-
23 derstanding or a crossing of ideas, that I believe
24 you will be told you can consider.

25 (continued on next page.)

1
2 And if I misstate this you must know that
3 I am only allowed to give you certain elements
4 of the law so I may talk to you in a framework.
5 I have no authority. What I say to you is not
6 in any sense what you must accept. I give it
7 to you in the framework of this lawsuit because
8 otherwise you will have no anchor, no boundaries.

9 One of the fascinating things about it
10 is, and I want to call your attention to another
11 page on page 29 or 30. And you will have these
12 books with you and so I am sure you know you
13 will feel free to study them.

14 There is a phrase that rings, like come
15 on strong, bullshit and others which become
16 critical words.

17 Page 30 is the page where Mr. Weinberg says,
18 this is all within the 5-a, if you please. I
19 assume everybody has 5-a. On page 30, if you
20 be so good, there is a sentence which again is
21 one of the phrases you have heard again many, many
22 times ad nauseum but it is so significant I think
23 you can pick it out.

24 Now Weinberg says, we got like the goose
25 that lays the golden egg. We all like to make a

buck.

Now, go back to August 5, when they say to him, we want fifteen back. And tie this in with, we got the goose, we all like to make a buck. Is there any way in the human condition that you cannot then believe that Mel Weinberg is saying, look, nothing is to happen here, no official acts, nothing. Walk in, we will rip off the millionaire, or whoever he may be and that's it. No official act, nothing is extended. Come on in, we will rip it off.

Now, in the sense the Government wants you to accept it as a finished and complete and very sophisticated, I think we call it a sting operation, I think you must consider whether in fact it's true or whether this was an amateurish event and whether there were misunderstandings in all parts and no meeting of the mind and no design to do what is called a violation of a congressman's oath to do an official act contrary to the public.

One of the things I talked about Congressman Myers is this: And I do it with the permission of his counsel because this is a conspiracy, and

3 1
2 in a very real sense, in a very real sense. That
3 which effects Congressman Myers effects Mr. Erri-
4 chetti. I think you will be told if you find
5 this was a misunderstanding, it was not a situation
6 where there was a knowledgeable intent to do wrong
7 and that Congressman Myers never had the knowledge
8 and will to do it, I think you will hear from his
9 Honor that you must acquit all. And that's why
10 you will hear me talk about Congressman Myers
11 because there is no question but that Mr. Errichetti,
12 who took no money and is not charged with taking
13 any money even, no suggestion that he did, has
14 a fate which is tied in inextricably with Mr.
15 Myers.

16 My people have an old spiritual that says
17 that sometimes I feel like a motherless child.
18 And that's Errichetti. He is a long way from home
19 because Myers, Myers, that's all we hear. Read
20 the indictment. It's the congressman, it's the
21 congressman's act.

22 Well, if you lump them altogether you have
23 to consider what the total ideas are and what
24 happened. And that's why this tube is an abomination
25 because it represents to be the full and complete

truth and it can never be, not ever. Just as one man's pulse may be meaningless in another or one woman's feelings at certain times is curious and individual to her so that in this courtroom I know I need not plead for you, with you in this fashion. But because it is so serious I do, that you please consider the human condition.

And we are all actors, and Mr. Weinberg, too. And bless his conning heart, he is just as human and just as subject and just as entitled to decent consideration as any.

But in this particular endeavor I will ask you to riddle again, why did the F.B.I. need a Mel Weinstein -- Weinberg, I beg your pardon-- in order to carry out a so-called sting to get a congressman? Why? He had to be there for a reason.

The only reason he could be there is because he was a con man and the only reason his con was good is because they had to give this idea, this is all a con, he is disloyal to this employer and nothing is happening there and stumbles in, oh boy.

When Myers stumbles in it's not a crime unless he has the knowledge and has the intent. Perhaps

1 so sophisticated and complicated is this celebrated
2 king that has book contracts, movie contracts,
3 God knows what, because it's sensational, because
4 it's unusual. They may have overlooked the simple
5 problem that simple is best and simple works.
6 It's like having one of those fancy English cars.
7 It's beautiful to see and will do 180 and runs
8 about twice a month.

9 This is not a horse and buggy. This is
10 a space aged design to eliminate common sense.
11 If you were placed in control or a supervisor
12 capacity, I ask you to ask yourselves, would you
13 not on the assignment of a celebrated con man
14 want to know something about him so you would
15 know how to relate to him?

16 On page 953 Mr. Ben-Veniste's cross
17 examination of Mr. Amoroso.

18 "Question: Did you ever ask Mr. Weinberg
19 what is all of this now about all this criminal
20 activity that you had been involved in in the
21 60's or 70's?

22 "Answer: No.

23 "Question: Never did?

24 "Answer: No.
25

1
2 "Question: Isn't it fair to say that you
3 dn't want to know?

4 "Answer: I don't care. It has nothing
5 to do with this case."

6 Well, ladies and gentlemen, that's like
7 petting a polar bear. He is beautiful, he is
8 statuesque, but you better know what you are doing.

9 In this instance the very fact that Mr.
10 Amoroso says that he didn't care indicates that
11 there was no control and that what happened here
12 was indeed a space age venture tumbling in orbit.

13 Let's examine further what has been said
14 because the trial has been long and you no doubt
15 have heard that restrictions on the use of the
16 word "script". But let's read what Mr. Amoroso
17 replies to the gentlest of our counsel, Mr.
18 Cacheris.

19 Page 981.

20 "Question: In fact, when you used the name
21 Tony De Vito, you were acting?

22 "Answer: Correct.

23 "Question: When you said you were working
24 for a Shiek, you were acting?

25 "Answer: Yes.

7 1

2 "Question: So when Mr. Myers came in, you
3 had a script that you were following, didn't you?

4 "Answer: Well not a script, just -- just
5 how I felt the thing was going.

6 "Question: You didn't have any idea what
7 you were going to ask him?

8 "Answer: Basically I knew what I wanted
9 from him.

10 "Question: That's correct. You knew what
11 you wanted from him?

12 "Answer: Correct.

13 "Question: And so that you asked him about
14 the introduction of private bills, didn't you?

15 "Answer: Correct.

16 "Question: And that's what your suggestion
17 was, wasn't it?

18 "Answer: Offhand, I have to look at the
19 transcripts.

20 "Question: You don't have any doubt about
21 it, do you, sir?

22 "Answer: I don't know who brought it up.
23 That is what I was referring to."

24 So you see, with respect to private bills,
25 he said, "I don't know who brought it up."

8
1
2 "Question: That's what you were referring
3 to. And you also asked him about the State Depart-
4 ment; you brought that up?

5 "Answer: Correct.

6 "Question: Isn't that correct?

7 "Answer: Sure.

8 "Question: And that was part of your
9 script, wasn't it?

10 "Answer: Correct.

11 "Question: And you also asked him if he
12 knew any key people in the State Department, didn't
13 you?

14 "Answer: I don't know if I mentioned any
15 key people. I just mentioned the State Department,
16 I think.

17 "Question: You brought up the State Depart-
18 ment?

19 "Answer: Yes. I said I just mentioned
20 the State Department."

21 I read this to you to give you the flavor
22 of what had happened, that these people stumbled
23 through this tragedy.

24 Page 984, again Mr. Amoroso being questioned
25 by Mr. Cacheris.

9
1
2 "Question: And didn't you say to Mr.
3 Errichetti, 'He'd have to introduce some kind
4 of legislation, right, some kind of bill or
5 something'?

6 "Answer: Correct.

7 "Question: And didn't Errichetti say,
8 'Whatever you say'?

9 "Answer: Correct, that's what he said.

10 "Question: And didn't Weinberg say, skipping
11 on down, 'Yes, let him tell Yassir whatever he
12 had to tell him'?

13 "Answer: That was the conversation, yes.

14 "Question: Is that right?

15 "Answer: Yes.

16 "Question: That was what you subsequently
17 wanted to get on T.V.?"

18 And the answer is, "Correct."

19 (continued on next page.)

1
2 You may say, well, we have heard these
3 things before and indeed we have. But I do
4 not believe that you heard them quite in the
5 context of which I am presenting them to you.

6 Now, we heard about, for example, the
7 earlier incidents, just to leave this for a
8 moment and to go to something I believe less
9 intense. At the beginning of all this you now
10 know, I believe it was early in '78 and about
11 December of '78 Mr. McCloud, Mr. Mc Carthy first
12 got in touch with my client. And you heard them
13 talk about the Port of Camden and that sort of
14 thing.

15 But more fascinating is the fact that Margo
16 Kennedy and all the Kennedy references who one
17 witness refers to as things he heard about, that
18 is to say Mr. Weinberg, and to which Mr. Mc Carthy
19 disavowed, nonetheless seem to be a fact in this
20 case.

21 As a matter of fact, I will read you and
22 you have your books and I will call it to your
23 attention soon the fact that there were many
24 congressman and senators mentioned and apparently
25 there was no wish, no wish to enforce the law

without distinction. And some of these things just never were paid any attention to.

I suggest when you consider that Errichetti was paying the bills for the hotel where Mr. Mc Cloud and Margo according to one story were in the same room and he sneaked down the back stairs, according to Mr. Mc Carthy were never really in room, but Mr. Mc Carthy was very interesting. He said that's the only suite they had.

Well, that's the style of ABSCAM. You don't sleep in ordinary rooms. It's suites and yachts and planes. But doesn't that suggest something about the inexact, the looseness, the bumbling of it all, and much of it exasperated and to the extreme you bring in a Weinberg.

Why a Weinberg? If there are congressmen that are going to be bribed, called them in and offer them "50,000. And somebody suggested an abominable idea, why not get those who have already committed a crime rather than create it?

But I am sure that that answer and that question anathema to the people in ABSCAM.

Now, I mentioned before about the money. I am going to document everything I say. It is

sworn testimony.

I mentioned the curious things that Amoroso didn't have to account for the money.

Petty cash in the cafeteria has to be accounted for by the cashier.

But on page 994 the question was asked about, about the money. Page 993, my cross examination.

"Question: Did you make a note in a 302 about obtaining the money and what you did with it and what happened to it?

"Answer: Did I make a notation?

"Question: Yes.

"Answer: No.

"Question: You were not responsible as an agent to make a precise report as to what happened with the money that is turned over to you?

"Answer: What I did when I received it, I counted it and then I placed it in that envelope.

"Question: Do you sign out for that money or do they just give it to you?

"Answer: No. Another agent probably signed for it.

4 1 "Question: What agent would probably have
2 signed?

3 "Answer: I have no idea. That would be
4 the responsibility of Mr. Good.
5

6 "Question: But as far as you were concerned
7 the money would not be accounted for in writing
8 or in any receipt of my kind?

9 "Answer: Not by me. By someone.

10 "Question: I am asking as far as you were
11 concerned, you would not have accounted for the
12 money by a writing or a receipt of any kind?

13 "Answer: No."

14 I am suggesting if the con were so wide
15 open that you are selling the goose that laid
16 the golden egg, which you didn't account for the
17 money, if you said, give me \$15,000 back and left
18 an envelope and walk out of the room, how can you,
19 the jury, decide that these involved culpable acts
20 by these defendants?

21 Proof beyond a reasonable doubt is not
22 invented for this trial. It means quite simply
23 that when a Government brings the charge they
24 don't prove by tipping the scale. They prove
25 by much more than that. And his Honor will give

you the definition.

If there is a lack of proof the defendants are entitled to an acquittal. If there is a lack of proof that does not allow you to reach a decision that rises to that great of height of proof beyond a reasonable doubt, you find them not guilty on that phrase, on that phrase. That phrase is one that is sometimes misleading.

The Skotch have a different phrase which I think explains it better. When a Scotch jury acquits, they say not proved. Because the word sometimes unfortunately convey to a juror when I say not guilty I am saying completely innocent, exonerated, go forth and do it again.

That is not so. You sit as judges and you must be as stern as Judge Pratt. And I will bet my life that if his mortal enemy was in front of him and if that evidence did not rise to proof beyond a reasonable doubt he would say, not proved. And that's your model. And that's what the law requires and that's why I say you have a special grace.

We are not ordinary human beings this night and tomorrow until this over. We are not

ordinary humans because we have to be above ourselves.

Do you think that at this hour of the night, and you know how long we have been here, and you know how long we were here last night and the night before and the night before, that I feel like doing what I have to do?

Well, I will die trying to do it because there is a special grace and there has to be the special courage that says not proved if it is not.

And when a Weinberg is needed by the F.B.I. to trick and trap, ladies and gentlemen, I say you must be so critical in your estimation of that fine body that you have to say they tried something new, they tried it in a bumbling and inexact way, and there is no proof that this man said, I will violate my oath. There is not one scintilla of evidence to that effect. And read in your book these two enormous meetings, and you will find that. It is 180 pages, the second meeting. Thirty pages the first meeting. The final page we have a goose, let's pluck him.

One of the analogies to what has to be done here, I think is found sometimes in taking

7
1
2 examinations. Examinations frequently don't pass
3 anything. Examinations are frequently not gaited
4 to the individual. It doesn't measure their
5 respective opportunity to education. It doesn't
6 respect their cultural differences, where I may
7 speak Swahili and someone else speaks German.
8 But flunk the exam and you are a failure and you
9 have to know in your heart that you are not a
10 failure because it wasn't fit for you, it wasn't
11 designed for you, it didn't add up to the truth.
12 And that's what the test is in this case.

13 It is a common thing on a job to have a
14 supervisor say, why did you do such and such, and
15 you turn to the person over you and he says he
16 told me not to do it. And that person shrugs his
17 shoulders and you have had it because unless you
18 examine the background and go into the reasons for
19 what you did, then the mere act for your not having
20 done it leaves you guilty, you don't have a chance
21 to explain. If you don't have a chance to describe
22 it, you have had it. And that's what is true in
23 this case. I heard it said about Mr. Cook that
24 he told us the truth, but that he never said
25 anything about a charade.

Well, let us see. On page 1298, Noto.

In a few minutes after I have set the stage,
I am going to play the tapes and I want you to
listen to them in the prospective I have tried
to impart to you. But this is on Noto. That's
the business of the immigration man.

(continued on next page.)

1
2 On page 1298, and the questions are of
3 Mr. Cook, the honest man.

4 "Question: You knew from the beginning it
5 was a total charade?

6 "Answer: Yes, sir.

7 "Question: And it was your understanding
8 that Mr. Weinberg was aware of the fact that you
9 were not indeed Mario Noto?

10 "Answer: Yes, sir.

11 "Question: When he sat and talked to you
12 did he give you any indication that he was aware
13 of the fact that you weren't Mario Noto except
14 for your age?

15 "Answer: No, sir.

16 "Question: And he was the one who remained
17 with you?

18 "Answer: Yes, sir.

19 "Question: That person we were referring
20 to was offscreen?

21 "Answer: Yes, sir.

22 "Question: You watched the play here on
23 the screen?

24 "Answer: Yes, sir.

25 "Question: He was off screen, wasn't he?

"Answer: Yes, sir.

"Question: Now, what was he doing? Can you tell us physically, was he standing, sitting, was he giving you any signals or anything?

"Answer: He was sitting in a chair talking to me.

"Question: Just talking to you straight?

"Answer: Yes, sir.

"Question: And did he tell you that there would be any consequences of your not being the Mario Noto in question, the difference in age?

"Answer: No, sir.

"Question: Did he say anything to you about the fact that your purpose was to come there to put on this act?

"Answer: I never talked to him other than on the tapes.

"Question: That's all.

"Answer: Yes, sir."

And then what did he then say?

A 1300. Remember now, this is the Noto situation. Mr. Amoroso has called Mr. Errichetti outside and in the room sit Weinberg and Mr. Cook. And this is the language. And Judge this, if you

will.

"Question: Can you tell us what Mr. Weinberg said to you?

"Answer: He said he is sure we can work this out, get it all straightened out, that Tony is just afraid that you are not whom you say you are.

"Question: He never said, "Look, you are not Noto, you have tried to pull a game on us. He never said that to you, did he?

"Answer: No.

"Question: In fact, he had said it's going to be okay, we will work it out; is that right?

"Answer: Yes, sir.

"Question: Was that in keeping with the concepts given you that he knew all about it and was going along with it?

"Answer: Yes, sir."

Now, what does that language mean in terms of Noto to you?

I would suggest to you that a reasonable interpretation is that in this situation where he is known to be an imposter, and Weinberg says that everything is going to be all right, don't worry

1 about it, that it suggests that Weinberg knew
2 all about it and was in on it. That's a very
3 reasonable deduction which can be drawn.
4

5 And there are many other such words here
6 which lead inevitably to that deduction.

7 Now, on page 1305 they talk about the Casino
8 matter.

9 You remember on July 26th on the trip to
10 Fort Lauderdale in the boat, it was by Mr.
11 Johanson, Mr. Criden and Mr. Errichetti in terms
12 of a casino matter which was described as legitimate
13 and in fact Amoroso said it was. And down they
14 went with their maps and their feasibility studies
15 and their dreams of four million dollars.

16 Cook knew about it. And now Mr. Honest
17 Cook testified for the Government.

18 "Question: And you also testified that
19 it was your understanding that Tony and Mel, the
20 representatives and the employees of the Shiek
21 were themselves to receive some money in the casino
22 matter; is that right?

23 "Answer: They indicated they wanted a part
24 of it, yes, sir.

25 "Question: It was your understanding, was

5 1
2 it not, that the Shiek was going to supply the
3 money for the casino venture?

4 "Answer: Yes, sir.

5 "Question: And the money transaction was
6 to be negotiated for the Shiek by Tony and Mel;
7 is that right?

8 "Answer: Yes, sir."

9 And Mr. Puccio then asked if he thought
10 it proper, and so forth.

11 Now, from the very beginning it will appear,
12 and I suggest you have a right to accept it as
13 fact or reject it, that from the very beginning
14 Tony and Mel were going to share.

15 Now, if they were going to share the money
16 and if they gave this impression from the beginning,
17 why isn't it absolutely plausible and reasonable
18 that Errichetti the congressman there is no
19 official act contemplated, there is nothing to
20 it?

21 Reasonable? I submit to you it is.

22 Now, I want to just give you a few other
23 matters to put this entire matter in prospective
24 because I think it's the only way to really explain
25 it.

6 1
2 You do recall an interesting thing about
3 the business of the \$50,000. Noto was only supposed
4 to get twenty-five. It's just a note as you look
5 at the film and remark how that worked out.

6 Excuse me just a moment. In the document
7 before you that refreshes your recollection,
8 may I ask you if it is not a fact when Mr. Weinberg
9 reported the name to you he allegedly got it from
10 Mr. Errichetti that it was Mopo and he was the
11 Commissioner of Immigration.

12 Enough for Mr. Cook because I think it
13 suggests to you that the honest Mr. Cook gave
14 some very honest answers and they might not have
15 been as conducive to some of the ideas that Mr.
16 Puccio wanted them, but there they are.

17 Now, one or two more references to Mr.
18 Amoroso before we play the tapes that I have
19 referred to.

20 We talk again about the acting performances
21 and he said they were correct.

22 And with respect to that activity which
23 came later, about an hour elapsed between the
24 time you had the money, that's the 22nd and the
25 time you went through the prologue, which is the

sealing and the not sealing of the envelope and the time of the actual activities, would that be correct?

And in that interim who was in the room, Weinberg and Good. What happened to the money?

But this is more precisely to the point.

And is it not so that as a result of this idea that formed in your mind on the 25th you then projected this idea on the 26th and advanced it, right?

Correct.

And you advanced it for the purpose of advising somebody to respond; is that right?

Correct.

And you advanced it specifically for the purpose of inducing Errichetti to respond, is that right?

Yes.

Now that you baited the trap with the idea, that's a correct statement, is it not?

Yes.

You expected my client to bite?

It could be, yes.

That would be the purpose of your doing it,

1 I would assume.

2 Again a part of a design.

3 I will tell you what he thought he did to
4 my client. Let's read what he said on page 1042.
5 We are referring to Weinberg, and he says as
6 follows:

7 "Question: And he conned everybody but
8 you, is that right?

9 "Answer: I can be conned just like every-
10 body else.

11 "Question: Did he con you?

12 "Answer: I don't think so.

13 He conned everybody else though.

14 "Question: By everybody else whom do you
15 mean? Let's take my client. He conned my client,
16 didn't he?

17 "Answer: I would say so.

18 "Question: He conned him in a superb fashion,
19 is that right?

20 "Answer: Yes, I would think so."

21 Now, I don't know how you react to that,
22 but that to me is something which goes to state
23 of mind. If a person is subject to being conned
24 or convinced or persuaded by what Mr. Weinberg
25

describes as a mixture of the truth and fiction,
whom are we to blame? The victim that is conned?

Well, that's what you're being asked to
do. You are being asked to convict Mr. Errichetti
by proof beyond a reasonable doubt that through
this entire enterprise when Mr. Amoroso says that
he was superbly conned that he, the victim, should
pay the price.

Well, that is so contrary to a sense of
justice that I ask you to consider that as a theme
running through this entire matter. And these
are not my words and it is not just rhetoric. It
is that which has been adduced from Mr. Amoroso's
mouth himself.

Now, Mr. Cook. Let's go again to the 22nd,
Congressman Myers, the key event. A question by
Mr. Puccio to his witness, the honest Mr. Cook.

"Question: Now, Mr. Cook, were you ever
told anything by anyone about a script that Congress-
man Myers would have to read for the Shiek's
representatives?

"Answer: No.

"Question: Were you ever told by anyone that
at the August 22nd meeting, Congressman Myers would

put on an act for the Shiek's representative?

"Answer: What I was told is: He had to meet with Mayor Errichetti beforehand where they would prepare him for what he would have to say and then he would meet.

"Question: Were you ever told that he would put on an act and say things he really didn't mean, were you ever told that?

"Answer: No, sir."

Now, if Mr. Cook, the honest man, the witness produced by the Government, says that he was told that Myers had to meet with Errichetti beforehand, where they would prepare him; and then let us take that honest man and believe him. You were asked to believe everything he said, why not that?

Now, with respect to the events that led up to and through the 22nd of August, starting in June, June 16th.

Mr. Furst, if you will.

Starting June 16th you have in the back of your books T-1 through 11, and I ask you to turn to that, please.

Now I will give you a brief rundown

1
2 on that and bring you right up to August, while
3 Mr. Furst prepares to play the tapes for you.

4 Please don't put your earphones on yet,
5 please.

6 On June 16th you will see that Mayor
7 Errichetti on the phone says, you know what we
8 got to do with Pete.

9 This is in part. I am just giving you
10 a running sequence so that they fall into line.

11 Mel says to Errichetti, Eric, give me the
12 proper speech that Mel gives you. June 28th,
13 fitting in the sequence, is what I call the
14 bullshit on stage command performance, but please
15 you will hear it and you will read it so that
16 you will be able to judge rather than my giving you
17 a conclusion.

18 (Continued on next page.)

Brown-summation

July 29th. July 29th, by the way, I shall return to because it is one of those tapes made by the so-called dropped cassette, which Professor Weiss says was never dropped but stopped and started, and part was left out by the Government in our estimation, but in that you will find the key expression that the naturalization guy is key one. So as early as July 29th the naturalization guy was a part of the scenario.

August 15th you will find there is a conversation about the wet and dry closing. And everybody who closes a house, you know you go through the rehearsal, and that's a dry run when you rehearse it. and the wet one when you finally close.

September 2nd, there is a telephone call referring to Immigration.

September 5 refers to green cards and my guy Errichetti.

September 12th, Errichetti doesn't know his game and Fester Detorintini(ph), and somebody called him Tetrizini(ph), but that's an Italian dish.

September 14th, Mr. Noto.

And on the 18th, Errichetti tells of the preparations on the 19th and then there is the video

Brown-summation

tape of Mario Noto.

The point we are making is that in the middle of this is August 22nd.

So the conversation throughout deals with the business of the con, the business of the false appearance. Because when you see the No Po view once more, you will know, you will know in the first place that it was a con, and in the second place that Mr. No Po could never have violated the law, or Mr. Cook. And that's exactly what happened on the 22nd meeting.

The dates are extremely important to our concepts of the case. And I want to apologize to you for the length of my address to you. And I would do it in a quicker and shorter time if I knew how. I assure you of that. I know you are tired and I know after a meal it will be much more pleasant to have beer, slippers and t.v. than an old man trying to talk to you about lines in a book. But please forgive me. We all know how serious it is, I am sure.

Would you run it, please.

The first one is a telephone call, June 16th, please. I'm sorry, I was drinking water and

Brown-summation

1
2 didn't hear it. I beg your pardon. It's June 20th,
3 which is a telephone call.

4 (Whereupon tape recording referred to is
5 played.)

6 MR. BROWN: The next date is June 28th, which
7 I opened to you and which is so prominent, which
8 deals with the on-stage and most expensive t.v.
9 star ever paid and the language in those instances
10 is Mr. Weinberg.

11 There is a second page on June 20th that was
12 not played and we will play it later.

13 We are now going to Exhibit T-3.

14 (Whereupon, tape recording referred to is
15 played.)

16 MR. BROWN: That's the end of that particular
17 tape. And it's June 28th, two months from the
18 August meeting. And we will go on with the next
19 tape, but I want to ask you when the leopard changes
20 his spots, the Government wants to say to you that
21 in June Mel Weinberg was a different man than in
22 August. Although I read to you where Cook said he
23 had Errichetti to prepare. I read to you where
24 he is doing a superb con. But the Government says
25 to you, well, that was in June. Another thing.

Brown-summation

When would Mel Weinberg change his technique I asked you? The answer has to be never, because this is his life, this is his way, this is his personality. This is an actor with many parts and the same technique, within the same technique.

The reason this is important is because you will see there is a reference to the immigration official, Mr. Noto, ultimately; and that doesn't come to September 19th, but it's all part of the same relationship and attitude with people, the same attempt for people to do which according to Mr. Weinberg in his curious and convoluted and complex mind was designed to bring you in and say he is a party to it, there is nothing to it, nothing is going to happen.

Why did the FBI need this space better technology? And the FBI has my respect as I know it has yours. But why this, why this?

And they would say to you that the Weinberg giving this bullshit directions in June was not the Weinberg involved in August, August 22nd, or September 19th, where there was a complete farce.

But remember this, just remember this; if he could change his spots and be a different man

1
2 in July then he was in June, and a differnet man
3 in August than he was in June, then perhaps in the
4 human relationship you might say it. But this is
5 where the special grace comes in. In addition to
6 your experience, in addition to your common sense,
7 you have to apply to the sense of whether Meyers
8 actually was totally conned and didn't intend to
9 violate his act and had no desire to have knowledge
10 of that kind of action or not.

11 Now, we will go on to the next tape which
12 is right in sequence where again you will hear the
13 references to the naturalization guy who was the key
14 one. Remember, this is July 29th and Noto doesn't
15 come in until September 19th.

16 Would you play it please, T-4?

17 (Whereupon, tape recording referred to
18 is played.)

19 (Continued on next page.)
20

Brown-summation

(The tape thereupon continued to play)

(Tape playing completed)

MR. BROWN: Now, I would call to your attention before I ask Mr. Furst to play the next tape, but in the sequence, and this is July 29th, and that you mark that date in your mind or down because I will come back to it later, to the tapes, and the time, the length of the telephone conversation. And you will recall when Mr. Duffy talked about these things, and I would like to have the thing fixed in your mind. Now the next tape, T-5 would be August 15th, but we know that in the interim between July 29th and August 15th there were other tapes.

So would you turn in your books please -- remember we are going from July 29th now to 2-A, which is August -- there is one just before 2-A if you please, August 5th. I think it is 1-A. If you will start with 1-A, and remember we just heard on July 29th about the naturalization guys, the key one.

You are reading August 5, I think. You will notice on August 5 that there are references to the naturalization. And I would call your attention, if I may, to several references which show the

continuing relationship.

On the first page Weinberg says "He can get Senator Talmadge."

And Errichetti says, "I'm working on that so far, okay, Congressman Ozzie Meyers, okay?"

And that is the 15 coming back tape I called your attention to.

And down that page it is "Lederer" and "...haven't gotten to that point yet, okay."

And "... two Congressmen from Georgia."

And then down towards the bottom Angelo Errichetti says "... there's gonna be two congressmen from Florida being set up to talk to..." in fact they were approached, ... they have to meet with me on time, place, logistics... what I expect them to do... friendship, they've gotta say and what they've gotta prove, guarantees; you know, whatever they say.

Haven't met them yet."

Then you go over to the next, and as you read it, you find references to this State Department, and Congress, and Mel Weinberg saying, "All he's got is to tell Yassir is that ah when the time comes... I will sponsor anything you want."

And that was that August 5th.

Now, the 29th would be next. And that again refers to Congressman Meyers. And August 2 is next. And on the third page of that there is a reference to Yassir, this is when he meets Yassir, that just to tell him to come on strong. Well, he's going to give him a briefing. The stronger the better. And Yassir probably won't even say a word to him because he is very conscious how he speaks English. And then we will go from there to August -- we are on August 7th -- and then we go to August 8th.

And there again dealing with Congressman Meyers, push it as fast as possible. All right. What is it, Meyers, Congressman. He is ready willing and able tomorrow morning. He called me.

De Vito: You have to introduce some kind of legislation.

Whatever you say.

Tell him.

And then of course he says yeah, let him tell Yassir whatever he has to tell him. Now, that is still the theme. And the leopard has not changed his spots.

Now, if you go back to T-5, which is August 15th, the wet and dry closing.

(Tape played)

MR. BROWN: There you heard the words
"script." And "wet and dry closing."

The leopard has not changed his spots.

We are coming right up to August 22nd. Now
the August 22nd tape is quite long, of course. You
have seen it and I won't play that. But you will
notice that there has already been a reference to the
Immigration official.

We have come through from the June 29th,
which is the on-stage command performance. July
29th, the same thing. Naturalization guy is the
key, and right on through August 8th, "tell him what
to say."

And right on up to August 15th "wet and dry
closing."

Now we will go right by August 22nd deliber-
ately because you have seen it and can put it in
perspective, I am sure, to T-6, which is September
2nd.

Now remember this is a continuing relation-
ship.

THE COURT: Mr. Brown?

MR. BROWN: Yes, your Honor.

THE COURT: The 90 minutes that you had requested has expired.

MR. BROWN: Will you give me a grace of 15?

THE COURT: You have got it.

MR. BROWN: Thank you.

Will you run it please, sir?

(Tape played)

MR. BROWN: And now we will go to the next tape, which is T-7, September 5. This too refers to "green cards" and "my guy".

We are progressing towards September 19th.

(Tape played.)

MR. BROWN: That was T-7.

The next will be T-8, September 12th, a telephone call when he tells him who the investigator Torrentine is, to relate it to Noto.

(Tape played)

MR. BROWN: Thank you.

The next is T-9, telephone, where you will see the name referred to. I call your attention to the fact that the name ultimately agreed on was Mario Noto. If you listen to this you will see and you will find the difference which would have been if

Mr. Weinberg weren't in on the scam, certainly.

I believe about eleven minutes, your Honor.

Is that in accord with yours?

(Tape played)

MR. BROWN: The next will be T-10 on which we will have the final preparation for the Noto meeting on the 19th.

(Tape played)

MR. BROWN: These are the two men still in the same relationship they had in June. Indeed in May. Indeed before that.

And the reason we know that is that Mr. Weinberg made certainly hundreds -- literally hundreds of calls to Mr. Errichetti, and many of them not taped, and many for reasons which he explained as his being in other areas and unable to do the taping.

Now, I don't intend to quarrel with that, but I would like to call to your attention that there is in evidence Exhibit U, which you all have, and it shows, in summation, that there were 71 calls made totalling 227 minutes, or three hours and 47 minutes in that year that were made by Mr. Weinberg.

Now, prior to August 22nd there were four

calls totalling ten minutes where he made his kind of calls and apparently he didn't make contact, or for other reasons did not recall it.

Now, the importance of that is this, that in the con technique that Mr. Weinberg talks about, this was an important element, and this continued right from May and June, right on to August, and right on through September.

And no spots changed on that leopard.

Page 2202: "Q Right after Noto you sort of cut off from Errichetti, is that correct?

"A That is correct.

"Q For eight months prior you talked to him?

"A Yes.

"Q How many phone calls do you reckon you made to Mr. Errichetti?

"A I have no idea.

"Q Many?

"A Many.

"Q Would this be consistent with the theme of a confidence man, which was to stay right on the sucker?

"A Keep in touch.

1 "Q At all times?

2 "A At all times.

3 "Q Why was this a cardinal principal of a
4 con man's -- "

5 I withdrew it.

6 "Q You have stated that this is a cardinal
7 principal of being a successful con man, staying on
8 the mark?

9 "A Keep in touch.

10 "Q Constantly?

11 "A That is correct.

12 "Q Why would you want to keep in touch
13 constantly? So he doesn't get away?

14 "A That is correct."

15 Now, there is one observation here by Mr.
16 Weinberg that I think has to excite your consideration
17 of the very demands on your judgment that I talked
18 to you about.

19 It goes to the question of intent and weighing
20 words.

21 221B:

22 "Q And you do know that within that same
23 time period that you were soliciting Mr. Errichetti
24 to get Meyers, the Noto thing was going on, the
25

Scam within the Scam?

"A That's correct. "

That is the answer. That is what I have tried to demonstrate to you.

"Q And you didn't know to this day whether or not Mr. Meyers, who came in within the same sense as the Noto thing, intended to do anything that he said he was going to do; is that right? "

And his answer:

"A I do not know."

You were not there. How would you be able to say that he intends to do the wrong thing.

And the next question --and I really believe that from this con man skilled in the use of words and in his relationships with people we have a touchstone.

"Q So the words that he employed are words, but the intent to carry them out is something you didn't know to this day; isn't that right?

"A That's correct."

Now, there is no proof in this case that would support a finding beyond a reasonable doubt that Mr. Meyers intended to carry out this crime and offense, or that Mr. Errichetti did.

1
2 I do not cite Mr. Weinberg as an authority,
3 believe me. I cannot in one sense call him a con
4 man and criticize him, and in another sense exult
5 his wisdom. But I do suggest to you that when
6 Minnesota Fats gets on a pool table, you know he
7 knows what to do with a cue.

8 And when Weinberg brings people in and uses
9 words, he knows how to evaluate them because that is
10 his specialty.

11 "Q So the words that he employed are words
12 but the intent to carry them out is something you
13 didn't know to this day; is that right?

14 "A That's correct."

15 Now, there is one last area I would like to
16 call to your attention, and that is the area of
17 Weinberg the con man, the man who wants what he can
18 get from others.

19 Mr. Di Lorenzo testified here, and the
20 young lady named Deborah Procacci. Their testimony
21 was backed by a very impressive Special Agent, except
22 that he also confirmed the purchases of the items,
23 and that in effect everything was true. A gentleman
24 came in from Florida to say that in June Mr. Weinberg
25 traded in a brown van, though he said he put the

1
2 gifts in a brown van most of them before June, but
3 he did say in late summer he put some in a brown van.

4 He did say it was a brown van used by
5 Abdul Enterprises.

6 Now, I'm not going to quarrel about a van or
7 no van. But I submit to you this, that a man who
8 would turn in three \$6,000 watches is not the same
9 man who would ask for a microwave and dishes, and
10 three 22-inch Sonys for the board of directors of
11 Abdul.

12 This is a different man. And this is a
13 person who knows how to play the game. The reason
14 the gifts would be important is because first he
15 denies them absolutely, and second, that it shows
16 a continuing relationship, the con of Errichetti,
17 who to his never-ending regret considered this man
18 a friend, because they were in a sense-confederates.
19 They combined together for the 'Noto' scam, for the
20 Meyers scam, and for the other scams that you heard
21 referred to where he used the now so important
22 words.

23 Ladies and gentlemen, I've been privileged
24 by his Honor to go even beyond the allotted time.
25 But I would like to leave with you just a sense of

1
2 appreciation.

3 I can tell you sincerely, and you can bet
4 if I didn't mean it I wouldn't tell you, that you
5 have undoubtedly given the kind of attention to this
6 case that every lawyer in this room -- and for once
7 I will speak for Mr. Puccio, because he expressed
8 his appreciation with your attention -- it has been
9 incredible.

10 There is one complaint I make, and you must
11 take this very seriously, I am concerned because you
12 are so inscrutable that as we sit and watch you we
13 know that you by design have made every effort to
14 remain neutral and open-minded as you have been told
15 by his Honor until after all these addresses, however
16 tedious, however onerous, however the repetitive they
17 are, and until His Honor gives the charge.

18 Following me later will come Mr. Puccio
19 in what is called the rebuttal.

20 I haven't deliberately been this long to
21 make it impossible for him to have a most attentive
22 audience. But I hope it works out that way.

23 But having watched you I know that is not
24 possible because you will make every effort. And
25 I know you will give to him exactly the same

1
2 consideration that you have so graciously given me.
3 He is entitled to it. And please, please, do just
4 that. I have a deep appreciation for Mr. Puccio
5 and Mr. Sharf as professional antagonists.

6 But they ceratinly are -- while they represent
7 one side in this lawsuit, not enemies, and as I say,
8 I do believe that in this room there has been a
9 desperate sweaty search for truth.

10 And I know when you wrestle with these items
11 in evidence, and wrestle with the charge, and try
12 to put it altogether, there will only be one thought
13 in your mind, and that is to do justice no matter
14 how it comes out.

15 That you'll not let sympathy interfere from
16 my defendant. I do not ask it. I ask only that you
17 apply rigorously the law. I ask you to remember
18 that presumption of innocence until his Honor tells
19 you it is time to deliberate.

20 I ask you to remember proof beyond a
21 reasonable doubt above all else because nowhere
22 else in the world is a man given a trial where he is
23 presumed innocent, and where the requirement is
24 a strict and religious adherence to the idea that if
25 the Government had not proved it beyond a reasonable

doubt, whatever your believe, whatever your speculation, whatever your thoughts, you must find not proved and dismiss these charges.

Again, I want to thank you.

THE COURT: Thank you Mr. Brown.

MR. BROWN: Thank you for the extention, your Honor.

THE COURT: We will take a short recess and then we will continue.

(The jury thereupon retired from the courtroom at 9:30 o'clock P.M.)

(Continued next page)

1
2 THE COURT: Mr. Puccio, how long do you need
3 for your rebuttal?

4 MR. PUCCIO: Judge, I would say a half hour,
5 possibly 45 minutes. I won't go longer than that.

6 THE COURT: All right. Bring in the jury.

7 MR. PUCCIO: Maybe less.

8 (The jury is in the box.)

9 THE COURT: All right, Mr. Puccio, you may
10 proceed.

11 MR. PUCCIO: Thank you, your Honor.

12 Your Honor, Judge Pratt, defense counsel,
13 ladies and gentlemen. It's astonishing to believe
14 we started the proceedings about nine o'clock in the
15 morning and here we are ten o'clock in the evening.

16 I realize that the hour is late and I have
17 spoken to you at length before, prior to your listening
18 to the summations of various counsel for the defense.

19 Ladies and gentlemen, I tried this morning
20 to marshal the evidence for you, and to chronologically
21 review with you the tapes and the testimony that you've
22 heard over the last couple of weeks.

23 At this point, I won't do that again, but what
24 I would like to do is discuss certain questions that
25 were raised by Mr. Brown, Mr. Cacheris, Mr. Ben-Veniste,

Rebuttal-Puccio

and Mr. Duffy, and suggest to you answers to the questions they raised which are somewhat different.

Again, the arguments made by counsel, the arguments made by me, are based upon inferences we asked you to draw from the evidence. If I draw any inferences which you do not wish to draw or cannot draw or think don't make any sense, reject them.

I don't plan to go into every single argument that has been raised in the last six or seven hours or we would be here for a couple of days more.

I plan to answer certain arguments, the others I submit to you the answers are contained in the record of this case.

I think there are certain general questions, general issues, that are raised here that need answering at the outset.

One thing struck me as I listened to Mr. Brown and others, phrases like "inveigled the Congressman," "push the Congressman." The inference that someone is doing something that he does not want to do. "Coach the Congressman. Entice the Congressman. Trap the Congressman."

Ladies and gentlemen, do you really believe that people really do what they don't want to do?

Rebuttal - Puccio

Do you really believe that a United States Congressman took \$50,000 in an envelope in a motel in New York City a little more than a year ago when he really didn't want to do it?

Do you really believe what you saw on the videotape was an act portrayed by an actor who was coached by a con man?

What is a con? That is a word that has been bandied about and has come up several times during defense counsels' closing arguments. What is a con? What does it mean in the context of this case?

Surely if I were to walk outside this building tomorrow morning with a loaded gun and walk into the First National City Bank and put the gun to the teller's head and say "Give me the money," and all of a sudden the teller reveals himself to be an FBI agent and I was placed under arrest and the building was surrounded -- I would have been conned.

I would have attempted to commit a crime in a place where I suspected no law enforcement present. I would have been duped into dealing with a teller who is really an FBI agent.

What happened here? Was this a con? As Amoroso said, "Sure Errichetti was conned."

1 I submit to you Myers was conned in this sense,
2 Errichetti was conned, Criden was conned, Johanson was
3 conned. They were conned by -- they believed that
4 the corrupt businessmen with whom they dealt, the
5 corrupt businessmen to whom Congressman Myers sold his
6 office -- they believed that those people were corrupt
7 businessmen. What they didn't know is they were
8 dealing with an FBI agent.

9
10 So they surely were conned. As Mr. Brown puts
11 it, are they victims? Certainly not. Victims of what,
12 victims of the fact that your government, the FBI,
13 was too diligent? Victims of the fact a technique
14 was used here? A technique that resulted in giving
15 you definitive uncontroverted evidence of a bribe
16 taken by a United States Congressman?

17 Perhaps one of the complaints, as Mr. Duffy
18 put it, is that the FBI isn't out chasing bank robbers,
19 or one would see very clearly, that these defendants
20 would feel much better off if the FBI were out chasing
21 bank robbers and not politicians.

22 Now, you've heard a lot about Mel Weinberg.
23 And you've heard a lot about the FBI. Ladies and
24 gentlemen, Mel Weinberg, for all his human frailties,
25 as it was put, is not on trial in this case.

Rebuttal - Puccio

Ladies and gentlemen, the FBI is not on trial in this case.

Ladies and gentlemen, the Government of the United States is not on trial in this case. The people on trial in this case are seated right here (indicating).

Now, why was Weinberg needed? Mr. Brown asked that question. Mr. Good testified to you yesterday he had been working with the FBI a number of years and conducted many investigations. Many undercover investigations. And he told you in his opinion informants such as Mel Weinberg are essential.

You heard the tapes. You heard the conversations that Mr. Weinberg had with Mr. Errichetti. Did it strike you in listening to those tapes that Mr. Weinberg and Mr. Errichetti did not have a relationship that gained confidence for the undercover operation?

Didn't it strike you that Mr. Weinberg and Mr. Errichetti were able to speak one another's language, perhaps not as well as Mr. Amoroso would be able to speak that language.

When you start to delve into the evidence of this case: you have videotapes of what happened, so you are told, don't pay any attention to the videotapes,

it's what is not on the tapes that counts.

As Mr. Brown put it, if a man comes home and finds his wife in the arms of another man, maybe that is not what it seems to be, she fell into the position. You can believe that Congressman Myers stumbled into that room and took that \$50,000 by accident, but I suggest you are stretching the limits of your imagination.

What about Mr. Weinberg and all these tapes? You've seen stacks and stacks of tapes in this courtroom.

MR. BROWN: I object. That is one of the techniques, to have stacks that are not in evidence.

I object to that. He pointed to the stack.

MR. PUCCIO: I will make reference to the testimony that there were thousands of tapes made.

MR. BROWN: Not in this case.

THE COURT: Your objection is overruled. The tapes have been here primarily for the convenience of the defendants. They have called upon them from time to time to have them produced.

MR. BROWN: Only those that are relevant. Many are not.

THE COURT: It has been made apparent how many

Rebuttal - Puccio

tapes were made in the case. Whether downstairs, upstairs, or here, I don't see any significance whatsoever.

MR. BROWN: If they are in evidence, but they are not.

THE COURT: The tapes that are in evidence are marked as exhibits. The fact of the existence of other tapes is also in evidence properly before the Court and jury.

Objection overruled.

MR. PUCCIO: Ladies and gentlemen, you've heard testimony that hundreds and hundreds of tapes were made during the so-called Abscam investigation. You've seen tapes, hours and hours of tapes, that have been heard. You've seen tapes displayed in the courtroom. What is missing?

Well, we hear testimony that three tapes were lost and we hear testimony that 50 seconds or one minute and 50 seconds was missing from another tape. All to suggest to you that somehow something is being kept from you.

We are told for instance that the agent who poured the drinks at the Barclay Hotel was never subpoenaed by the Government when he could have been

subpoenaed by anyone from either side.

Do you believe that Mr. Weinberg, if you deem the absence of those three tapes that were stolen on an airplane, is so important -- do you believe Mr. Weinberg would suggest to the FBI or anyone else that his tapes were stolen on a plane flight when he could have said he never made the recordings?

You had evidence of toll records from Mr. Weinberg's telephone indicating certain calls were not recorded. Doesn't it make sense to you if Mr. Weinberg wished to deceive anybody, couldn't he have gone to an outside phone and made a call that there wouldn't be any record of?

You are told by the absence of this evidence it means something. I submit to you that the absence of these insignificant pieces is meant to distract your attention from the substantial amount of evidence on the critical issue of the tapes that you've seen on the TV and heard through the audio recordings.

Now, you've heard about this conversation that Mr. Weinberg had with a Senator who was not involved in this case. I mentioned it to you this morning. You heard it again. It was played by Mr. Brown during his closing argument.

I ask you to think about that for a moment. You don't know all the facts of that case, you heard very little. But do you believe that Mel Weinberg could get a United States Senator or anyone to do something that he really didn't want to do?

Do you think Mel Weinberg is capable of that? Do you think anyone is capable of that? "Stress the influence you have, Senator, to get contracts." What does that say to you? Does that indicate to you that Mel Weinberg is capable of getting a United States Senator or any other public official to do something that he didn't want to do? This matter wasn't pursued because it's not part of this case.

I submit to you, it's taken out of context but to follow it up a little bit, if the United States Senator walked into a room and told someone he was willing to sell his office, do you think it's Mel Weinberg that got him to do that? Do you think that happens in the real world? Do you think men of power, men of position, men of influence, are going to let Mel Weinberg coach them and tell them what to do? Turn them into actors? Does that make sense to you?

I submit to you, it is ridiculous, ladies and gentlemen, and you saw when you observed Congressman

Rebuttal - Puccio

Myers. Congressman Myers wasn't handed a script. It wasn't a play in which he was portraying a role or playing a part. He said things because he meant them. He said things to get the money. He sold his office for \$50,000.

Very interesting, this is all a play. It's all a stage, all make-believe. And Mr. Johanson tells the FBI that he had many sleepless nights since it all began.

Why couldn't Mr. Johanson, why couldn't Congressman Johanson, sleep, ladies and gentlemen? Why couldn't he sleep? He couldn't sleep because he had sold himself.

MR. DUFFY: Objection.

THE COURT: Overruled.

MR. DUFFY: It's not in evidence. No claim of that here.

THE COURT: Overruled.

MR. PUCCIO: You've heard an argument astonishingly that Mr. Errichetti never received any money. The acting coach himself did it for free. Do you believe that?

What about Mr. Cook? Back at the Criden law firm in Philadelphia, sitting there with Mr. Criden

Rebuttal - Puccio

1
2 talking about how it's all split up. Do you think
3 that Mr. Errichetti showed up at the hotel room for
4 nothing?

5 \$15,000. Let it not confuse you, \$15,000
6 coming back. On the tape I played to you this morn-
7 ing, it was explained by Mr. Weinberg, it was a device
8 to get Mr. Errichetti's conversation and find out
9 who else was involved. The undercover people struck
10 a bargain with Mr. Errichetti, pretended to be
11 friendly with Mr. Errichetti, to find out who else
12 was involved. Only the figure was cut from 100 to 50,
13 so there was no 15 coming back.

14 I won't play it, but if you listen to the
15 tape after the Congressman leaves, you'll hear about
16 the fact there was money that was to come back when
17 the figure was higher.

18 Mr. Ben-Veniste played to you -- or showed
19 you a picture of Mel Weinberg standing on this screen
20 with a cigar in his mouth. And it is so indicative
21 of what you've heard from the defense counsel. He
22 showed you the scene, pointing you to Mr. Weinberg
23 after the Congressman left the screen with the cash.

24 In other words, you are to believe what is
25 important is Mel Weinberg with a cigar in his mouth

Rebuttal - Puccio

and what is not important is Congressman Myers stuffing his pockets.

Mr. Weinberg was the recipient of all these gifts. Even if Mr. Weinberg received the gifts, I submit to you the evidence shows he did not. How they have any effect on this case, what the relevance is, escapes me. But Mr. Weinberg, super con man, con man par excellence -- whatever that means -- keeps a \$350 oven and gives the FBI three, \$6,000 Piaget watches that they didn't even know existed.

MR. BEN-VENISTE: Objection. That is -- there is absolutely no evidence of that.

THE COURT: The jury's recollection will control as to what evidence there is on the point.

MR. PUCCIO: Mr. DiLorenzo. Do you remember Mr. DiLorenzo, the Mayor's chauffeur, testified he was on the scene on August 22, 1979? He had chauffeured Mayor Errichetti to the International Inn. He wasn't on duty at this time, he indicated he worked his 30 hours other times of the week. Do you remember him? He was the fellow who couldn't remember. He couldn't remember whether or not he held a package that day. I wonder why?

Well, he tells you that he made all these

Rebuttal - Puccio

deliveries and gifts to Mr. Weinberg in late summer 1979 -- by the way, all of this comes to light, told to the FBI, after the indictment is returned in this case. And it's not told to the FBI or anyone else or the grand jury conducting its investigation -- their testimony is being heard, he tells you at the end of the summer, late summer of 1979, he put three television sets in Mel Weinberg's van.

The only trouble is Mel Weinberg's van, used during the investigation, the records of which Mr. Good identified, was sold in June of that year and therefore the three television sets never went into that van.

Do you remember those three television sets? Those are the three TV sets that Mr. Duffy would have you believe went to agents of the FBI along with Mr. Weinberg, Mr. Brady, and Mr. Amoroso, and Mr. Weinberg each kept a Sony TV delivered at the end of the summer, 1979.

The FBI is accused of misconduct. FBI agents accused of breaking the law. And that's supposed to get you to center on the real issues in this case.

I submit to you, it's nothing but a smoke-screen.

Rebuttal - Puccio

Another smokescreen, the Nopo or Noto incident. Now, Mr. Brown would have you believe that this Nopo incident, this episode with the Mayor of a major city attempting to rip off a businessman, that this incident somehow demonstrates the innocence of Congressman Myers and the others for bribery and conspiracy to commit bribery.

What do we know about this Nopo situation? We know Mr. Cook testified it wasn't until late September or at least the middle of September that he was approached to play Mario Noto or Nopo.

If you recall Mr. Cook's testimony, he never heard about any play-acting in connection with Mr. Myers.

As much as defense counsel would like you to believe Mr. Cook was the actor supreme and said something else, I direct you to the record, Mr. Cook didn't know about any play-acting with Congressman Myers because there was no play-acting. But what Mr. Cook was asked to do was portray an official of the Immigration Service in September, when according to Mr. Cook, September they tried to get an official but couldn't.

You listened to those tapes or recall that

tape that Mr. Brown played. They were talking about an Immigration official during the summer. But Mr. Cook wasn't approached until later on.

What does this all mean? It's brought in to demonstrate to you or get you to believe that Weinberg was in on it. Weinberg was part of this. The better part of an hour of this day has been spent trying to convince you that Weinberg was part of the Nopo episode.

I submit to you that that argument falls on the tapes that Mr. Brown played to you. Now, if Weinberg and Errichetti are conspiring in another crime, that is a ripoff of the businessmen by using a fictitious Immigration official, why when they are having private telephone conversations do they not talk about that? Why does Mr. Errichetti say, Well, -- on the telephone -- I have to go over to the official's office. Weinberg is in on it? He would have said, "What are you, crazy?"

It doesn't make any sense. Mr. Brown said to you that Weinberg was in on it. And there was cross-examination during the trial for I would say a couple of hours, cross-examination of Mr. Cook, designed to get Mr. Cook to say that Weinberg was in on it. To establish through Mr. Cook that Weinberg was in on it.

Rebuttal - Puccio

And this episode in a series of questions went on and on until it was established beyond any doubt that Weinberg was not in on it.

We played that tape during the Government's case to lay the foundation to rest because it is a smokescreen, ladies and gentlemen.

How can Weinberg be in on it in light of the conversation Mr. Brown played to you tonight? How can Mr. Weinberg be in on it if he told Mr. Criden that he suspected Mayor Errichetti of pulling this deal and Mr. Criden went to Errichetti and told Errichetti and Errichetti and Weinberg have an argument on the telephone, wherein it's absolutely clear that they weren't together on this, and Mr. Errichetti is enraged about the fact -- playing a role.

Would you play that, please? October 3rd.

(Tape played.)

MR. PUCCIO: As you can hear, Weinberg was obviously in on it.

Mr. Brown and I do agree sometimes. He struck me with something he said, struck me as being entirely accurate. Mr. Brown said at one point, referring to the television, the tube is an abomination.

Well, that is certainly true in this case.

Rebuttal - Puccio

Congressman Myers can be the first witness to that. The tube is an abomination. But that camera recorded with punishing accuracy everything that went on. And it was that camera that the Congressman couldn't get around when he testified.

When you're behind the eight ball to the extent that Congressman Myers was after the playing of the tapes, no one can blame him for taking a shot. But I submit to you the shot wasn't even close.

But he said constantly, mindful of the day the Judge would charge the jury, "I intended to do nothing. I intended to do nothing."

State of mind and intention are relevant, as you will learn from the Judge, on certain aspects of this case. Do you really believe the Congressman intended to do nothing but says he would do everything? Was he ever asked to do anything? During the undercover investigation, which extended all the way to February 2nd, it's clear that he was not.

Do you have any doubt, and of course the Judge will charge you it is not necessary that he actually did anything -- do you have any doubt that if he were asked to do something that he would have done it? Do you have any doubt in your minds? Six months later

18 1
2 he's asked to go to the Barclay Hotel and he goes up
3 there and spends half the night selling everything
4 under the sun, using his influence, using his office.
5 What did Congressman Myers believe, if you listen
6 to his story and try to analyze it, when he was told
7 on August 22nd, supposedly by Mayor Errichetti, that
8 the Sheik had gone to South America -- what was his
9 state of mind? What would a rational person have
10 concluded, the Sheik had gone to South America and
11 I'm going up to a room to talk about immigration and
12 to promise to introduce a bill for a man who is not
13 coming to the United States?

14 Do you think he really believed that? Alice
15 in Wonderland. That is the only way to describe his
16 testimony.

17 Ladies and gentlemen, I think I've covered
18 all that I wanted to cover and really all that time
19 permits. It's gotten quite late. The final word
20 is you, and the evidence is here for you to consider
21 and to draw the inferences that are proper to draw.

22 But I would like to close by telling you that
23 I also agree with the words of Mr. Duffy when he says
24 the stuff of tragedy is in this room. I mean this
25 very seriously when I tell you there is tragedy in

Rebuttal - Puccio

19 1
2 this room. There is a lot of tragedy. There is
3 tragedy for the citizens of Philadelphia that the
4 Congressman represents. And there is tragedy for
5 the City of Camden, New Jersey that Mayor Errichetti

6 MR. BROWN: I object. He's not on trial for
7 any official act. Mr. Errichetti is --

8 THE COURT: Overruled.

9 MR. PUCCIO: There is tragedy for the Congress
10 of the United States, in which Mr. Myers sits. And
11 there is tragedy on the screen.

12 Thank you, Judge.

13 THE COURT: Thank you, Mr. Puccio.

* * *

I N D E X

3976

WITNESSES

none

E X H I B I T S

<u>DEFENDANT'S</u>	<u>Description</u>	<u>For Id.</u>	<u>In Evid.</u>
Exhibit A,C ,D,E,F,G,H	docs.		3647
Exhibit EE	doc.		3648

* * * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

3977

-----X
UNITED STATES OF AMERICA, :
 :
 -against- :
MICHAEL O. MYERS, ANGELO J. ERNICHETTI, :
LOUIS C. JOHANSON, HOWARD L. CRIDEN, :
 :
Defendants. :

80 CR 00249

United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

August 29, 1980
9:00 o'clock a.m.

B E F O R E :

HONORABLE GEORGE C. PRATT, U.S.D.J.

MICHAEL PICCZZI
OFFICIAL COURT REPORTER

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4 United States Attorney for the
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7 Strike Force
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* * *

THE COURT: Good morning, ladies and gentlemen.

Since I spoke to you yesterday morning, has anyone talked to you about the case or made any attempt to talk to you about the case? If so, raise your hands.

Have any of you talked about the case among yourselves?

Have you read or seen anything on television or heard anything on radio outside the courtroom about the case?

Very good.

We are now at the stage of the trial where you are about to undertake your final function as jurors. Your duty is a serious and important one. In performing it you actively share with me the responsibility of administering justice according to law and the evidence in this case. Your oath as jurors obliges you to discharge this final task in an attitude of complete fairness and impartiality -- and, as was emphasized by me when you were selected as jurors -- without bias or prejudice, for or against the Government or the defendant as parties to this controversy.

You must not permit yourselves to be governed by sympathy, prejudice or public opinion, or any other consideration which is not founded in the evidence and in these instructions on the law. The Government, the defendant, and the public all expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by me and reach a just verdict, regardless of the consequences.

This case is important to the Government, since the enforcement of the criminal laws is of prime importance to the welfare of the community.

Obviously, it is equally important to the defendants, who are charged with serious crimes and have the right to receive a fundamentally fair trial, and the community has an interest in that, too.

The fact that the Government is a party entitles it to no greater consideration than that accorded to any other party to a litigation.

By the same token, it is entitled to no less consideration.

All parties, the Government and individuals alike, stand as equals before the bar of justice.

In these instructions I shall describe for you first the general principles applicable to all

Charge of the Court

criminal trials, and the nature of the charges in this case, next the specific rules of law which are applicable to those charges, and finally something about how you should reach a verdict.

First, as to the general principals applicable to all criminal trials.

To begin with, keep in mind that I have no view whatsoever of the guilt or innocence of these defendants. My function now is to instruct you as to the law.

And it is your duty to accept these instructions as to the law and to apply them to the facts as you may find them.

With respect to any fact matter, it is your recollection, and yours alone that governs. Anything that counsel, either for the Government or the defense may have said with respect to matters in evidence -- whether during the trial, in a question, in argument, or in summation -- is not to be substituted for your own recollection of the evidence.

So, too, as to any matter in evidence, anything that I may have said during the trial, or may refer to during the course of these instructions, is not to be taken in place of your recollection.

Charge of the Court

Your final role in this case is to decide and pass upon the fact issues in the case.

You are the sole and exclusive judges of the facts.

You determine the weight of the evidence; you appraise the credibility of the witnesses; you draw the reasonable inferences from the evidence.

You finally determine the guilt or innocence of these defendants.

The indictment is merely an accusation -- a charge. It is not evidence of the defendants' guilt.

Since the defendants have pleaded "not guilty", the Government has the burden of proving the charges against the defendants beyond a reasonable doubt.

A defendant does not have to prove his innocence. On the contrary, a defendant is presumed to be innocent of the accusations contained in the indictment.

As to each defendant, this presumption of innocence was in his favor at the beginning of the trial; it continued in his favor throughout the entire trial. It is in his favor even as I instruct you now, and it remains in his favor during the course of your deliberations in the jury room.

The presumption of innocence is removed only if and when you are satisfied that the Government has sustained its burden of proving the defendant's guilt beyond a reasonable doubt. If the Government has failed to sustain its burden, then the presumption of innocence alone is sufficient to acquit him.

I have used the term "reasonable doubt." What is a reasonable doubt?

The words almost define themselves -- that there is a doubt founded in reason and arising out of the evidence in the case, or the lack of evidence.

It is a doubt which a reasonable person has after carefully weighing all the evidence.

Reasonable doubt is a doubt which appeals to your reason; to your judgment; to your common sense and your experience.

It is not caprice, whim, speculation, conjecture or suspicion; it is not an excuse to avoid the performance of an unpleasant duty; it is not sympathy for a defendant.

If, after a fair and impartial consideration of all the evidence, you can, candidly and honestly, say you are not satisfied of the guilt of a defendant -- that you do not have an abiding conviction of his

guilt --

In sum, if you have such a doubt as would cause you, as prudent persons, to hesitate before acting in matters of importance to yourselves, --

Then you have a reasonable doubt, and in that circumstance it is your duty to acquit.

On the other hand, if after such an impartial and fair consideration of all the evidence, you can, candidly and Honestly, say you do have an abiding conviction of a defendant's guilt -- such a conviction as you would be willing to act upon, in important and weighty matters in the personal affairs of your life, then you have no reasonable doubt, and under such circumstances, it is your duty to convict.

Reasonable doubt does not mean a positive certainty, or beyond all possible doubt.

If that were the rule, few persons, however guilty they might be, would be convicted.

Since it is practically impossible for a person to be absolutely and completely convinced of any controverted fact, the law in a criminal case is that it is sufficient if the guilt of a defendant is established beyond a reasonable doubt -- not beyond all possible doubt.

Charge of the Court

Nor is it the Government's burden to prove each and every bit of evidence to be true beyond a reasonable doubt. Its burden is to prove beyond a reasonable doubt each and every essential element of the crime charged, and I will say more about the essential elements of these crimes in a moment.

Although reasonable doubt may arise from the failure of the Government to produce evidence, the law does not require the prosecution to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require the prosecution to produce as exhibits all papers and things mentioned in the evidence.

A defendant is not obligated to present evidence in his favor. He had the right to rely on the failure by the Government to prove its case. He may also rely on evidence brought out on cross-examination of witnesses called by the Government. On the other hand, a defendant has the power to subpoena anyone in support of his position if he so chooses, and he may exercise that power, if he chooses.

I have used the term "inference". An inference

Charge of the Court

is a conclusion which reason and common sense lead you to draw from the facts which have been established by the evidence in the case. Always it is for you the jury to draw whatever inferences may be called for by the evidence.

Evidence may be either direct or circumstantial.

Direct evidence is that which is given of actual or personal knowledge of the fact in question. One, who with his own eyes sees a man fire a gun at another man, and then tells what he saw, has given direct evidence of the shooting.

In the absence of direct evidence, however, reliance is often placed upon circumstantial evidence which does not tend to establish the fact in question directly, but rather does so indirectly by establishing surrounding circumstances from which the fact in question can be inferred.

Thus, if our witness to the shooting had not actually been there to see it, but after hearing a shot, arrived moments later, and saw one man holding a smoking gun and the other lying on the ground, bleeding, his testimony would tend to prove the shooting. But it would be indirect or circumstantial

Charge of the Court

evidence since it would be evidence of surrounding facts from which the fact in question, the actual shooting, might be inferred.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires, that, before convicting, the jury be satisfied of a defendant's guilt beyond a reasonable doubt from all the evidence, both direct and circumstantial.

What is the evidence in the case which you may consider? It consists of:

1. Sworn testimony of witnesses regardless of who may have called them;
2. Exhibits received in evidence regardless of who may have produced them;
3. Facts which may have been admitted or stipulated.

What is not evidence?

1. Statements or arguments of counsel in opening, summation or made during the trial are not evidence.
2. Any statements I may have made are not evidence.
3. Any testimony I may have stricken from the

Charge of the Court

record and told you to disregard is not evidence.

4. Questions to which objection has been sustained are not evidence, and you must not speculate on what the answer might have been had I permitted the answer to be given.

As you noticed, during the trial, objections were made and rulings on evidence given. You should draw no inferences from the comparative frequency of objections of one or the other side or from the comparative record in having objections sustained. Where an objection to a question was sustained, of course you must disregard the question and draw no inferences from its wording about the answer that might have been given. Where an objection was overruled, the evidence then received has no special weight just because it was not unsuccessfully objected to.

A difficult aspect of any jury's duty is to determine the credibility of the witnesses and to weigh their testimony.

You, the jurors, are the sole judges of the credibility of the witnesses. Credibility refers to the believability of their testimony and the weight their testimony deserves.

Charge of the Court

Your determination of the issue of credibility very largely must depend upon the impression that a witness makes upon you as to whether or not he is telling the truth or giving you an accurate version of what occurred.

When you come into a courtroom and sit in the jury box, while the trial is going on, when you are deliberating in the jury room, you have your common sense, your good judgment, and your experience with you.

You decide whether or not a witness was straightforward and truthful; whether the witness attempted to conceal anything; whether the witness had a motive to testify falsely; whether there was any reason why the witness might color his testimony.

In other words, what you try to do, to use the vernacular, is to size a person up just as you would do in any important matter where you were undertaking to determine whether or not a person is truthful, candid and straightforward.

Scrutinize the testimony given, and the circumstances under which each witness testified, and every matter in evidence which tends to show whether the witness was worthy of belief.

Charge of the Court

Consider each witness' (1) intelligence; (2) motive and state of mind; (3) demeanor and manner while on the witness stand; (4) the witness' own ability to observe the matters as to which he testifies -- whether he shall impress you as having an accurate recollection of these matters; (5) the relation each witness might bear to either side of the case; (6) the manner in which each witness might be affected by the verdict, and (7) the extent to which, if at all, each witness is either supported or contradicted by other evidence.

If you find that any witness -- and this applies alike to Government and Defense -- wilfully testified falsely as to any material fact, you have a right to reject the testimony of that witness in its entirety, or you may accept that part or portion which you believe to be credible.

The fact that some government witnesses may be government employees does not entitle their testimony to any greater weight or consideration than that afforded to any other witness in the case.

You will evaluate their credibility the same way you do that of any other witness.

The weight of the evidence is not necessarily

Charge of the Court

determined by the number of witnesses testifying on either side. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of greater credence. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

Inconsistencies or discrepancies within a witness' testimony or between the testimony of different witnesses may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently. Innocent misrecollection, like vague recollection, is not an uncommon experience. In weighing the effect of a discrepancy, consider whether it pertains to a matter of importance or unimportant detail and whether the discrepancy results from innocent error or intentional falsehood.

The ultimate question for you to decide in passing upon the credibility of any witness is: Did the witness tell the truth here before you as to essential matters?

A few words about prior statements. This causes some special problems in the law.

Charge of the Court

Generally speaking, evidence comes to you from the witnesses who testify here in the courtroom. Under some circumstances, however, prior statements which a witness has made may also be admissible.

In this trial there have been many references to statements which various witnesses have made before they testified here. Some of those prior statements have been oral, some were in the form of reports made by government officers, some were written and had been signed by the witnesses, and some had been given under oath in the course of another trial or in grand jury or other proceedings.

Now I must discuss with you what use you may make of such statements, for the proper use of a prior statement may vary with who the witness is, with the particular statement, with its relationship to the witness' testimony, with what the witness says about it, and with the purpose for which it was presented to you.

In the first place, all of a witness' prior statements which you have heard may be weighed and considered by you in evaluating the truth or falsity of what that witness said here in the courtroom -- that is, in determining the credibility of the witness'

testimony.

In evaluating any witness' prior statement, you may take into consideration both the nature of the examination here, and the purpose of the statement on the prior occasion. You may also take into consideration normal variations in retelling an event in order to determine whether the statements are truly inconsistent or merely a difference in describing an occurrence.

If you find an inconsistency it is for you and you alone to determine whether the inconsistency is to a material or immaterial fact, and what effect the inconsistency may have on the witness' credibility.

A witness, however, may be inaccurate, contradictory, or even untruthful in some respects, and yet be entirely credible in the essentials of his testimony.

Now, in addition to helping you determine credibility, some prior statements of a witness may also be considered and weighed by you as substantive evidence in the case. This is permitted by the applicable rules in three circumstances:

1. If the witness acknowledged here that he made the statement and that it was true;

Charge of the Court

2. If the statement was inconsistent with the witness' trial testimony and was made under oath in a trial, hearing, deposition or other proceeding such as a grand jury proceeding;

3. If the statement was made by a defendant it may be used as substantive evidence against him although not against a codefendant unless you make some specific findings in connection with the conspiracy count which I will discuss later .

Whether a prior statement is consistent or inconsistent is a fact question solely for your determination. You also determine whether a witness' prior failure to disclose information, when the opportunity to do so presented itself, is inconsistent with his present testimony. In making that determination you should consider all the facts and circumstances attendant at the time of making the prior statement or the omission of information.

In summary, with respect to prior statements, all the prior statements you have heard may be considered by you in determining the credibility of the witness who made the statement.

In addition to its use on credibility, however, a prior statement may be given substantive weight:

Charge of the Court

1. If the witness testified that he made it and it was true.

2. If the statement was inconsistent with the trial testimony and was made under oath as part of another proceeding.

3. If the witness was a defendant.

In the last analysis, of course, it is for you to determine in the light of these and my other instructions what weight you will give to the testimony of each witness.

The day before yesterday I explained to you about expert witnesses, how they differ from other witnesses. I said at the time I would repeat it in my instructions now. It was only a short time ago and I will not repeat it. If any of you feel you want that instruction repeated, you may request it by a note. I will be happy to outline it for you again.

Ellis Cook acknowledged that he had been granted immunity from prosecution in connection with his testimony here.

One who testifies under a grant of immunity with a promise from the Government that he will not be prosecuted is a competent witness. His testimony may be received in evidence and considered by the jury

Charge of the Court

even though not corroborated or supported by other evidence.

Such testimony, however, should be examined by you with greater care than the testimony of an ordinary witness. You should consider whether the testimony may be colored in such a way as to further the witness's own interest, for a witness who realizes that he may procure his own freedom by incriminating another has a motive to falsify. After such consideration, you may give the testimony of an immunized witness such weight as you feel it deserves.

The testimony of a witness may be discredited or impeached by showing that the witness has been convicted of a felony, that is, of a crime punishable by imprisonment for a term of one year or more. Prior conviction does not render a witness incompetent to testify, but is merely a circumstance which you may consider in determining the credibility of the witness. It is the job of the jury to determine the weight to be given to any prior conviction as impeachment.

Some of the testimony in this case comes from the witness Melvin Weinberg, who after he was arrested and indicted in Pittsburgh agreed to cooperate with the Government and become an informer for the F.B.I.

Charge of the Court

An informer is someone who provides evidence against a defendant in return for some personal benefit given him by the Government.

Here, you will recall Mr. Weinberg's testimony that in return for his cooperation his sentence was reduced from imprisonment to probation and he has been paid substantial sums of money by the Government.

If informers could never be used, of course, there would be many cases involving real and serious guilt in which convictions would not be obtainable. Their testimony, however, must be received with caution and weighed with care and given such weight as you deem it entitled to receive under all of the circumstances of the entire case.

The law does not prohibit the use of an informer, and whether you approve of their use is not to enter into your consideration of this case. In certain types of crime, the Government, of necessity, is frequently compelled to rely upon the testimony of persons with criminal records, or informers, otherwise, it would be difficult to detect or prosecute some wrongdoers, and this is particularly true in bribery cases.

Charge of the Court

The law does not compel a defendant in a criminal case to take the witness stand and testify, and no presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact that three of the defendants in this case did not testify. Therefore, the jury should not even discuss the fact that the three defendants did not testify.

The law never imposes upon a defendant in a criminal case the burden or duty of producing any evidence. But a defendant may present himself as a witness, as the defendant Myers did in this case. In that event, the defendant is subject to cross-examination. As you have observed, and his credibility is for you, the jury, to determine, in the same manner as other witnesses.

Obviously, a defendant has a deep personal interest in the result of his prosecution; indeed, it is fair to say he has the greatest interest in its outcome.

Interest creates a motive for false testimony, and a defendant's interest in the result of his trial is of a character possessed by no other witness.

In appraising his credibility, you may consider

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that a defendant has a strong motive to lie to protect himself, but you may also consider that he takes a real risk by subjecting himself to cross-examination.

In addition, simply because a person has a vital interest in the end result, it by no means follows that he is not capable of telling a truthful and straightforward story.

It is for you to decide to what extent, if at all, defendant's interest has affected or colored his testimony.

We turn now to the specific charges against these defendants as set forth in the indictment.

Keep in mind that the defendants are on trial only for the crimes alleged in the indictment and for no other crimes.

Thus, we are dealing with the three crimes or counts of the indictment. The first one is conspiracy, the second bribery, and the third interstate travel. Those are loose descriptions for them.

You are free to discuss and decide the issues in any order you choose. But I suggest to you your work might be easier if you would take up first the bribery count, that is, Count Two of the indictment, then the interstate travel count, Count Three, and

finally the conspiracy count, Count One.

For reasons of convenience and helping you to understand the issues, that is the order in which I will discuss these counts.

With each of the charges I will review with you the statute, the indictment, and the essential elements of the crime.

The statute, of course, is the law passed by Congress, that the defendants are charged with violating.

The indictment sets forth the specific crimes of which the defendants are accused.

The essential elements are those factors which must be established beyond a reasonable doubt for a defendant to be guilty of a charged crime. Each of the essential elements of the three crimes I will discuss with you in some detail.

With respect to Count Two of the indictment, each of these counts by the way has an introductory paragraph, and I will give a copy of the indictment to you for your deliberations. There is an introductory paragraph with respect to each of the three counts and that identifies who is who in this case. It describes the defendant Myers as a member of the

United States House of Representatives, representing the First Congressional District of Pennsylvania; the defendant Errichetti as Mayor of Camden, New Jersey, and a member of the State Senate of the State of New Jersey; the defendant Johanson, a member of the City Council of Philadelphia and a member of the law firm of Criden, Johanson, Dolan, Morrissey & Cook; it identifies the defendant Criden as a member of the law firm; Anthony Amoroso, Jr., Ernest Haridopolos, and Michael Wall as special agents of the FBI acting in an undercover capacity, using the names respectively Tony DeVito, Ernie Poulos, and Michael Cohen, who purported to represent foreign business men from the Middle East who were seeking to invest money in the United States and planned to emigrate to the United States. It identifies Mel Weinberg as a private citizen assisting the FBI, who purported to be an employee of the aforesaid foreign business men.

All that is incorporated by reference in Count Two. The body of Count Two is set forth in the second paragraph which I would read to you. This is the bribery count. It reads as follows: On or about and between the 26th day of July, 1979

and the 2nd day of February, 1980, within the Eastern District of New York and elsewhere, the defendant Michael O. Myers, aided and abetted by the defendants Angelo J. Errichetti, Louis C. Johanson and Howard L. Criden, unlawfully, wilfully and knowingly did directly and indirectly corruptly ask, demand, exact, solicit, seek, accept, receive and agree to receive a sum of money from Special Agents Amoroso, Haridopolos and Wall for himself and other persons and entities in return for the defendant Michael O. Myers being influenced in his performance of official acts as a member of Congress, to wit, his decisions and actions in a matter involving immigration, residency and citizenship of foreign nationals, which might at any time be ending or which might by law be brought before the House of Representatives and departments, agencies, and branches of the Government of the United States, and in return for the defendant Michael O. Myers being influenced to commit, aid, in committing, collude in and allow fraud, and to make opportunity for the commission of fraud on the United States.

That is all alleged to be in violation of two sections of Title 18 of the United States Code,

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Charge of the Court

Sections 2 and 201 subdivision (c).

Section 2 covers aiding and abetting. That is a section which involves defendants Errichetti, Johanson, and Criden.

(Continued on next page.)

Charge

Now, I'll discuss that section two with you in a moment.

First, however, we must focus upon Section 201(c), the bribery section which the defendant Myers is charged with violating. Now, Section 201(c) provides that:

"Whoever, being a public official, directly or indirectly corruptly asks, demands, exacts, solicits, seeks, accepts, receives or agrees to receive anything of value for himself or for any other person or entity in return for being influenced in his performance of any official acts" shall be guilty of a crime.

To prove the defendant Myers guilty under this charge of Count 2, the Government must establish four essential elements; one, that on August 22, 1979, the defendant Myers received a sum of money; two, that when he did so, he was a public official; three, that he received the money in return for being influenced in his performance of an official act; and four, that he so acted knowingly, wilfully and corruptly. Each of these elements must be established beyond a reasonable doubt. The law never imposes on a

Charge

defendant in a criminal case the burden or duty of presenting any evidence or calling any witnesses.

Now, let us discuss each of these essential elements. The first is that on August 22, 1979, the defendant Myers received a sum of money. The Government contends that on August 22, 1979, at the International Inn at Kennedy Airport, the defendant Myers received from FBI Agent Amoroso, posing as Tony DeVito, an envelope containing \$50,000. Defendants do not contest this element. It is for you to determine, based on the evidence, whether it has been established beyond a reasonable doubt.

The second essential element is that, at the time he received the money, that is, on August 22, 1979, the defendant Myers was a public official. The statute specifically defines a public official as including a member of Congress. It is not contested that, at the time in question, defendant Myers was a member of the House of Representatives, representing the First Congressional District of Pennsylvania, and was therefore a public official within the meaning of the statute.

The third essential element is that the

defendant Myers received the money in return for being influenced in his performance of an official act. And official act is defined by the statute to be, "Any decision or action on any question, matter, cause, suit, proceeding or controversy which may at anytime be pending or which may by law be brought before any public official in his official capacity, or in his place of trust or profit."

Here, the Government alleges that the official acts were decisions and actions of defendant Myers as a member of Congress in a matter involving immigration, residency and citizenship of foreign nationals which might at some time be pending or which by law may brought before the House of Representatives and departments, agencies and branches of the United States. Specifically, the Government claims that defendant Myers agreed, in return for the money, to assist a "Sheik" -- let me put that in quotation marks -- whom Amoroso claimed to represent in coming to or remaining in this country by introducing into Congress a private immigration bill and by using his influence as a Congressman with officials in

1
2 State Department to favorable affect the Sheik's
3 residency status here.

4 A promise by a Congressman to introduce
5 or support a private immigration bill would be a
6 promise to perform an official act within the
7 meaning of this Federal Bribery Statute. A
8 promise by a Congressman to use the influence of
9 his position and office to affect decisions of
10 departments and agencies of the Government of the
11 United States could also be a promise to perform
12 an official act; and this could include a promise
13 to intervene before the Executive Branch of the
14 Government to facilitate an alien's entry into
15 this country, to stay his deportation, or to
16 procure permanent resident status for him.

17 Defendants do not deny that defendant Myers
18 said the things that you have seen and heard him
19 say on the video tapes. They contend, however,
20 that he did not intend to be influenced in any
21 official acts for the Sheik , and that he was
22 only pretending to acquiesce in the bargain with
23 Amoroso. The charge of bribery under Section 201(c)
24 focuses directly upon what was defendant Myers'
25 intent when he took the money. Did he intend, when

Charge

the time came, to help the Sheik, to introduce a private bill into Congress, to intervene with State Department officials? Or did he merely pretend that he would do so without actually intending to follow through on his promise? This matter of defendant Myers' intent when he took the money is the central issue on this element.

How do you determine what was his intent? Intent is a state of mind and, of course, it is not possible to look directly into a man's mind to see what went on. The only way you have of arriving at the intent of the defendant in this case is for you to take into consideration all the facts and circumstances shown by the evidence, including the video tapes and the other exhibits, and determine from them what was Myers' intent. Thus, a defendant's intent may not be proved directly but maybe inferred from his words, and acts, and from such inferences as may arise from a combination of words and acts, even though anyone of them, taken by itself, might seem unimportant.

Not every payment or contribution received by a Congressman constitute bribery. To violate Section 201(c), the payment received must be

1 accompanied by a specific intent on the part of
2 the Congressman to be influenced in the manner
3 specified in the indictment. That intent is not
4 supplied merely by the fact that the payment was
5 received with some generalized understanding
6 or expectation of benefit or good will to the donor.
7 In order to establish the offense of bribery, the
8 Government must show that the money was received
9 by Congressman Myers with the intent to pursue
10 a specific course of conduct. The Government is
11 not required, however, to show either that
12 defendant Myers actually carried out his promise
13 or that he performed any acts in an attempt to
14 do so; nor is the Government required to show that the
15 promised official acts would have been accomplished.
16 The promise does not cease to relate to an official
17 act simply because the undercover agent offering
18 the bribe knows that the subject of the promised
19 legislative action is fictitious and that the
20 promise will not actually be performed.

21 What the statute focuses upon is the
22 Congressman's actions and the state of mind. Thus, the
23 fact that the Sheik did not exist but was a
24 fictitious person is not material to this case.
25

Charge

It is enough if defendant Myers believed that the Sheik existed and accepted the money in return for being influenced in his future official acts on the Sheik's immigration, residency or citizenship status.

Moreover, in considering the guilt or innocence of a defendant who is accused of bribery, it makes no difference that the object of the bribe itself may be lawful activity. The purpose of the law is to protect the integrity of official acts against the possible temptation to act in other than a proper manner which may result from the payment of money to influence such an official act. While it is not necessary, as I said earlier, for the Government to show that Myers actually carried out the acts which were the subject of his promise, you may, however, consider the absence of any evidence showing that Congressman Myers performed any act to implement the promises charged in the indictment as bearing on the question of whether, when he took the money, he intended to use influence in his performance of official acts.

Similarly, in determining what was defendant Myers' intent when he took the money on August 22,

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1979, you may weigh and consider, along with the other evidence in the case, his subsequent words and conduct at the Barclay Hotel on January 24th, and 25, 1980, as recorded on the video tapes, Government's Exhibits 7 and 8. After weighing all these considerations and the evidence in the case, you must determine whether the Government has established beyond a reasonable doubt this third essential element, that defendant Myers took the money in return for being influenced in his performance of an official act.

The fourth essential element is that defendant Myers acted knowingly, wilfully and corruptly. An act is done knowingly when done voluntarily and purposely and not because of mistake, accident, misunderstanding or other innocent reason. An act is done wilfully when done voluntarily and intentionally and in violation of a known legal duty. An act by a public official is done corruptly when done voluntarily and intentionally and with the bad purpose of accomplishing either an unlawful end or result or a lawful end or result by some unlawful means.

The motive to act corruptly ordinarily is

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with the hope or expectation of, or in return for, either financial gain or other benefit to one's self or some aid, profit or benefit to another. So, a public official acts corruptly whenever he wilfully solicits or accepts money in return for being influenced in his official action. It does not matter that he intends to turn over all or part of it to others.

In short, on this element, you must determine on all the evidence whether defendant Myers acted knowingly, wilfully and corruptly. In summary, up to this point, in order to determine whether defendant Myers is guilty of violating Section 201(c) under Count 2 of the indictment, you must decide whether the Government has established beyond a reasonable doubt each of the four essential elements; one, that on August 22, 1979, he received a sum of money; two, that when he did so, he was a public official; three, that he received the money in return for being influenced in his performance of an official act; and four, that he so acted knowingly, wilfully and corruptly.

If the Government has established each of these elements beyond a reasonable doubt, you must

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find defendant Myers guilty, on Count 2, of receiving a bribe. If you determine that defendant Myers is not guilty of this bribery charge, then you must consider whether defendant Myers is guilty under Count 2 of the crime of receiving a criminal gratuity in violation of Section 201(g).

Now, this is a lesser offense that is included in the charge that is alleged under Count 2; that is, receiving a criminal gratuity is a lesser offense with different elements than receiving a bribe. I will instruct you as to the elements of the crime of receiving a criminal gratuity in a moment, but keep in mind that you are to consider the criminal gratuity charge only if you decide to acquit defendant Myers on the bribery charge. He can be convicted of one crime or the other, not both. You may, of course, decide to acquit defendant Myers on both the bribery and gratuity charges. You should not compromise on the lesser charge because you can't reach an agreement. Unless 12 of you determine that the defendant is guilty of a crime, he cannot be found guilty.

Excuse me just a moment.

Charge

(Pause.)

THE COURT: Now, let's talk about this charge of receiving a criminal gratuity. Section 201(g), dealing with receiving gratuities, provides in pertinent part that:

"Whoever, being a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly receives anything of value for himself, for or because of any official act performed or to be performed by him" shall be guilty of a crime.

Now, there are five essential elements that are necessary to establish defendant Myers' guilt of the crime of receiving a criminal gratuity under this Section 201(g). Those five elements are, one, that on August 22, 1979, defendant Myers received a sum of money; two, that at the time, he was a public official; three, that he received the money otherwise than as provided by law for the proper discharge of his official duty; four, that he received the money for or because of an official act to be performed by him; and five, that he so acted knowingly and wilfully. These gratuity elements can be understood perhaps

Charge

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2 a little better by comparing them with the elements.
3 under the bribery statute that I discussed with
4 you a moment ago.

5 Now, the first and second elements are the
6 same as those that I discussed with you under the
7 bribery charge and I don't have to repeat those
8 instructions again. The third element here is that
9 defendant Myers received the money, "Otherwise
10 than as provided by law for the proper discharge
11 of his official duty." This element is included
12 in order to make it clear that lawful fees, properly
13 paid to public officials, such as salary, expense
14 reimbursement, filing fees and things of that
15 sort, are not payments forbidden by the statute.
16 There is no suggestion by either side that the
17 \$50,000 payment to the defendant Myers was salary,
18 expense money or a fee or other kind of payment
19 authorized by law.

20 You will recall that under the bribery
21 charge, payment must have been received corruptly.
22 Here, it need only have been a payment not provided
23 by law for the discharge of official duty.

24 The fourth element is that the defendant
25 Myers received the money for or because of an

Charge

official act to be performed by him. The law that prohibits receiving gratuities, as I have said, is called a lesser included offense under the law that prohibits receiving bribes. Its purpose is to prohibit a public official in the course of his official duties from receiving additional compensation as a tip or gratuity for or because of an official act. This requires you to consider why the payment was made and received.

(Continued on next page.)

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From the point of view of Government agents, of course, no official acts were actually expected to be done by defendant Myers. But as I have already explained the fact that the Sheik was a mythical person and that his representatives were Government agents engaged in a sting operation is immaterial to your decision. What you must do, then, is to view what happened from Congressman Myers' point of view, for what you must determine is whether he committed this crime. Thus, you must determine whether this payment was received by Myers because of an official act. This requires you to evaluate his knowledge at the time from his point of view. Was he paid because he was a Congressman? From his point of view, were the matters to which the payment related ones which were within the scope of his official functions as a Congressman? From his point of view, was the payment made because of some official act the Sheik might ask him to perform in the future?

To find a violation on the charge of receiving a bribe, as I instructed you earlier, you must find that a public official had a specific intent to be influenced in the performance of his official

Charge

acts.

In order to find a violation on this charge of receiving a gratuity, it is not necessary to find such a specific intent. The Government must prove that the purpose of receiving the payment was to receive an additional reward, gratuity or tip because of an official act performed or to be performed by the Congressman. The payments may be a violation even in the absence of evidence that the giver sought a particular preference or that the receiver specifically intended to give one. Again, it is not necessary under this Section that the Government prove that the payment actually caused or prompted or affected any official act, nor need the Government prove the extent or the manner or exact means by which the official acts might have been done. But the Government must establish beyond a reasonable doubt that the payment was received because defendant Myers was a Congressman and because of some official act to be performed by him in his position as a Congressman.

In addition to promises made by defendant Myers on the tapes to introduce a private immigration bill to the Sheik, if it was to be needed,

Charge

1 and otherwise to assist him in his immigration
2 problems here, defendant Myers also promised to
3 use his influence on the Sheik's behalf in
4 connection with a variety of other matters; the
5 hotel, the Atlantic City casino, port development
6 in Philadelphia, and so forth. These other matters,
7 of course, are State or local, but not Federal
8 matters and, therefore, activity by Myers in
9 connection with them would not be an official
10 act by him as a Congressman. Thus, if you find that
11 the payment was received by Myers because of the
12 local matters and not because of the immigration
13 matter, or if you find it was not because of any
14 of them, then it would not be because of an official
15 act. If, however, you find that the payment
16 was received by Congressman Myers because of a
17 combination of things, including the immigration
18 matter, then you may find that it was because of
19 an official act. The fact that the Federal
20 Immigration matter was combined with other non-federal
21 promises does not prevent the payment from being
22 because of an official act.

23 In your deliberations, you should first
24 determine the guilt or innocence of defendant Myers
25

Charge

on the charge of violating the law against receiving a bribe. If you find him guilty on that bribery charge, then there is no need for you to consider the lesser included offense, receiving a criminal gratuity. However, if you determine that defendant Myers is not guilty of the bribery charge, then you should go on to consider whether he is guilty or not guilty on the criminal gratuity charge.

Thus far, I have only talked about defendant Myers. Now, let's consider the other three defendants, Angelo Errichetti, Louis Johanson and Howard Criden. As I said before, they come in under Section 2 of the statute, the aiding and abetting section. We'll talk first about Count 2 of the indictment, although this also applies to Count 3.

Since those three gentlemen are not public officials as defined in the statute -- keep in mind that this is a Federal Statute and it defines public officials as Federal Public Officials -- these three cannot be guilty of violating Section 201(c) or 201(g) directly. However, the indictment does charge that defendant Myers was aided and abetted by the other three defendants in doing the

1 acts that Myers was charged with doing; and aiding
2 and abetting someone else to commit a crime may
3 in itself be a crime.

4 Thus, if you have found defendant Myers
5 not guilty under Count 2 of both charges, that is,
6 receiving a bribe and receiving a criminal gratuity,
7 then you'd have to find the other three defendants
8 also not guilty. But if you find defendant
9 Myers guilty of either receiving a bribe or
10 receiving a criminal gratuity, then you have to
11 consider the charge against the other three
12 defendants for aiding and abetting Myers criminal
13 conduct.

14 The aiding and abetting charge is brought
15 under 18 U.S. Code Section 2, which provides in
16 part that:

17 "Whoever commits an offense against the United
18 States or aids, abets, counsels, commands, induces
19 or procures its commission, is punishable as a
20 principal."

21 Where, as in the present case, two or more
22 persons are charged together with the commission
23 of an offense, the Government is not required
24 to prove that one of the defendants alone did all
25

of the things required to make out the offense.
On the contrary, under Section 2 that I just read,
all those who aid and abet the commission of an
offense or cause anything to be done which, if
directly performed, would be an offense, are
treated as equally guilty of the crime; that is,
they are punishable as principal offenders.
Hence, if a person wilfully unites his efforts with
one or more others to bring about the commission
of a crime, he is equally guilty with the others
and they with him, provided that he is conscious
of the nature of the criminal venture and intention-
ally associates himself in its furtherance and
actively participates in bring about the accomplish-
ment of the criminal venture.

Keep in mind, however, that mere association
is not a crime. There is no such thing under our
laws as guilt merely by association. The mere
presence of a defendant where a crime may have
occurred, even coupled with that defendant's
knowledge that a crime is being committed, or mere
negative acquiescence by a defendant in the criminal
conduct of others, even with guilty knowledge,
is insufficient to establish his guilt. An aider a-

Charge

abettor must have some interest in the criminal venture. In order to convict any of the defendants as an aider and abettor, you must be convinced beyond a reasonable doubt that he voluntarily and intentionally participated in the criminal venture in an effort to make it succeed.

You have heard the evidence relating to the participation of the defendants Errichetti, Criden and Johnson in the events of August 22, 1979, and leading up to that day. You must separately evaluate the evidence as to each of them and for each, you must determine whether the Government had established beyond a reasonable doubt that he voluntarily and intentionally participated with Congressman Myers in the receipt of a bribe or criminal gratuity in an effort to make the venture succeed. If so, you will find that defendant guilty. If not, you will find him not guilty.

Now, let's consider Count 3 of the indictment which charges the defendants with violating what is called the Travel Act, 18 U.S. Code Section 1952. Unless you found defendant Myers guilty under Count 2, that is, the receipt of a bribe or receipt of a criminal gratuity, unless you find

Charge

him guilty of one or the other of those, you must find all four of the defendants not guilty on this Count 3. If, however, you have found defendant Myers guilty on Count 2, then you must consider each defendant under this Count 3.

Now, Section 1952 of the Code provides in part that:

"Whoever travels in interstate commerce with intent to distribute the proceeds of any unlawful activity, or otherwise to promote or carry on any unlawful activity, and who thereafter distributes the proceeds or promotes or carries on the unlawful activity," is guilty of a crime.

The term, "unlawful activity," in this section is defined and includes a number of things; but one of the things that it includes is bribery.

Now, under that Section 1952, as well as under Section 2, which I discussed with you a moment ago, the aiding and abetting section, all four defendants are charged in Count 3 of the indictment as follows:

First, there is the general allegation that identifies the various participants. It is incorporated by reference. Then, part two of Count 3 alleges

Charge

that:

"On or about the 22nd day of August 1979, within the Eastern District of New York and elsewhere, Michael O. Myers, Angelo J. Errichetti, Louis C. Johanson and Howard L. Criden, the defendants, unlawfully, wilfully and knowingly did travel in interstate commerce from the States of New Jersey and Pennsylvania into the Eastern District of New York and did use facilities in interstate commerce with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of unlawful activity, said unlawful activity being bribery, in violation of Title 18, United States Code, Section 201, and did thereafter perform and attempt to perform acts to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of said unlawful activity, and to distribute the proceeds of said unlawful activity.

"3. It was a part of said unlawful activity that the defendant Michael O. Myers, aided and abetted by the defendants Angelo J. Errichetti, Louis C. Johanson and Howard L. Criden, would and

Charge

10 1
2 did directly and indirectly corruptly ask, demand,
3 exact, solicit, seek, accept, receive and agree
4 to receive a sum of money for himself and other
5 persons and entities in return for the defendant
6 Michael O. Myers being influenced in his performance
7 of official acts as a member of Congress and being
8 influenced to commit and collude in the commission
9 of fraud on the United States."

10 Now, for a violation of this Travel Act
11 count as charged in the indictment, there are
12 two essential elements that must be established
13 beyond a reasonable doubt. They are, one, that
14 on August 22, 1979, the defendants whom you are
15 considering -- you have to consider each of them
16 separately -- the defendant traveled in interstate
17 commerce; two, that he did so with intent to
18 promote or carry on the unlawful activity of
19 defendant Myers, that is, his receipt either of
20 a bribe or a criminal gratuity; three, that there-
21 after, that is, after he traveled with the intent,
22 he performed an act either to carry on or promote
23 the unlawful activity, or to distribute its
24 proceeds; and four, that the defendant acted
25 knowingly and wilfully. Again, the Government

Charge

1
2 establish each of these elements beyond a reasonable
3 doubt. The law never imposes on a defendant in a
4 criminal case the burden or duty of calling any
5 witnesses or producing any evidence.

6 Now, let us consider each of the elements
7 separately and remember that you must determine them
8 separately for each defendant. The first element
9 is that on August 22, 1979, defendant traveled
10 in interstate commerce. It is charged, and there
11 is evidence that on that date, each of the four
12 defendants traveled from either Pennsylvania or
13 New Jersey to the vicinity of Kennedy Airport
14 in New York State. Such travel would be in
15 interstate commerce, and, if you find it occurred,
16 it would satisfy this element.

17 The second element is that the defendants'
18 interstate travel was with intent to carry on or
19 promote the unlawful activity of defendant Myers.
20 The unlawful activity referred to is that which is
21 the subject of Count 2 of the indictment; that is,
22 either receiving a bribe or the lesser included
23 offense of receiving a criminal gratuity.

24 As to the defendant Myers, this second
25 element presents no special problems, since it was

Charge

1 his own unlawful activity in New York that was
2 the basis of the charge. As to the other three
3 defendants, however, you must analyze separately
4 the circumstances of each one's travel to New York
5 on that occasion and determine whether he made
6 the trip with intent to carry on or promote
7 defendant Myers' unlawful activity. You will
8 determine a defendant's intent from all of the
9 evidence which bears on his own knowledge and
10 conduct.
11

12 The third element is that, after traveling
13 to New York, the defendant performed an act either
14 to carry on or promote defendant Myers' unlawful
15 activity, or to distribute its proceeds. Under
16 this element, it is necessary that, after traveling
17 to New York, the defendant did some additional
18 act. The additional act may be one which carried
19 on or promoted defendant Myers' unlawful activity
20 of receiving a bribe or a criminal gratuity, or
21 it may be that he received or agreed to receive
22 part of the money that was paid to defendant
23 Myers. You have heard evidence with respect
24 to each defendants' participation in the events
25 of the day, and as to his sharing in the \$50,000

Charge

gift. It is for you to determine from that evidence whether the Government has established this third element beyond a reasonable doubt.

(Continued on next page.)

1 The fourth element is that the defendant
2 acted knowingly and wilfully, terms that I earlier
3 defined for you. In the context of this charge,
4 these requirements mean that, when the defendant
5 traveled in interstate commerce, intending to
6 promote Defendant Myers' unlawful activity, and
7 then performed an addition act to that end and
8 shared in the \$50,000 payment, did the defendant
9 act voluntarily and intentionally and in violation
10 of a known legal duty? Did he know what he was
11 doing? Did he know that Myers was to receive a
12 payment? Did he act freely and without compulsion?
13 Did he come to New York to participate in the
14 transaction? Did he know that the money he received
15 was part of the payment to Myers and was received
16 by Myers either as a bribe or as a criminal gratuity?
17 For a participating defendant, if the answers to
18 these questions are yes beyond a reasonable doubt,
19 then this fourth element would be satisfied.
20

21 In summary of Count three, the Travel Act
22 count, therefore, you must find for each defendant
23 four essential elements before you can find that
24 defendant guilty; one, that on August 22 of 1979,
25 he traveled in interstate commerce; two, that he

1
2 did so with intent to promote or carry on the
3 unlawful activity of defendant Myers; three, that
4 thereafter he performed an act either to promote
5 or carry on the unlawful activity or to distribute
6 its proceeds; and four, that he acted knowingly
7 and wilfully.

8 Now, let's turn to count one of the indict-
9 ment, the conspiracy count. Again, the first para-
10 graph is the introductory identifying paragraph.

11 "Paragraph two: On or about and between
12 the 26th day of July, 1979 and the 2nd day of
13 February, 1980, within the Eastern District of
14 New York and elsewhere, Michael O. Myers, Angelo
15 J. Errichetti, Louis C. Johanson and Howard L.
16 Cirden, the defendants, unlawfull, wilfully and
17 knowingly did combine, conspire, confederate and
18 agree together and with each other and with others
19 known and unknown to the grand jury to defraud the
20 United States and agencies and departments thereof
21 of the Government's right,

22 "a. To the faithful and honest
23 service of the Defendant Myers as a member
24 of Congress in relation to matters before
25 the House of Representatives, performed

free from corruption and fraud and uninfluenced by payments of money and other valuable consideration to himself and others;

"b. To have the official acts of the Defendant Myers as a member of Congress, in attempting to influence decisions of departments and agencies of the United States in relation to matters of immigration and residency, performed free from corruption, fraud and dishonesty, and uninfluenced by considerations of personal advantage and private financial gain to himself and others;

"c. To have the immigration and citizenship laws administered honestly and impartially, free from improper and undue pressure and influence;

"d. To have its officials and employees charged with enforcing the immigration and citizenship laws perform their official duties free from impairment and obstruction by the exercise upon them of corrupt, fraudulent, dishonest, unlawful, improper and undue pressure and influence;

"And did further conspire and agree to commit

an offense against the United States in violation of Title 18, United States Code, Section 201; to wit: The defendants Myers, Errichetti, Johanson and Criden, did conspire and agree together and with others, directly and indirectly corruptly to ask, demand, exact, solicit, seek, accept, receive and agree to receive a sum of money for the defendant Myers and other persons and entities in return for the Defendant Myers being influenced in the performance of official acts and being influenced to commit, aid in committing, collude in and allow fraud, and to make opportunity for the commission of fraud on the United States.

"Paragraph three: It was a part of the conspiracy that the Defendant Angelo J. Errichetti did advise Special Agent Amoroso and Melvin Weinberg that the Defendant Michael O. Myers would assist the aforesaid foreign businessmen to enter and remain in the United States in return for a cash payment of \$100,000.

"Four: It was further a part of the conspiracy that the defendant Michael O. Myers would agree to assist the foreign businessmen to enter and remain in the United States in return for the

cash payment of \$100,000.

"Five, it was further a part of the conspiracy that the defendant Michael O. Myers would give a portion of the aforesaid cash payment to the defendants Angelo J. Errichetti, Louis C. Johanson and Howard L. Criden.

"Six: It was further a part of the conspiracy that the Defendants Michael O. Myers and Angelo J. Errichetti did meet with Special Agent Amoroso and Melvin Weinberg and Defendant Michael O. Myers did receive a cash payment of \$50,000 in return for his assurances that he would introduce private immigration bills to enable the foreign businessmen to remain in the United States and would take such other action as would be necessary to achieve that end, including intervention with the Department of State.

"Seven: It was further a part of the conspiracy that the Defendant Michael O. Myers did share the proceeds of the \$50,000 payment with the Defendants Angelo J. Errichetti, Louis C. Johanson and Howard L. Criden and another individual known to the grand jury, and that the Defendant Myers did retain \$15,000 for his own

use and benefit.

"Eight: It was further a part of the conspiracy that the Defendant Michael O. Myers did subsequently solicit, demand and agree to receive an additional \$35,000 from Special Agents Wald and Haridopoulos in return for his assistance to the foreign businessmen in the aforesaid immigration matter because the defendant Myers had received \$15,000 for his own use and benefit instead of the \$50,000 which he had been told by the defendants Angelo J. Errichetti, Louis C. Johanson and Howard L. Criden that he would receive for his own use and benefit.

"In furtherance of the conspiracy and to effect the objects thereof, the Defendants committed the following overt acts, among others, within the Eastern District of New York."

The indictment then lists some twelve overt acts which I'm not going to read to you now, but I will shortly, when I get to that portion of the charge. All of this is alleged to be in violation of Title 18 United States Code Section 371, which provides:

"If two or more persons conspire either to

commit any offense against the United States, or to defraud the United States or any agency thereof in any manner or for any purpose, and one or more of such persons do any acts to effect the object of the conspiracy, each is guilty of the crime."

Thus, in effect, the defendants are charged with conspiracy to commit the crime we have already discussed under count two, having a Congressman receive a bribe or a criminal gratuity. If you have found Defendant Myers not guilty under count two, then you must find all defendants not guilty under count one.

Four essential elements are required to be proved in order to establish the offense of conspiracy charged in the indictment:

1, that the conspiracy described in the indictment was wilfully formed and was existing at or about the time alleged;

2, that the accused -- and you have to evaluate each of the four defendants separately-- that the accused wilfully became a member of the conspiracy;

3, that one of the conspirators thereafter knowingly committed at least one of the overt acts

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charged in the indictment at or about the time and place alleged; and four, that such overt act was knowingly done in furtherance of some object or purpose of the conspiracy as charged.

If the jury should find beyond a reasonable doubt from the evidence in the case that existence of the conspiracy charged in the indictment has been proved and that, during the existence of the conspiracy, one of the overt acts alleged was knowingly done by one of the conspirators in furtherance of some object or purpose of the conspiracy, then proof of the conspiracy offense charged is complete and it is complete as to every member found by the jury to have been wilfully a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators did the overt act.

As I stated before, the burden is always upon the prosecution to prove beyond a reasonable doubt every essential element of the crime charged. The law never imposes on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Now, let's consider each of the essential

elements in turn.

After the first element, that the conspiracy described in the indictment was wilfully formed and was existing at or about the time alleged, a conspiracy is a combination of two or more persons by concerted action to accomplish some unlawful purpose or to accomplish some lawful purpose by unlawful means; so a conspiracy is a kind of partnership in criminal purposes in which each member becomes the agent of every other member. The gist of the offense is a combination or agreement to disobey or to disregard the law. Mere similarity of conduct among various persons and the fact that they may have associated with each other and may have assembled together and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy. However, the evidence in the case need not show that the members entered into any express or formal agreements, or that they directly by words spoken or in writing, stated between themselves what their object and purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished.

Common sense will tell you that when people undertake to enter into a criminal conspiracy, much is left to unexpressed understanding. Explicit language and words are not required to indicate assent or involvement in a conspiracy.

What the evidence in the case must show beyond a reasonable doubt in order to establish that a conspiracy existed is that the members in some way or manner or through some contrivance positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

The evidence in the case need not establish that all the manners or methods set forth in the indictment were agreed upon to carry out the alleged conspiracy, nor that all means or methods which were agreed upon were actually used or put into operation, nor that all of the persons charged to have been members of the alleged conspiracy were such. What the evidence in the case must establish beyond a reasonable doubt is that the alleged conspiracy was knowingly formed and that one or more of the means or methods described in the indictment were agreed upon to be used in an effort to effect or accomplish some object of

1 the conspiracy as charged, and that two or more
2 persons, including one or more of the accused,
3 were knowing members of the conspiracy as charged
4 in the indictment.
5

6 As to the time of the conspiracy, it is not
7 essential that the Government establish that the
8 conspiracy began or ended on a specific date.

9 It is sufficient for this element if you
10 find that in fact, the conspiracy was formed and
11 existed for some time within the period set forth
12 in the indictment; that is, at some time between
13 July 26th, 1979 and February 2, 1980.

14 As to the essential elements, that the
15 accused wilfully became a member of the conspiracy,
16 one may become a member of a conspiracy without
17 full knowledge of all the details of the conspiracy.
18 A defendant need not know the identities of or
19 the precise number of all of the other members,
20 nor the entire scope of the conspiracy, nor all
21 of the means by which the objects or purpose
22 of the conspiracy were to be accomplished. Each
23 member of the conspiracy may perform separate
24 and distinct acts. There must, however, be
25 agreement by the conspirators on the essential

1 nature of the plan and on the time of criminal
2 conduct in fact contemplated. On the other hand,
3 a person who has no knowledge of the conspiracy
4 but simply happens to act in a way which furthers
5 some object or purpose of the conspiracy does not
6 thereby become a conspirator. It is necessary,
7 therefore, that the Government prove beyond a
8 reasonable doubt that the particular defendant
9 was aware of the common criminal purpose and
10 was a willing participant with intent to advance
11 the purpose of the conspiracy.

12 (continued on next page.)
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Charge of the Court

Before the jury may find that a defendant, any other person, has become a member of a conspiracy the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed, and that the defendant, or other person who is claimed to have been a member, wilfully participated in the unlawful plan, with the intent to advance or further some object or purpose of the conspiracy.

To act or participate wilfully means to act or participate voluntarily and intentionally, in violation of a known legal duty. So, if a defendant, or any other person, with understanding of the unlawful character of a plan, knowingly encourages, advises or assists, for the purpose of furthering the undertaking or scheme, he thereby becomes a willful participant -- a conspirator.

One who wilfully joins an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

In determining whether a conspiracy existed, the jury should consider the actions and declarations of all of the alleged participants. However, in determining whether a particular defendant was a member

Charge of the Court

of the conspiracy, if any, the jury should consider only his own acts and statements. He cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed, and that he was one of its members.

It is this rule that required many of the limiting instructions during the trial. You will recall that as to many of the conversations and tapes I instructed you that until I gave you further instructions you should consider those statements and actions only against the defendant who made them. Now I want to broaden that instruction. All of such statements may be weighed by you, as I originally instructed, in determining whether that defendant was a member of the conspiracy. If you find beyond a reasonable doubt, however, that a defendant was a member of the conspiracy, then all of his acts and statements made during and in furtherance of the conspiracy may be used and weighed against every other defendant whom you also find to have then been a member of the conspiracy.

Similarly, the acts and statements of the other members could also be weighed against him.

The indictment charges that the four defendants

conspired among themselves and with others. Under the evidence you may find that Ellis Cook was also a member of the conspiracy if he meets the standards I have described for you. If you make that finding, then you may also weigh his statements and acts during the conspiracy as binding upon those defendants who were also members at the time.

Ordinarily an act done or an admission or incriminatory statement made outside of court, by one person, may not be considered as evidence against any person who was not present and did not hear the statement made, or see the act done.

However, when it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed, and that a defendant was one of its members, then the statements thereafter knowingly made and the acts thereafter knowingly done, by any person likewise found to be a member, may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the statements and acts may have occurred in the absence and without the knowledge of the defendant, provided that such statements and acts were knowingly made and done during the continuance of the conspiracy, and in furtherance

Charge of the Court

of some object or purpose of the conspiracy.

Of course, a statement of a conspirator, which is not in furtherance of the conspiracy, or which is made before its existence, or after its termination, may be considered as evidence only against the person making it. Nor may a statement of one conspirator made after another conspirator has withdrawn from the conspiracy be considered against the withdrawn conspirator.

As to the third element: that one of the conspirators thereafter knowingly committed at least one of the overt acts charged in the indictment, at or about the time and place alleged... the indictment alleges twelve overt acts and I will read them to you.

1. On or about July 29, 1979, the defendant ERRICHETTI told Melvin Weinberg during a telephone conversation between Florida and New Jersey that the defendant MYERS was prepared to meet with Special Agent Amoroso and Weinberg.

2. On or about August 5, 1979, at John F. Kennedy International Airport, within the Eastern District of New York, the defendant ERRICHETTI met with Amoroso and Weinberg and told them that the defendant MYERS would assist the foreign businessmen

Charge of the Court

in an immigration matter in return for a payment of money.

3. On or about August 7, 1979, in Cherry Hill, New Jersey, the defendants ERICHETTI and CRIDEN had a meeting with Amoroso and Weinberg.

4. On or about August 22, 1979, the defendant CRIDEN travelled by automobile from Philadelphia, Pennsylvania, to John F. Kennedy International Airport accompanied by Michael Criden.

5. On or about August 22, 1979, the defendants MYERS and JOHANSON travelled by automobile from New Jersey to John F. Kennedy International Airport.

6. On or about August 22, 1979, the defendant ERICHETTI travelled by automobile from New Jersey to John F. Kennedy International Airport accompanied by Joseph DiLorenzo.

7. On or about August 22, 1979, the defendants MYERS, ERICHETTI, JOHANSON and CRIDEN had a meeting at John F. Kennedy International Airport.

8. On or about August 22, 1979, at the Travelodge International Motel, within the Eastern District of New York, the defendants MYERS and ERICHETTI had a meeting with Amoroso and Weinberg during which the defendant MYERS received Fifty Thousand Dollars

Charge of the Court

{ \$50,000.00 } in return for being influenced in his performance of official acts in an immigration matter on behalf of the foreign businessmen.

9. On or about August 22, 1979, the defendants ERRICHETTI and CRIDEN had another meeting at John F. Kennedy International Airport, said meeting being different from the meeting referred to in Overt Act 7.

10. On or about August 22, 1979, in Philadelphia, Pennsylvania, the defendants MYERS, JOHANSON and CRIDEN held a meeting at which a portion of the Fifty Thousand Dollars { \$50,000.00 } was divided among themselves.

11. On or about January 24, 1980, at the Barclay Hotel, Philadelphia, Pennsylvania, the defendants MYERS and CRIDEN had a meeting with Special Agents Wald and Haridopolos during which the defendant MYERS complained of his failure to receive Fifty Thousand Dollars { \$50,000.00 } for his exclusive use and benefit as a result of the August 22, 1979 meeting, and solicited, demanded and agreed to receive an additional Thirty-Five Thousand Dollars { \$35,000.00 } in return for his assistance in the immigration matter.

12. On or about January 25, 1980, at the Barclay Hotel, Philadelphia, Pennsylvania, the

Charge of the Court

defendant MYERS had a meeting with Special Agents Wald and Haridopoulos.

Those are the overt acts alleged in the indictment.

It is not essential that the Government prove performance of all twelve of these overt acts. All that is required to satisfy this element of the crime is that the Government prove beyond a reasonable doubt that at least one of them occurred while the conspiracy was in existence. And, as to each defendant found to be a member of the conspiracy, there must be proof that an overt act occurred during the time he was a member.

As to the fourth element: "That such overt act was knowingly done in furtherance of some object or purpose of the conspiracy charged."

An "overt act" is any act that is knowingly committed by one of the conspirators, in an effort to effect or accomplish some object or purpose of the conspiracy. The overt act itself need not be criminal in nature, if considered separately and apart from the conspiracy. It may be as innocent as the act of a man walking across the street, or driving an automobile, or using a telephone. It must, however,

Charge of the Court

be an act which follows and tends toward accomplishment of the plan or scheme, and must be knowingly done in furtherance of some object or purpose of the conspiracy charged in the indictment.

In your consideration of the evidence in the case, you should first determine whether or not the conspiracy existed, as alleged in the indictment. If you conclude that the conspiracy did exist, you should next separately determine whether or not each of the accused wilfully became a member of the conspiracy, and, if he did, during what time was he a member.

If it appears beyond a reasonable doubt from the evidence in the case that the conspiracy alleged in the indictment was wilfully formed, and that a defendant wilfully became a member of the conspiracy either at its inception or afterwards, and that thereafter, while the defendant was a member, one or more of the conspirators knowingly committed one or more of the overt acts charged in furtherance of some object or purpose of the conspiracy, then there may be a conviction of that defendant even though the conspirators may not have succeeded in accomplishing their common object or purpose, and in fact may have failed of so doing.

Charge of the Court

A defendant's guilt or innocence of the crime of conspiracy is not determined by the extent or degree of his participation. A defendant may be convicted as a conspirator even though he may have played only a minor part in the conspiracy.

You are further instructed, with regard to the alleged conspiracy offense, that proof of other conspiracies involving some of these defendants is not proof of the single conspiracy charged in the indictment. What you must do is determine whether the single conspiracy charged in the indictment existed between two or more conspirators. If you find that no such conspiracy existed, then you must acquit the defendants as to that charge. However, if you are satisfied that such a conspiracy existed, you must determine who were the members of that conspiracy.

If you find that a particular defendant was a member of another conspiracy, but not the one charged in the indictment, then you must acquit that defendant on the conspiracy count. In other words, to find a defendant guilty of conspiracy you must find that he was a member of the particular conspiracy charged in the indictment and not some other separate conspiracy.

Charge of the Court

Now, applying these general considerations to the conspiracy charged in Count One of the indictment, you must keep in mind the particular conspiracy with which these defendants are charged. It is to defraud the United States of the faithful and honest service of Congressman Myers and to have him receive money -- as a bribe or gratuity -- in connection with certain matters pertaining to the immigration, residency and citizenship of a fictitious Middle Eastern business man.

In short, the defendants are charged with a conspiracy relating to Congressman Myers and the immigration, residency and citizenship status of the Sheik. They are not, repeat not, charged here with any conspiracy with respect to: any other Congressmen; any Senators; any hotel projects or zoning problems in Philadelphia; any gambling casino projects in Atlantic City; any port development projects in Philadelphia; any dealings with organized crime unions, or local or state officials, or any other matters.

I have permitted you to hear evidence of discussions and meetings pertaining to those other matters, not because they were part of the conspiracy

Charge of the Court

charged here, but only because that evidence might help you determine three certain things:

1. Defendant MYERS' state of mind when he accepted the \$50,000 payment. Did he take the money in return for being influenced in immigration and residency problems the Sheik might have in the future? Did he take it because of an official act? Or was he only pretending that he would help the Sheik, without actually intending to do so?

2. Whether there was a common plan or scheme in the actions of Mr. Weinberg that was followed with these defendants.

3. The state of mind of the other three defendants -- ERICHETTI, JOHANSON and CRIDEN -- from their statements and conduct on such of those other occasions that any of them participated in. You may better be able to determine each of the participants' knowledge and intent with respect to the events charged here -- that is, whether each one acted in this conspiracy knowingly and wilfully.

Of course, with respect to each of those other matters, since they were outside the conspiracy charged in this indictment, you should consider the acts and statements made, to be evidence only against the

defendant who made them.

There are a few more comments I have to give you about limiting instructions. I mentioned them once before. I had given you limiting instructions with respect to the many tapes and conversations that you heard. In evaluating them, you should focus upon who participated, when did it occur, and then looking at the overall picture, who was in the conspiracy at that particular time. And any statements we are talking about of that nature you may weigh only against members of the conspiracy at the time the statements were made. Or against those people who actually made the statements.

You heard tapes and other testimony with respect to events pertaining to Senator Williams. Senator Williams is not part of this case. That is a separate transaction. It involves some parallels to what happened in the transactions that we are concerned with here. And the evidence there was offered for your consideration on the question of whether or not there was a common plan or scheme in the actions of Mr. Weinberg, so that you can determine whether or not what happened there did happen in the situation here.

1 Thirdly, the statement that was made by the
2 defendant JOHANSON to the FBI agent, that was made
3 after the conspiracy ended. And that statement may
4 be used only in connection with your deliberations
5 on Mr. Johanson. You may not use it against the other
6 defendants.

7 Similarly, the false statement made by the
8 defendant MYERS to Agent McHullen with respect to
9 not knowing the Sheik's representatives, that also
10 was made after the conspiracy was over and you may
11 use that only in connection with weighing the conduct
12 and state of mind of the defendant MYERS and not that
13 of the other defendants.

14 I just want to get this organized here.

15 Now, with respect to the events at the Barclay
16 Hotel on January 24, 25, Mr. Myers, Mr. Criden, and
17 just MYERS on another occasion, you will recall there
18 is some testimony that the defendant ERICHETTI was
19 out of the MYERS' transaction as of October or November
20 and if you find that to be so, of course, whatever
21 happened at the Barclay Hotel will be after he ceased
22 to be a member of the conspiracy, if you find a
23 conspiracy to have existed, and if you find he was
24 a member of it at an earlier date.
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Charge of the Court

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You may not weigh the events at the Barclay
as bearing against the defendant ERICHETTI if you
find that he was no longer a member of a conspiracy
there.

(Continued on next page.)

Charge

THE COURT: Also, with respect to what happened at the Barkley, that evidence I admitted to assist in determining what was the defendant Myers' state of mind back in August. Was he pretending? Did he take the money in return for being influenced in an official act? Did he take it because of an official act? Did he act knowingly and corruptly? Those are, as I indicated, issues which you must determine.

And you may weigh his conduct and statements in January in determining what his state of mind may have been back in August.

All right, in summary on the conspiracy count, based on the foregoing instructions and all the evidence in the case, you must determine for each defendant whether the Government has established beyond a reasonable doubt: One, that a conspiracy as described in the indictment was wilfully formed; two, that the defendant wilfully became a member; three, that at least one of the overt acts was committed by one of the conspirators while the defendant was a member; four, that the overt act was knowingly done in furtherance of the conspiracy.

Aiding and abetting versus conspiracy

1
2 with overt act.

3 You may have wondered what is the differ-
4 ence between conspiracy under Count 1 and aiding
5 and abetting under Count 2 that I discussed with
6 you. How do you distinguish between a conspiracy
7 to receive a bribe or criminal gratuity as charged
8 in Count 1 and aiding and abetting their commission
9 as charged in Count 2?

10 The two concepts are indeed similar, but
11 there is an essential difference.

12 In conspiracy, the essence of the crime
13 is the agreement. Once a person has agreed with
14 another to engage in criminal conduct, and one overt
15 act by any of the conspirators has been committed,
16 then the crime of conspiracy has been committed,
17 even if nothing further is done.

18 With aiding and abetting, however, it is
19 necessary not only that the substantive crime, that
20 is the receipt of a bribe or a criminal gratuity
21 actually occurred, but also that the aider and abettor
22 do some affirmative act himself in furtherance of
23 the substantive crime. That is, that he assist
24 and actively participate in some way to accomplish
25 the criminal venture.

It is important, ladies and gentlemen, that you focus on the precise issues before you. The defendants are on trial in this case for the three counts in the indictment.

(1) Conspiracy to defraud the United States by agreeing to deprive the Government of the faithful and honest service of Michael O. Myes, and agreeing to receive money as a bribe or as a gratuity.

(2) Receiving money as a bribe or as a gratuity; and

(3) Traveling interstate with the intent to promote and thereafter promoting the unlawful activity of receiving money as a bribe or as a gratuity.

Defendants are not on trial for any other crimes. Their guilt or innocence must be determined solely on the basis of whether the Government has established beyond a reasonable doubt the essential elements of the particular crimes charged.

Nor is the Government, or the FBI, or Melvin Weinberg on trial here. You have heard a great deal of evidence and argument about the

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FBI's ABSCAM operation and Mr. Weinberg.

As I explained to you earlier this week you are not to be concerned with whether the prosecution, or the FBI agents or Mr. Weinberg acted or whether the ABSCAM investigation was conducted legally or illegally, properly or improperly. Those are questions which must be decided by me at an appropriate time. But they are not questions which should affect your determination of the facts in this case and the guilt or innocence of the defendants. Your concern must be with what the defendants did or what they thought.

What the FBI agents and Mr. Weinberg did should concern you only to the extent that you find it affected the conduct and state of mind of a defendant or the credibility of any witnesses as to those matters.

You should also keep in mind that a trial is not a popularity contest.

Whether you like or dislike, or approve or disapprove of any of the participants - the attorneys, the defendants, Mr. Weinberg, Mr. DiLorenzo or any other witness -- should not enter

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into your evaluation of the evidence, your weighing of the testimony and your determining of the issues. You must fairly and impartially evaluate all the evidence in the case, and determine if the Government has established beyond a reasonable doubt evidence of the essential elements of the crime charged.

You are to draw no unfavorable inference against the defendants or any of them because of because of the fact that they were tried together. You must give separate consideration, and render a separate verdict with respect to each defendant. And each is entitled to have his guilt or innocence determined from his own conduct, and from the evidence which applies to him, as if he were being tried alone. Guilt or innocence is an individual matter, and when you deliberate upon the verdicts in this case, you must determine the guilt or innocence of each defendant separately and individually.

As I have told you, however, unless you find defendant Myers guilty under Count 2, of receiving either a bribe or a gratuity, you may not find him guilty under Count 1 or 3, nor may you

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find any other defendant guilty on any of the charges. If you do find the defendant Myers guilty under Count 2, however, then you may find any of the defendants either guilty or not guilty on any and all of the counts in the indictment.

With respect to each crime charged against the defendant, the Government must prove every element of the crime charged beyond a reasonable doubt. If the Government fails as to any element, you must acquit as to that crime.

The fact that one element of the crime may or may not exist has no bearing upon any other element.

If you conclude that one element of the crime has been established, you may not infer solely from the existence of that element the existence of any other element of the crime.

If any element of the crime has not been established beyond a reasonable doubt, your verdict must be "not guilty". On the other hand, you must convict the defendant if each of the elements of the crime has been proved beyond a reasonable doubt.

I have sought not to comment on the evidence

Charge

in any detail or to give any impression as to my own view, if I have one, of the relative weight of the evidence. However, if I have done so inadvertently, I ask you to disregard it entirely, because you are the sole judges of the facts.

Under your oath as jurors, you cannot allow a consideration of the sentence which may be imposed upon a defendant, if he is convicted, to enter into your deliberations, or to influence your verdict in any way. In the event of a conviction, the duty of imposing sentence rests solely with me.

In your deliberations, you are not to consider whether you approve or disapprove of the statutes which the defendants are charged with violating. The only question for you to consider is whether the Government has proved beyond a reasonable doubt the essential elements of the crimes as I have explained them.

Now, let us discuss your deliberations -- how you should go about reaching your verdict.

When you retire to the jury room, your first duty will be to elect your foreman or forelady, who will preside over your deliberations.

Charge

During your deliberations, you should assume the attitude of judges of the facts rather than partisans or advocates.

Some of you have kept notes during the trial. You may take those notes with you to the jury room for your deliberations. Of course, just because one juror may have written down a note as to some bit of evidence does not necessarily mean his notation is correct. We all make mistakes in note taking, and in your deliberations you each should weigh carefully your own recollections and notes as well as those of your fellow jurors. When you consider evidence to be found in the exhibits, as a precaution against possible inaccurate note taking, you should check the exhibits themselves in order to be satisfied that they actually show what your notes reflect.

Notes are simply an aid to memory and may not be given any greater weight or influence in the determination of this case than the recollection or impression of other jurors with respect to the facts or the conclusions to be drawn from the facts. Any controversy between such a recollection and a juror's notes should, in any

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event, be settled by asking to have the Court Reporter's transcript on the point read back to you for it is the Court record rather than any juror's notes upon which you must base your determination of the facts and ultimately your verdict.

Your duty is to weigh the evidence in the case, and to determine the guilt or innocence of the defendant solely upon the basis of the evidence and these instructions.

Each of you, as jurors, is entitled to your own opinion, but each of you should exchange views with your fellow jurors.

That is the very purpose of jury deliberation to discuss and to consider the evidence; to listen to the arguments of fellow jurors;

To present your individual views;

To consult with one another; and

To reach an agreement based solely and wholly on the evidence, if you can do so without violence to your own individual judgment.

Each of you must decide the case for yourself after consideration with your fellow jurors.

But you should not hesitate to change an opinion which, after discussion with your fellow

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jurors, appears to you to be erroneous.

However, if after carefully considering all the evidence, and the arguments of your fellow jurors, you entertain a conscientious view that differs from others, you are not to yield your judgment simply because you are outnumbered.

Your final vote must reflect your conscientious view as to how the issues should be decided.

The charges here are most serious.

A just determination of this case is important to the public;

It is equally important to these defendants.

Under your oath as jurors, you must decide this case without fear or favor, and solely in accordance with the evidence and the law.

If the Government has failed to carry its burden as to a defendant, your sworn duty is to acquit;

If it has carried its burden as to a defendant, you must not flinch from your sworn duty -- you must convict.

Shortly after you retire to deliberate, I will send into your a copy of the indictment and

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each of the exhibits which has been admitted into evidence.

If you wish to have some portion so the testimony repeated, I will call you back into the Courtroom and have it read to you. When the Court Reporters have completed typing up my instructions to you, which probably will be within an hour or so, I will have a copy of my instructions sent to you so that it won't be necessary for you to come out and read it back to you if there is some portion you wish to hear.

With respect to the part about expert witnesses, I did not cover that. If you want that, send out a note and I will take care of that for you.

You must report a verdict as to each defendant on all counts of the indictment. You may find a defendant guilty or not guilty with the exceptions I have given you. You may find a defendant guilty or not guilty on any and all of the counts. A verdict on each count must be unanimous. I have prepared a form of verdict which you may find helpful in keeping track of your verdicts as you reach them. The Marshal

Charge

will give it to you along with the indictment
and the exhibits.

The Marshal will be available outside the
jury room to report when you have reached your
verdict or to let me know if there are any
questions which you wish to have answered.

When you have arrived at your verdict,
ready to report something, tell the Marshal but
do not disclose what your verdicts are. I will
have the Foreperson announce them orally back
in the Court.

Take a short recess during which counsel
will review the charge with me to make certain
I haven't misspoken or omitted something.

Don't discuss the case.

(The jury left the Courtroom.)

(Continued on next page.)

* * *

* * * *

(The jury thereupon returned to the Courtroom at 11:45 o'clock A.M.)

THE COURT: There are just a couple of things on the charge, ladies and gentlemen. You will recall in connection with the events of the Barclay, I have told you that your consideration of those events should be limited to ascertaining what was the defendant Myers' state of mind back in August.

However, counsel have pointed to me that I also read them to you as overt acts numbers 11 and 12. In view of the limitation that I placed upon their use in evidence, I will strike overt acts numbered 11 and 12 and you should just consider that they are not part of the indictment as overt acts. And you will recall that I told you that with respect to the overt acts it is only necessary that one overt act be established beyond a reasonable doubt and all the other circumstances that related to that, that it has to be an overt act during the time that a particular person was a member. In other words, if your conclusion is that there was a conspiracy and the membership

varied from time to time, in order to find that a particular member of the conspiracy was guilty of conspiracy, you would have to find that there had been an overt act committed during the time that he was a member. Assuming that there was only one overt act and it occurred before someone joined or after he withdrew, then he wouldn't have been guilty of conspiracy. If it occurred while he was a member then he would be. So then the only effect that has on anything that has happened here is when you read the indictment just pretend that overt acts 11 and 12 aren't there. Everything else is the same.

With respect to the expert witness charge I said I was not going to read it to you. What I will do is when I have the written charge sent in to you I will have copies of the transcript of what I said before so that will also be in front of you and itself will be a refresher.

There is one other thing. In talking about the various crimes that are charged here I apparently referred on various occasions to when the crime was committed, or the conspiracy began, or this conspiracy had ended, or something happened

1 after the conspiracy ended. You of course
2 understand that is just a manner of speech.
3 Whether or not any crime is committed is your
4 determination. Whether or not there was a
5 conspiracy is your determination. Every fact in
6 this case is for your determination. And to the
7 extent that I may have spoken as if there were
8 crimes, as if there were conspiracies, and so
9 forth, that is just a means of talking about or
10 getting into a discussion as to the various matters
11 that we had to cover. And it was not in any way
12 to imply that I had made a determination, or
13 there had been a crime committed, or there was a
14 conspiracy, or that any of the facts that I had
15 talked about are actually facts. These are all
16 matters for your decision and for your decision
17 only.
18

19 All right. We are now at the stage that I
20 spoke to you about almost three weeks ago. We
21 started with 16 jurors. We are still very fortunate
22 to have all 16 of you ready to go to work.
23 Unfortunately, as I explained at the beginning,
24 only 12 of you are going to have that duty and
25 privilege, which means Barnetta Shefrin, Reginald

1
2 Allen, Patricia Langford and Hyman Wattenberg,
3 your services as jurors in this case is at an
4 end.

5 I told you at the beginning that you should
6 not feel that this in any way -- that your
7 participation in the case is of any less importance
8 than if you were on the deliberating jury. It is
9 just under the rules it is 12 and it is not 16.
10 Your part of this case has been just as important
11 a part as that of any of the other 12 jurors.
12 I want to thank you for the near heroic labors
13 that you have put in here with what I am told
14 is a rather stiff hand. You have put in a lot
15 of work. You have been very attentive. I
16 want to thank you for what you have done. You
17 have made a significant contribution to the case
18 because your presence here has made it possible
19 at this point to have the case reassured of going
20 on to a just conclusion. When the other jurors
21 retire to deliberate you are excused and relieved
22 of all strictures that I have placed upon you.

23 Now, your oaths sum up your duties, ladies
24 and gentlemen, and that is without fear or favor
25 to anyone you will well and truly try the issues

between these parties according to the evidence given to you here in Court and according to the laws of the United States.

You may now retire to the jury room and begin your deliberations.

(The following occurred at 11:52 o'clock A.M. in open Court.)

THE CLERK: Ladies and gentlemen of the jury, take your pens and pencils with you.

The four alternates, I would like to see you on the side. You can bring me back your pads and pencils.

Now, counsel, I will be out in a minute to collect all of your Exhibits.

(The jury thereupon retired from the Courtroom at 11:53 o'clock A.M. to begin their deliberations.)

* * *

* * *

13 THE COURT: Ladies and gentlemen, I have your
14 notes.

15 Take the second one first, Court's Exhibit
16 21, which says:

17 "Also, we requested a copy of your instructions
18 of this morning two to three hours ago and still
19 have not received them. "Receipt of them is
20 imperative to further our deliberations."

21 I can appreciate your frustration. The delay
22 has been due to the fact that the Court reporters
23 did not get them typed quite as quickly as I had
24 hoped they would be able to. They had them for
25 perhaps 35 minutes. They are being proofread.

1
2 I had just this minute finished reading them.
3 There were a couple of changes I had to make, where
4 a typographical error could probably create some
5 problems, which we will correct in longhand for you.
6 There are a few typographical errors which are
7 obviously seen.

8 One admonition I should give you with respect
9 to the instructions: you should not single out any
10 instruction or find a line here and say that solves
11 the problem. You must consider the instructions as
12 a whole and apply them in the way that I gave them
13 overall.

14 Now, with respect to Court's Exhibit 20, which
15 is your note about, first, "may we be provided with
16 Court stenographer's transcript of the Ellie Cook
17 testimony."

18 I answered that to you, saying:

19 "I cannot send you the transcript. However,
20 I will have any part or all part of it read to
21 you here in the Courtroom. Please let me know what
22 part or parts you wish to hear."

23 "Yes! Testimony of August 14th of direct
24 examination of the conversation between Myers and
25 Johanson."

Now, counsel and I have conferred about this, and if I understand your request correctly, it is that you want only the testimony of Ellis Cook on his direct examination, what he said about a conversation between Congressman Myers and Mr. Johanson.

We find that at page 1151 of the record.

The question is:

"Then what happened?"

"A Congressman Myers came back in with Mr. Johanson. They introduced me to Congressman Myers and I went back to my own office. I was in Mr. Criden's office at that time. A few minutes later they called me in. Apparently, Congressman Myers had left."

Counsel and I are agreed there is nothing more in the direct testimony of Mr. Cook that pertains to conversations or dealings in the presence of Mr. Cook between Myers and Johanson.

My question to you, is that what you wanted to hear or do you have reference to something else?

THE FOREPERSON: Something else?

THE COURT: If you can tell me what it is, fine. If you want to go back and phrase it for me precisely in a note, you can do that, too.

(Pause)

THE FOREPERSON: Your Honor, the jury has selected me to be foreman.

The conversation that we requested is the one with Congressman Myers and Mr. Johanson in Mr. Johanson's home in Longport prior to the August 22nd meeting.

THE COURT: Was that in the testimony of Congressman Myers?

THE FOREPERSON: It was also in the testimony of Congressman Myers; but we believe we have reference to it in the testimony of Mr. Cook as well.

THE COURT: Is it Mr. Cook's version that you want to hear?

THE FOREPERSON: Yes.

THE COURT: Not Congressman Myers'?

THE FOREPERSON: Yes.

THE COURT: Yes, meaning ^{not} ~~no~~ Congressman Myers'?

THE FOREPERSON: Yes, you are correct. WE want Mr. Cook's and not Mr. Myer's.

THE COURT: All right. I understand what it is you wish to hear. Give me a chance to find it with counsel and we will call you back in when we

1
2 can locate it, and I will have the charge for you
3 very shortly.

4 THE FOREPERSON: Thank you very much.

* * *

1
2 THE COURT: Ladies and gentlemen, from the
3 direct testimony of Mr. Cook, page 1135;

4 "Q Did you have occasion to discuss this
5 matter with Mr. Criden and Mr. Johanson again?

6 "A At a later time. And, I would say, within
7 a week or so, Mr. Johanson had indicated he had
8 talked with Congressman Myers and he would be willing
9 to meet with the Sheik or the Sheik's representatives.
10 I don't remember which one it was.

11 "Q And did Mr. Johanson say anything else?

12 "A At that point, no, sir."

13 That's all we can find that fits into the
14 category of what you gave to us. So it's the answer
15 to the question you have asked.

16 I don't mean to say you can't hear anything
17 else. You can have the whole thing read back to
18 you, the whole transcript, I suppose if necessary; but
19 I have tried to answer the question that you have asked.

20 Now, you may have to ask a different question
21 if you are looking for something else. That's
22 all for the moment.

23 I will have the transcript and the business on
24 the charge sent into you in a minute. You may
25 resume your deliberations.

* * *

10 THE COURT: Ladies and gentlemen, I have
11 your note. It indicates that you have reached
12 a verdict.

13 Would you take the verdict, please?

14 THE CLERK: Yes, your Honor.

15 Madam Forelady, would you please rise?

16 Madam Forelady, ladies and gentlemen of
17 the jury, have you agreed upon a verdict?

18 JUROR NUMBER ONE: Yes, we have.

19 THE CLERK: I refer to the form of verdict.

20 How do you find the defendant Myers on
21 Count One?

22 JUROR NUMBER ONE: Guilty.

23 THE CLERK: How do you find the defendant
24 Errichetti on Count One?

25 JUROR NUMBER ONE: Guilty.

THE CLERK: How do you find the defendant
Johanson on Count One?

JUROR NUMBER ONE: Guilty.

THE CLERK: How do you find the defendant
Criden on Count One?

JUROR NUMBER ONE: Guilty.

THE CLERK: How do you find the defendant
Myers on Count Two?

(Bribery)

JUROR NUMBER ONE: Guilty.

THE CLERK: How do you find the defendant
Errichetti on Count Two?

(Bribery.)

JUROR NUMBER ONE: Guilty.

THE CLERK: How do you find the Defendant
Johanson on Count Two?

(Bribery.)

JUROR NUMBER ONE: Guilty.

THE CLERK: How do you find the Defendant
Criden on Count Two?

(Bribery)

JUROR NUMBER ONE: Guilty.

THE CLERK: How do you find the Defendant
Myers on Count Three?

1 JUROR NUMBER ONE: Guilty.

2 THE CLERK: How do you find the defendant
3 Errichetti on Count Threes?

4 JUROR NUMBER ONE: Guilty.

5 THE CLERK: How do you find the Defendant
6 Johanson on Count Three?

7 JUROR NUMBER ONE: Guilty.

8 THE CLERK: How do you find the Defendant
9 Criden on Count Three?

10 JUROR NUMBER ONE: Guilty.

11 THE CLERK: The Court having received your
12 verdict you the jury say you find the defendants
13 Myers, Errichetti, Johanson and Criden guilty on
14 counts one, two on bribery and count three, so say
15 you all?

16 JURORS: We do.

17 THE CLERK: Please be seated. Thank you.

18 THE COURT: Ladies and gentlemen, that
19 concludes not only three long weeks of work but
20 your obligations in connection with this trial.

21 Does someone wish to have the jury polled?

22 MR. DUFFY: Yes.

23 MR. BROWN: Yes.

24 THE COURT: Bill the jury.
25

1
2 THE CLERK: Juror number one, is that
3 your verdict?

4 Starting on this side, Juror Number One,
5 is that your verdict?

6 JUROR NUMBER ONE: Yes.

7 THE CLERK: Juror number two, is that your
8 verdict?

9 JUROR NUMBER TWO: Yes.

10 THE CLERK: Juror number three, is that
11 your verdict?

12 JUROR NUMBER THREE: Yes.

13 THE CLERK: Juror number four, is that
14 your verdict?

15 JUROR NUMBER FOUR: Yes.

16 THE CLERK: Juror number five, is that
17 your verdict?

18 JUROR NUMBER FIVE: Yes.

19 THE CLERK: Juror number six, is that your
20 verdict?

21 JUROR NUMBER SIX: Yes.

22 THE CLERK: Juror number seven, is that
23 your verdict?

24 JUROR NUMBER SEVEN: Yes.

25 THE CLERK: Juror number eight, is that

1
2 your verdict?

3 JUROR NUMBER EIGHT: Yes.

4 THE CLERK: Juror number nine, is that
5 your verdict?

6 JUROR NUMBER NINE: Yes.

7 THE CLERK: Juror number ten, is that your
8 verdict?

9 JUROR NUMBER TEN: Yes.

10 THE CLERK: Juror number eleven, is that
11 your verdict?

12 JUROR NUMBER ELEVEN: Yes.

13 THE CLERK: And juror number twelve, is that
14 your verdict?

15 JUROR NUMBER TWELVE: Yes.

16 THE CLERK: Thank you.

* * *

