

17-343

To Be Argued By:
PAUL TUCHMANN

United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

—against—

JOHN SAMPSON,

Defendant-Appellant.

**On Appeal From The United States District Court
For The Eastern District of New York**

BRIEF AND APPENDIX FOR THE UNITED STATES

BRIDGET M. ROHDE
*Acting United States Attorney,
Eastern District of New York
271-A Cadman Plaza East
Brooklyn, New York 11201
(718) 254-7000*

DAVID C. JAMES,
PAUL TUCHMANN,
ALEXANDER A. SOLOMON,
MARISA M. SEIFAN,
*Assistant United States Attorneys,
Of Counsel.*

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-against-

JOHN SAMPSON,

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES

PRELIMINARY STATEMENT

John Sampson appeals from a judgment entered on January 25, 2017, in the United States District Court for the Eastern District of New York (Irizarry, Ch.J.). Sampson was convicted, after a jury trial, of obstruction of justice, in violation of 18 U.S.C. § 1503(a), and two counts of making a false statement within the jurisdiction of the United States government, in violation of 18 U.S.C. § 1001. He was sentenced to three concurrent terms of imprisonment of 60 months, three years of supervised release, a

\$300 special assessment, and a fine of \$75,000. He is currently in custody.¹

On appeal, Sampson argues that the district court erred by: (1) allowing Sampson to be convicted of obstruction of justice for conduct that constituted witness tampering but that could not legally constitute obstruction of justice; (2) improperly instructing the jury regarding aiding and abetting liability under 18 U.S.C. § 2(b); (3) upholding Sampson's conviction for violating § 1001 as charged in Count Nine of the trial indictment absent sufficient evidence; (4) refusing to admit into evidence agent's notes of the interview during which Sampson made the false statements at issue; (5) refusing to overturn the convictions notwithstanding the Supreme Court's decision in McDonnell v. United States, 136 S. Ct. 2355 (2016); and (6) imposing sentences that were substantively and procedurally unreasonable. As shown below, all of these claims are meritless.

¹ This Court denied Sampson's motion for a stay of his surrender and for bail pending appeal on March 28, 2017.

STATEMENT OF FACTSI. Sampson's Scheme to Obstruct Justice

Beginning in the 1990's, Sampson served as a court-appointed referee for foreclosure proceedings conducted by the Supreme Court of the State of New York in Kings County. (T 71-72).² Accordingly, Sampson was entrusted with conducting sales of foreclosed properties and using the proceeds to repay any outstanding mortgages on the properties. (T 72-73). As referee, Sampson controlled escrow accounts holding proceeds of the foreclosure sales and was required to tender any surplus funds from foreclosure sales to the Kings County Clerk. (T 72-74). However, Sampson did not remit all surplus funds as required. (T 52-62, 66-87). Instead, Sampson embezzled approximately \$440,000 from escrow accounts through cash withdrawals and wire transfers to his own account. (T 1560-1636).

In or about July 2006, Sampson solicited and received \$188,500 from Queens businessman Edul Ahmad in order to replenish embezzled funds from foreclosure escrow accounts. (T 103, 107-08, 179-90, 196-201). Sampson never repaid these funds to Ahmad

² "T," "A," "GA," "DE," and "GX" refer to the trial transcript, Sampson's appendix, the government's appendix, entries on the district court's docket, and government exhibits, respectively. "Br." refers to Sampson's brief.

and did not declare them on his New York State Senate financial disclosure forms as required by law. (T 108, 233-35, 1392-1415).

After Ahmad realized that Sampson would not repay him, Ahmad asked Sampson for assistance in Sampson's official capacity as a New York State Senator. During the ensuing period, Sampson engaged in various official acts for Ahmad's benefit, including intervening with New York State regulatory agencies conducting audits of Ahmad's businesses and using his Senate position to lobby for Ahmad to receive potentially lucrative real-estate-owned ("REO") brokerships from national financial institutions. (T 235-56, 263-67, 272-326, 330-31, 1040-50, 1070-80, 1091-1103, 1146-49, 1256-75, 1294-95, 1312-36). After arranging and personally attending a meeting between Ahmad and REO representatives, in which Sampson urged the REO representatives to hire more minority brokers (a category that included Ahmad), vouched for Ahmad's competence, and advised them to consider putting Ahmad on their list of REO brokers (T 241-42, 1043), Sampson introduced legislation in the State Senate that would have specifically benefitted Ahmad as the owner of a minority-owned business in procuring additional REO brokerships (A 897-99; T 1046-47).

In July 2011, the FBI arrested Ahmad on bank and wire fraud charges relating to his orchestration of a scheme to defraud mortgage lenders. These charges were filed by the United States

Attorney's Office for the Eastern District of New York (the "USAO"). (T 342-43). Shortly after Ahmad's arrest, Sampson initiated a scheme to obstruct justice by obtaining confidential information regarding Ahmad's case - including the identities of cooperating witnesses and witness statements - in order to prevent Ahmad from pleading guilty and cooperating with the government and thereby preventing disclosure of Sampson's embezzlement and other criminal conduct. (T 370-78). Specifically, Sampson attempted to obtain confidential, nonpublic information from (1) Samuel Noel, an administrative employee in the USAO, (2) attorneys who represented Ahmad's co-conspirators, and (3) Warren Flagg, a retired FBI agent who had extensive experience working with the USAO.

Notwithstanding Sampson's efforts, Ahmad began to cooperate with the government's investigation in November 2011, at which time he informed the government about Sampson's criminal conduct and began to participate in recorded meetings and conversations with Sampson.

A. Samuel Noel

Sampson attempted to use his long-time close personal friend Samuel Noel, who was a supervisory paralegal at the USAO, to obtain confidential information about cooperating witnesses against Ahmad to encourage Ahmad to continue fighting his case,

while armed with sensitive non-public law enforcement information they could use to tamper with witnesses. Shortly after Ahmad's arrest, Sampson contacted Noel and told him that one of Ahmad's co-conspirators was "snitching" on Sampson and asked Noel to find out if that person and three other individuals were cooperating with the government in Ahmad's criminal case. (T 1695-97). Noel understood that Sampson wanted Noel to improperly access USAO internal records and agreed to provide Sampson with such nonpublic law enforcement information. (T 1701-03).

After speaking with Sampson, Noel used his government account to run the names of Ahmad and Sampson through the Public Access to Electronic Records ("PACER") database and determined the federal prosecutor assigned to Ahmad's case, AUSA Alexander Solomon. (T 1706-10). Noel also used his government account to run the names provided by Sampson, as well as Sampson's name, through the Legal Information Office Network System ("LIONS") database, a nonpublic Department of Justice database that contains the names of individuals who have been charged or are under investigation as well as other information about the investigation. (T 1710-12, 1818-23). Noel found results under two of the names provided by Sampson but failed to find any information about Sampson. Noel called Sampson to inform him that

he did not find any information suggesting that Sampson was under investigation by the USAO. (T 1710-13, 1738-39).

Noel then spoke with a female paralegal working for AUSA Solomon on Ahmad's case ("Paralegal 1"). In a closed-door meeting in Noel's office, Noel asked Paralegal 1 to inform Noel if she discovered information that witnesses were "saying something about [Sampson], or information in regard to this particular case [involving Ahmad]." (T 1713-14). Noel asked Paralegal 1 to leave files containing any such information open for Noel to examine, so that Noel could forward the information to Sampson. Because Paralegal 1 appeared "[v]ery uncomfortable," Noel did not follow up further with her, other than "one call that [Noel] left a message to see if she came across anything." (T 1715). During a later recorded meeting, Sampson confirmed the request for Paralegal 1's assistance, telling Ahmad that his source could not easily get the information they wanted, so "he's getting his in and working with the girl." (T 441-42; see also A 914).

Noel similarly approached a female paralegal working in the USAO public integrity section ("Paralegal 2"). In another closed-door meeting in his office, Noel asked Paralegal 2, "If you come across any names of these people, talking anything about [Sampson], please just give me a heads up, let me know." Paralegal 2 also appeared "uncomfortable," and Noel did not follow up further

with her. (T 1716-19). Noel, in turn, informed Sampson that Noel had reached out to USAO paralegals, who were reportedly "looking into it." (T 1719).

During the fall of 2011, Sampson arranged for Ahmad and Noel to speak to each other on the telephone. During this call, Noel assured Ahmad that Noel was trying to get the information that Ahmad and Sampson wanted. (T 376-77, 1733-36). Sampson himself confirmed that he had arranged for Ahmad to speak with the source (Noel) during a recorded meeting with Ahmad, (T 443; A 915) and made a similar admission during a voluntary interview with the FBI in front of his home on July 27, 2012 (T 2058).

Sampson's efforts to obtain confidential information from the USAO were further evidenced by Sampson's statements during recorded meetings with Ahmad. For example, during a consensually-recorded meeting with Ahmad on November 22, 2011, Sampson noted that the source (Noel) was "giving [Sampson] information" that was "not legal[]" for Noel to provide because "he's [Noel is] not allowed to give" it to Sampson. Sampson then stated, "I don't want to jeopardize when they catch him [Noel] looking at something and ask him a whole big question." (T 440-43; A 913-14, 923).

B. Ahmad's Co-Conspirators

Sampson also made arrangements for Ahmad's co-conspirators in his mortgage fraud scheme to be represented by

compromised counsel who would betray attorney-client confidences in order to convey such information to Sampson. For example, after Ahmad learned that the FBI had approached a co-conspirator named Qayaam Farrouq, Sampson arranged for an attorney (the "Farrouq Attorney") to represent Farrouq. Sampson instructed Ahmad not to have direct contact with the Farrouq Attorney, but rather indicated that Sampson himself would conduct all communications with the Farrouq Attorney about Farrouq. (T 381-85). After Farrouq's arrest by the FBI on November 22, 2011, the Farrouq Attorney represented Farrouq at his arraignment and detention hearing. The Farrouq Attorney continued to represent Farrouq until December 9, 2011. (T 435-37).

On November 22, 2011, soon after Farrouq and another of Ahmad's mortgage fraud co-conspirators, Nazir Gurmohamed, were arrested by the FBI, Ahmad participated in a recorded phone call and a recorded meeting with Sampson. During these recorded conversations, Sampson attempted to make arrangements for Gurmohamed to be represented by a lawyer (the "Gurmohamed Attorney") who would reportedly convey to Sampson – and through Sampson to Ahmad – privileged information concerning whether Gurmohamed was cooperating with law enforcement. While in Ahmad's presence, Sampson participated in a phone call with the Farrouq Attorney and asked the Farrouq Attorney information about the

arraignment and detention hearing of Farrouq and Gurmohamed, including the amount of bail. Sampson then stressed to Ahmad the importance of arranging counsel to represent Gurmohamed: "I want him to have his own attorney. He should have his own private attorney. We can keep an eye on him." Sampson envisioned that the Gurmohamed Attorney, like the Farrouq Attorney, would call Sampson to report on the intentions of Farrouq and Gurmohamed to cooperate with the government, saying, "Call me. Telling me, boom, boom, boom. This is what happened in the morning. This is what they're saying" After first indicating that it would be unethical for Ahmad to pay the Gurmohamed Attorney's retainer for representing Gurmohamed, Sampson nonetheless instructed Ahmad to pay for the Gurmohamed Attorney's representation of Gurmohamed in cash to avoid a "money trail." (T 408, 417-19, 438-39, 444-52; A 923, 927-28, 932). Following the meeting, Sampson sent Ahmad a text message containing the Gurmohamed Attorney's contact information. (T 455-56; GX 7).

C. Warren Flagg

Sampson similarly made efforts to retain an investigator with close ties to the USAO in order to obtain confidential information about Ahmad's case. During a recorded conversation with Ahmad, Sampson remarked that such an investigator "can open the doors that we can't get in." (T 540; A 973). On February 28,

2012, Sampson arranged for Ahmad to meet with Warren Flagg, a private investigator who had worked extensively with the USAO during his previous career as an FBI Special Agent. (T 548-53). During the meeting, Flagg informed Sampson and Ahmad that it would be illegal for him to provide Ahmad with nonpublic information about potential cooperating witnesses obtained from his contacts at the FBI or USAO. In particular, Flagg warned that any such efforts, including contact with potential cooperating witnesses before the government's disclosure of witness statements, would constitute witness tampering and could result in criminal charges against Ahmad and Flagg. During the meeting, Flagg requested that Ahmad compile a list of potential cooperating witnesses for Flagg to investigate and to arrange a meeting with Ahmad's retained counsel. (T 618-25, 641; A 1009-10).

At the direction of law enforcement, Ahmad did not provide the requested list to Sampson or Flagg. (T 642). Sampson, however, repeatedly encouraged Ahmad to provide such a list and, during a recorded phone call on March 5, 2012, told Ahmad that, once retained by Ahmad and thus shielded by attorney-client privilege, Flagg would "help us get the information that we need" from the USAO, as Flagg "knows people in, in there [the USAO]," and that Sampson had to "have somebody doing dirty work and grunt work" who "knows the gray area [of legality]." (T 642-44, 647,

652; GX 511T at 1-2, 5). As Sampson explained, "[Flagg] can't deliver the goods before a retainer is signed, I don't want to say no more." (T 651-52; GX 511T at 4). Sampson also indicated that Ahmad's criminal counsel did not have to know what Flagg was doing for Ahmad. (T 643-52; GX 511T at 4). Several weeks later, Sampson reminded Ahmad, in a text message, to provide the list of potential cooperating witnesses "ASAP." (T 654-55; GX 45).

II. Witness Tampering and Evidence Tampering:
The Check Register Page

At the direction of law enforcement, Ahmad recreated a check register page (the "Check Register Page") he had located in his own records that documented his \$188,500 payment to Sampson. During a meeting on February 22, 2012 at Vetro Restaurant in Queens, Ahmad showed the duplicate Check Register Page to Sampson, informed Sampson that the government had issued a subpoena to Ahmad for records, and said that the Check Register Page was responsive to the subpoena. Ahmad then asked Sampson what Ahmad should do. After repeatedly instructing Ahmad (1) not to disclose the existence of the Check Register Page or the \$188,500 payment, and (2) to lie to law enforcement about the nature of the document and the underlying payment, Sampson took the duplicate Check Register Page from Ahmad and did not return it to him. (T 111-13, 564-615, 1001-21, 2008-12; A 981-1004).

III. The Liquor Store

In early 2012, Sampson acquired a hidden ownership interest in a liquor store in Brooklyn (the "Liquor Store"), together with four business partners. Not wanting to publicly disclose his ownership interest, Sampson caused the submission to the New York State Liquor Authority of a liquor license application that falsely omitted his ownership interest in the Liquor Store. (T 1662-65, 2078-98). Sampson subsequently directed one of his Senate staff members, Celeste Knight, to intervene with the New York State Department of Taxation and Finance with respect to a tax liability the Liquor Store owed, without disclosing his ownership interest in the Liquor Store to her. (T 1464-82).

IV. Sampson's Statements

On July 27, 2012, FBI special agents, including Special Agent Ken Hosey, interviewed Sampson in front of his house in Brooklyn. During this interview, the agents asked about, among other topics, the Check Register Page. After Sampson claimed that he did not recall anything with respect to payments he had received from Ahmad, the agents showed Sampson a photocopy of the duplicate Check Register Page that Sampson had taken from Ahmad at the February 22, 2012 meeting at Vetro Restaurant. (A 777-80). Notably, this photocopy of the duplicate Check Register Page consists of an exact photographic reproduction of the duplicate

Check Register Page Ahmad had created at the direction of law enforcement and provided to Sampson on February 22, 2012. (A 891-93). After a special agent directed Sampson's attention to the top line of the duplicate Check Register Page, which indicated that a loan was provided to Sampson "earlier in the month" (the month of the check register entry), and asked Sampson whether he had ever seen the document, Sampson claimed that "it didn't ring a bell" and that "he didn't have a recollection from it." Sampson added that, if he could check his files or received more information, he might be able to recall. (A 779-80). An agent then asked the question again. Sampson responded that he had not previously seen the Check Register Page. (T 2055).

During the same interview, Sampson stated that he did have an ownership interest in the Liquor Store and claimed that his business partners awarded the ownership interest to him in return for arranging the transaction and performing legal work, even though he could not identify any such legal work to the agents. Additionally, Sampson denied that he had asked any members of his Senate staff for assistance in connection with the Liquor Store, claiming that he had not pressured and would not pressure staff members to make that kind of inquiry. (T 2099-2108). At the conclusion of the interview, agents advised Sampson that it was a felony to lie to federal agents. In response, Sampson stated

that not everything he had told the agents was false. (T 2108-09).

V. The Jury Trial

On March 17, 2015, a grand jury returned a fifth superseding indictment against Sampson, which charged him with the following offenses: two counts of federal program embezzlement, in violation of 18 U.S.C. § 666(a)(1)(A); conspiracy to obstruct justice, in violation of 18 U.S.C. § 1512(k); obstruction of justice, in violation of 18 U.S.C. § 1503(a); one count of witness tampering, in violation of 18 U.S.C. §§ 1512(b)(2)(A), 1512(b)(2)(B), 1512(b)(2)(C), and 1512(b)(3); one count of witness tampering, in violation of 18 U.S.C. § 1512(b)(3); evidence tampering, in violation of 18 U.S.C. § 1512(c)(1); concealment of records, in violation of 18 U.S.C. § 1519; and three counts of false statements, in violation of 18 U.S.C. § 1001(a)(2). (A 62-88).

In a jury trial commencing on June 22, 2015, the government tried all of these counts with the exception of the embezzlement charges, which the district court had announced before trial that it would dismiss as time-barred and which are the subject of a separate appeal by the government. See United States v. Sampson, 2d Cir. Docket No. 15-2869.

During the charging conference for the trial, Sampson sought an instruction regarding the Section 2 willful causation theory of liability for the Section 1503 charge, specifically that "the defendant . . . has to have the mental state required for the offense that he or she caused be committed." (A 803-04). The district court declined to give the instruction Sampson sought, as the Second Circuit had approved the instruction from Judge Sand's treatise, which instruction the district court used in United States v. Gabriel, 125 F.3d 89 (2d Cir. 1997). (A 805-07). After defense counsel initially sought to substitute the word "corruptly" for "intentionally" in the charge, the district court ultimately agreed to substitute the phrase "willfully and corruptly." Defense counsel replied "Thank you Your Honor." (A 809). The district court continued by asking if the government and the defense were both in agreement regarding this instruction, as revised by the district court to address Sampson's concerns:

THE COURT Is the government okay with that addition?

[THE AUSA]: Yes, Your Honor.

THE COURT Okay. So I don't think that we need those other questions that are on page 45.

[THE AUSA]: We agree, Your Honor.

THE COURT Okay. Defense too?

[DEFENSE COUNSEL]: Yes, Your Honor.

(A 809).

The defense also asked for and received an instruction on the affirmative defense of entrapment. (T 2239-41). Pursuant to the instruction provided to the jury, the government was required to prove beyond a reasonable doubt that Sampson was predisposed to commit the crime charged in order to rebut a finding of any evidence of inducement by a government agent. (T 2502-03). As part of its predisposition case, the government was permitted to introduce evidence of Sampson's other misconduct including the embezzlement, the drafting of a false affidavit in connection with a New York State regulatory probe of Ahmad's businesses, false statements in Sampson's Senate Financial Disclosure Forms, false statements to the New York State Liquor Authority, and other false statements Sampson made to FBI agents. (GA 41-47).

On July 24, 2015, the jury found Sampson guilty of the § 1503(a) count and of two of the false statement charges – one pertaining to Sampson's statement that he had not seen the Check Register Page before his interview with agents and the other pertaining to Sampson's statement that he had never enlisted the services of a staff member with respect to the Liquor Store. The jury acquitted Sampson of the remaining charges. (See DE 214, 218).

VI. Post-Trial Litigation

Following his conviction at trial, Sampson moved under Rule 29 of the Federal Rules of Criminal Procedure to dismiss the § 1503 conviction and the false statement conviction pertaining to the Check Register Page. (See DE 227, 228). In a written opinion filed on February 26, 2016, the district court denied Sampson's motion. United States v. Sampson, 2016 WL 756565 (E.D.N.Y. Feb. 26, 2016).

In pertinent part, the district court rejected Sampson's argument that he was improperly convicted of obstruction based on conduct that violated the witness tampering statute, finding that Sampson waived this argument by not raising it before trial, and also that United States v. Masterpol, 940 F.2d 760 (2d Cir. 1991), and its progeny do not prohibit Section 1503 convictions based on "witness-related conduct." Sampson, 2016 WL 756565, at *12. The district court also criticized Sampson for mischaracterizing the government's arguments at closing:

[T]he government argued that Sampson gave Ahmad witness information for the purpose of facilitating Ahmad's potential witness tampering. The mere appearance of the term "witness tampering" within this quote does not mean the government urged the jury to convict Sampson under Count Two for the substantive crime of witness tampering.

Id. at *13.

Additionally, the district court rejected Sampson's argument that the false statement regarding the Check Register Page was literally true:

For Sampson's answer to be "literally true," the Court would have to conclude, based on the entire context of the July 27, 2012 interview, that Special Agent Hosey was asking whether Sampson had ever seen the Photocopy Register Page. Why Special Agent Hosey would have asked such a perfectly useless question is beyond the Court, and Sampson does not even attempt to explain why he believed that was the question posed by Special Agent Hosey. Of course Special Agent Hosey was not asking if Defendant literally had ever seen the actual photocopy then being displayed; Special Agent Hosey was asking if Sampson had ever seen the image depicted therein. The only way Defendant's statement may be deemed "literally true" is if the Court viewed the statement in isolation, which is precisely what the precedent of this Circuit prohibits.

Id. at *17.

Also prior to sentencing, Sampson sought to submit a motion for a new trial, in light of McDonnell v. United States, 136 S. Ct. 2355 (2016). (DE 251). In summarily denying the motion on September 19, 2016, the district court wrote:

The bottom line is that the defendant neither was charged with or convicted of any bribery offense. To the contrary, as the government notes, the Court repeatedly instructed the jury, *in limine* and in its final instructions (at defense request), that the defendant was not charged with bribery or corruption offenses.

(A 37, DE for 9/19/2016).

At a multi-hour sentencing hearing on January 18, 2017, the district court imposed concurrent sentences of 60 months for all counts of conviction. As described more fully in Point Six, infra, the hearing included a lengthy discussion of both Sampson's crimes of conviction and a host of instances of uncharged and acquitted illegal and unethical conduct that the district court found Sampson had committed.

ARGUMENTPOINT ONESAMPSON WAS PROPERLY CONVICTED
UNDER 18 U.S.C. § 1503 FOR OBSTRUCTING
JUSTICE, NOT FOR TAMPERING WITH WITNESSES

Sampson argues that he was improperly convicted of 18 U.S.C. § 1503 for conduct that constituted witness tampering, purportedly contrary to this Court's decisions in United States v. Hernandez, 730 F.2d 895 (2d Cir. 1984), and United States v. Masterpol, 940 F.2d 760 (2d Cir. 1991), that conduct constituting witness tampering in violation of 18 U.S.C. § 1512(b) cannot be charged under § 1503(a).³ As the district court found, Sampson's argument is meritless and, furthermore, was waived.

³ Masterpol's holding that witness-tampering may not be prosecuted under § 1503(a) has, to say the least, proved to be controversial. Indeed, all eight other Circuits that have considered the issue have disagreed with Masterpol. See United States v. LeMoure, 474 F.3d 37, 40-42 and n.2 (1st Cir. 2007); United States v. Ladum, 141 F.3d 1328, 1338 (9th Cir. 1998); United States v. Tackett, 113 F.3d 603, 606-11 (6th Cir. 1997); United States v. Maloney, 71 F.3d 645, 659 (7th Cir. 1995); United States v. Moody, 977 F.2d 1420, 1424 (11th Cir. 1992); United States v. Kenny, 973 F.2d 339, 343 (4th Cir. 1992); United States v. Branch, 850 F.2d 1080, 1082 (5th Cir. 1988); United States v. Risken, 788 F.2d 1361, 1369 (8th Cir. 1986). For the reasons set forth in these decisions, the government respectfully contends that Masterpol was wrongly decided.

I. Sampson's Obstructive Conduct Consisted of Endeavoring to Obtain Nonpublic Law Enforcement Information

Sampson was convicted of violating § 1503(a) for his endeavors to obtain nonpublic law enforcement information concerning cooperating witnesses in the government's case against Ahmad. Such conduct consisted of Sampson's efforts to obtain nonpublic information from Samuel Noel, Warren Flagg, and attorneys representing Ahmad's co-conspirators. These efforts improperly to obtain confidential information constituted the actus reus of the § 1503(a) count. When Sampson engaged in these actions with the requisite criminal intent to influence, obstruct, or impede the due administration of justice in Ahmad's prosecution, he violated § 1503(a).

The government's references in summation to witness tampering in connection with the obstruction counts were for the limited, proper purpose of showing Sampson's corrupt intent. Specifically, the government argued that Sampson engaged in these acts of obstruction with the goal that the nonpublic law enforcement information he ultimately obtained would be used to tamper with witnesses as part of his overarching scheme to prevent Ahmad from cooperating with law enforcement authorities. The government also advanced this argument to counter Sampson's argument to the jury that his efforts to learn the identities of

cooperating witnesses against Ahmad were legitimate "background research." (A 839-40, 844; GA 61-62, 63-64, 185-89).

The government's targeted references to witness tampering during summation to show corrupt intent did not transform Sampson's knowing and unauthorized efforts to obtain privileged, nonpublic law enforcement information into a witness-tampering offense. By way of analogy, if a defendant steals a car with the intent to use it in a bank robbery, he is no less guilty of automobile theft because the government relies upon his intended use of the car to prove criminal intent. Such a defendant likely could not be prosecuted for attempted bank robbery if he was stopped after stealing the car because the theft of the car would presumably amount to "mere preparation" for the bank robbery. Here, Sampson's efforts to obtain confidential law enforcement and privileged information without authorization were not charged as attempted witness tampering under § 1512(b) in light of the remoteness of the actus reus from witness tampering. Cf. United States v. Veliz, 800 F.3d 63, 72 (2d Cir. 2015) (noting the reluctance of courts to find that soliciting the murder of a witness constitutes an attempt to violate § 1512(a)(2) absent other substantial steps).

The comments Sampson highlights in his brief are consistent with the foregoing analysis. For example, the

government's references to Ahmad's paying for a lawyer to represent Gurmohamed "to try to influence Gormohamed," and to Sampson's being put on notice by the private investigator Flagg that doing certain things would be "tampering" were made specifically for the purpose of rebutting Sampson's argument that he was merely engaged in legitimate "background research" and thus to proving the element of corrupt intent. (Br. 21) (quoting A 821-22, 824-25, 827). Indeed, Sampson himself quotes the government's rhetorical question during summation, which is consistent with this line of argument, regarding whether Sampson's remarks to Ahmad in a phone call were "about legitimate background research or . . . about doing something illegal." (Br. 21) (quoting A 829).

Similarly relevant to the question of corrupt intent was the government's argument during summation that "[c]ritically, as to purpose," Sampson tried to "'give Ahmad the names and identities of cooperating witnesses so Ahmad could tamper with them. You saw the defendant tamper with witnesses in this case; he knew how it's done.'" (Br. 22) (quoting A 832-33) (emphasis added). Sampson's suggestion that the government was affirmatively arguing that Sampson had engaged in witness tampering under § 1503 misleadingly conflates two different arguments the government made during summation. The government's argument that the jury had previously seen Sampson tamper with witnesses referred to Sampson's conduct

on February 22, 2012 at Vetro restaurant, when Sampson tampered with Ahmad (in a meeting captured on a videotape); Sampson was charged for this conduct with witness tampering under 18 U.S.C. § 1512 - not under § 1503(a). References by the government during this portion of its summation to Sampson's tampering with Ahmad - in the context of a discussion of evidence that proved the § 1503(a) count - supported the government's argument that the jury should consider Sampson's efforts to tamper with Ahmad on February 22, 2012 when assessing the corrupt intent element supporting the § 1503(a) count. In particular, the government argued that Sampson's endeavor to obtain confidential law enforcement information about cooperating witnesses using Noel, Flagg, and attorneys for Ahmad's co-conspirators demonstrated his corrupt intent to use that information to tamper with a witness, among other illegitimate purposes underlying his overarching scheme to prevent Ahmad's cooperation, and that Sampson was not going to use the information merely to conduct "background research."

Arguing that the government "conflated" the obstruction count with the witness tampering counts (Br. 23), Sampson points to the government's argument at summation regarding "other occasions" when the jury "heard about when the defendant engaged in conduct similar to the witness tampering and evidence tampering

he's charged with in [the witness tampering and evidence tampering counts.] First again . . . there's the defendant's obstruction of Ahmad's case like it's charged in" the obstruction of justice and obstruction conspiracy counts. (Br. 22-23) (quoting A 835). However, these two portions of the government's summation (separated by twelve pages of trial transcript) relate to two different arguments about two different sets of counts.

At page 2295 of the trial transcript, the government properly argued that Sampson had a corrupt purpose in connection with the acts he took to obtain confidential law enforcement information, by referring to evidence of the charged witness tampering conduct. (A 832-33). At pages 2307-08 of the trial transcript, on the other hand, the government was addressing the charged witness tampering offenses, against which Sampson had mounted an entrapment defense, to which the government was entitled to respond by showing that Sampson was predisposed to commit the tampering offenses. (A 835). In the latter context, the government argued that one reason the jury could find Sampson predisposed to commit the charged witness tampering offenses was due to his conduct in obstructing Ahmad's criminal case, conduct similar to that charged in the witness tampering and evidence tampering counts. The government's reliance on Sampson's conduct in obstructing Ahmad's case to show predisposition to tamper, in

a portion of summation addressed to the tampering counts, did not "conflate" obstruction and tampering. Rather, the government properly cited different aspects of Sampson's conduct during different parts of its summation to prove corrupt intent under § 1503, and predisposition to commit the tampering offenses, respectively.

Sampson's complaint regarding the government's reference during its rebuttal to a recorded statement in which Sampson said he intended to influence the testimony of one of the witnesses against Ahmad, Qayaam Farrouq, is particularly ill-chosen. (Br. 23) (quoting A 853). Sampson's counsel explicitly invited this argument when he posed a "challenge" to the government at the close of the defense summation, in support of the argument that Sampson was attempting to conduct legitimate "background research":

I challenge the prosecutor to provide you with one cite in the transcript where it shows that anyone even discussed trying to influence any witness' testimony. I also challenge the prosecutor to show you where in the transcript there is any legitimate evidence that John Sampson's intent in obtaining information on witnesses was anything other than gathering information to negatively impact their credibility at trial.

(A 846). Sampson cannot now complain that the government responded to this "challenge" by citing evidence of Sampson's intention to influence a witness's testimony. In any event, Sampson's plans to

influence Farrouq's testimony were not charged or proved as a violation of 18 U.S.C. § 1503(a) in themselves, and the government never implied, let alone claimed, that they were. Rather, this reference during rebuttal to tampering with Farrouq was another appropriate argument to show Sampson's corrupt purpose behind his efforts to obtain confidential law enforcement information regarding cooperating witnesses using Noel, Flagg, and attorneys for Ahmad's co-conspirators.

Sampson also decries the government's statement during rebuttal that it was "witness tampering" for Sampson to arrange for Michael Mays, an attorney who was Sampson's associate, to represent Farrouq. (Br. 23) (quoting A 879). However, Sampson misleadingly fails to include in his brief the government's entire sentence: "[W]hen [Sampson] is arranging for close associates like Michael Mays to represent people like Qayaam Farrouq, that's witness tampering, that's a corrupt purpose." (A 879) (emphasis added). When the full sentence is read, it is apparent that the government was once again responding to Sampson's argument that his efforts to obtain non-public information about cooperating witnesses were for the legitimate purpose of conducting "background research." Notably, Sampson repeats this argument on appeal – omitting the government's reference to Sampson's corrupt purpose – even after the district court characterized that very

omission as an "egregious example[]" of Sampson's attempted "obfusc[ation]" of "the difference between witness tampering as a corrupt purpose, and witness tampering as the acts reus of the obstruction charge." Sampson, 2016 WL 756565, at *13. As the court further observed:

[T]his quote appears in the middle of the government's broader argument concerning Sampson's corrupt purpose. That portion of the government's summation, in which it clearly and repeatedly urged the jury to find that Sampson acted with a corrupt purpose, covers five pages of the transcript. See Tr. 2410:2-2415:24 (mentioning the phrase "corrupt purpose" 14 times and "witness tampering" once). The government's singular misuse of the phrase "witness tampering" in this context appears to have been inadvertent, and in any event, was clearly immaterial and non-prejudicial. Defendant's misguided attempt to portray the government's argument as something other than what it was is unavailing.

Id.

Sampson even complains that the government "went so far" during rebuttal as to contend that Sampson "actually had tampered with a witness" by saying Sampson had gotten "his claws" in a witness - specifically, his former Senate staff member Celeste Knight, who was represented by an attorney with professional connections to Sampson. (Br. 23) (quoting A 879-80). During Knight's patently incredible testimony at the trial, the district court admonished her that she was under oath because of the obvious falsity of some of her answers, which were clearly crafted to

protect Sampson. (A 726). The government permissibly asked the jury to infer that Sampson was responsible for Knight's incredible testimony, and Sampson does not contend that that argument was improper. In any event, the government certainly never suggested that Knight's testimony could supply the basis for convicting Sampson on the obstruction counts, and thus these comments provide no support for Sampson's claim that he was convicted under § 1503(a) for witness tampering.

Sampson also makes much of the fact that the government initially proposed a jury instruction that it later withdrew regarding what was necessary to prove a violation of § 1503(a). (Br. 26-27). Sampson misconstrues the withdrawn instruction, and the withdrawal does not have the effect he claims. The government did not claim in the instruction that obtaining confidential law enforcement information, by itself, constituted obstruction of justice, absent a finding by the jury that the defendant had a corrupt purpose (that is, corrupt intent).

The withdrawn instruction posited only that obtaining confidential law enforcement information, including the identities of cooperating witnesses, obstructed, impeded, and influenced the due administration of justice. (A 1049, 1051). Based on the withdrawn instruction, a defendant who engaged in such acts with corrupt intent was guilty of the crime. Absent the withdrawn

instruction, the jury was required to determine whether Sampson's conduct had the natural and probable effect of impeding the due administration of justice, rather than having that question decided by the judge.⁴ (GA 199).

In any event, even if Sampson is right that the withdrawal of the proposed jury instruction led the government to argue that one of his illicit purposes in obtaining confidential information was to tamper with witnesses, it does not logically follow that "Sampson was convicted of witness tampering" (Br. 27), rather than obstruction of justice. As the government argued and proved, Sampson's specific intent in engaging in the acts for which he was convicted of violating § 1503(a) - unlawfully obtaining confidential law enforcement information through Noel, Flagg and compromised attorneys for Ahmad's co-conspirators - was to obtain confidential law enforcement information, conduct that does not constitute a violation of the witness tampering statute. The government's proof of an underlying corrupt purpose - in this case, to tamper with witnesses and dissuade Ahmad from cooperating - is distinct from the non-corrupt purpose of doing "background research." As the district court stated, "What Hernandez and its

⁴ Even according to the withdrawn instruction, the government still would have had to prove Sampson's corrupt purpose, in the face of Sampson's opening argument that his only purpose in obtaining the confidential information was to perform "legitimate" background research.

progeny actually forbid are § 1503 convictions based on conduct proscribed by § 1512, i.e., witness tampering.” Sampson, 2016 WL at *12. Sampson was convicted of violating 18 U.S.C. § 1503(a) for acts that cannot be charged under the witness tampering statute, and the conviction is thus consistent with Masterpol and Hernandez.

II. Sampson Waived this Argument

As the district court also properly found, Sampson waived this argument because the indictment provided notice of how he allegedly violated § 1503. See Sampson, 2016 WL 756565 at *9-*11.⁵ By waiting to make this argument until after jeopardy attached and a conviction was obtained, Sampson attempted to “sandbag” the government.

Sampson received ample notice of the government’s theory of prosecution under § 1503(a), which was the sole charge in the initial indictment covering Sampson’s overarching scheme to obstruct Ahmad’s prosecution. As alleged in the speaking portion of the initial indictment and all subsequent charging instruments,

⁵ Sampson argues that the district court’s finding that the indictment “disclosed” a “connection” to witness tampering is inconsistent with its finding that Sampson was not convicted of conduct that constituted witness tampering. (Br. 27-28). But what the district court properly found was that the indictment put Sampson on notice that the government would argue that his corrupt purpose in obtaining confidential law enforcement information was tampering with witnesses. See Sampson, 2016 WL 756565 at *10-*11.

Sampson took numerous steps to improperly obtain confidential law enforcement information from Noel, including the names of witnesses cooperating with the government in Ahmad's case (GA 10-11, ¶¶ 27-28; see also A 70-71, ¶¶ 29-30), and Sampson told Ahmad that, once they identified such cooperating witnesses, Sampson would "take them out" (GA 10-11, ¶ 28; see also A 71 ¶ 30). These paragraphs, found under the subheading "John Sampson's Use of a USAO Employee to Obstruct Justice," make clear that the conduct described under that heading was relevant to the § 1503(a) charge, rather than the § 1512(b) witness tampering charges pertaining to the events at Vetro Restaurant, where the discussion with Ahmad occurred. (GA 10; A 70). Notably, the section of the speaking portion of the initial indictment relevant to the § 1512(b) witness tampering charges followed under the subheading "John Sampson's Witness Tampering and Evidence Tampering." (GA 11; A 71).

Thus, from the filing of charges in this case, Sampson was on notice that (1) the government intended to prove the § 1503(a) charge with evidence of efforts to obtain information about cooperating witnesses against Ahmad, and (2) the government intended to use evidence that Sampson said he would "take out" or tamper with cooperating witnesses as evidence relevant to that charge. Only after his trial conviction did Sampson contend that such conduct violates only § 1512(b), and not § 1503(a).

Sampson waived his right to make this claim by not raising it before trial. As provided by Fed. R. Crim. P. 12(b)(3)(B), a motion alleging "a defect in the indictment or information" must be raised before trial. Thus, a claim that an indictment fails to state an offense may be raised at any time, but a claim that an indictment is defective in some other way must be raised before trial.

Sampson asserts that, before and during trial, the government made arguments inconsistent with its argument regarding Sampson's having the corrupt purpose of tampering with witnesses. (Br. 28). But even assuming arguendo that the government in fact made arguments that were inconsistent (a contention the government in no way concedes), such arguments did not "retract" the indictment's allegations, or otherwise mean that Sampson was no longer on notice of the relevant allegations in the indictment - that Sampson had attempted to obtain confidential law enforcement information without authorization and did so with the corrupt intent of tampering.

In another case where the defendant similarly argued that the evidence showed he had not violated § 1503(a), but rather § 1512(b), the district court ruled that the defendant had waived the claim by failing to raise it before trial. See United States v. Fortunato, 2003 WL 21056974, at *3-6 (E.D.N.Y. Mar. 10, 2003),

rev'd and vacated in part on other grounds, 383 F.3d 65 (2d Cir. 2004) (citing United States v. Oldfield, 859 F.2d 392, 397 (6th Cir. 1988)).

Fortunato's reasoning is persuasive. Sampson does not contend that the conduct of which he was convicted did not constitute a federal offense, but only that the government charged him under the wrong statute. This non-jurisdictional claim is subject to waiver. Cf. United States v. Kumar, 617 F.3d 612, 620-22 (2d Cir. 2010) (claim that defendant was charged under wrong obstruction-of-justice statute was non-jurisdictional and was waived by guilty plea). The purpose of requiring non-jurisdictional defects in the indictment to be raised before trial is so "inquiry into an alleged defect may be concluded and, if necessary, cured before the court, the witnesses, and the parties have gone to the burden and expense of a trial[.]" United States v. Crowley, 318 F.3d 401, 420 (2d Cir. 2003) (quoting Davis v. United States, 411 U.S. 233, 241 (1973)). In other words, the rule exists to prevent precisely the type of "sandbagging" that would occur if defendants could wait to raise such claims until after the trial had begun. Accordingly, by failing to move for dismissal before trial, Sampson waived his claim.

POINT TWO

SAMPSON'S CHALLENGE TO THE JURY CHARGE
ON AIDING AND ABETTING SHOULD BE REJECTED

Sampson next argues that the district court erred when, over his objection, it instructed the jury regarding aiding and abetting pursuant to 18 U.S.C. § 2(b). This claim should also be rejected.

As an initial matter, contrary to the assertion in his brief, Sampson did not object to the instruction that the district court ultimately gave regarding aiding and abetting. At the charging conference, Sampson voiced a concern that "the requirement that the jury find the requisite mental state on the part of Mr. Sampson gets a little bit buried" in the court's proposed charge and asked for a Third Circuit pattern instruction that the defendant had to have the mental state required to commit the underlying offense. (A 803-04). In the subsequent colloquy, defense counsel explained that "[m]y point is that the defendant needs the corrupt intent," and acknowledged that "I don't think we're arguing about the law so much as how it will be explained." (A 806, 808).

The district court declined to give the Third Circuit instruction Sampson sought but did revise the charge to address the stated concern that the proposed instruction did not sufficiently require the jury to find that Sampson had acted with

corrupt intent. (A 809). Sampson's counsel did not object to the instruction after the court had revised it. To the contrary, Sampson's counsel thanked the court and stated his satisfaction with the revised instruction. (A 809). Counsel later requested an additional sentence incorporating the court's earlier instruction on the scienter required for obstruction, which request the court granted. (A 810). The fair reading of the record is that, while the court did not give the particular charge counsel initially preferred, counsel believed that the changes the court made to the charge adequately addressed counsel's concern that Sampson needed to have acted with corrupt intent.

Because Sampson did not preserve an objection to the instruction given by the court, this Court should review his claim for plain error. To prevail on plain error review, Sampson must establish that (1) there is an error; (2) the error is "plain"; (3) the error affected the appellant's substantial rights, which in the ordinary case means it affected the outcome of the district court proceedings; and (4) the error seriously affects the fairness, integrity or public reputation of judicial proceedings. See United States v. Olano, 507 U.S. 725, 732-34 (1993); see also Molina-Martinez v. United States, 136 S. Ct. 1338, 1343 (2016). Sampson fails to show that there was any error in the instruction, let alone plain error.

Sampson claims that the court's instruction did not properly require the jury to find that Sampson had corrupt intent in the context of the aiding and abetting theory, because it "essentially resurrected the government's argument that trying to obtain confidential information, by itself, constituted obstruction." (Br. 30). Thus, Sampson argues, the instruction improperly "directed a finding of guilt if the jury concluded that Sampson - for any reason - had caused Noel (the paralegal) to obstruct the Ahmad prosecution by obtaining non-public information, without any reference to Sampson's intent." (Br. 30).

Specifically, Sampson complains of the "question" the court posed to the jury regarding whether Sampson "willfully caused" another person to obstruct justice, which reads as follows: "Did the defendant intentionally cause another person to obstruct, impede, or influence or corruptly endeavor to obstruct, impede or influence the federation prosecution of Edul Ahmad by obtaining nonpublic information contained in the government's files or computer databases?" (A 888). The significance of this question, however, must be read in the context of the court's earlier instruction, which gave a more comprehensive explanation of the state of mind necessary to establish § 2(b) liability:

In addition to charging the defendant as a principal, the government has charged the

defendant under [sic] alternate theory that even if the defendant did not commit the crime charged in Count Two [the violation of 18 U.S.C. § 1503(a)], the defendant willfully caused another person to physically commit the crime. Thus, you may find that the defendant acted as an aider and abettor if you find that the government has proven beyond a reasonable doubt that he knowingly, willfully, and corruptly caused another person to obstruct justice, as I just defined it. I previously defined knowingly, willfully, and corruptly to you. Those same definitions apply here, and I need not repeat them.

(GA 202-03) (emphasis added). In its prior instructions, the court had defined "corruptly" as follows: "To act corruptly means to act with an improper purpose and to engage in conduct knowingly and dishonestly, and with the intent to obstruct, impede or influence the due administration of justice." (GA 199, 200-01).

Viewing the charge as a whole, as this Court's precedents require, see, e.g., United States v. Naiman, 211 F.3d 40, 51 (2d Cir. 2000), the jury could not have found Sampson guilty of Count Two on a § 2(b) theory without finding that he had acted corruptly. First, the initial paragraph of the aiding and abetting charge, quoted above, expressly instructed the jury that it had to find that Sampson "knowingly, willfully and corruptly caused" Noel to engage in obstructive conduct in order to convict under that theory. Second, the subsequent question that Sampson highlights does not say that Sampson only had to willfully cause Noel to "obtain[] nonpublic information contained in the government's

files.” Rather, the second question also asks whether, in causing Noel to obtain such nonpublic information, Sampson “intentionally cause[d]” Noel “to obstruct, impede, or influence or corruptly endeavor to obstruct, impede or influence the federal prosecution of Edul Ahmad.” To act intentionally for the purpose of obstructing, impeding, or influencing Ahmad’s prosecution would be to act with corrupt intent under the court’s prior definition of that term. (See GA 199-201). Thus, the court’s second question, like the first paragraph of the aiding and abetting charge, incorporated the requirement of corrupt intent.

Moreover, Sampson cannot demonstrate that any possible ambiguity in the charge affected his substantial rights, as the plain error rule requires. As discussed in Point One, the government argued at trial that Sampson sought to obtain nonpublic information for the corrupt purposes of tampering with witnesses and dissuading Ahmad from cooperating. The government never argued to the jury that Sampson could be convicted of Count Two simply for obtaining that information without such corrupt intent. Indeed, the first point of Sampson’s brief argues that the government erroneously argued a witness-tampering theory in connection with Count Two. While that claim has no merit for the reasons explained in Point One, Sampson cannot plausibly pivot from making that argument to contending that the jury could have

convicted him if, as he claimed, he lacked a corrupt purpose and merely sought nonpublic information about the identities of witnesses so that he could do legitimate "background research."

POINT THREE

THE FALSE STATEMENTS CHARGE
REGARDING THE CHECK REGISTER PAGE IS SOUND

Sampson raises three challenges to his false statements conviction regarding the Check Register Page. None of these challenges has any merit.

I. Sampson's False Statement Was Not Literally True

First, the district court properly rejected Sampson's contention that his statement to the FBI agents that he did not recall seeing the Check Register Page previously was literally true. See Sampson, 2016 WL 756565 at *17-*18. In Bronston v. United States, 409 U.S. 352, 362 (1973), the Supreme Court held that a literally true but arguably misleading answer to a question could not support a conviction for perjury under 18 U.S.C. § 1621. Therefore, "any special problems arising from the literally true but unresponsive answer are to be remedied through the 'questioner's acuity' and not by a federal perjury prosecution." Id.⁶ A defendant's "statements must be judged according to common sense standards and given their natural meaning in relation to their context." United States v. Schafrick, 871 F.2d 300, 303-04

⁶ While Bronston applies to perjury prosecutions, this Court has suggested that the same rule applies to § 1001 prosecutions. See United States v. Mandanici, 729 F.2d 914, 921 (2d Cir. 1984). But see United States v. Harrod, 981 F.2d 1171, 1175-76 (10th Cir. 1992).

(2d Cir. 1989). The "literal truth or falsity of [a] defendant's words" cannot be determined if those words are divorced from their proper context. Id. at 303-04 (citing United States v. Ford, 603 F.2d 1043, 1049 (2d Cir. 1979)).

Applying this precedent, the district court found that, for Sampson's statement to be literally true, the context of the interview must indicate that Special Agent Hosey was asking Sampson if he had previously seen a photocopy of the Check Register Page:

Why Special Agent Hosey would have asked such a perfectly useless question is beyond the Court, and Sampson does not even attempt to explain why he believed that was the question posed by Special Agent Hosey. Of course Special Agent Hosey was not asking if Defendant literally had ever seen the actual photocopy then being displayed; Special Agent Hosey was asking if Sampson had ever seen the image depicted therein. . . . The only way Defendant's statement may be deemed "literally true" is if the Court viewed the statement in isolation, which is precisely what the precedent of this Circuit prohibits.

Sampson, 2016 WL 756565 at *17 (citing Schafrick, 871 F.2d at 304). Ultimately, the district court concluded, "Defendant's answer that he did not recall seeing the Check Register Page was directly responsive to Special Agent Hosey's question, so the Bronston defense is not available to Sampson here." Id. at *18.

As the district court properly concluded, no reasonable person could or would have understood Hosey's question as an inquiry into whether Sampson could recall having previously seen

the specific piece of paper shown to Sampson during the interview. Rather, any reasonable person would have interpreted the question, aided by the presentation of the photocopy, as referring to whether Sampson recalled previously seeing the image of the Check Register Page. Indeed, Sampson's initial response that he did not recall the document and would have to check his files belies any suggestion that he understood the question to refer to the physical document shown to him, which could not possibly have been both in Sampson's files and shown to him by the agents at the same time.⁷

Accordingly, Sampson's answer that he did not recall seeing the Check Register Page before was false, as the jury found, because Sampson had seen and closely examined the Check Register Page just a few months before - at the February 22, 2012 Vetro

⁷ Sampson also cites the fact that "Sampson had been told by Ahmad that he had the only copy of the Check Register Page, which he [Sampson] had taken on February 22, 2012," to support his position that it was the piece of paper he had taken from Ahmad on February 22 that Sampson was referring to when he told the agents he did not have a recollection of the Check Register Page. (Br. 33). However, this fact indicates that Sampson actually understood the agents' question to be referring to whether he was familiar with the image of the Check Register Page, and not the piece of paper the agents showed him during the interview. If at the time of the interview Sampson recognized the piece of paper that was shown to him as a copy of the document he had taken from Ahmad on February 22, he could not truthfully claim that he "could not recall" if he had seen it before. To be consistent with the argument he now makes, he would have to have responded that he had not seen before the piece of paper shown to him, because he would have known that it was not the version of the document that he recognized.

Restaurant meeting. (A 113-15, 284-94, 297, 981-1004; GA 79-95, 97-119, 138-58, 163-67). Thus, in denying Sampson's motion, the district court properly considered the statement in light of its context, logic, and common sense, as precedent required it to do.

II. There Was Sufficient Proof of an Intent to Deceive

Sampson next argues that there was insufficient evidence of his intent to deceive when he falsely claimed that he did not have a recollection of the Check Register Page because of his statement during the interview that "if he could check his files . . . he may be able to recall." (Br. 34). This argument is also meritless. As Sampson well knew, the Check Register Page was evidence of, or could lead to the discovery of, a host of crimes and misdeeds he had committed, or at least could be investigated for: his witness tampering and evidence tampering in connection with his meeting with Ahmad at Vetro restaurant on February 22, 2012; his embezzlement from escrow accounts; the \$188,500 payment he received from Ahmad but did not report on his state financial disclosure forms, and which preceded many official acts he took on Ahmad's behalf; his performing official acts for Ahmad in connection with that payment; and his illegally funding his 2005 race for Kings County District Attorney with money he had embezzled from escrow accounts. Sampson thus had ample motive to lie about

the Check Register Page when asked about it, and that is exactly what he purposefully did.

Sampson's argument also ignores Hosey's testimony about Sampson's admissions during his counseled, voluntary interview with the USAO on August 23, 2012. During that interview, Sampson confirmed that (a) he kept the Check Register Page he had taken from Ahmad on February 22, 2012 so that Ahmad could not disclose it to the government, notwithstanding Ahmad's informing him that he had been subpoenaed for it; (b) he did not want the public or the government to become aware of the \$188,500 loan, because it would be perceived as a quid pro quo for political favors; and (c) for these reasons, as well as because he feared the Check Register Page might lead to the discovery of his embezzlement from escrow accounts, he did not return the Check Register Page to Ahmad at the end of the February 22, 2012 meeting at Vetro restaurant. (GA 169-70). As Sampson himself admitted, he had every incentive to deceive the agents about the Check Register Page.

III. Hosey's Question Was Not Ambiguous

Sampson also complains that Hosey's questions regarding the Check Register Page were "ambiguous" as a matter of law. (Br. 34-35). The district court rejected this argument in its ruling on Sampson's post-trial motions. See Sampson, 2016 WL 756565, at *17 ("Of course Special Agent Hosey was not asking if

Defendant literally had ever seen the actual photocopy then being displayed"). As the district court thus found, there was nothing ambiguous about showing a native English speaker (who was both an attorney and a State Senator) a photocopy of a document and asking if he had seen it before. As reflected by Hosey's testimony, Sampson did not indicate that he was in any way confused about the question, but instead claimed that he might be able to recall if he could check his files. (A 780). Notably, Sampson's counsel did not even cross-examine Hosey on this issue, despite vigorously cross-examining him about many other aspects of his questioning of Sampson. (T 2128-92, 2196-97).

POINT FOURTHE LIQUOR STORE FALSE STATEMENT CONVICTION IS SOUND

Sampson contends that the district court erred in precluding him from introducing as substantive evidence the handwritten notes of FBI Special Agent Erin Zacher regarding his answers to questions about his involvement with the Liquor Store. Sampson claims he would have used these notes to (1) prove the "absence" in the notes of the charged statement that Sampson had not asked any member of his Senate staff to assist in any matter related to the Liquor Store, and (2) show that the discussion of the Liquor Store occurred during two distinct portions of the interview. (Br. 37-38). In a colloquy following summations, the district court explained that it had precluded this evidence, which contains Sampson's hearsay statements, as "an end run to try to bring in self-serving statements that the defense couldn't put in." (A 885). As this Court has held, the district court's evidentiary rulings are reviewed for abuse of discretion and under a harmless error standard. See United States v. Mercado, 573 F.3d 138, 141 (2d Cir. 2009).⁸

⁸ While Sampson complains that he was not permitted to make a full argument to the district court on this issue (Br. 38), he omits the context of the trial judge's frustration with defense counsel, who repeatedly ignored her evidentiary rulings and previously during the trial veered close to being held in contempt. (E.g., A 352-53, 379-81, 384-86, 394-402, 409-15; GA 120-25, 126-29, 131-37, 172-73). Defense counsel continued to ignore the

As an initial matter, Zacher's notes are not exculpatory, as Sampson claims for the first time on appeal. In fact, the notes reflect that when Sampson was "[a]sked about staff assisting Edmon [Brathwaite]" (one of Sampson's partners in the Liquor Store), Sampson responded that he "[w]ould not put pressure on staffer to make an inquiry." (A 1025). These notes are consistent with Hosey's trial testimony that "[Sampson] stated he had not [asked his Senate staff to assist regarding the Liquor Store] and said that he would not put pressure on his staff to make that kind of inquiry." (A 782).⁹

Nor were the notes necessary to show that the discussion of the Liquor Store occurred during two different portions of the interview. Hosey's testimony was ongoing when Sampson unsuccessfully sought to introduce the agent's notes, and the defense later did elicit Hosey's testimony about the sequence of events, including that agents repeatedly returned to the topic of the Liquor Store at different times during the interview, which

district court's rulings after this exchange as well. (E.g., A 798-99; GA 174-75).

⁹ Contrary to Sampson's assertion, the district court did not "preclude[] the defense from asking Agent Hosey whether Sampson had actually denied seeking staff assistance" for the Liquor Store. (Br. 38). Rather, the district court sustained the government's objection to the form of the question, which was formulated in a manner that the district court had repeatedly held was improper. (A 797).

was the purported non-hearsay purpose of introducing the notes. (A 797-98, 800-01). Zacher was also available and could have been called as a witness to testify about the accuracy of her notetaking or about the unfolding of events during the interview with Sampson. The district court was thus well within its discretion to exclude the notes as self-serving hearsay. In any event, any error would be harmless in light of the availability of non-hearsay evidence Sampson could have elicited and did elicit regarding the same subject.

POINT FIVETHE DISTRICT COURT PROPERLY ADMITTED EVIDENCE
OF SAMPSON'S OFFICIAL ACTS ON BEHALF OF AHMAD

Sampson contends that the district court abused its discretion by admitting evidence of bribery in the form of official acts he took on behalf of Ahmad, from whom he had received benefits, including the \$188,500 payment. However, consistent with the district court's ruling on a pre-trial motion in limine, evidence of this conduct was not offered to prove that Sampson had committed bribery, but rather to (1) demonstrate motive for Sampson's commission of the charged obstruction and tampering offenses and (2) prove an element of the charged violation of 18 U.S.C. § 1512(b)(3), insofar as the information at issue related to the commission or possible commission of a federal offense.¹⁰ (GA 36-38).

¹⁰ Sampson also complains that the government's evidence of these official acts consumed more than the one day's worth of trial testimony originally anticipated. (Br. 45). However, many of the witnesses who testified about these official acts also testified about other facts independently relevant to other issues in the case. For example, witnesses Peter Tang, Premraj Hansraj, Rholda Ricketts, and Michael Elmendorf also testified about facts relevant to showing Sampson's predisposition to commit the charged tampering crimes (some of which facts were the same facts as those involving official acts by Sampson on Ahmad's behalf, and thus would have been independently admissible for that reason), and witness Celeste Knight's testimony was direct evidence of the Liquor Store false statement.

At trial, the district court repeatedly instructed the jury – upon Sampson’s request – that evidence of bribery could be considered only for the limited purpose of showing motive and that Sampson was not charged with bribery or corruption offenses. (A 611; GA 159, 161, 171, 176-77, 197-98). Notwithstanding these instructions, Sampson complains that the government argued to the jury that he had committed bribery. (Br. 43-44). In fact, during its addresses to the jury, the government made targeted references to Sampson’s concern with being investigated for bribery as a motive for the charged obstruction and tampering offenses. (E.g., A 849; GA 60, 179-80, 181). This was precisely the proper purpose for which this evidence had been admitted. See United States v. Willoughby, 860 F.2d 15, 24 (2d Cir. 1988) (“[W]hen a defendant has been charged with attempted or actual obstruction of justice with respect to a given crime, evidence of the underlying crime and the defendant’s part in it is admissible to show the motive for his efforts to interfere with the judicial processes.”). The government also made references to Sampson’s “quid pro quo” relationship during rebuttal summation after Sampson attacked Ahmad’s credibility, in order to emphasize that no one other than Sampson or Ahmad was likely privy to the facts concerning their relationship and the relationship of trust between Ahmad and Sampson. (A 875).

By contrast, defense counsel repeatedly emphasized during both jury addresses the issue of whether Sampson was guilty of bribery offenses. (GA 65, 182-84, 190-95). Given this record, as well as the district court's repeated instructions on the limited permissible use of evidence of Sampson's efforts to help Ahmad, Sampson suffered no prejudice.

The Supreme Court's decision in McDonnell, narrowing the definition of an "official act" in federal bribery cases, does not help Sampson. First, Sampson was neither charged with nor convicted of any bribery offense that required proof of an official act. Therefore, McDonnell is inapplicable.

Similarly lacking in merit is Sampson's argument that he was unfairly prejudiced by the implication that he had committed bribery based upon the admission of acts that allegedly do not constitute bribery under McDonnell. Even assuming arguendo that Sampson's efforts on behalf of Ahmad do not qualify as "official acts" under McDonnell, Sampson was justified in believing that he had committed bribery at the time of the charged offenses, long before McDonnell was decided, and was accordingly motivated to interfere with Ahmad's prosecution. Indeed, the government introduced Sampson's own admission (the veracity of which Sampson has never challenged) that he was concerned that the \$188,500

payment "would be perceived as a quid pro quo for political favors." (GA 169).

Moreover, Sampson was charged with violating 18 U.S.C. § 1512(b)(3), which proscribes hindering the communication to federal law enforcement of "information relating to the commission or possible commission of a federal offense." Id. (emphasis added); (see GA 204-05) (Section 1512(b)(3) jury instructions). Evidence of Sampson's efforts on behalf of Ahmad was thus admissible as proof of conduct that was, at the time it occurred, at least a "possible" federal offense.

Further, even under McDonnell, the trial evidence would have permitted the jury to find that Sampson engaged in "official acts" on behalf of Ahmad. Sampson did not merely sell Ahmad access to himself or to other government officials, or perform quotidian constituent services for Ahmad. Rather, Sampson repeatedly pressured New York State officials to meet with Ahmad and consider Ahmad's interests generally and also to take concrete steps for Ahmad's benefit. Thus, there was ample trial evidence that Sampson did not "merely set[] up a meeting, host[] an event, or call[] another official," but rather took concrete steps, or influenced others to do so, in connection with several specific, focused matters that were "pending" before public officials. See McDonnell, 136 S. Ct. at 2369-70.

For example, Sampson repeatedly interfered with ongoing regulatory investigations of Ahmad's businesses by meeting with regulators and encouraging them to curtail their inquiries. (A 611-48, 651-61, 663-705). Sampson also engaged in official acts to assist Ahmad in procuring real-estate-owned ("REO") listings with banks doing business in New York State. After arranging and personally attending a meeting between Ahmad and REO representatives, in which Sampson urged the REO representatives to hire more minority brokers (like Ahmad), Sampson vouched for Ahmad's competence and advised them to consider putting Ahmad on their list of REO brokers. (A 135-37, 432-41). Sampson also introduced legislation in the State Senate – a quintessentially concrete legislative official act – that would have benefitted Ahmad in procuring additional REO brokerages. (A 436-38, 897-99).

There is also no merit to Sampson's complaint that the government elicited "legal conclusions" from its witnesses. (Br. 47). Shelley Mayer's testimony that she was "uncomfortable with the fact that Ed Ahmad appeared to be a client of Senator Sampson's firm and not just a person from the district or a person with whom he did not have [sic] personal relationship" (A 324) was not objected to and concerned her state of mind, not a legal conclusion. Peter Tang's testimony that he had never "been

confronted by another state politician . . . in the performance of [his] duties" (A 498-99) was objected to only as a matter of form and was a factual statement rather than a legal conclusion. Similarly, the testimony of Michael Elmendorf and Rholda Ricketts about their concerns that Sampson had violated New York's Public Officers Law or had a conflicted relationship were based on their experience in their own government positions and their own understanding of the proper procedures they aimed to follow in their respective agencies. These concerns were relevant because they helped show Sampson's possible commission of a federal offense, or to demonstrate his knowledge that he was behaving unethically, to prove his motive to obstruct justice. The testimony of Argi O'Leary of the New York State Department of Taxation and Finance and Sampson's Senate staffer Celeste Knight regarding their concerns about Sampson's conduct were based on their understanding of proper conduct by people employed by, or dealing with, the agencies they worked for. It was proper for the jury to infer from the testimony of all of these public servants that, as an attorney and a State Senator, Sampson similarly understood that his actions were at the very least potentially illegal, thus giving rise to a motive for him to engage in the charged obstruction and tampering offenses.

POINT SIX

SAMPSON'S SENTENCE WAS REASONABLE

Appellate review of a challenged sentence is limited to "reasonableness," United States v. Booker, 543 U.S. 220, 261-64 (2005), a standard that applies to the "sentence itself" and to "the procedures employed in arriving at the sentence," United States v. Verkhoglyad, 516 F.3d 122, 127 (2d Cir. 2008) (citation omitted). Reasonableness review employs a "deferential abuse-of-discretion standard," Gall v. United States, 552 U.S. 38, 41 (2007), which "incorporates de novo review of questions of law (including interpretation of the Guidelines) and clear-error review of questions of fact," United States v. Legros, 529 F.3d 470, 473-74 (2d Cir. 2008).

I. The District Court Properly
Calculated the Guidelines Range

A. Amount of Ahmad's Mortgage Fraud

Sampson argues that the district court should not have given him a 16-level enhancement based on his having known (or that he reasonably should have known) of Ahmad's \$3 million mortgage fraud. (Br. 51). The district court found that this enhancement should apply based on Sampson's knowledge of Ahmad's wealth, combined with evidence showing that Sampson knew that Ahmad was using straw buyers. (A 1114-15). With this evidence, the government proved that Sampson knew or should have known about the

extent of Ahmad's mortgage fraud. See United States v. Girardi, 62 F.3d 943, 946 (7th Cir. 1995) (noting that Application Note 1 to U.S.S.G. § 2X3.1 "only requires 'specific offense characteristics' of the underlying offense to be 'known' or 'reasonably known'").

In particular, trial evidence established that Ahmad, whose mortgage fraud prosecution was the object of Sampson's scheme to obstruct, was the leader and organizer of an extensive mortgage fraud ring that involved far more than four straw buyers and other co-conspirators. Ahmad was publicly known to be the principal of extremely successful real estate and mortgage brokerage businesses and a person whose displays of wealth attracted Sampson to lean on Ahmad for financial benefits, including the \$188,500 loan that was never repaid. (GA 66, 67-74). That Ahmad conducted his lucrative business fraudulently was known or reasonably foreseeable to Sampson, based on the repeated inquiries by New York State regulators into Ahmad's business practices that Sampson attempted to interfere with, culminating in Sampson's instructions to Ahmad to have one of his employees, Premraj Hansraj, take full responsibility for the falsification of real estate and mortgage documents presented to New York State regulators. (A 197-210).

Moreover, Sampson's statements during recorded conversations demonstrated his conscious avoidance, if not full

knowledge, of Ahmad's complicity in mortgage fraud activity. While Sampson asserts that the district court erred in finding that he knew that Ahmad was using straw buyers (Br. 53), the evidence supported the district court's finding. Specifically, Sampson repeatedly attempted to dissuade Ahmad from making any admissions about his own criminal culpability, even as Ahmad, on some occasions, explained to Sampson that Ahmad had, in fact, used straw buyers to purchase properties. (GA 76-77) (Sampson responding to Ahmad's statement that he had used straw buyers to purchase properties for Ahmad as follows: "He didn't buy houses, no, no, no, Ed, he did not buy houses for you. You and Nazir, you're an investor. Nobody bought houses for you. You got to get that mindset out. Nobody bought houses for you.").

Further, this aspect of Ahmad's conduct was made known to Sampson by the publicly-filed complaint and indictment in Ahmad's mortgage fraud case, which filings preceded much of Sampson's obstructive conduct and also preceded Ahmad's recorded statements to Sampson that Ahmad had used multiple straw buyers to purchase properties for himself. (GA 76-77). In fact, Sampson studied the complaint before opining that the government did not have "a strong case" against Ahmad, and the indictment, a copy of which agents recovered from Noel's office, stated that Ahmad's mortgage fraud scheme related to mortgages worth a total of more

than \$50 million. (A 238; GA 223, 226). That Sampson was on notice that the intended loss resulting from Ahmad's mortgage fraud scheme was greater than \$3 million is similarly demonstrated by the great volume of Ahmad's business, which Sampson knew from Ahmad's success, and the allegations in the charging documents filed against Ahmad by the USAO.

B. Abuse-of-Trust Enhancement

Sampson next disputes the district court's application of a two-level abuse-of-trust enhancement under U.S.S.G. § 3B1.3. (Br. 55-58). In finding this enhancement applicable, the district court observed that "[the defendant's] status as an attorney is what's really at the core of the obstruction of justice." (A 1115). The court cited, among other things, the root of the obstruction offense in Sampson's embezzlement from escrow accounts he held as a referee, and the skill, knowledge and relationships he developed as an attorney to engage defense lawyers to represent Ahmad's co-conspirators in order to monitor them, as well as the knowledge he gained as a criminal defense attorney regarding the process by which cooperating witnesses can be exposed. (A 1115-17).

Sampson argues that the district court failed to address the requirement for the abuse-of-trust enhancement that a victim of the offense must have entrusted Sampson with "discretionary

authority.” (Br. 55-56). But whether or not Sampson occupied a position of trust in connection with the offense of conviction, the court’s findings support imposing the same two-level enhancement on the alternative ground that Sampson “used a special skill” to commit the offense. See U.S.S.G. § 3B1.3 (“If the defendant abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense, increase by 2 levels.”) (emphasis added). The Court may affirm on this alternate ground even though the district court did not rely upon it. See, e.g., United States v. Yousef, 327 F.3d 56, 156 (2d Cir. 2003).

The Guidelines commentary specifically cites “lawyers” as an example of persons possessing special skills. U.S.S.G. § 3B1.3, Application Note 4; see also United States v. Harris, 38 F.3d 95, 99 (2d Cir. 1994). Sampson argues that his skill as an attorney did not “contribute[] significantly to the commission of the offense.” (Br. 57). However, the district court’s findings to the contrary are not clearly erroneous. Sampson’s understanding of the cooperation process, which led to his efforts to prevent Ahmad and his codefendants from cooperating with the government, was based upon his knowledge and experience as a criminal defense attorney. Moreover, Sampson had the ability to find compromised counsel to represent Ahmad’s codefendants. That Sampson “asked

someone else to speak with" one of the attorneys (Br. 57) does not undermine that conclusion. Nor does the fact that "Sampson did not need to be an attorney to make a referral." (Br. 57). See United States v. Fritzson, 979 F.2d 21, 22-23 (2d Cir. 1992) ("The fact that the same offenses could have been committed by a person without the defendant's special training is immaterial; a § 3B1.3 adjustment is proper where the defendant's special skills increase his chances of succeeding or of avoiding detection.").

II. The Court Properly Imposed an Upward Variance

The district court imposed a sentence above the Guidelines range it calculated based upon the court's careful consideration of the many factors that went into its § 3553(a) analysis. (A 1115-60). These factors included the numerous instances of uncharged, dismissed, and acquitted conduct, occurring both before and after Sampson's conviction, for which the district court properly found Sampson accountable, including: his embezzlement, witness and evidence tampering, false statements to the New York State Liquor Authority, false statements on financial disclosure forms, failure to observe his suspension from the bar even after he had been convicted in this case and was awaiting sentencing, and obstructing New York state regulatory investigations of Ahmad's businesses. (A 1152-58). The district court also properly considered the conduct underlying Sampson's

two false statement convictions when imposing sentence for the obstruction conviction. (A 1154).

Sampson complains that because the Guidelines range for the dismissed embezzlement offenses would have been "at worst" 41-51 months, a 60-month sentence cannot be justified. (Br. 58). However, Sampson's pattern of illegal and unethical behavior, his status as an experienced attorney and a leader of the State Senate (as well as its Ethics Committee) and the brazen nature of the crime, which included abusing a longtime friendship with a USAO employee to invade a law enforcement office for confidential information regarding cooperating witnesses, more than justified a five-year sentence under § 3553(a).

Notwithstanding the district court's accurate description of Sampson's argument that Ahmad, rather than Sampson, made the suggestion on February 22, 2012 at Vetro restaurant that the subpoenaed Check Register Page not be turned over to the government as "disingenuous," Sampson presses that argument again here, and again his argument ignores critical facts. (Br. 59). After telling Sampson about his receipt of a subpoena that covered the Check Register Page, Ahmad stated the following when showing Sampson the Check Register Page and raising the topic for the first time: "Because while doing the paperwork I run into this right there, and obviously I have to turn this over, so I said let me

show this to you.” (GA 87) (emphasis added). Despite Ahmad’s initial statement that the document “obviously” needed to be disclosed to the government, Sampson repeatedly urged Ahmad not to disclose it and to lie to the government about the nature of both the document itself and the \$188,500 loan. Indeed, Sampson ultimately took the Check Register Page from Ahmad to prevent its disclosure to the government. (GA 89-117).

The district court also properly found that Sampson was responsible for the affidavit falsely blaming Premraj Hansraj for wrongdoing in the context of the ongoing regulatory investigations of Ahmad’s real estate businesses:

[T]he Court agrees that there was enough circumstantial evidence that the defendant knew or at the very least was reckless in not knowing that the statements that were contained in the affidavit were false. And while there was a difference in the testimony between Hansraj and Ahmad as to whether or not Hansraj signed the affidavit in Sampson’s presence, those facts are included in the amendment [to the PSR].

. . . .

You told Ahmad, “Don’t be the fall guy. Let some one of your other flunkies be the fall guy.” That’s what that affidavit was about, was somebody else being the fall guy because you needed Ahmad. You used an expired notary license, you didn’t follow any of the procedures that you were supposed to do, again, violating your ethical obligations.

(A 1111, 1156). Thus, the court acknowledged the very discrepancy in testimony raised now by Sampson in properly determining that

Sampson's role in the false affidavit was another factor relevant in formulating an appropriate sentence. Indeed, Sampson does not presently dispute that he notarized the affidavit with an expired notary license - yet another example of a pattern of misconduct and ethical lapses properly considered by the district court.

Sampson also complains about the district court's consideration at sentencing of his false statements on Senate ethics forms, his misleading statements to an administrative law judge when he appeared at a hearing on Ahmad's business, and his appearing as an attorney in family court after his law license had been suspended as a result of his conviction in this case. (Br. 60). The court considered these facts relevant at sentencing because they were part of a long running pattern in which Sampson routinely lied or cut ethical corners - notwithstanding his privileged status as an attorney and a high-ranking state lawmaker. This host of illegal and unethical acts, when taken together, justified a five-year sentence.

III. The Sentence Did Not Create "Unwarranted Disparities"

Sampson complains that the district court considered, among other things, his status as an elected official and political leader when imposing the sentences. (Br. 61-62). Sampson's public position was, of course, entirely appropriate for the district court to consider at sentencing under 18 U.S.C. § 3553(a)(1), which

called upon the district court to consider the "history and characteristics of the defendant." In any event, Sampson's abuse of his office was directly connected to his conviction on the false statement count relating to the Liquor Store. In addition, the evidence at trial showed that he had repeatedly lied on his Senate financial disclosure forms, in violation of his duties as a public official, and that he performed many official acts for Ahmad's benefit after receiving the \$188,500 payment. Sampson's status as a public official was thus tied to his offense conduct.

Sampson also argues that his five-year sentence created an unwarranted disparity with the five-year sentence received by former New York State Senator Dean Skelos. (Br. 62-63). This argument is meritless. To begin with, the prohibition in 18 U.S.C. § 3553(a)(6) against "unwarranted sentence disparities" refers to disparities on a nationwide basis. See United States v. Ghailani, 733 F.3d 29, 55 (2d Cir. 2013) (citation omitted). Moreover, while some defendants have argued that § 3553(a)(6) should also apply to sentencing disparities among codefendants in the same case, see id., that view, even if adopted, could not be extended to require a district court to avoid disparity with a sentence imposed on a single defendant in an unrelated case. If Sampson's approach were followed, sentencing disparities would exist in every case, since, regardless of the sentence imposed, resourceful counsel could

undoubtedly find some defendant somewhere who received an apparently disparate sentence.

In any event, the nature of the crimes Sampson and Skelos were convicted of - obstruction of justice and bribery, respectively - make Sampson's comparison inapt. Sampson's history and characteristics, and his pattern of illegal and unethical conduct, as reviewed at length by the district court, amply justified his five-year sentence.

CONCLUSION

For the reasons stated, the judgment of the district court should be affirmed.

Dated: Brooklyn, New York
September 15, 2017

Respectfully submitted,

BRIDGET M. ROHDE,
Acting United States Attorney,
Eastern District of New York.

By: _____/s/
PAUL TUCHMANN
Assistant U.S. Attorney

DAVID C. JAMES,
PAUL TUCHMANN,
ALEXANDER A. SOLOMON,
MARISA M. SEIFAN,
Assistant United States Attorneys,
(Of Counsel).

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FILED
APR 29 2013
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JDG:DAS/PT/AAS
F.#2012R01872

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA

- against -

JOHN SAMPSON,

Defendant.

AMON, CH.J.

GOLD, M.J.

- - - - -X

I N D I C T M E N T

Cr. No. **CR 13 - 0269**
(T. 18, U.S.C.,
§§ 666(a)(1)(A),
981(a)(1)(C), 1001(a)(2),
1503(a), 1503(b)(3),
1512(b)(2)(A),
1512(b)(2)(B),
1512(b)(2)(C),
1512(b)(3), 1512(c)(1),
1519, 2 and 3551 et seq.;
T. 21, U.S.C., § 853(p))

THE GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this Indictment, unless otherwise indicated:

I. The Defendant

1. From 1997 through the present, the defendant JOHN SAMPSON was a member of the New York State Senate (the "Senate") representing the 19th Senate District in southeastern Brooklyn. From June 2009 to December 2012, SAMPSON was the leader of the Democratic Conference of the Senate. From January 2011 to December 2012, SAMPSON was also the Minority Leader of the Senate.

2. Since 1992, the defendant JOHN SAMPSON was an attorney licensed to practice law in the State of New York. His

law practice included, among other things, criminal defense work and legal work involving the sale of foreclosed properties.

3. In September 2005, the defendant JOHN SAMPSON participated as a candidate in the Democratic Party primary election for the position of Kings County District Attorney. SAMPSON lost this primary election.

II. Overview of JOHN SAMPSON's Criminal Schemes

4. Since the 1990's, the defendant JOHN SAMPSON served as a court-appointed referee for foreclosure proceedings conducted by the Kings County Supreme Court. In that capacity, SAMPSON, acting on behalf of the Kings County Supreme Court, controlled escrow accounts holding proceeds of foreclosure sales of Brooklyn real estate properties.

5. Since approximately 1998, the defendant JOHN SAMPSON embezzled approximately \$440,000 in funds from escrow accounts relating to foreclosure proceedings involving four Brooklyn real estate properties.

6. On or about July 21, 2006, the defendant JOHN SAMPSON asked an associate (the "Associate"), an individual involved in the real estate business whose identity is known to the Grand Jury, for \$188,500. The Associate agreed and, at SAMPSON's direction, provided SAMPSON with these funds (the "Associate Transaction") in the form of three bank checks payable to third parties. SAMPSON asked for this \$188,500 because he

feared that his embezzlement of funds from foreclosure sales, which he told the Associate he had used to pay expenses arising from his campaign for Kings County District Attorney in 2005, could subject him to criminal prosecution. SAMPSON therefore sought the funds from the Associate Transaction to repay the embezzled funds before the embezzlement was uncovered.

7. The defendant JOHN SAMPSON characterized the Associate Transaction as a loan that he would repay. However, SAMPSON accepted this "loan" without written documentation of the transaction or a contemplated rate of interest. SAMPSON never repaid these funds to the Associate. Further, SAMPSON did not divulge the Associate Transaction in his Senate financial disclosure forms, as required.

8. In July 2011, law enforcement authorities arrested the Associate on bank and wire fraud charges as part of a scheme to defraud mortgage lenders (the "Mortgage Fraud Case"). These charges were filed by the United States Attorney's Office for the Eastern District of New York (the "USAO").

9. Shortly after the Associate was arrested, the defendant JOHN SAMPSON began engaging in a scheme to obstruct justice, so as to prevent the Associate from cooperating with law enforcement authorities, and thereby prevent authorities from learning of SAMPSON's criminal conduct. SAMPSON engaged in multiple instances of obstructive conduct, including

(1) attempting to obtain confidential, nonpublic information regarding the Mortgage Fraud Case through a person who, at the time, was an administrative employee in the USAO; and

(2) directing the Associate to withhold documentation of the Associate Transaction from the government.

III. Kings County Foreclosure Proceedings

10. Foreclosure proceedings for real property located in Kings County were administered by the Kings County Supreme Court. Justices of the Kings County Supreme Court appointed local attorneys to act as referees for foreclosure proceedings. A referee was entrusted with conducting the foreclosure sale of a property, and using the proceeds to repay any outstanding mortgages on the property. If a foreclosure sale generated a surplus after repayment of these mortgages and other expenses, the referee was required to tender this surplus to the Kings County Clerk's Office unless otherwise directed by the Kings County Supreme Court. Once the surplus funds were deposited with the Kings County Clerk, the prior owners of the property, and any other interested parties, had the right to receive these funds. The referee owed a fiduciary duty to the Kings County Supreme Court and was prohibited by law from enriching himself at the expense of the Kings County Supreme Court.

11. In or about and between 2007 and 2009, the Kings County Supreme Court was a component of the New York State

Unified Court System, which received in excess of \$10,000 in federal grants each year.

IV. The Embezzlement Scheme

12. Beginning in the 1990s, the defendant JOHN SAMPSON served as a court-appointed referee for foreclosure proceedings conducted by the Kings County Supreme Court. In that capacity, SAMPSON held surplus proceeds of foreclosure sales in escrow accounts (or "surplus funds"), from which he would receive and disburse the funds on behalf of the Kings County Supreme Court (the "Referee Accounts").

13. The defendant JOHN SAMPSON breached his fiduciary obligations as referee by embezzling approximately \$440,000 in surplus funds from the Referee Accounts he oversaw, involving at least four Brooklyn properties (the "Brooklyn Properties"). The Brooklyn Properties were located at 165 Forbell Street (the "Forbell Street Property"), 1915 Eighth Avenue (the "Eighth Avenue Property"), 831 Linden Boulevard (the "Linden Boulevard Property") and 224 Bay Ridge Avenue (the "Bay Ridge Avenue Property").

14. In particular, the defendant JOHN SAMPSON breached his fiduciary obligations as referee by (1) embezzling approximately \$80,000 of surplus funds from the Referee Account for the Forbell Street Property; (2) embezzling approximately \$80,000 of surplus funds from the Referee Account for the Eighth

Avenue Property; (3) embezzling approximately \$145,000 of surplus funds from the Referee Account for the Bay Ridge Avenue Property; and (4) embezzling approximately \$135,000 of surplus funds from the Referee Account for the Linden Boulevard Property.

15. The defendant JOHN SAMPSON used \$161,000 from the Associate Transaction to pay the Kings County Clerk and others designated by the Kings County Supreme Court a portion of the surplus funds SAMPSON had embezzled from the Referee Accounts for the Bay Ridge Avenue Property and the Linden Boulevard Property. However, SAMPSON never repaid any of the surplus funds he had embezzled from the Referee Accounts for the Forbell Street Property and the Eighth Avenue Property.

A. The Forbell Street Embezzlement

16. On February 17, 1998, a Justice of the Kings County Supreme Court appointed the defendant JOHN SAMPSON referee for the foreclosure proceeding for the Forbell Street Property. Pursuant to this appointment, SAMPSON was required by law to: (1) deposit the proceeds from the sale of the Forbell Street Property into a Referee Account (the "Forbell Street Referee Account"); (2) satisfy the mortgage and any other outstanding expenses related to the Forbell Street Property; and (3) promptly deposit with the Kings County Clerk any surplus funds from the foreclosure sale.

17. On October 7, 1998, the defendant JOHN SAMPSON signed a document entitled "Referee's Report of Sale" for the Forbell Street Property. In this report, SAMPSON represented to the Kings County Supreme Court that: (1) on or about February 17, 1998, SAMPSON sold the Forbell Street Property for \$115,000; and (2) there were surplus funds of approximately \$80,000 (the "Forbell Street Surplus") resulting from the sale, after repayment of the mortgage and expenses.

18. The defendant JOHN SAMPSON breached his fiduciary obligations as referee and never deposited any of the Forbell Street Surplus with the Kings County Clerk. Instead, between July 1998 and June 2008, SAMPSON embezzled approximately \$80,000 of the Forbell Street Surplus through cash withdrawals and electronic transfers from the Forbell Street Referee Account. For example, on or about February 13, 2008, SAMPSON transferred \$8,000 from the Forbell Street Referee Account into SAMPSON's personal bank account (the "Sampson Account"). SAMPSON never paid the Kings County Clerk any of the funds he embezzled from the Forbell Street Surplus.

B. The Eighth Avenue Embezzlement

19. On December 20, 2001, a Justice of the Kings County Supreme Court appointed the defendant JOHN SAMPSON referee for the foreclosure proceeding for the Eighth Avenue Property. Pursuant to this appointment, SAMPSON was required by law to:

(1) deposit the proceeds from the sale of the Eighth Avenue Property into a Referee Account (the "Eighth Avenue Referee Account"); (2) satisfy the mortgage and any other outstanding expenses related to the Eighth Avenue Property; and (3) promptly deposit with the Kings County Clerk any surplus funds from the foreclosure sale of the Eighth Avenue Property.

20. On June 28, 2002, the defendant JOHN SAMPSON signed a document entitled the "Referee's Report of Sale" for the Eighth Avenue Property. In this report, SAMPSON represented to the Kings County Supreme Court that: (1) on May 17, 2002, SAMPSON sold the 8th Avenue Property for \$180,000; and (2) there were surplus funds of approximately \$80,000 (the "Eighth Avenue Surplus") resulting from the sale, after repayment of the mortgage and expenses.

21. The defendant JOHN SAMPSON, however, did not deposit the Eighth Avenue Surplus with the Kings County Clerk. Instead, starting in approximately 2002, SAMPSON began to embezzle funds from the Eighth Avenue Referee Account.

22. As a result of the defendant JOHN SAMPSON's embezzlement, on or about July 21, 2006, a balance of \$55,167.94 remained in the Eighth Avenue Referee Account. On or about July 21, 2006, SAMPSON received the Associate Transaction in the form of three bank checks totaling \$188,500, one of which was in the amount of \$27,500. SAMPSON combined this \$27,500 check with

the \$55,167.94 remaining in the Eighth Avenue Referee Account to purchase a bank check in the amount of \$82,667.94 (the "2006 Bank Check"). The 2006 Bank Check was made payable to the "Kings County Clerk Office," ostensibly to repay surplus funds embezzled from the Eighth Avenue Referee Account to the Kings County Clerk.

23. However, the defendant JOHN SAMPSON never deposited the 2006 Bank Check with the Kings County Clerk. Instead, nearly two years later, on or about June 7, 2008, SAMPSON exchanged the 2006 Bank Check for eight bank checks worth \$10,000 each and one bank check for \$2,667.94 (collectively, the "2008 Bank Checks"). Each of the 2008 Bank Checks was made payable to "John Sampson," and the remitter was listed as "John Sampson."

24. On or about and between June 12, 2008 and January 12, 2009, the defendant JOHN SAMPSON redeemed for cash two of the \$10,000 bank checks, negotiated the \$2,667.94 bank check and deposited three of the \$10,000 bank checks into the Sampson Account. The remaining three 2008 Bank Checks, each with a value of \$10,000, were not negotiated. SAMPSON never paid the Kings County Clerk the funds he embezzled from the Eighth Avenue Referee Account.

V. JOHN SAMPSON's Obstruction of Justice

25. Shortly after the Associate's arrest in the Mortgage Fraud Case in July 2011, the defendant JOHN SAMPSON began engaging in a multifaceted scheme to obstruct justice.

26. From mid-December 2011 through mid-March 2012, law enforcement authorities conducted a judicially-authorized wiretap of the defendant JOHN SAMPSON's cellular telephone (the "Sampson Wiretap").

A. JOHN SAMPSON's Use of a USAO Employee to Obstruct Justice

27. Soon after the Associate's arrest, the defendant JOHN SAMPSON informed the Associate that SAMPSON knew an individual who, at that time, was an administrative employee in the USAO (the "Employee"), an individual whose identity is known to the Grand Jury. SAMPSON told the Associate that the Employee could provide information that would assist the Associate's defense in the Mortgage Fraud Case.

28. The defendant JOHN SAMPSON took numerous steps to obtain from the Employee confidential, nonpublic information regarding USAO matters. Specifically, SAMPSON asked the Employee to determine whether the USAO was conducting a criminal investigation of SAMPSON. In addition, SAMPSON told the Associate that he was attempting to determine the identities of cooperating witnesses in the Mortgage Fraud Case (the "Mortgage Fraud Cooperators"). During one meeting, SAMPSON told the

Associate that, if SAMPSON and the Associate were able to identify the Mortgage Fraud Cooperators, SAMPSON could arrange to "take them out."

29. When meeting with the defendant JOHN SAMPSON, the Associate asked about SAMPSON's additional efforts to obtain information concerning the Mortgage Fraud Case through the Employee. SAMPSON, however, was reluctant to discuss over the telephone the Employee's illegal efforts to obtain nonpublic information concerning the Mortgage Fraud Case. For example, while meeting with the Associate on November 22, 2011, SAMPSON stated, "I can't talk on the phone From now on, our conversation is, 'I don't have no contacts, you don't know nothing.' When we talk, that's how we talk."

30. In April 2012, law enforcement authorities confronted the Employee concerning the Employee's contacts with the defendant JOHN SAMPSON. Immediately thereafter, agents searched the Employee's office and located a slip of paper which contained the handwritten names of several individuals who were defendants in proceedings related to the Mortgage Fraud Case. The Employee was then suspended and subsequently terminated from his employment at the USAO.

B. JOHN SAMPSON's Witness Tampering and Evidence Tampering

31. On February 22, 2012, the defendant JOHN SAMPSON met with the Associate at a restaurant in Queens, New York.

Acting at the direction of law enforcement, the Associate told SAMPSON that the federal government had subpoenaed the Associate for business records. The Associate also told SAMPSON that, while reviewing the Associate's records, the Associate had located a check register page which memorialized SAMPSON's receipt of the funds from the Associate Transaction (the "Check Register Page"). The Associate stated that the Associate wanted to show the Check Register Page to SAMPSON before disclosing it to the government. The Associate then handed the Check Register Page to SAMPSON. After examining the Check Register Page, SAMPSON stated, "That's a problem . . . I mean for me."

32. The defendant JOHN SAMPSON instructed the Associate not to disclose the Check Register Page to the government. When the Associate stated that it might be a problem to withhold the document from the government, SAMPSON told the Associate to claim that the Associate did not maintain all of the Associate's records. SAMPSON instructed, "Don't say you don't have it. Just say you don't know. I don't want you to lie, just say you don't know." SAMPSON reiterated several times that he did not want the Associate to lie, while repeatedly instructing the Associate to tell the government, "I don't have it."

33. The defendant JOHN SAMPSON also told the Associate to remove other items from any documents the Associate provided to the government, to make it appear as though the Associate's

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records were incomplete. In addition, SAMPSON suggested that the Associate could falsely claim that the funds from the Associate Transaction were payment for legal work SAMPSON performed.

34. Later during this conversation, the defendant JOHN SAMPSON instructed the Associate that, if the government asked the Associate whether the Associate ever loaned SAMPSON money, the Associate should say "No." SAMPSON also suggested that, alternatively, the Associate could falsely claim that the Associate "forgave" any loan to SAMPSON.

35. The defendant JOHN SAMPSON retained the Check Register Page during and after this meeting, and never returned it to the Associate.

36. On the evening of February 22, 2012, after the meeting described above, the defendant JOHN SAMPSON called the Associate on the telephone. This conversation was captured on the Sampson Wiretap. During the call, SAMPSON asked if the Associate was making "copies of everything." The Associate responded that the Associate had brought the original Check Register Page to SAMPSON and had not kept any copies.

VI. The Interview of JOHN SAMPSON

37. On July 27, 2012, Special Agents from the Federal Bureau of Investigation (the "FBI") approached the defendant JOHN SAMPSON outside his Brooklyn residence and asked him about his involvement in, among other things, the criminal schemes

described above. During the interview, SAMPSON made the following statements in sum and substance, and in part.

38. When shown a copy of the Check Register Page, the defendant JOHN SAMPSON stated that the document "didn't ring a bell" and that he "didn't have a recollection from it." SAMPSON also stated that he did not recall seeing the Check Register Page previously.

39. The defendant JOHN SAMPSON admitted that he had asked the Employee for information on the Mortgage Fraud Case, but claimed that he only requested public information from the Employee, such as the name of the judge assigned to the Mortgage Fraud Case. When asked why he would request public information from an employee of the USAO, when SAMPSON himself was an attorney, SAMPSON stated that he was not "good" with computers.

40. At the conclusion of the interview, the agents advised the defendant JOHN SAMPSON that he had lied to federal agents, which constituted a federal crime. After being asked whether he wished to revise his statement, SAMPSON stated, "Not everything I told you was false."

COUNT ONE

(Embezzlement - Forbell Street)

41. The allegations in paragraphs one through forty are realleged and incorporated as if fully set forth in this paragraph.

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42. On or about February 13, 2008, within the Eastern District of New York and elsewhere, the defendant JOHN SAMPSON, an agent of the Kings County Supreme Court, a component of the New York State Unified Court System, did knowingly and intentionally embezzle, steal, obtain by fraud, misapply and otherwise without authority knowingly convert to the use of a person other than the rightful owner, property of the Kings County Supreme Court, a component of the New York State Unified Court System, an agency of state government that received benefits in excess of \$10,000 under one or more Federal programs involving grants, contracts, subsidies, loans, guarantees, insurance and other forms of Federal assistance in one or more one-year periods, which property was valued at \$5,000 or more, and was owned by, and was under the care, custody and control of, the Kings County Supreme Court, to wit: \$8,000 of the Forbell Street Surplus.

(Title 18, United States Code, Sections 666(a)(1)(A) and 3551 et seq.)

COUNT TWO
(Embezzlement - Eighth Avenue)

43. The allegations in paragraphs one through forty are realleged and incorporated as if fully set forth in this paragraph.

44. On or about June 7, 2008, within the Eastern District of New York and elsewhere, the defendant JOHN SAMPSON,

an agent of the Kings County Supreme Court, a component of the New York State Unified Court System, did knowingly and intentionally embezzle, steal, obtain by fraud, misapply and otherwise without authority knowingly convert to the use of a person other than the rightful owner, property of the Kings County Supreme Court, a component of the New York State Unified Court System, an agency of state government that received benefits in excess of \$10,000 under one or more Federal programs involving grants, contracts, subsidies, loans, guarantees, insurance and other forms of Federal assistance in one or more one-year periods, which property was valued at \$5,000 or more, and was owned by, and was under the care, custody and control of, the Kings County Supreme Court, to wit: \$82,667.94 of the Eighth Avenue Surplus.

(Title 18, United States Code, Sections 666(a)(1)(A) and 3551 et seq.)

COUNT THREE

(Obstruction of Justice - Mortgage Fraud Case)

45. The allegations in paragraphs one through forty are realleged and incorporated as if fully set forth in this paragraph.

46. In or about and between July 2011 and July 2012, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant JOHN SAMPSON, together with others, did knowingly, intentionally and corruptly

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endeavor to influence, obstruct and impede the due administration of justice in an official proceeding, to wit: the Mortgage Fraud Case.

(Title 18, United States Code, Sections 1503(a), 1503(b)(3), 2 and 3551 et seq.)

COUNT FOUR

(Witness Tampering - Check Register Page)

47. The allegations in paragraphs one through forty are realleged and incorporated as if fully set forth in this paragraph.

48. On or about February 22, 2012, within the Eastern District of New York, the defendant JOHN SAMPSON did knowingly, intentionally and corruptly persuade and attempt to persuade the Associate, with intent: (a) to cause and induce the Associate to (1) withhold the Check Register Page, (2) conceal the Check Register Page with intent to impair its availability for use, and (3) evade legal process summoning the Associate to produce the Check Register Page, all in connection with one or more official proceedings, to wit: (i) a grand jury investigation in the Eastern District of New York, and (ii) the Mortgage Fraud Case; and (b) to hinder, delay and prevent the communication to one or more law enforcement officers of the United States, to wit: Special Agents of the FBI and prosecutors in the USAO, of information, specifically, the Check Register Page, relating to

the commission and possible commission of one or more Federal offenses, to wit: (1) federal program embezzlement, in violation of Title 18, United States Code, Section 666(a)(1)(A), as described in paragraphs five, six and twelve through twenty-four, and as charged in Counts One and Two above, and (2) federal program bribery, in violation of Title 18, United States Code, Section 666(a)(1)(B), in connection with the Associate Transaction as described in paragraphs six and seven.

(Title 18, United States Code, Sections 1512(b)(2)(A), 1512(b)(2)(B), 1512(b)(2)(C), 1512(b)(3) and 3551 et seq.)

COUNT FIVE

(Witness Tampering - Associate Transaction)

49. The allegations in paragraphs one through forty are realleged and incorporated as if fully set forth in this paragraph.

50. On or about February 22, 2012, within the Eastern District of New York, the defendant JOHN SAMPSON did knowingly, intentionally and corruptly persuade and attempt to persuade the Associate, with intent to hinder, delay and prevent the communication to one or more law enforcement officers of the United States, to wit: Special Agents of the FBI and prosecutors in the USAO, of information, to wit: information regarding the Associate Transaction, relating to the commission and possible commission of one or more Federal offenses, to wit: (a) federal program embezzlement, in violation of Title 18, United States

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Code, Section 666(a)(1)(A), as described in paragraphs five, six and twelve through twenty-four, and as charged in Counts One and Two above, and (b) federal program bribery, in violation of Title 18, United States Code, Section 666(a)(1)(B), in connection with the Associate Transaction as described in paragraphs six and seven.

(Title 18, United States Code, Sections 1512(b)(3) and 3551 et seq.)

COUNT SIX
(Tampering with Evidence)

51. The allegations in paragraphs one through forty are realleged and incorporated as if fully set forth in this paragraph.

52. In or about and between February 2012 and August 2012, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant JOHN SAMPSON did knowingly, intentionally and corruptly conceal and attempt to conceal a record, document and other object, to wit: the Check Register Page, with the intent to impair the availability of the Check Register Page for use in one or more official proceedings, to wit: (a) a grand jury investigation in the Eastern District of New York, and (b) the Mortgage Fraud Case.

(Title 18, United States Code, Sections 1512(c)(1) and 3551 et seq.)

COUNT SEVEN
(Concealment of Records)

53. The allegations in paragraphs one through forty are realleged and incorporated as if fully set forth in this paragraph.

54. In or about and between February 2012 and August 2012, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant JOHN SAMPSON did knowingly and intentionally conceal and cover up a record, document and tangible object, to wit: the Check Register Page, with the intent to impede, obstruct and influence a matter within the jurisdiction of a department and agency of the United States, to wit: the United States Department of Justice, and in relation to and in contemplation of such matter.

(Title 18, United States Code, Sections 1519 and 3551 et seq.)

COUNT EIGHT
(False Statement - Check Register Page)

55. The allegations in paragraphs one through forty are realleged and incorporated as if fully set forth in this paragraph.

56. On or about July 27, 2012, within the Eastern District of New York, the defendant JOHN SAMPSON did knowingly and willfully make a materially false, fictitious and fraudulent statement and representation, in a matter within the jurisdiction

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of the executive branch of the Government of the United States, to wit: the FBI, in that the defendant falsely stated and represented to FBI Special Agents that he did not recall seeing the Check Register Page previously, when in fact, as he then and there well knew and believed, the defendant did recall seeing the Check Register Page previously.

(Title 18, United States Code, Sections 1001(a)(2) and 3551 et seq.)

COUNT NINE

(False Statement - Request For Nonpublic Information)

57. The allegations in paragraphs one through forty are realleged and incorporated as if fully set forth in this paragraph.

58. On or about July 27, 2012, within the Eastern District of New York, the defendant JOHN SAMPSON did knowingly and willfully make a materially false, fictitious and fraudulent statement and representation, in a matter within the jurisdiction of the executive branch of the Government of the United States, to wit: the FBI, in that the defendant falsely stated and represented to FBI Special Agents that he only requested public information from the Employee, when in fact, as he then and there well knew and believed, the defendant requested nonpublic information from the Employee.

(Title 18, United States Code, Sections 1001(a)(2) and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION FOR COUNTS ONE AND TWO

59. The United States hereby gives notice to the defendant that, upon his conviction of either of the offenses charged in Counts One and Two of this Indictment, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C), which requires the forfeiture of all property, real or personal, that constitutes or is derived from proceeds traceable to any such offenses.

60. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

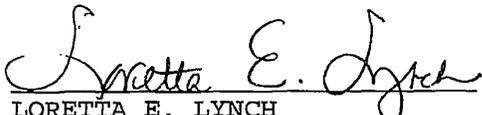
it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any

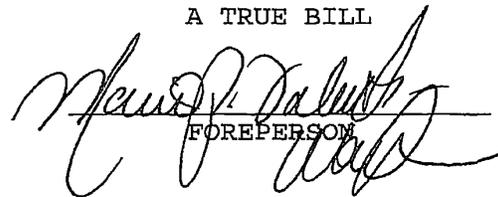
Case 1:13-cr-00269-DLI Document 1 Filed 04/29/13 Page 23 of 24 PageID #: 23

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other property of the defendant up to the value of the
forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Section 981(a)(1)(C);
Title 21, United States Code, Section 853(p))


LORETTA E. LYNCH
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

A TRUE BILL

FOREPERSON

F#2012R01872

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No. _____

UNITED STATES DISTRICT COURT

EASTERN District of NEW YORK

CRIMINAL Division

THE UNITED STATES OF AMERICA

vs.

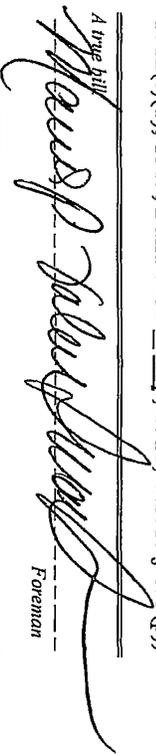
John Sampson,

Defendant.

INDICTMENT

(T. 18, U.S.C., §§ 666(a)(1)(A), 981(a)(1)(C), 1001(a)(2), 1503(a), 1503(b), 1512(b)(2)(A), 1512(b)(2)(B), 1512(b)(2)(C), 1512(b)(3), 1512(g)(1), 1519, 2 and 3551 et seq.; T. 21, U.S.C. § 853(f))

A true bill



Foreman

Filed in open court this _____ day;

of _____ A.D. 20 _____

Clerk

Bail, \$ _____

Assistant U.S. Attorneys Paul Tuchmann (718-254-6294), Daniel Spector (718-254-6345) and Alexander Solomon (718-254-6074)

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INFORMATION SHEET

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
APR 29 PM 4:11
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

USAO#: F#2012R01872

1. Title of Case: United States v. John Sampson

CR 13 - 0269

2. Related Magistrate Docket Number(s)

None (X)

AMON, CH.J.
GOLD, M.J.

3. Arrest Date: Defendant not yet arrested

4. Nature of offense(s): X Felony
Misdemeanor

5. Related Civil or Criminal Cases - Title and Docket No(s). (Pursuant to Rule 50.3 of the Local E.D.N.Y. Division of Business Rules): See relation letter, attached hereto

6. Projected Length of Trial: Less than 6 weeks (x)
More than 6 weeks ()

7. County in which crime was allegedly committed: Kings, Queens
(Pursuant to Rule 50.1(d) of the Local E.D.N.Y. Division of Business Rules)

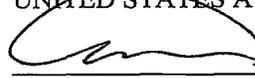
8. Was any aspect of the investigation, inquiry and prosecution giving rise to the case pending or initiated before March 10, 2012.¹ (X) Yes () No

9. Has this indictment been ordered sealed? (X) Yes () No

10. Have arrest warrants been ordered? (X) Yes () No

LORETTA E. LYNCH
UNITED STATES ATTORNEY

By:



Alexander Solomon
Paul Tuchmann
Daniel Spector
Assistant U.S. Attorneys
(718) 254-7000

Rev. 10/01/03

¹ Judge Brodie will not accept cases that were initiated before March 10, 2012.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :
 :
 :
 -against- :
 :
 JOHN SAMPSON, :
 :
 Defendant. :
-----X

OPINION AND ORDER
13-CR-269 (S-5) (DLI)

DORA L. IRIZARRY, United States District Judge:

Defendant John Sampson (the “Defendant”) was indicted in the Eastern District of New York for embezzlement under 18 U.S.C. § 666 (Counts 1 and 2), obstruction of justice under 18 U.S.C. § 1503 (Count 4), witness and evidence tampering under 18 U.S.C. § 1512 (Counts 5-7), concealment of records under 18 U.S.C. § 1519 (Count 8), and false statements to law enforcement officers under 18 U.S.C. § 1001 (Counts 9-11). (Fifth Superseding Indictment (“SSI”) ¶¶ 52-55, 58-73, Dkt. Entry No. 121.) On October 31, 2014, the Court dismissed Counts 1 and 2 as barred by the statute of limitations. On March 17, 2015, the government filed a fifth superseding indictment that added a count for conspiracy to obstruct justice under 18 U.S.C. § 1512. (SSI ¶¶ 56-57.)

Defendant and government filed motions *in limine* on December 1, 2014 to have evidence introduced or precluded at trial. (*See* Def’s Mot. in Limine, Dkt. Entry No. 84; Gov’t’s Mot. in Limine, Dkt. Entry No. 87.) On the same day, the government filed an additional letter setting forth other evidence it would seek to introduce at trial, if Defendant were to testify, including: 1) proffer-protected statements; 2) evidence of Defendant’s predisposition to commit the charged crimes if Defendant asserts an entrapment defense; and 3) topics for cross-

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examination.¹ (Gov't Letter of Dec. 1, 2014 ("Gov't's Letter"), Dkt. Entry No. 91.) At a status conference held on February 2, 2015, Defendant also moved to preclude two audio recordings. For the reasons set forth below, the government's motion is granted in part and denied in part and Defendant's motion is granted in part and denied in part.

I. The Superseding Indictment

From 1997 to the present, Defendant has served as a member of the New York State Senate.² (SSI ¶ 1.) Since 1992, he also has practiced law in New York. (*Id.* ¶¶ 1-2.) In Counts 3-10 of the SSI, the government makes several allegations regarding Defendant's alleged interference with an ongoing federal investigation. The alleged interferences revolve around the theory that Defendant was attempting to conceal embezzlement and bribery offenses from federal officials.

Specifically, the SSI alleges that Defendant embezzled hundreds of thousands of dollars from bank accounts while serving as a referee on foreclosed properties in Brooklyn (the "Referee Accounts"). As a referee, Defendant would receive and disburse funds from foreclosed properties on behalf of the Supreme Court of the State of New York. (*Id.* ¶¶ 4, 12.) Defendant embezzled surplus funds from the Referee Accounts. (*Id.* ¶ 5.) In order to repay the embezzled money, Defendant obtained \$188,500 (the "Associate Transaction") from an associate ("the Associate") that Defendant characterized as a loan he would repay, but which, in fact, was not repaid. (*Id.* ¶ 6-7.)

In July 2011, the Associate was arrested in the Eastern District of New York on bank and wire fraud charges as part of a scheme to defraud mortgage lenders. (*Id.* ¶ 8.) Shortly after the

¹ For the sake of judicial economy, the additional requests set forth in this letter were incorporated into the discussion of the government's motions *in limine* so that all the requests could be addressed in this Opinion and Order.

² During the pendency of this matter, Defendant was re-elected to another Senate term.

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Associate was arrested, Defendant allegedly began to engage in obstructive conduct to prevent the Associate from cooperating with law enforcement authorities. (*Id.* ¶ 9.) First, Defendant reached out to an administrative employee (the “Employee”) at the United States Attorney’s Office (“USAO”) for information regarding the Associate’s case. (*Id.* ¶ 29-30.) Defendant told the Associate that he had asked the Employee for the identities of cooperating witnesses in the Associate’s case and, if they were able to identify the witnesses, Defendant could arrange to “take them out.” (*Id.*) Defendant also asked the Employee to determine whether the USAO was investigating him. (*Id.*) During this time period, from mid-December 2011 to mid-March 2012, law enforcement authorities conducted a judicially authorized wiretap on Defendant’s cellular phone. (*Id.* ¶ 28.)

At the direction of law enforcement officers, the Associate told Defendant that the federal government had subpoenaed business records from the Associate and, while reviewing the records, the Associate had located a receipt for the Associate Transaction (the “Check Register Page”). (*Id.* ¶ 33.) The Associate then showed the Check Register Page to Defendant explaining that he had not yet disclosed it to the government. (*Id.*) Defendant allegedly then instructed the Associate not to disclose the Check Register Page to the government. (*Id.* 34-36.) Defendant also instructed the Associate to lie to the government about what had happened to the Check Register Page and not to tell the government that the Associate had lent Defendant money. (*Id.*) Defendant never returned the Check Register Page to the Associate. (*Id.* ¶ 37.)

Count 11 of the SSI charges Defendant with making materially false, fictitious and fraudulent statements and representations to Federal Bureau of Investigation (“FBI”) agents about an outstanding sales tax balance owed by a liquor store in which Defendant allegedly has a financial interest. (*Id.* ¶¶ 43-46, 50-51, 72-73.) By way of background, as a Senator, Defendant

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was required to disclose any ownership interest he had in any business or any outstanding debts he owed. (*Id.* ¶ 3.) In or about December 2011, John Sampson, along with four other partners, acquired an ownership interest in a liquor store in Brooklyn, New York that he subsequently concealed from his Senate staff members. (*Id.* ¶¶ 10, 40-41.) When acquired, the liquor store owed an outstanding sales tax balance. (*Id.*) Defendant, without disclosing his interests, allegedly directed his Senate staff member to resolve the liquor store's outstanding sales tax obligation. (*Id.* ¶¶ 43-46.) On July 27, 2012, Special Agents of the FBI interviewed Defendant about his involvement in the liquor store. (*Id.* ¶ 47.) Defendant allegedly admitted to the FBI agents that he had an ownership interest in the liquor store, but denied that he had asked his Senate staff member to resolve the liquor store's tax issues. (*Id.* ¶¶ 50, 73.)

II. Government's Motion *in Limine*

The government moves *in limine* to: 1) admit evidence of uncharged crimes and other acts as direct evidence of the charged crimes and/or pursuant to Rule 404(b) of the Federal Rules of Evidence; 2) admit proffer-protected admissions should Defendant introduce contradictory evidence or make contradictory arguments; 3) admit other uncharged conduct in its case-in-chief if Defendant raises an entrapment defense; 4) permit the government to cross-examine Defendant concerning certain prior "bad acts" should he testify; and 5) preclude the defense from introducing certain self-serving evidence or making certain arguments. (Mem. of Law in Supp. of the Gov't's Mots. in Limine ("Gov't's Mem.") attached as Exhibit 1 to Gov't's Mots. in Limine at 1, Dkt. Entry No. 90.) Defendant opposes seeking to stipulate to certain facts instead. (*See generally* Def. John Sampson's Mem. of Law in Opp'n to the Gov't's Mots. in Limine ("Def.'s Opp'n"); Dkt. Entry No. 101.) Defendant also moves *in limine* to preclude the

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government from introducing evidence about the liquor store, embezzlement, bribery, and certain recordings between Defendant and the Associate.

A. Admission of Evidence of Uncharged Crimes and Other Acts

The government seeks to introduce the following: 1) evidence of Defendant's embezzlement from four bank accounts relating to foreclosure actions in which he was the referee; 2) evidence that the Associate bribed Defendant to perform official acts on his behalf; 3) evidence that Defendant failed to disclose a monetary transaction with the Associate as required on his Senate Financial Disclosure Forms from 2006 to 2011; and 4) evidence that Defendant had a relationship of trust with the Associate. (*See generally* Gov't's Mem.) Defendant opposes arguing that: 1) the government "seeks to try" uncharged embezzlement and public corruption crimes, which would confuse the jury concerning the actual charges brought by the government; 2) the evidence is inadmissible pursuant to Rule 403 because it is prejudicial, would waste trial time, and cause jury confusion; and 3) the proffered evidence could be "viewed as far more serious than the alleged obstruction." (Def.'s Opp'n at 1-3.) Defendant also offers to stipulate to certain facts in lieu of the government's introduction of evidence to prove the facts at trial. (*See generally* Def.'s Opp'n.)

Evidence of uncharged criminal conduct is relevant and potentially admissible under two doctrines. First, evidence of uncharged criminal conduct is relevant if the uncharged conduct "arose out of the same transaction or series of transactions as the charged offense, if it is inextricably intertwined with the evidence regarding the charged offense, or if it is necessary to complete the story of the crime on trial." *See United States v. Carboni*, 204 F.3d 39, 44 (2d Cir. 2000); accord *United States v. Miller*, 116 F.3d 641, 682 (2d Cir. 1997) (affirming the admission of uncharged murders against a defendant charged with murder and RICO violations as the

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uncharged conduct was “proof of the existence of the RICO enterprise . . . which used such acts of violence in furtherance of its narcotics conspiracy”); *United States v. Thai*, 29 F.3d 785, 812 (2d Cir. 1994) (“When the indictment contains a conspiracy charge, uncharged acts may be admissible as direct evidence of the conspiracy itself.”); *cf. United States v. Inserra*, 34 F.3d 83, 89 (2d Cir. 1994) (noting that evidence of other “bad acts” may be admitted “to provide the jury with the complete story of the crimes charged by demonstrating the context of certain events relevant to the charged offense”).

Second, evidence of uncharged criminal conduct is relevant and admissible as “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident” under Rule 404(b) of the Federal Rules of Evidence. FED. R. EVID. 404(b); *see also United States v. Levy*, 731 F.2d 997, 1002 (2d Cir. 1984) (“[A]s long as the evidence is not offered to prove propensity, it is admissible.”). The Second Circuit, while adopting an inclusionary approach to Rule 404(b), has held that three requirements must be met before evidence may be admitted under this rule. “Evidence . . . offered under Fed. R. Evid. 404(b) may be admitted if the court: 1) determines that the evidence is offered for a purpose other than to prove the defendant's bad character or criminal propensity; 2) determines that the evidence is relevant under Fed. R. Evid. 401 & 402,³ and is more probative than unfairly prejudicial under Fed. R. Evid. 403; and 3) provides an appropriate limiting instruction to the jury, if one is requested.” *United States v. Mickens*, 926 F.2d 1323, 1328 (2d Cir. 1991) (internal citations and

³ Rule 401 states that “[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” FED. R. EVID. 401.

Rule 402 states that “[r]elevant evidence is admissible unless any of the following provides otherwise:

- the United States Constitution;
- a federal statute;
- these rules; or
- other rules prescribed by the Supreme Court.

Irrelevant evidence is not admissible.” FED. R. EVID. 402.

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quotations omitted). Additionally, the Second Circuit has held that, “when a defendant has been charged with actual . . . obstruction of justice with respect to a given crime, evidence of the underlying crime and the defendant’s part in it is admissible to show the motive for his efforts to interfere with the judicial process.” *United States v. Willoughby*, 860 F.2d 15, 24 (2d Cir. 1988); *see also United States v. Bradwell*, 388 F.2d 619 (2d Cir. 1968) (affirming trial court’s decision to admit evidence of crime defendant was acquitted of, in order to show a defendant’s motive for committing obstruction of justice).

Yet, not all relevant evidence is admissible. Under Federal Rule of Evidence 403, “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” FED. R. EVID. 403. Upon weighing the probative value and risk of prejudice of admitting these uncharged crimes, the court must preclude any uncharged conduct that is unduly prejudicial to the defendant. The court also must “be careful to consider the cumulative impact of the evidence on the jury and to avoid the potential prejudice that might flow from its admission.” *See United States v. Wallach*, 935 F.2d 445, 472 (2d Cir. 1991). However, in *United States v. Bradwell*, the Second Circuit held that “[w]hile allowing such proof in an obstruction case inevitably entails danger that the jury may convict the defendant for the crime previously investigated, this is a matter for cautionary limiting instructions” *Bradwell*, 388 F.2d at 621.

Defendants may offer to stipulate to certain facts in order to avoid the admission of evidence, upon the contention that the evidence is unfairly prejudicial pursuant to Rule 403. *See e.g., United States v. Cottman*, 116 F.3d 466 (2d Cir. 1997) (unpublished). However, the Supreme Court has made clear that a “criminal defendant may not stipulate or admit his way out

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of the full evidentiary force of the case as the government chooses to present it.” *See Old Chief v. United States*, 519 U.S. 172, 186-87 (1997). “[T]he prosecutor's choice will generally survive a Rule 403 analysis when a defendant seeks to force the substitution of an admission for evidence creating a coherent narrative of his thoughts and actions in perpetrating the offense for which he is being tried.” *See id.* at 192. “The rationale for this rule is ‘to permit a party to present to the jury a picture of the events relied upon. To substitute for such a picture a naked admission might have the effect to rob the evidence of much of its fair and legitimate weight.’” *Cottman*, 116 F.3d at 3 (quoting *Old Chief*, 519 U.S. at 186.)

1. *Evidence of Embezzlements*

The government seeks to introduce the following evidence of federal program embezzlements in its case in chief to prove that Defendant hindered communications related to a federal offense in violation of 18 U.S.C. 1512(b)(3) (Counts 5 and 6): “(a) testimony of recordkeeping witnesses to establish the mechanics of the foreclosure process and to admit relevant records; (b) testimony regarding [D]efendant’s statements to the Associate in July 2006 about [D]efendant’s embezzlement from the referee accounts; and (c) bank records, cancelled checks, and court documents showing that (i) surpluses remained after [D]efendant conducted the relevant foreclosure sales as referee, (ii) [D]efendant embezzled from these referee accounts, (iii) [D]efendant used the Associate Transaction to replenish the Bay Ridge Avenue and Linden Boulevard Referee Accounts and to remit the relevant surplus funds, and (iv) [D]efendant failed to remit to the Kings County Clerk any surplus funds from the Eighth Avenue Referee Account.” (Gov’t’s Mem. at 7, 11.) The government asserts it will take approximately one day to introduce this evidence. In the alternative, the government seeks to introduce this evidence under Rule 404(b) to show a motive for Defendant to obstruct justice. (*Id.* at 7-11.) Defendant objects

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arguing that the government should be precluded from introducing evidence of uncharged crimes and crimes dismissed as barred by the statute of limitations, and that the evidence would be unfairly prejudicial as “the New York public views official corruption with a particularly jaundiced eye,” confuse the issues, create undue delay, and waste time. (Def.’s Opp’n at 5-15.) Instead, Defendant offers to “stipulate that the ‘Check Register Page’ and information about that document ‘relat[ed] to the...possible commission of a Federal offense,’” thereby removing that element from the case. (Def.’s Opp’n at 8.)

Upon performing the balancing test required under Rules 403 and 404(b), the Court holds that the embezzlement evidence is admissible as direct evidence relevant to the obstruction of justice charge. Proof of the embezzlements, though dismissed criminal acts, is necessary both to complete the story of the crime on trial and to establish an element required to prove witness tampering under 18 U.S.C. § 1512(b)(3). *See* 18 U.S.C. § 1512(b)(3) (requiring the government to prove that Defendant attempted to hinder the communication of information relating to the commission or possible commission of a federal offense or offenses to federal law enforcement officers or judges). Defendant is charged with concealing a “Check Register Page” from federal agents. This “Check Register Page” is alleged to be proof of a “loan” the Associate gave Defendant in order to repay money Defendant allegedly embezzled from referee accounts. Evidence concerning the embezzlement scheme gives the jury context for the importance of the “Check Register Page,” Defendant’s interest in the document, and his motive for obstructing justice. Furthermore, the government must prove the possible commission of a federal offense as an element of 18 U.S.C. § 1512(b)(3). Therefore, the government must introduce evidence of the embezzlements if it is to sustain its burden of proof. Excluding this evidence would deprive the government of the ability to prove Counts 5 and 6. Furthermore, the evidence also is admissible

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under Rule 404(b). The evidence shows a motive for committing the obstruction of justice, witness tampering, and false statement offenses, is relevant under Rules 401 and 402, and is more probative than prejudicial.

The Court finds unavailing Defendant's position that the evidence should be excluded because the embezzlement charges were dismissed as outside the statute of limitations. There is no law to support Defendant's position. If the government may introduce evidence of crimes a defendant was acquitted for as in *Bradwell*, then it certainly can introduce evidence of time-barred crimes. Notably, Defendant does not meet the requirements for excluding the evidence under Rule 403. As the government states, it will take only one day to present this evidence at trial and will not cause undue delay. Even if the evidence was introduced over several days, this would not constitute undue delay in a trial that otherwise is expected to last approximately five weeks. The evidence is inextricably intertwined with the crime. The alleged obstruction of justice involved concealing a "Check Register Page" indicating the Associate "lent" Defendant money that Defendant then used in the embezzlement scheme. This makes the evidence highly probative and will not tend to confuse the jury. The evidence also proves an element of the government's case, completes the story of the crime on trial, and shows a motive to commit the crimes. Without the embezzlement evidence, the story is incomplete and the jury certainly would be left to wonder why Defendant had interfered in a federal investigation. The Court finds unavailing Defendant's arguments that the embezzlement evidence shows bad acts that are "more serious" in nature than the charged crimes. Interfering with a federal investigation is a very serious crime, particularly when committed by a public official, who also is an attorney. Therefore, the probative value of the evidence outweighs any prejudicial effect on Defendant.

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Furthermore, any potential prejudicial effect can be addressed by appropriate limiting instructions to the jury, as needed, throughout the trial.

The Court declines to accept Defendant's offer to stipulate that the information regarding the "Check Register Page" related to the possible commission of a federal offense. Allowing Defendant to stipulate to this fact would deny the government the opportunity to present the full evidentiary force of its case, and, as the Court finds the evidence survives the balancing analysis under Rules 403 and 404(b), there is no reason to avoid any potential prejudicial effect through a stipulation.

2. Evidence of Bribery

The government proffers that the Associate will testify that, when he lent Defendant the Associate Transaction, the Associate did not consider the money a bribe, but, when it was clear Defendant would not repay the money, he began to ask Defendant to commit acts in Defendant's official capacity on his behalf. Consequently, the government seeks to introduce the following as direct evidence of bribery to prove that Defendant hindered communications related to a federal offense in violation of 18 U.S.C. § 1512(b)(3) (Counts 5 and 6): "(a) [that Defendant] intervene[ed] with the New York City Department of Environmental Protection ("DEP") to support the Associate's efforts to obtain a permit that enabled him to develop real property in Queens, New York; (b) [that Defendant] intervene[ed] with the Superintendent of the New York State Banking Department ("NYSBD"), the New York State Department of State ("DOS"), and a New York State administrative law judge in an effort to (i) delay and curtail an investigation of the Associate's business by the NYSBD and the DOS, and (ii) modify the terms of a settlement between the Associate's business and the NYSBD; and (c) [that Defendant] used Senate staff to contact institutional sellers of foreclosed 'real estate owned' or 'REO' properties in an effort to

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persuade those sellers to use the Associate's real estate business as a designated seller of REO properties." (Gov't's Mem. at 13-14.) Alternatively, the government argues that this evidence is admissible under Rule 404(b) to show Defendant's motive for interfering in a federal investigation. Defendant objects for the same reasons that he objects to the admission of the embezzlement evidence, stressing that the Associate Transaction was a loan. (Def.'s Opp'n at 5-15.) As before, Defendant offers to stipulate to the "commission or possible commission of a federal offense." (*Id.* at 8.)

For the same reasons that the embezzlement evidence is admissible in the government's case in chief, the Court finds the bribery evidence admissible. As discussed above, 18 U.S.C. § 1512(b)(3) requires the government to prove that Defendant attempted to hinder the communication of information relating to the commission or possible commission of a federal offense or offenses. Therefore, the bribery evidence the government seeks to admit, which is evidence of a possible federal offense, is directly relevant to proving a case under 18 U.S.C. § 1512(b)(3). Furthermore, as with the embezzlement evidence, the bribery evidence completes the story of the crime on trial and explains Defendant's actions with regard to the federal investigation. It also provides a motive for the crime, tends to prove intent, and is admissible under Rule 404(b).

In performing the balancing test under Rule 403, the Court also finds the evidence is more probative than prejudicial. As with the embezzlement evidence, the bribery evidence will not cause undue delay, confuse or mislead the jury, waste time, or needlessly present cumulative evidence. The bribery evidence is inextricably intertwined with the alleged obstruction of justice as it satisfies an element of the crime and provides a motive for why Defendant would seek to

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obstruct justice. This clear probative value outweighs any prejudicial effect on Defendant and limiting instructions will limit any potential harm to Defendant.

3. *Senate Financial Disclosure Forms*

The government seeks to introduce the following evidence to corroborate the Associate's testimony, complete the story of the "Associate Transaction", and show that Defendant intended to hide the "Associate Transaction" from the public: "(a) [D]efendant's Senate Financial Disclosure Forms from 2006 to 2011, which omit any reference to the Associate Transaction; (b) [D]efendant's Senate Financial Disclosure Forms from 2012 and 2013, which . . . disclose a loan of \$188,500 from the Associate as one of [D]efendant's obligations; and (c) other testimony regarding [D]efendant's obligation to disclose the Associate Transaction on his Senate Financial Disclosure Forms." (Gov't's Mem. at 14-15.) Defendant objects to its admission pursuant to Rule 403 arguing that documents with no reference to the loan are not evidence that the Associate Transaction occurred, are not probative, do not "complete the story" of the loan, and the evidence would unfairly prejudice him. (Def.'s Opp'n at 16.) Instead, Defendant offers to stipulate that "the checks reflected on the Check Register Page were issued." (*Id.*)

The Court will allow the introduction of the Senate Financial Disclosure Forms as relevant direct evidence of the obstruction of justice charges. As discussed above, the government intends to show that Defendant accepted the Associate Transaction in order to conceal embezzlements by repaying money unlawfully taken out of referee accounts. The Senate Financial Disclosure Forms will corroborate the Associate's testimony with regard to this theory. Defendant's failure to report the Associate Transaction on his Senate Financial Disclosure Forms suggests that Defendant was using the money for an illicit purpose, *i.e.* the embezzlements. Therefore, the Senate Financial Disclosure Forms help to complete the

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government's story regarding the embezzlements and the resulting interference in a federal investigation.

Defendant's arguments that the evidence is more prejudicial than probative are unavailing. Very little prejudice will result from the jury knowing that Defendant did not disclose financial information on his Senate Financial Disclosure Forms as such an omission is not more egregious than the charged criminal acts. As such, the Court also rejects Defendant's stipulation offer as there is very little, if any, prejudicial effect to be avoided through a stipulation and it would interfere with the government's right to present the "full evidentiary force of the case as the government chooses to present it" and to present a "coherent narrative" of Defendant's thoughts and actions in perpetrating the crime. *See Old Chief*, 519 U.S. at 186-87, 192. Moreover, limiting instructions may be given to limit any potential prejudice to Defendant.

4. *Evidence of Trust with the Associate*

The government also seeks to admit evidence that a relationship of trust existed between Defendant and the Associate consistent with the charged conduct. Specifically, the government wants to introduce evidence that Defendant directed the Associate to submit a false affidavit that Defendant subsequently notarized to the NYSBD and DOS in order to "thwart" ongoing investigations into the Associate's business and lay blame on one of the Associate's employees for falsified documents that the Associate submitted to the agencies. (Gov't's Mem. at 16-17.) The government also seeks to introduce evidence that Defendant appeared at an administrative hearing concerning this investigation to assist the Associate's attorney. (*Id.* at 18 n.8.) In the alternative, the government argues this evidence is admissible to corroborate the Associate's testimony. (*Id.* at 16.) Defendant objects, arguing that the evidence is not relevant, is more

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prejudicial than probative (including the cumulative effect of the evidence), would cause undue delay, and waste time. Defendant instead offers to stipulate that a “relationship of trust” exists between him and the Associate. (Def.’s Opp’n at 17-18.)

The government’s motion is denied with respect to this evidence, but without prejudice to renew should Defendant assert an entrapment defense (*see infra* section II, C) or otherwise opens the door to its admission at trial. Although the government argues correctly that the evidence is admissible to show the development of a relationship of trust between Defendant and the Associate, *see United States v. Williams*, 205 F.3d 23 33-34 (2d Cir. 2000); *United States v. Rosa*, 11 F.3d 315, 333-334 (2d Cir. 1993); *United States v. Pitre*, 960 F.2d 1112, 1119 (2d Cir. 1992), and to corroborate the Associate’s testimony as a cooperating witness who participated in the commission of uncharged crimes jointly with the defendant, *see United States v. Everett*, 825 F.2d 658, 660 (2d Cir. 1987), the Court finds the prejudice outweighs its probative value. This evidence essentially is evidence of Defendant’s prior obstruction of justice, but in connection with a state investigation. As such, the jury may interpret this evidence as propensity evidence. The Court already has permitted the government to introduce evidence of other criminal conduct between Defendant and the Associate that is probative of the relationship of trust that existed between the two and completes the story or narrative of the crime. The Court also has admitted the Senate Financial Disclosure Forms to corroborate the Associate’s testimony. Accordingly, this additional evidence is cumulative. Overall, the prejudice to Defendant outweighs its probative value.

B. Proffer Statements

The government seeks to admit certain proffer statements of Defendant should he offer evidence that contradicts the statements in the admissions either by his own testimony or the

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questioning of witnesses. (Gov't Letter at 2-5, Dkt. Entry No. 91; Proffer Agreement attached as Exhibit 1 to Gov't's Letter; Proffer Agreement attached as Exhibit 2 to Gov't's Letter.) The government generally is permitted to offer proffer-protected admissions to rebut factual assertions made by Defendant. The Second Circuit has held that the government properly may introduce proffer-protected defendant admissions to rebut a defendant's contradictory evidence, despite the waivers contained in proffer agreements identical to those here. *See United States v. Barrow*, 400 F.3d 109, 115-23 (2d Cir. 2005). The Circuit defined rebuttal evidence as "any evidence that the trial judge concludes fairly counters and casts doubt on the truthfulness of factual assertions advanced, whether directly or implicitly, by an adversary." (*Id.* at 121.) The Circuit also noted that any evidence would be subject to Rule 403 analysis. (*Id.* at 119-20.)

At this stage, it is premature for the Court to rule on whether the admissions should be admitted when Defendant has not asserted facts that refute them. Therefore, the Court reserves decision on the admissibility of proffer-protected admissions until the issue is raised at trial.

C. Evidence to Rebut an Entrapment Defense

Defendant intends to assert the defense of entrapment, though he is unclear as to which counts he intends to raise the defense. (*See* Def.'s Letter of Dec. 15, 2014 ("Def.'s Letter") at 4, Dkt. Entry No. 105.) As an initial matter, the government objects to the availability of the entrapment defense for Count 4 as the conduct charged in Count 4 began before the government contacted Defendant. (Gov't's Letter at 5 n.4.) However, the government intends to rebut the entrapment defense by proving Defendant's predisposition to commit the charged crimes. (Gov't's Letter at 5.) The government thus seeks to introduce the following evidence to rebut Defendant's entrapment defense: 1) Defendant's embezzlement from the Referee Accounts; 2) Defendant's use of the USAO Employee to obstruct an investigation into the Associate's case; 3)

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Defendant's false statements on Defendant's Senate Financial Disclosure Forms; 4) Defendant's false statements to the state liquor authority; 5) Defendant's fraudulent claims for *per diem* expenses; 6) Defendant's drafting of a fraudulent affidavit on behalf of the Associate in connection with a state agency investigation of the Associate; 7) Defendant's fraudulent reporting of the use of Democratic Senate Campaign Committee ("DSCC") funds; 8) Defendant's false and misleading statements about the Aqueduct Racetrack bidding process; and 9) other false statements made to FBI agents. (Gov't's Letter at 6-10.) The government also asserts that an entrapment defense will open the door to its use of the proffer-protected admissions. (*Id.* at 10-11.) Defendant objects, arguing that the government's evidence should be limited to acts that occurred during the "inducement period" and that the evidence should be excluded because it is irrelevant, would cause confusion and delay, and the probative value is outweighed by its prejudicial effect. (Def.'s Letter at 6-12.)

"The Supreme Court has made clear that '[g]overnment agents may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the [g]overnment may prosecute.'" *United States v. Brand*, 467 F.3d 179, 191 (2d Cir. 2006) (quoting *Jacobson v. United States*, 503 U.S. 540, 548 (1992)). "To make out a defense of entrapment, 'a defendant must first prove government inducement by a preponderance of the evidence. The burden then shifts to the government to show that the defendant was predisposed to commit the crime beyond a reasonable doubt.'" *United States v. Al-Moayad*, 545 F.3d 139, 153 (2d Cir. 2008) (quoting *United States v. Gagliardi*, 506 F.3d 140, 149 (2d Cir. 2007)). The government may prove predisposition in order to rebut an entrapment defense by demonstrating any of the following: "(1) an existing course of criminal conduct similar to the crime for which [the defendant] is

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charged, (2) an already formed design on the part of the accused to commit the crime for which he is charged, or (3) a willingness to commit the crime for which he is charged as evidenced by the accused's ready response to the inducement.” *Id.* at 154 (quoting *United States v. Salerno*, 66 F.3d 544, 547 (2d Cir.1995)). With regard to what is considered “criminal conduct similar to that which the defendant is charged,” conduct that is “morally indistinguishable” and “of the same kind” is considered sufficiently similar. *See United States v. Viviano*, 437 F.2d 295, 299 n.3 (2d Cir. 1971); *United States v. Williams*, 705 F.2d 603, 623 (2d Cir. 1983). Defendant argues that the “morally indistinguishable” standard is outdated. (Def.’s Letter at 5.) However, the Second Circuit has not overruled this standard and the cases relied on by Defendant do no more than articulate the ways in which the government can rebut an entrapment defense.

The government also may use evidence of uncharged criminal conduct, *see, e.g. United States v. Gantzer*, 810 F.2d 349, 352 (2d Cir. 1987); *United States v. Malachowski*, 415 Fed. Appx. 307, 311-21 (2d Cir. Mar. 23, 2011) (unpublished), or evidence of events that occurred after the inducement, *see United States v. Harvey*, 991 F.2d 981, 994 (2d Cir. 1993). Defendant argues that any evidence of criminal conduct must be close in temporal proximity to the charged crime relying on *Sherman v. United States*, 356 U.S. 369 (1955). However, the Supreme Court in *Sherman* very clearly relied on the specific facts in that case in determining that the defendant’s criminal conduct from nine and five years earlier did not show predisposition. The Supreme Court did not hold that “earlier crimes occurring too far in the past” should not be considered. In any event, the uncharged crimes at issue here were close in temporal proximity to the crimes charged.

Here, the government seeks to offer evidence demonstrating “an existing course of criminal conduct similar to the crime for which [the defendant] is charged.” (Gov’t’s Letter at

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5.) The Court already has admitted most of the evidence the government seeks to introduce to rebut the entrapment defense, including the embezzlement evidence and Senate Financial Disclosure Forms. However, if Defendant pursues a defense of entrapment, then the Court will allow the introduction of evidence that Defendant drafted a fraudulent affidavit on behalf of the Associate. As discussed *supra*, the fraudulent affidavit evidence is admissible, but the Court excluded it as being more prejudicial than probative. Yet, when Defendant asserts the defense of embezzlement, this balance changes and the evidence becomes more probative than prejudicial. Defendant submitted the fraudulent affidavit in an effort to obstruct justice and, therefore, it demonstrates “an existing course of criminal conduct similar to the crime for which [the defendant] is charged.” The evidence, thus, is highly probative to prove predisposition, and any prejudicial effect is outweighed by the probative value.⁴

The Court will now address the remaining evidence: 1) using an employee of the USAO to obstruct an investigation into the mortgage fraud case 2) false statements to the state liquor authority; 3) fraudulent claims for *per diem* expenses; 4) fraudulent reporting of the use of Democratic Senate Campaign Committee (“DSCC”) funds; 5) false and misleading statements about the Aqueduct Racetrack bidding process; 6) other false statements made to FBI agents; and 7) use of the proffer-protected admissions.

1. Using an Employee of the United States Attorney’s Office to Obstruct Investigation Into the Mortgage Fraud Case

The government seeks to introduce evidence that Defendant contacted a USAO employee to obtain non-public information prior to the government’s inducement of Defendant. (Gov’t’s Letter at 6.) Apart from being admissible as underlying evidence of Counts 3 and 4, this

⁴ Defendant characterizes this evidence as merely submitting an affidavit with an invalid notary license. (Def.’s Letter at 9.) However, as discussed *supra*, the affidavit evidence involves a much more complicated obstruction of justice scheme.

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evidence is also admissible to show predisposition. The Defendant contacted the Employee before the Associate's cooperation with the government, and therefore Defendant cannot assert entrapment as to these charges. See *United States v. Valencica*, 645 F.2d 1158, 1172 n.19 (2d Cir 1980 (“[E]ntrapment defense . . . cannot be raised without some evidence of inducement by a government agent.”) (citing *United States v. Demma*, 523 F.2d 981, 985 (2d Cir. 1975)). Furthermore, this evidence is highly probative of Defendant's propensity and, therefore, any prejudicial effect is outweighed by the probative value. Presenting this evidence also will not cause confusion or delay. Therefore, this evidence is admissible.

2. *False Statements to the State Liquor Authority*

The government seeks to introduce evidence that Defendant made false statements to the New York State Liquor Authority in an application for a liquor license that failed to declare Defendant's ownership interests in the store. (*Id.* at 7.) This evidence is admissible relevant direct evidence of Count 11 as discussed *infra*. It also is admissible to rebut any defense of entrapment as the State Liquor Authority relied on these false statements in conducting its investigation concerning the granting of licensing privileges.

3. *Fraudulent Claims for Per Diem Expenses*

The government seeks to introduce evidence that Defendant submitted fraudulent claims for *per diem* reimbursement expenses that New York State Senators are entitled to for the days they are in Albany, New York on legislative business. (*Id.*) This criminal conduct is not similar to the charged conduct and is inadmissible for purposes of rebutting an entrapment defense. Lying in order to be reimbursed fraudulently is different from interfering with an ongoing federal investigation. Therefore, the evidence is inadmissible.

4. Fraudulent Reporting of the Use of DSCC Funds

The government seeks to introduce evidence that Defendant fraudulently disbursed DSCC funds to himself and others while he was chair of the Senate Democratic Conference. (*Id.* at 8.) In particular, the government wants to show that Defendant funneled money to a political operative to compensate the operative for helping him become the leader of the Senate Democratic Conference and that Defendant funneled money to other New York congressman who also helped achieve that leadership position. (*Id.* at 8-9.) This evidence is not similar to the charged criminal conduct and is inadmissible to rebut an entrapment defense. Although the evidence demonstrates that Defendant illegally may have paid kickbacks for political favors, this type of conduct is distinguishable from interfering with an ongoing federal investigation. Therefore, the evidence is inadmissible.

5. False and Misleading Statements about the Aqueduct Racetrack Bidding Process

The government seeks to introduce evidence that Defendant made false and misleading statements to the New York State Inspector General, who was performing an investigation into the bidding process for awarding a license to operate video lottery facilities at Aqueduct Racetrack. (*Id.* at 9.) In particular, the government seeks to introduce evidence that: (a) Defendant lied under oath by implausibly claiming a lack of recall in response to more than 100 questions posed to him; (b) Defendant disclosed information to lobbyists, but claimed falsely, under oath, that the information was not confidential; and (c) Defendant justified this falsehood by asserting that the New York State Senate did not possess confidential materials. (*Id.* at 9-10.)

The uncharged criminal conduct that the government recounts in connection with the Aqueduct Racetrack bidding process is similar to the charged criminal conduct. Both events

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show Defendant acting to interfere with an ongoing investigation and lying to investigators in order to frustrate efforts at achieving justice. Furthermore, the evidence is more probative than prejudicial as it tends to show Defendant's predisposition and thus rebuts any entrapment defense. The evidence also will neither cause delay nor confusion. Therefore, the Court finds this evidence admissible to rebut Defendant's entrapment defense.

6. Other False Statements Made to FBI Agents

The government seeks to introduce evidence that Defendant made other false statements to FBI agents in addition to the false statements Defendant is charged with making in Counts 8 through 10. (Gov't's Letter at 10.) The Court finds these statements admissible to show predisposition, as lying to law enforcement officers during an ongoing criminal investigation is similar to the criminal conduct charged.

7. Use of the Proffer-Protected Admissions

The government seeks to introduce proffer-protected admissions in order to rebut any entrapment defense, citing to *United States v. Evans*, 2006 WL 3628073, at *10-11 (N.D. Ohio Dec. 11, 2006). (Gov't's Letter at 10.) Defendant incorrectly claims that the government's reliance on *Evans* is misplaced. *Evans* is consistent with Second Circuit case law previously discussed in connection with the other prong of the government's motion *in limine* concerning proffer statements. *See, supra*, section II, B. To the extent Defendant made any proffer statements that are inconsistent with an entrapment defense, the government may use such statements to rebut the defense.

D. Admission of Evidence to Cross-Examine Defendant

The government seeks to cross-examine Defendant about the following events should Defendant seek to testify: 1) Defendant's solicitation of funds to help Senator Shirley Huntley

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repay a personal debt after telling the donors the funds were campaign contributions; 2) Defendant's acceptance of a \$10,000 payment from a businessman and use of his official position to lobby on behalf of the businessman's interests; 3) Defendant's violation of New York State Election Law by producing election brochures that led readers to believe Defendant was endorsed by the SEUI Healthcare Workers East Union when he was not; and 4) Defendant's designation of \$100,000 in discretionary New York State funds to a non-profit organization operated by one of the liquor store's business partners, which was not used to advance the non-profit's mission. (Gov't's Letter at 11-12.) Defendant objects, arguing that the evidence is more prejudicial than probative and that the government may not introduce extrinsic evidence to prove these crimes or bad acts. (Def.'s Letter at 11-12.) Defendant also contends that the government should not be permitted to cross-examine him about the embezzlements as they are outside the statute of limitations.

Federal Rule of Evidence 608(b) states that:

[E]xtrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of: (1) the witness; or (2) another witness whose character the witness being cross-examined has testified about.

FED. R. EVID. 608(b). Evidence admitted under Rule 608(b) is subject to the probative-prejudicial balancing test of Rule 403. *See United States v. Schwab*, 886 F.2d 509, 513 (2d Cir. 1989).

The government will be permitted to cross-examine Defendant regarding these incidents pursuant to Rule 608(b) should Defendant testify at trial. These incidents clearly go to Defendant's character for truthfulness as they all involve incidents where Defendant may have lied or misrepresented facts in order to induce others to act. Moreover, as the Court has found

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the embezzlement evidence admissible to prove the government's underlying charges, the government will be permitted to cross-examine Defendant regarding the embezzlements. The law does not prevent the government from questioning Defendant about the embezzlements because they are outside the statute of limitations. These topics are highly probative of Defendant's character for truthfulness, and as such, are not excluded as more prejudicial than probative pursuant to Rule 403.

E. Preclusion of Defendant's Evidence

The government moves *in limine* to preclude Defendant from: 1) arguing that he committed "the obstruction counts" (Counts 3 and 4) to preserve his political standing; 2) arguing that the government did not and could not charge him with public corruption; 3) arguing that, because he replenished the funds in two referee accounts he did not embezzle the money; 4) introducing evidence that he did not obstruct justice with regard to the Check Register Page because it was returned to the government; 5) offering certain self-serving recordings into evidence; and 6) asking a prosecutor, who the government will call as a witness, about Defendant's familiarity with proffer sessions and perjury. (Gov't's Mem. at 20-25.) Defendant opposes the motion for various reasons discussed below. (Def.'s Opp'n at 18-25.)

1. Political Standing Argument

The government moves to preclude Defendant from arguing that he "committed the offenses charged in the Obstruction Counts in order to preserve his political standing." (Gov't's Mem. at 20.) Defendant does not intend to argue this point as he acknowledges it is not a legally recognized affirmative defense. (Def.'s Opp'n at 19.) Additionally, the Court does not interpret the government's papers to suggest that they wish to preclude Defendant from arguing intent as Defendant asserts in his opposition. (*Id.*) Therefore, this issue is moot.

2. *Public Corruption Argument*

The government moves to preclude Defendant from introducing evidence that the government did not and could not charge Defendant with public corruption. (Gov't's Mem. at 21.) Defendant contends he will not argue this point. (Def.'s Opp'n at 19-20.) However, Defendant seeks to have the jury understand that no political corruption charges were brought and that the embezzlement charges were dismissed as outside the statute of limitations. (*Id.*) The government agrees to a jury instruction that Defendant is not charged with embezzlement or political corruption, but objects to informing the jury that the embezzlement charges were dismissed. (Gov't's Reply Mem. of Law in Supp. of the Gov't's Mot. *in Limine* ("Gov't's Reply") at 19; Dkt. Entry No.107.) The Court will give the jury a limiting instruction as suggested by the government, and not charge the jury that two counts of embezzlement were dismissed as outside the statute of limitations as there is no legal basis for doing so.

3. *Replenishment of the Referee Accounts*

The government seeks to prevent Defendant from arguing that he did not commit the federal offense of embezzlement because he replenished the Bay Ridge and Linden Boulevard Referee Accounts. (Gov't's Mem. at 23.) Defendant agrees not to argue that "as a matter of law, replenishing funds that have been embezzled renders an earlier embezzlement non-criminal or that such a result [was] obtained here." (Def.'s Opp'n at 21.) However, Defendant asserts that he may want to argue the effect that replenishing the funds had on his intent to commit embezzlement. (*Id.*) The Court will allow Defendant to make this latter argument as it bears directly on his intent. However, Defendant, an attorney, is reminded that "ignorance of the law is no excuse", *see* OLIVER WENDALL HOLMES, THE COMMON LAW 41 (M. Howe ed. 1963) (1881), and the Court may limit Defendant's evidence if it conflicts with this long held principle.

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Moreover, the Court may instruct the jury that, under the law, an embezzlement occurs at the time of the taking, regardless whether the item is returned. *See United States v. Irvine*, 98 U.S. 450 (1878).

4. The Check Register Page

The government seeks to preclude Defendant from offering evidence that he returned the Check Register Page to the government or that he did not commit obstruction of justice because he returned the Check Register Page to the government. (Gov't's Mem. at 23-24.) Defendant does not seek to introduce evidence about the return of the Check Register Page. (Def.'s Opp'n at 22.) However, Defendant does wish to argue that the fact that he did not destroy the Check Register Page bears on his intent to commit obstruction of justice. (*Id.*) The Court will allow Defendant to pursue this line of argument as it bears directly on whether Defendant possessed the intent to commit obstruction of justice.

5. Admissibility of Certain Other Recordings

The government moves to preclude Defendant's introduction into evidence several recorded conversations between Defendant and law enforcement officers and private investigators, Defendant and the Associate, and the Associate and an FBI agent as inadmissible hearsay. (Gov't's Mem. at 24-25; Exhibits 1-6 attached to Def.'s Opp'n.) Defendant objects, asserting that Defendant's conversations are hearsay exceptions because they show Defendant's state of mind and the conversation between the FBI agent and the Associate is not hearsay because it is not being offered for the truth of the matter asserted. (Def.'s Opp'n at 23-24.)

Generally, a party's out-of-court statements are admissible only if offered by that party's opponent. *See* FED. R. EVID. 801(d)(2). However, under Federal Rule of Evidence 803(3), there is an exception to the hearsay rule for "[a] statement of the declarant's then-existing state of mind

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(such as motive, intent, or plan)” FED. R. EVID. 803(3). Defendant argues that the recordings establish his state of mind, because they demonstrate that he sought advice from law enforcement officers during the period when he allegedly obstructed justice. (Def.’s Opp’n at 23.) After reviewing the transcripts, the Court finds that the evidence is not admissible under Rule 803(3). While, as Defendant asserts, the evidence appears to demonstrate that Defendant reached out to private investigators and law enforcement officers on behalf of the Associate, and Defendant encouraged the Associate to use a private investigator, the evidence does not relate to Defendant’s state of mind as to the underlying charges of interfering with a federal investigation. Therefore, the evidence does not constitute a hearsay exception under Rule 803(3) and is inadmissible.

On the other hand, the Court agrees with Defendant that the recording between the Associate and the FBI agent is not hearsay. The recording is not being offered for the truth of the issues discussed in the recording, but to demonstrate that the Associate was coached by the FBI agent. Therefore, the recording between the Associate and the FBI agent is admissible as evidence relevant to Defendant’s entrapment defense.

6. Cross-Examination of the Prosecutor Witness

In order to prove Defendant’s willfulness to make the false statements charged in Counts 7 through 9, the government intends to call as a witness a prosecutor who will “testify about her interactions with [D]efendant during proffer sessions the government conducted with a witness.” (Gov’t’s Mem. at 25.) Defendant acted as counsel for a witness at two proffer sessions on May 17, 2012 and June 28, 2012. (*Id.*) The government expects the prosecutor to testify that she reviewed the terms of the proffer agreements with the witness in front of Defendant, including noting that the witness “received no immunity from prosecution for false statements the

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[w]itness made during proffer sessions” and that “it was a crime to lie to federal agents and prosecutors.” (*Id.*) The government seeks to limit Defendant from cross-examining the witness about the underlying matters relating to the “investigation of the witness.” (*Id.*) Defendant indicates that he will not “explore the ‘investigation of the witness’” but seeks to ask questions to “probe the state of the prosecutor’s memory in 2015 about proffer sessions in 2012 as well as the prosecutor’s bias.” (Def.’s Opp’n at 25.)

The Court finds this issue premature. Defendant’s cross-examination will be limited to the subject matter of the direct examination. *See* FED. R. EVID. 611. At trial, the government may renew their objection, if Defendant’s cross-examination goes beyond the scope of direct examination.

III. Defendant’s Motions *in Limine*

Defendant moves *in limine* to preclude the government from introducing: 1) evidence related to the ownership interest in the liquor store; 2) evidence related to the federal program embezzlement and federal program bribery;⁵ 3) the recordings of conversations between Defendant and the Associate and others of December 30, 2011 and February 22, 2012; and 4) other miscellaneous recordings. (*See generally* Mem. of Law in Support of Def. John Sampson’s Mot. in Limine (“Def.’s Mot.”), Dkt Entry No. 84; Status Conference as to Def., Feb. 2, 2015.) Defendant argues that the evidence is irrelevant and should be excluded under Federal Rule of Evidence 402, or in the alternative, it is unfairly prejudicial, would cause undue delay, and is misleading to the jury and should be excluded under Federal Rule of Evidence 403. In its response, the government agrees not to introduce some of the evidence objected to by Defendant. (*See generally* Gov’t’s Mem. of Law in Opp’n to Def.’s Mot. in Limine (“Gov’t’s Opp’n”); Dkt. Entry No. 99.) The Court already has addressed most of the evidentiary issues regarding the

⁵ Defendant labels this as evidence of “public corruption” in his papers.

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federal program embezzlement and federal bribery. Therefore, the only remaining evidentiary issues concern: 1) the liquor store charge; 2) Defendant's use of embezzled funds to finance his campaign for the office of Kings County District Attorney; 3) the fact that Defendant's law practice included the sale of foreclosed properties; 4) the Associate's payment for Defendant's travel to the Caribbean; and 5) the positions Defendant held as a New York State Senator. (Def.'s Mot. at 3-11, 12-13, 15.)

"To be relevant, evidence need only tend to prove the government's case, and evidence that adds context and dimension to the government's proof of the charges can have that tendency. Relevant evidence is not confined to that which directly establishes an element of the crime." *United States v. Gonzalez*, 110 F.3d 936, 941 (2d Cir. 1997). "Background evidence may be admitted to show, for example, the circumstances surrounding the events or to furnish an explanation of the understanding or intent with which certain acts were performed." *United States v. Coonan*, 938 F.2d 1553, 1561 (2d Cir. 1991). However, as discussed, *supra*, the Court may exclude relevant evidence under Federal Rule of Evidence 403, "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." FED. R. EVID. 403.

A. Evidence Related to the Liquor Store

Defendant moves *in limine* to exclude the following evidence related to Count 11: 1) recordings reflecting Defendant's ownership interest in the liquor store; 2) that Defendant was obligated to disclose this interest on his Senate Financial Disclosure Forms; 3) that Defendant did not disclose this interest to the New York State Liquor Authority; and 4) evidence that Defendant used his official position to benefit the liquor store. (Def.'s Mot. at 4-11.)

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Specifically, Defendant moves to exclude portions of the SSI, recordings regarding the liquor store, portions of an FBI report of an interview with Defendant, and any other unspecified evidence the government seeks to produce in this regard. (*Id.*)

After reviewing the recordings, the language in the SSI, and the FBI report, the Court finds that the liquor store evidence is admissible to show background context and dimension. The admissibility of evidence concerning Defendant's ownership has been discussed above in section II, C, and held admissible. The evidence in the recordings and the statements in the SSI give relevant background on Defendant's ownership interest in the liquor store. The evidence also provides an explanation of the understanding or intent with which Defendant made the false statements to the FBI agents with which he is charged in Count 11. Without this evidence, the jury would be left to wonder why Defendant made false statements regarding the liquor store to the FBI. The portions of the FBI report Defendant seeks to exclude provide this same background and context, and also are part of the underlying charge that Defendant lied to FBI agents. All of this information, together, gives the information the jury needs to understand the motivation and intent with which Defendant was acting when he spoke to the FBI agents.

Furthermore, the probative value of this evidence is not outweighed by any potential prejudice. The evidence is merely background information and the "bad acts" of lying to state authorities and using his official position to benefit the liquor store are not more egregious than lying to federal agents. The probative value of understanding all of this background information also outweighs any risk of undue prejudice. Additionally, the evidence is not going to cause undue delay or confuse the jury. However, as there are multiple, repetitive recordings related to the liquor store, Defendant may renew his objection at trial if he believes the evidence is unduly

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cumulative, causing undue delay, or confusing the jury. Therefore, the liquor store evidence is admissible.

B. Audio Recordings of Dec. 30, 2011 and Feb. 22, 2012

At the status conference held on February 2, 2015, Defendant moved to preclude two recordings made on December 30, 2011 and February 22, 2012, as being more prejudicial than probative. The government opposed, and later provided the Court with transcripts of the recordings. (Letters Enclosing Trs., Dkt. Entry No. 113 & 114.)

The Court has reviewed the transcripts and finds that they are admissible as relevant direct evidence of the charged crimes. The recordings constitute proof of the underlying charges of obstruction of justice and witness tampering. While the Court understands Defendant's concerns, particularly with regard to the transcript of February 22, 2012, the Court must leave it to the jury to interpret Defendant's statements and their meanings.

C. Embezzlement Evidence and Defendant's Property Foreclosure Law Practice

Defendant moves to preclude the government from referencing in the SSI or at trial that Defendant used the embezzled funds to finance his campaign for Kings County District Attorney and that Defendant's law practice included the sale of foreclosed properties because it would be unfairly prejudicial, cause delay, mislead the jury, and waste time. (Def.'s Mot. at 12-13.)

The government is precluded from referencing that Defendant used the embezzled funds to finance his campaign for Kings County District Attorney. The evidence is not necessary or relevant to complete the story of the embezzled funds and would be unduly prejudicial.

However, the government is permitted to mention that Defendant's law practice included the sale of foreclosed properties. The evidence is relevant to explain Defendant's role as a court-appointed referee for foreclosed properties. Therefore, it is admissible. Furthermore, the

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probative value outweighs any potential prejudice from this evidence, and its admission would not cause undue delay, mislead the jury, or waste time.

D. Associate's Payment for Defendant's Travel

Defendant moves to preclude the government from introducing evidence that the Associate paid for Defendant's foreign travel to the Caribbean in order to show "quid pro quo" corruption as unfairly prejudicial. (Def.'s Mot. at 13.) The government contends that it is introducing the evidence not to show corruption, but to show the relationship of trust between the Associate and Sampson because some of the trips were taken together. (Gov't's Opp'n at 11.) The Court will allow the introduction of evidence of the travel that Defendant and the Associate took together to show the relationship that existed between Defendant and the Associate. However, the Court will not admit evidence of the other travel that the Associate paid for on behalf of Defendant unless it is related to the government's underlying bribery case.⁶

E. Defendant's Positions in the Senate

Defendant moves to preclude the government from mentioning in the SSI or at trial positions Defendant held in the Senate as irrelevant, confusing, and causing undue delay. (Def.'s Mot. at 15.) The government responds in a footnote, simply that this evidence is not prejudicial and is relevant evidence as to Count 9, concerning abuse of his positions. (Gov't's Opp'n at 12 n.15.) This evidence is neither confusing nor will it cause undue delay. The fact that Defendant is a New York State Senator will be before the jury in any event, and, thus, this evidence is neither irrelevant nor unduly prejudicial. Accordingly, it is admissible.

⁶ The Court also notes that the government did not seek to introduce this evidence in its motion *in limine* and, therefore, it may not be permitted to introduce it at trial if it seeks to admit it.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X
UNITED STATES OF AMERICA, : 13 CR 269
:
-against- :
JOHN SAMPSON, : United States Courthouse
: Brooklyn, New York
:
Defendant. : June 24, 2015
: 9:30 o'clock a.m.
- - - - - X

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE DORA L. IRIZARRY
UNITED STATES DISTRICT JUDGE, and a jury.

APPEARANCES:

For the Government: KELLY T. CURRIE
United States Attorney
BY: ALEXANDER A. SOLOMON
PAUL A. TUCHMANN
MARISA SEIFAN
Assistant United States Attorneys
271 Cadman Plaza East
Brooklyn, New York
For the Defendant: NATHANIEL H. AKERMAN, ESQ.
JOSHUA N. COLANGELO-BRYAN, ESQ.
GINA SPIEGELMAN, ESQ.
DORSEY & WHITNEY
51 West 52nd Street
New York, NY 10019
Court Reporter: Gene Rudolph
225 Cadman Plaza East
Brooklyn, New York
(718) 613-2538
Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

Opening - Seifan

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1 government about the secret \$188,000 loan. If Ahmad
2 cooperated with the government, the government would discover
3 that Sampson had stolen hundreds of thousands of dollars, and
4 if Ahmad cooperated with the government, the government would
5 investigate Sampson for bribery because of the political
6 favors he had done for Ahmad.

7 So, as you can imagine, John Sampson needed to keep
8 his friend close, needed to keep an eye on him to make sure
9 that the one guy who could give him up didn't turn on him.

10 Well, John Sampson, the lawyer, understood the
11 criminal justice system, and he came up with a plan to break
12 the law. This was his plan: Learn who the witnesses were in
13 Ahmad's case. With that information, the defendant and Ahmad
14 could dig up dirt on those witnesses and take steps to
15 influence their testimony, and the defendant knew someone on
16 the inside of law enforcement who could get him this
17 information, who could get him this confidential law
18 enforcement information, someone he trusted implicitly,
19 someone he believed would never betray him.

20 Enter Sam Noel, the defendant's friend since high
21 school, the godfather to his oldest daughter, a man you will
22 meet during this trial who worked as a paralegal in the U.S.
23 Attorney's Office for the Eastern District of New York, the
24 very office that was prosecuting Ahmad.

25 The defendant asked Noel to betray the trust the

Opening - Akerman

26

1 lawyer, and Gina Spiegelman, who is also a lawyer from my
2 office.

3 During the course of this trial, you may see some
4 other lawyer-looking type people that show up at the desk.
5 They are also from my office, and a paralegal.

6 And, of course, seated with me is John Sampson, who
7 is at the end of the table.

8 Now, John Sampson is presumed innocent. And we are
9 here to help you, as the jury, point out the many reasonable
10 doubts that lurk in the evidence that the government will
11 present in this case.

12 Let me just briefly review with you the three legs
13 of the government's case that I just mentioned.

14 First, John Sampson reaching out to his long-time
15 friend, Sam Noel, does not amount to obstruction of justice.
16 There was no attempt at any point to obstruct the mortgage
17 fraud case or anything else. There is no credible evidence.
18 And you're going hear more about this on the tape.

19 And the Assistant United States Attorney didn't tell
20 you this, but one of the allegations here was that attempting
21 to find the identity of the witnesses was done in order to
22 kill, threaten witnesses, which clearly did not take place.
23 There was no corrupt purpose here. The only discussion was
24 about using that information to do background research on
25 potential witnesses, not to dig up dirt. Such background

Opening - Akerman

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1 research is perfectly permissible. In fact, the government
2 itself would have had to reveal the identities of witnesses
3 before trial, so that background research on witnesses could
4 be done.

5 Significantly, you'll also learn that no
6 confidential information was ever revealed by anyone.

7 As for the second leg of the government's charges,
8 when it became clear that John Sampson was not receiving or
9 providing confidential information, as you heard, on
10 February 22, 2012, the government had their informant, Ahmad,
11 dangle in front of John Sampson a fabricated check register
12 that documented the loan from Ahmad to Sampson

13 Now, John's reaction to Ahmad asking John what he
14 should do about the check register is the basis for the other
15 obstruction of justice charges in this case. The proof will
16 show that Ahmad's actions amounted to entrapment, a legal
17 concept that Judge Irizarry will instruct you on at the end of
18 the trial.

19 In this context, you will learn that some two months
20 before the February 22 meeting, the government tried to
21 ensnare John into committing obstruction of justice in
22 connection with this loan document. On that earlier occasion,
23 Ahmad told Sampson he was worried that documents relating to
24 that loan that he had given John would harm -- and I quote
25 -- "harm" John. Unlike what the government told you about

Opening - Akerman

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1 each and every one of us from government overreach.

2 With these principles in mind, let me briefly
3 address each of the three parts of the government's case in a
4 little more detail than I presented before.

5 First are the two charges of obstruction for asking
6 Sam Noel for confidential information relating to the
7 witnesses in the mortgage fraud case. Now, the mortgage fraud
8 case is the case in which the government informant pled guilty
9 to mortgage fraud. The government claims that John Sampson
10 obstructed justice by trying to get confidential information
11 from his friend Sam Noel in connection with that case. The
12 evidence will show at the end of the day that John Sampson's
13 actions amounted to little more than a request for
14 information. Critically, there is no credible evidence that
15 any request was made for a corrupt purpose.

16 Now, it was also an allegation here, which the
17 Assistant United States Attorney did not mention and you're
18 going to hear it on the tape, that supposedly John made some
19 kind of threat to kill witnesses, which was the motive for
20 getting the names of the witnesses.

21 Whatever Ahmad claims John said, the idea that John
22 made an actual threat is literally laughable. You will hear a
23 recording in which Ahmad raises with John Sampson the notion
24 that they had discussed killing witnesses in order to get John
25 to say something incriminating. Instead, John laughs and

Opening - Akerman

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1 says, We ain't killing nobody. What are you talking about,
2 man?

3 When Ahmad clarifies he is talking about John
4 killing unidentified -- some unidentified witnesses, they both
5 end up laughing over the absurdity of the idea, and
6 immediately Ahmad starts talking about the new car he just
7 bought. You will hear all of that on a recording that the
8 government is going to present. Beyond that, there was no
9 discussion of doing anything more than background research on
10 potential witnesses, which every defendant is allowed to do.
11 It is not digging up dirt.

12 Again, the government was going to be obligated to
13 disclose the identities of the witnesses in the mortgage fraud
14 case. The evidence of any intent to influence the testimony
15 of any witness is not in the evidence, and is not something
16 you're going to hear about. So, there is no credible evidence
17 that there was any criminal purpose in attempting to obtain
18 information.

19 Finally, there is no credible evidence that any
20 confidential information was received by John or provided to
21 Ahmad. The same holds true as to John's request as to other
22 matters that came up.

23 Second, let me address the charges relating to the
24 meeting at the restaurant which the government just outlined
25 for you, where Ahmad puts the fake check register in front of

1 will come into evidence during the course of this trial that
2 are not charged as crimes in this indictment.

3 First, there will be evidence on other supposed
4 crimes or wrongdoing by which the government will argue that
5 John Sampson had a motive or predisposition to obstruct
6 justice. These other supposed crimes or wrongdoing are not
7 charged as obstructions in this indictment. It would be
8 entirely improper to convict John Sampson on the charged
9 crimes simply on the basis of noncharged conduct. In that
10 connection, there will be evidence that some ten to twelve
11 years before the crimes charged in this indictment, John
12 Sampson did not, as he was ordered to do by the state court in
13 Brooklyn, return to the court a significant amount of funds
14 entrusted to him when he acted as a state court referee.

15 As the judge will instruct you, those failures to
16 return funds to the state court are not charged as crimes in
17 this case. Your task is not to determine whether John Sampson
18 should be convicted of those crimes.

19 The government will also present evidence of what it
20 claims is bribery as a motive to obstruct justice. The theory
21 put forth by the government is that Ahmad's loan to John
22 Sampson mysteriously became a bribe at some unspecified point.

23 Again, the evidence will show that this is just
24 another example of government overreach. There was no
25 bribery. The judge will instruct you there are no bribery

Ahmad - direct - Solomon

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1 A Yes, sir.

2 Q When was that, approximately?

3 A I would say around 2003, 2004, perhaps even 2005.

4 Q What kind of lifestyle did you have when business was
5 good?

6 A I had a very extravagant lifestyle.

7 Q Please explain.

8 A For one, I was driving a Lamborghini. I was going to
9 restaurants, extravagant restaurants. I was going on
10 vacation, hanging out, partying.

11 Q When business was good, did you use checks for cash on a
12 frequent basis?

13 A Yes, sir.

14 Q What was the typical amount for these checks for cash?

15 A They range anywhere between 3,000, 9800.

16 Q Were they ever in an amount more than 9800?

17 A No, sir.

18 Q Which bank were you using at the time?

19 A Chase, J.P. Morgan Chase.

20 Q What was the reason that you never wrote a check for cash
21 in an amount greater than \$9800?

22 A At the time, I used one of my employees, his name is
23 Nazir Gurmohamed, who ran the construction site, including
24 purchasing materials for the construction site, and it was
25 easy to have cash available for him to buy emergency stuff,

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1 EXAMINATION CONTINUES

2 BY MR. SOLOMON:

3 Q Getting back to live testimony, what was your work
4 telephone number?

5 A (718) 848-6200.

6 Q Did you sometimes --

7 THE COURT: I'm sorry. Did you say 6200?

8 THE WITNESS: Yes, Judge.

9 Q Did you sometimes speak to John Sampson over that work
10 number?

11 A Yes.

12 Q Were there other numbers that you spoke to John Sampson
13 over other than the 646 number you listed before?

14 A That was the main number I spoke to him on.

15 Q Did you have other numbers as well?

16 A Yes.

17 Q During any of these conversations you had with John
18 Sampson, would you sometimes talk to him about your own
19 personal affairs?

20 A Yes.

21 Q Would he sometimes talk to you about his own personal
22 affairs?

23 A Yes, sir.

24 Q Would you also sometimes hang out with John Sampson?

25 A Yes, sir.

GR

OCR

CM

CRR

CSR

Ahmad - direct - Solomon

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1 Q What kinds of things would you do together?

2 A Go out to a dinner; we went on vacation.

3 Q What kinds of restaurants did you go to dinner at?

4 A Extravagant restaurants.

5 Q When you say "extravagant," what do you mean?

6 A It means, nicely decorated, a little pricey.

7 Q How much were the bills, generally speaking, for the two
8 of you?

9 A Range anywhere between two and \$300.

10 Q During meals, what would happen -- during meals with John
11 Sampson, what would happen when the bill arrived at the table?

12 A The bill would typically come and placed on the table,
13 stay there for a little while and then I will pay it.

14 Q Why did you pay?

15 A I paid because, you know, we were friends and also these
16 were opportunities for me to, you know, rub shoulder with a
17 senator and a friend. If I ever need favor I can rely back on
18 it.

19 Q Did John Sampson ever offer to pay for any of these
20 meals?

21 A Not to the best of my recollection.

22 Q You mentioned that you traveled with John Sampson.

23 Where did you go with him to?

24 A Our first trip, we went to Antigua and the second trip
25 was to Guyana.

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1 Q What was the purpose of these two foreign travels?

2 A There were cricket matches down there and I asked him for
3 us to go down.

4 Q So you went to participate or to watch cricket matches?

5 A No, just watch.

6 Q Who paid for these two trips outside of the United
7 States?

8 A I paid for the trips.

9 Q What did you pay for specifically?

10 A I paid for the airline tickets, the hotel accommodation
11 and when we were down there from time to time drinks and
12 dinner.

13 Q How much did you expend approximately for these two trips
14 on John Sampson?

15 A These two trips, about between three and five thousand.

16 Q Why did you pay for these two trips?

17 A I seen as getting closer to John as well as, you know, if
18 I needed any favor in the future, I can reach out to him.

19 Q Did you pay for the airfare for these two trips by cash
20 or by other means?

21 A By credit card.

22 Q Which credit card did you use to pay for these two trips?

23 A My American Express.

24 Q When you paid for John Sampson's travel or meals, did he
25 ever express gratitude to you?

GR

OCR

CM

CRR

CSR

Ahmad - direct - Solomon

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1 A Yes, always.

2 Q What would he say?

3 A He said thank you, man. I appreciate it.

4 Q Did he ever offer to repay you for your expenses?

5 A No.

6 Q You mentioned that it was your idea to travel outside of
7 the country with John Sampson, is that right?

8 A Yes, sir, it was.

9 Q Why did you want to travel with him?

10 A John is always be my friend for many years. Him and I
11 spent a lot of time together. I enjoyed his company and there
12 was cricket match down there. I thought it would be an
13 opportunity for us to have a good time and by the same token
14 get closer to him.

15 Q Did these trips outside of the country bring you and John
16 Sampson closer?

17 A I think so.

18 Q Did you consider John Sampson to be a close friend?

19 A Yes, sir.

20 Q Did you value his friendship?

21 A Yes, sir.

22 Q How?

23 A Over the years, myself and John being friends, he's
24 always been a dependable friend to me. Any time I am in a
25 situation, I needed help, I would always reach out to him and

GR

OCR

CM

CRR

CSR

Ahmad - direct - Solomon

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1 he would never turn me down when I ask him to help me on any
2 situation.

3 Q Did there come a time when John Sampson ran to become
4 District Attorney of Kings County?

5 A Yes, sir.

6 Q When was that, approximately?

7 A Sometime around 2005.

8 Q Did you support him in his candidacy?

9 A Yes, sir.

10 Q How so?

11 A I donated to his campaign.

12 MR. SOLOMON: Your Honor, may I show the witness
13 what's marked as Government Exhibit 3-A on the Elmo, please?

14 THE COURT: Yes.

15 Q It is a two-page document, sir. This is page one. This
16 is page two.

17 Do you recognize what this document is.

18 A Yes, sir.

19 Q What is it?

20 A These were checks I gave to John when he was running for
21 the Brooklyn District Attorney's Office.

22 MR. SOLOMON: Your Honor, the government moves to
23 admit into evidence Government Exhibit 3-A.

24 THE COURT: Any objection?

25 MR. AKERMAN: No objection, Your Honor.

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1 THE COURT: They are admitted.

2 (Marked.)

3 MR. SOLOMON: May we publish, please?

4 THE COURT: Yes.

5 Q First directing your attention to the lower check; what
6 is the amount of the check?

7 THE COURT: We are not hearing you if you talk away
8 from the mike.

9 MR. SOLOMON: I'm sorry.

10 Q Directing your attention to the lower of these two
11 checks.

12 What is the amount of the bottom check?

13 A \$10,000.

14 Q What is the date of that check?

15 A 8/5/2005.

16 Q That's August of 2005?

17 A Yes, sir.

18 Q And how about the upper check?

19 A \$500.

20 Q And who are these checks made out to?

21 A John Sampson Justice For All.

22 Q What was John Sampson Justice for All?

23 A I think that was the account set up for his Brooklyn
24 District Attorney's race.

25 Q Secondly, this is the second page of the document.

Ahmad - direct - Solomon

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1 What is the amount of that check?

2 A \$5,000.

3 Q And who is this check payable to?

4 A John Sampson Justice For All.

5 Q Were all three of these checks from 2005?

6 A Yes, sir.

7 Q Did John Sampson win that race?

8 A No, he did not.

9 Q Do you know who won?

10 A I think Charles Hynes won the race.

11 Q Throughout your relationship with John Sampson, has he
12 continued to run to become a state senator?

13 A Yes, sir.

14 Q Have you supported him in his campaigns to retain his
15 position as a state senator in the State of New York?

16 A Yes, sir. I have always done so.

17 Q How so?

18 A From time to time he would have -- John would have
19 campaign birthday celebration and I would go there. Sometimes
20 he would have campaign fundraising, I would attend and I would
21 donate to his campaign.

22 MR. SOLOMON: Your Honor, may I read another
23 stipulation into the record, please?

24 THE COURT: Yes.

25 What's the exhibit number, please?

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1 MR. SOLOMON: The exhibit number is 3-S as in
2 stipulation.

3 It is hereby stipulated and agreed by and between
4 the United States of America and defendant John Sampson that:

5 A record custodian of the New York State Board of
6 elections, which is defined as BOE, would testify that BOE
7 records, which are defined as the BOE records, show that on or
8 about the following dates Adul Ahmad donated the following
9 dollar amounts to the campaign committee devoting to electing
10 the defendant John Sampson to the New York State Senate.

11 Then there is a chart which shows:

12 March 24, 2000, amount donated, \$1,000.

13 November 6, 2000, amount donated, \$1,000.

14 June 17, 2002, amount donated, \$1,000.

15 May 4, 2006, amount donated, \$1,000.

16 June 14, 2007, amount donated, \$1,000.

17 May 21, 2008, amount donated, \$1,000.

18 The BOE records were made and kept at or near the
19 time that the activity occurred by someone with personal
20 knowledge of the activity or from information transmitted by
21 someone with personal knowledge of the activity, made and kept
22 in the ordinary course of business of the BOE, and made and
23 kept as a regular practice of that activity.

24 The BOE records were also a record of a public
25 office because they set out the BOE's activities and records

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 ----- X

4 UNITED STATES OF AMERICA,	:	13-CR-269
	:	(DLI)
5 -against-	:	
	:	United States Courthouse
	:	Brooklyn, New York
6	:	
7 JOHN SAMPSON,	:	
8	:	
9 DEFENDANT.	:	Monday, June 29, 2015
	:	9:30 a.m.
	:	

10 ----- X

11
12 TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
13 BEFORE THE HONORABLE DORA L. IRIZARRY
14 UNITED STATES DISTRICT COURT JUDGE

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

16 For the Government:	KELLY T. CURRIE, ESQ. Acting United States Attorney BY: ALEXANDER A. SOLOMON, ESQ. PAUL A. TUCHMANN, ESQ. MARISA SEIFAN, ESQ. Assistant United States Attorneys
18 For the Defendant 19 John Sampson:	Dorsey & Whitney BY: JOSHUA N. COLANGELO-BRYAN, ESQ. NATHANIEL H. AKERMAN, ESQ. GINA SPIEGELMAN, ESQ.
21 Also Present:	Ken Hosey, FBI Case Agent Megan Hynes, Paralegal

22 Courtroom Deputy: Christy Carosella

23 Court Reporter: Mary Agnes Drury, RPR
24 E-mail: Mad78910@yahoo.com

25 Proceedings recorded by computerized stenography. Transcript
produced by Computer-aided Transcription.

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1 Q At the bottom on line 38, page two where you ask,
2 "Mays, Mays, Mays, Mays told you," what were you trying to
3 express?

4 A I wanted to find out where he got the information from
5 and he told me Mays gave it to him.

6 Q And on line 42 when you asked, "Well, how Mays know the
7 other guys then, he's only representing Qayaam, how did he
8 know about the other guys," what were you saying?

9 A I wanted to know how Mays knew the bail for the other
10 guys since Mays was supposed to representing Qayaam Farrouq.
11 And he told me the prosecutor, they all speak to each other.
12 That information Mays got from the prosecutors.

13 Q And on line 15 of the same page where Sampson refers to
14 Steve as the "cricket guy", what did you refer that to?

15 A Steven Massiah, one of the individuals who got arrested
16 with Nazir Gurmohamed and Qayaam Farrouq.

17 Q And that's Steve Massiah's connection with cricket?

18 A He's the United States captain, cricket captain.

19 Q For the cricket team?

20 A Yes, sir.

21 Q Directing your attention to page three on line 31 where
22 you stated, "No, but remember, remember, don't forget, all
23 these guys that actually got charged are in connection with
24 me. Right, for example, Nazir, he bought houses for me.
25 Steve bought houses for me." What were you trying to

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1 express there?

2 A That I had committed fraud with these guys, and because
3 I had committed fraud is the reason why they got arrested.

4 Q What kind of fraud were you trying express with John
5 Sampson?

6 A That I used these guys as straw buyers.

7 Q That was true that you used these individuals as straw
8 buyers?

9 A Yes, I have.

10 Q And when John Sampson responded saying, on line 36, "He
11 didn't buy houses, no, no, no, Ed, he did not buy houses for
12 you. You and Nazir, you're an investor. Nobody bought
13 houses for you. You got to get that mindset out. Nobody
14 bought houses for you." What did you understand John
15 Sampson telling you?

16 A He's trying convince me that we didn't commit a crime
17 together. Instead of having the mindset that I committed
18 fraud and used them as straw buyer, they merely acted as an
19 investor or as a business partner with me.

20 Q Is that something that John Sampson had told you
21 before?

22 A Yes, we had spoke about this before.

23 Q And did you speak about this before you started
24 cooperating with the government?

25 A Yes, we have.

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1 photograph, please?

2 THE WITNESS: I'm sorry, to the left.

3 (Photograph is turning.)

4 Q Is the area where the FBI agents getting visible right
5 now?

6 A Yes. Just a little bit more.

7 (Photograph is turning.)

8 A Yeah. So they were sitting right here. (Indicating.)

9 Q So they were sitting in the light blue chairs in the
10 foreground in the bottom right of the screen?

11 A Yes.

12 MR. SOLOMON: Your Honor, I'd like to show the
13 witness what's marked for identification as Government
14 Exhibit 508, which is a CD.

15 THE COURT: I'm sorry, what is the number again?

16 MR. SOLOMON: It's 508, and it contains 508-A,
17 508-B and 508-C.

18 BY MR. SOLOMON:

19 Q Do you recognize what this is, sir?

20 A Yes, sir.

21 Q What is it?

22 A These are the recordings of that meeting, the boosted
23 version, the unboosted version, and then the full boosted
24 version.

25 Q When you say "boosted" what do you mean?

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1 A During the conversation when John Sampson would sort
2 of, like, whisper and it was difficult to be recorded, the
3 voices were enhanced.

4 Q So this recording was enhanced to increase the
5 audibility, is that what you're saying?

6 A Yes, sir.

7 Q And there are full excerpts or there are excerpts, I'm
8 sorry, withdrawn.

9 Are there excerpts of the recording of the meeting
10 on February 22nd in this compact disc?

11 A Yes, sir.

12 Q Can you explain?

13 A The areas where John Sampson would speak as if he
14 didn't want to be recorded or suspect he's being recorded
15 was boosted so the excerpts of that part of the conversation
16 is on this CD.

17 Q Is there also an equivalent part of unboosted
18 conversation for comparison purposes?

19 A Yes, sir. The areas where it was difficult for the
20 recorder to pick up what he was saying because of the noise
21 and speaking very low, that version is also on this tape.

22 MR. SOLOMON: Your Honor, the government offers
23 508-A, B and C into evidence.

24 MR. AKERMAN: No objection.

25 THE COURT: And 508 as well?

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1 MR. SOLOMON: Well, actually, 508 is already in
2 evidence, so this is just 508-A, B and C.

3 MR. AKERMAN: No objection.

4 THE COURT: All right. It's admitted. Thank you.

5 (Government Exhibits 508-A, 508-B and 508-C are
6 admitted into evidence.)

7 MR. SOLOMON: Your Honor, may we play 508 to the
8 jury, please?

9 THE COURT: That's off the laptop?

10 MR. SOLOMON: Yes. And I'll direct your attention
11 and the jury's attention to the transcripts marked 508-C.

12 Q And before we start, sir, is there any scrolling text
13 together with this particular recording?

14 A I'm sorry, can you repeat that?

15 Q Is there any scrolling text with respect to this
16 particular meeting?

17 A I'm not sure what you mean by "scrolling".

18 THE COURT: I don't know either.

19 MR. SOLOMON: Sorry, your Honor.

20 Q Is the transcript incorporated into this particular
21 recording, so you can see the transcript as you listen to
22 the recording?

23 A Yes, sir.

24 (Recording is being played.)

25 THE COURT: So before you continue any

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1 questioning, given the hour, why don't we take our morning
2 break at this point.

3 So, ladies and gentlemen, you can leave everything
4 on your chairs, you can leave the monitors out. Remember to
5 keep an open mind, not to form or draw any conclusions.
6 Remember that you cannot talk about this case among yourself
7 or anyone else over any kind of media and remember that
8 can't do any research or investigation on your own over any
9 kind of media. So we will resume again at 11:30, okay? Be
10 careful stepping out.

11 (Jury is out of the courtroom at 11:14 a.m.)

12 THE COURT: All right. The jurors are no longer
13 present. Everyone can take a break. We will resume at
14 11:30. You too, Mr. Ahmad.

15 (Witness leaves the witness stand.)

16 (Proceeding were recessed and recalled.)

17 (Honorable Dora L. Irizarry takes the bench.)

18 THE COURT: Everyone please be seated. This is
19 case on trial continued. All of the parties are present as
20 per the appearances this morning. We have a new person at
21 the end of defense counsel table.

22 MR. AKERMAN: We do. That's Mr. Joseph Garguilo,
23 who is a paralegal with our office.

24 THE COURT: Okay. So perhaps can I have his
25 spelling, please?

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1 MR. GARGUILO: G-a-r-g-u-i-l-o.

2 THE COURT: Okay. If you want to just introduce.
3 I'll pave the way for you to, just introduce him so the jury
4 doesn't start wondering who is this person.

5 MR. AKERMAN: All right.

6 THE COURT: Okay. The jury is not present. I
7 just had a question for the government. What was just
8 placed on tape number -- I know I'm still very retro calling
9 it a "tape", on the CD 508? Was that a boosted conversation
10 or an unboosted conversation, because it wasn't clear to me?

11 MR. SOLOMON: I'm sorry, your Honor, that was
12 boosted. What we're going to do now is there is a
13 two-minute excerpt of unboosted in the additional CD that we
14 just introduced. We're going to play that so the jury can
15 hear the contrast, but it's only for two minutes.

16 THE COURT: Okay. All right. So if everyone is
17 ready, why don't we get Mr. Ahmad and we'll get the -- oh,
18 let's check the jury first.

19 COURTROOM DEPUTY: They're all here.

20 THE COURT: Okay. Yes, you can bring him. Thank
21 you. Reminder, Friday is a Court holiday, the Court will be
22 closed.

23 MR. COLANGELO-BRYAN: Your Honor, we were going to
24 ask in terms of letter in opposition that is due on Friday,
25 in terms of the courtesy copy if we --

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1 THE COURT: You can bring that on Monday, but do
2 your filing on Friday, because I can still access that.

3 (Witness retakes the witness stand.)

4 THE COURT: You can have a seat, sir.

5 THE WITNESS: Thank you.

6 THE COURT: I don't know, defense counsel, if you
7 were aware that -- I think your microphones are off, so just
8 so you are aware. It hasn't made a difference now, but just
9 so you're aware of it.

10 MR. SOLOMON: Your Honor, is the jury on its way
11 right now?

12 THE COURT: Yes.

13 MR. SOLOMON: We can talk about this perhaps later
14 then.

15 THE COURT: Okay. Jury is entering.

16 (Jury is in the courtroom at 11:35 a.m.)

17 THE COURT: Welcome back. Everyone may be seated.
18 Do the parties agree that all of our jurors are present and
19 properly seated?

20 MR. SOLOMON: Yes, your Honor.

21 MR. AKERMAN: Yes, your Honor.

22 THE COURT: And we have another person who has
23 joined defense counsel at their table. Mr. Akerman, if you
24 wanted to make the introduction, please.

25 MR. AKERMAN: Sure. This is Mr. Joseph Garguilo,

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1 who is a paralegal in my office. And as I said in the
2 beginning, there will be people in and out, and this is one
3 of the persons that is now in.

4 THE COURT: Mr. Garguilo, if you won't mind
5 standing, so the jury can see you.

6 (Mr. Garguilo stands.)

7 THE COURT: Thank you very much. All right. This
8 is the government's continued direct examination of
9 Mr. Ahmad by Mr. Solomon. Welcome back, sir.

10 THE WITNESS: Thank you.

11 THE COURT: And I remind you again, sir, you are
12 still under oath you may continue when you are ready,
13 Mr. Solomon.

14 MR. SOLOMON: Thank you, your Honor.

15 BY MR. SOLOMON:

16 Q Good morning, sir.

17 A Good morning, sir.

18 Q Sir, with respect to the tape recording that we played
19 for the jury in Government Exhibit 508, was that a boosted
20 or unboosted tape that we played?

21 A That was the unboosted.

22 Q Unboosted?

23 A Yes, sir.

24 MR. SOLOMON: For contrast, your Honor, we would
25 like to play 508-B, which is on the CD that we just

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1 introduced into evidence.

2 THE COURT: Yes.

3 MR. SOLOMON: And I'll direct the jury's attention
4 to page three of the same transcript that we just went
5 through, 508-T starting at line 39.

6 (Recording being played.)

7 BY MR. SOLOMON:

8 Q So, sir, was that boosted or unboosted that we just
9 listened to?

10 A That was the unboosted, sir.

11 Q So what was the longer version, boosted or unboosted?

12 A Yeah, my apologies, that was boosted.

13 Q So what effects did you notice in terms of the voice
14 quality with the boosted versus the unboosted?

15 MR. AKERMAN: Objection, your Honor.

16 THE COURT: I'm going to sustain. It's the jury's
17 -- it's up to the jury to assess the facts. You've listened
18 to the tape recording itself. As I explained to you earlier
19 before we started to play the recordings, it's the
20 recordings that are the evidence. And ultimately, it's
21 going to be what you hear and what you recall from the
22 recordings that controls, not that of anyone else. And it's
23 not the transcript. The transcript is not evidence, it's
24 the recording that is evidence. So the objection is
25 sustained. The jury heard for themselves.

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1 MR. SOLOMON: Thank you, your Honor.

2 BY MR. SOLOMON:

3 Q Sir, during this meeting on February 22nd, 2012, when
4 John Sampson said something quietly, what did you do?

5 A I repeated it louder to get it on tape.

6 Q Did you do that repeatedly?

7 A Yes.

8 Q I'd like to direct your attention now to the transcript
9 508-T. We'll turn ahead to page three, line eight.

10 THE COURT: I'm sorry, what page?

11 MR. SOLOMON: Page three, line eight.

12 Q When you stated, "We have another status conference,
13 but in the meantime the government subpoenaed all my
14 records." What were you trying to express?

15 A I was trying to express I have a court date coming up
16 and the government had subpoenaed my record. With the
17 combination of the subpoena going to court -- with the
18 combination of the court date coming up and the subpoena
19 that the government had issued, that I needed some
20 clarification as to what to do with this document very
21 urgently.

22 Q And further down on line 24 and line 23 into 24, you
23 stated, "Because while doing the paperwork I run into this
24 right there, and obviously I have to turn this over, so I
25 said let me show this to you. You remember this, right?"

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1 What were you doing at that time?

2 A I was expressing that I was starting to gather the
3 paperwork to hand it over to my attorney to the government.

4 Q Were you showing John Sampson anything at that time?

5 A Yes, I was showing him a copy of the check, the check
6 register, sorry.

7 Q And were the two of you sitting side-by-side at that
8 point?

9 A Yes, we were.

10 Q And in which hand, if you remember, did you have the
11 document?

12 A I don't recall.

13 Q And turning ahead to page four -- sir, before this
14 meeting with John Sampson, had you actually received the
15 subpoena for your records?

16 A No, I did not.

17 Q Why did you say you had a subpoena for your records?

18 A That was the direction I was given by the agent.

19 Q And had you actually gathered all of your records to
20 produce them to the government?

21 A No, I did not.

22 Q Why did you say that?

23 A That was the directive I got from the agent that the
24 conversation should be around.

25 Q And on page four, line three when you asked, "What do I

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1 tell them? And obviously if I hide this right -- let's say
2 I don't give this, for argument's sake they are going
3 through the record, right, they're not going to miss the
4 sequence." What were you doing at that point?

5 A I was trying to get him -- I was trying to see what he
6 would do getting this information, how would he respond to
7 that.

8 Q And when you said, "If I don't give them this, they're
9 not going to miss the sequence," What did you mean?

10 A I meant if I didn't give them, they would miss the
11 sequence.

12 Q And the following answer on line eight when John
13 Sampson said, "This opens up a can of worms," what did you
14 understand that to mean?

15 A That this could cause potential problems for him.

16 Q Further on down the page line 18 after you had stated,
17 "Everything here is new to me. I don't know." Part of John
18 Sampson's response is inaudible. Do you remember what he
19 stated?

20 A He was telling me I didn't have to show this
21 information.

22 Q Do you remember verbatim what he said at that point?

23 A I don't remember the exact words.

24 Q And further down on line 25 when John Sampson said,
25 "But it doesn't say anything inaudible," do you remember

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1 what portion of the conversation was inaudible?

2 A Yeah. The notation on the check register didn't
3 explain much of the detail other than a loan to John
4 Sampson.

5 Q And on line 29 when he said again, "It doesn't say
6 anything inaudible." Do you remember what he was saying?

7 A Yeah. In other words, the check stated it was a loan
8 to John Sampson, but it didn't say for what or what it
9 represented.

10 Q And so in line 31 when you were saying, "It says 185.
11 What does that tell you, my accountant pick it up." What
12 were you expressing there?

13 A I was trying to explain if my accountant could pick the
14 loan up going through my record, there is a good chance that
15 the government might.

16 MR. SOLOMON: Okay. Your Honor, can I show the
17 witness again what's in evidence as Government Exhibit 6?

18 THE COURT: Yes.

19 MR. SOLOMON: Thank you.

20 Q So when you are referring to 185 in the conversation on
21 line 31, what were you indicated on this document in
22 Government Exhibit 6?

23 A The 185,000 written in numbers.

24 Q On the upper right-hand corner?

25 A Yes, sir, that I highlighted.

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1 Q And when you talked about your accountant picking up
2 this notation in line 33, what were you referring to?

3 A I was referring to the 188,500 that I circled.

4 Q And that's in the upper left-hand corner of Government
5 Exhibit 6?

6 A Yes, sir.

7 Q And in line 38 through 39 you said, "You tell me what
8 to do. I don't know what to do," Why did you say that?

9 A The instructions from the agent is to show him a copy
10 of the check register and see how he responded to it. So as
11 I showed him the copy of the check register, I told him I
12 didn't know what to do with it to see how he would respond.

13 Q And further on down on line 43 when you asked, "Don't
14 show it to them? I'm just worried if we hide it and they
15 audit." John Sampson responded, "You're not going to hide
16 it inaudible." Do you remember what he said?

17 A I don't remember, sir.

18 Q Okay. Now, directing your attention ahead to page five
19 on line two you stated, "Tell them it's missing?" Why did
20 you state, "Tell them it's missing."

21 A Because he told me to tell the government that the
22 check -- I couldn't find it and it was missing?

23 Q Were you repeating what he said?

24 A Yes, sir.

25 Q And on line seven when you stated, "Tell them I lost,"

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1 why did you say that?

2 A From line five I was repeating what he said, tell them
3 that the check register was lost.

4 Q Do you remember what John Sampson stated in line nine?

5 A No, I don't.

6 Q And in line 14 before John Sampson said, "Don't say you
7 don't have it, just say you don't know." What did you say
8 in the portion that was inaudible, if you can remember?

9 A I don't remember what he said there.

10 Q Do you remember what level voice, what volume voice he
11 used to say, "I don't want you to lie." In line 15 and 16?

12 A That was said in a very low voice.

13 Q And in line 31 when you stated, "I think there is one
14 attributable to you, but, I mean, it's campaign stuff."

15 What were you referring to?

16 A That the checks -- umm -- that one of the possibilities
17 in explaining to the government, I could tell them that this
18 was given for campaign.

19 Q What specifically did John Sampson say to you about
20 that?

21 A He said that I could tell the government that -- he had
22 gave me several option that I can explore to the government
23 or I can tell the government, and one of them I could tell
24 them that it's for campaign contribution.

25 Q And in line 36 when you stated, "But they haven't asked

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1 me how I owe the money." Why did you state that?

2 A One of the other option was he had told me also that I
3 could tell the government that I was repaying a loan.

4 Q What specifically did John Sampson say to you about
5 repaying the loan?

6 A That this 188,500 was a repayment of a loan that I took
7 from him.

8 Q Did you ever take a loan of \$188,500 from John Sampson?

9 A No, sir.

10 Q At the bottom of page five where John Sampson said
11 several times, "I don't want you to lie," what tone of voice
12 was that?

13 MR. AKERMAN: Object, your Honor.

14 THE COURT: Would you repeat the question, please?

15 Q At the bottom much page five where John Sampson said,
16 "I don't want you to lie," what was the level of his voice?

17 A Very loud, sir.

18 Q And in the middle of that statement on line 42 where he
19 stated, "Just tell them unintelligible." Do you remember
20 what he told you?

21 A Just tell them you can't find it.

22 Q What was the volume of that statement?

23 A Very low.

24 Q Turning ahead to page six, on line nine when you stated
25 the word, "Mortgages," why did you bring up the word

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1 mortgages?

2 A There was a statement about why the government was
3 interested in looking through the paperwork and he told me
4 they were not interested in this loan or documents
5 pertaining to this loan, that the government was looking for
6 mortgage papers.

7 Q And further on down on line 19 where you stated, "And
8 this is the notation I made," what were you referring to?

9 A The notation on the check -- copy of the check register
10 that there was a loan out to John Sampson.

11 Q Is that what is written on the upper left-hand corner
12 of Government Exhibit 6?

13 A Yes, sir.

14 Q So between line 22 and 42 there are several
15 unintelligible statements. Do you remember what John
16 Sampson was saying?

17 A On line 38 he had to tell me you don't have to give it
18 to them. And line 40, I said, "I wouldn't give it to them,"
19 meaning, the copy of the check register.

20 Q Were you repeating what John Sampson told you to do?

21 A Yes, sir.

22 Q Do you remember what the other statements were by John
23 Sampson between line 22 and 42 on page six?

24 A I don't remember.

25 Q Okay. Turning ahead to page seven on line 19 to 20

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1 when you stated, "This guy, this FBI guy that you know,"
2 what were you referring to?

3 A I was referring to the private investigator.

4 Q Which private investigator was that?

5 A Warren Flagg.

6 Q And further down on line 29 when you stated, "You don't
7 need the guy to go to trial with me," what were you
8 expressing to John Sampson?

9 A That I needed somebody whose got contacts to give us
10 information rather than having a private investigator to
11 hold my hand through the trial.

12 Q And in lines 33 through 34 when John Sampson said, "You
13 need more, you need moral support unintelligible trial, you
14 need more than that," do you remember what he was stating to
15 you?

16 A Yes, he was agreeing that we need somebody who could
17 give us information.

18 Q On line 40 you stated, "My trial start in April. Do I
19 need a guy to come follow me?" What were you expressing?

20 A That I did not need a private investigator to follow me
21 around, I needed somebody who could get us information, get
22 us quickly, because the trial was coming up in April.

23 Q On line 43 when John Sampson responded, "No. No. No.
24 You need to be able to unintelligible see what's going on."
25 What was he telling you?

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1 A He was agreeing with me that we need that type of
2 person to get us that information.

3 Q Turning ahead to page eight on line 14 when you said,
4 "You set up the appointment. You tell him you're my
5 lawyer." What were you telling him to do?

6 A To set up a meeting with Warren Flagg because he
7 insisted that I should have a meeting with Steven Kartagener
8 to sign some sort of agreement with him. So I wanted John
9 Sampson to set up a meeting with Warren Flagg.

10 Q Was this an effort to steep Steve Kartagener out of the
11 meeting?

12 A Yes.

13 Q And in line 18 when you stated, "If we were worried
14 about whatever is said that is protected, at least you are
15 there as my lawyer." What were you expressing to John
16 Sampson?

17 A That Warren Flagg had told me it's best when we do the
18 meeting that I should have my lawyer there. So to get
19 Warren Flagg to the meeting and get John to set up the
20 meeting. I told him that.

21 Q Were you doing this pursuant to agent directions?

22 A Yes, sir.

23 Q Is that what you were told to say?

24 A Yes, sir.

25 Q On line 25 -- I'm sorry, line 23 you stated, "Yeah, but

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1 let's be straight with him. I'm looking for no
2 unintelligible." What were you expressing?

3 A That I wanted John to tell him straight out what type
4 of information we were looking for, we were looking for
5 inside contact information.

6 Q And when John Sampson responded, "No, we're looking for
7 people who could get us information," what did you
8 understand John Sampson to be telling you?

9 A Yes. That's the type of person that we want somebody
10 to get us information.

11 Q Turning ahead to page nine, on line 15 you stated, "I
12 went to Rita. Rita can't get more connections." Why did
13 you state that?

14 A My understanding that Rita had contacts, I'm not sure
15 whether it was in the Eastern District or Southern District.
16 After the meeting she had established that her connection
17 was in the Southern District, and so I wanted John to reach
18 out to Rita and find out if she had any other contact.

19 Q Did John Sampson state anything about Rita Dave in line
20 13 on page nine?

21 A I don't recall, sir.

22 Q And in lines 23 to 24 when John Sampson stated, "Listen
23 you know how our guy is, make sure you lose a couple page
24 here and there." What did you understand him to be telling
25 you to do?

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1 A When submitted paperwork a copy of the checks, to make
2 sure there were a couple of sequence missing in front of
3 this check and after.

4 Q Including this check as well?

5 A Yes, sir.

6 Q And on line 30 when you asked, "But let me ask you
7 question, are they going to be able to get this record
8 unintelligible." What were you asking John Sampson?

9 A The fact that he was telling me to not turn over all
10 the documents to the government. I was asking him whether
11 the government has the ability to get the information that I
12 didn't turn over to them.

13 Q How did he respond?

14 A He says yes.

15 Q He said they could get the information?

16 MR. AKERMAN: Objection, your Honor,
17 mischaracterizes the transcript.

18 THE COURT: Can you read back the last question
19 for me?

20 (Last question was read back.)

21 THE COURT: Rephrase the question, please.

22 Sustained as to form.

23 MR. SOLOMON: Okay. Thank you, your Honor.

24 BY MR. SOLOMON:

25 Q Directing your attention to line 33 when John Sampson

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1 stated, "No, it depends," in response to your question, "Are
2 they going to be able to get to this record," do you
3 remember what portion of John Sampson's statement inaudible
4 was stated by John Sampson?

5 A Yeah, it depends on what they're looking for.

6 Q And further on down to page nine into page ten, so this
7 is starting line 37 on page nine through line 12 on page
8 ten, there are several inaudible comments. Do you remember
9 what John Sampson was saying during this portion of the
10 transcript?

11 A I'm sorry, sir, can you repeat that question?

12 Q Yes. On page nine line 37 in response to your
13 question, "They'll take out the mortgage on that," through
14 line 12 on page ten, there are several inaudible comments.
15 Do you remember what John Sampson was saying during this
16 portion of the conversation?

17 A No, sir, I can't.

18 Q On line 20 on page ten when John Sampson stated, "So I
19 don't want you to lie unintelligible since I don't have.
20 I'll give you what I have and I don't know what you have. I
21 don't know, but I don't want you to lie." What do you
22 understand him to be telling you?

23 A I'm not really clear what he was trying to say here,
24 but he said that very loudly.

25 MR. AKERMAN: Object.

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1 THE COURT: Let him finish the answer. I'm sorry
2 what were you -- what was the last thing you said?

3 THE WITNESS: I wasn't clear what John Sampson was
4 saying here or what he meant.

5 THE COURT: Overruled.

6 Q And what was the volume of his voice when he said, "I
7 don't want you to lie," in line 20 through line 22 on page
8 ten?

9 A Very loud.

10 Q In line 26 through 27 when John Sampson stated,
11 "Unintelligible you don't know what happened. It's not, you
12 don't know what happened. It's, I don't have it." What did
13 you understand him to be telling you?

14 A So after I turned over the copies to the government, if
15 they realize that these checks were missing, the pages were
16 missing and they asked me for it, I didn't know what
17 happened, I just didn't have it.

18 Q Is that what you were supposed to say to the
19 government?

20 A Yes, sir.

21 Q And on line 33 when you asked, "But by saying I don't
22 have it, am I lying or not, I don't know," what were you
23 asking John Sampson?

24 A By not turning over the paperwork to the government,
25 and they request the information subsequently and I say I

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1 don't have it, I would be lying to the government, correct?

2 Q And in line 35 when John Sampson responded stating,
3 "No, you don't have it," what did you understand him to be
4 saying to you?

5 A Tell the government that I don't have the information.

6 Q At the bottom of page ten, lines 44 and 45 John Sampson
7 stated, "Man unintelligible something that I thought is very
8 simple between you and I, you know, unintelligible." Do you
9 know what he was saying there?

10 A Yes. He was referring to the loan that I gave him. He
11 was saying to me that he thought this was a simple
12 transaction and the fact now that the government -- the fact
13 that I got into this trouble and the government had
14 subpoenaed my record, this could potentially have some
15 problems for him.

16 Q On page 11 when Sampson asked on line three to line
17 four, "You okay with that? You okay what we talked about?"
18 What did you understand John Sampson to be asking you?

19 A If I was okay to lie to the government and tell them
20 that I didn't have these information.

21 Q When you stated in line six, "That's fine. If you want
22 me to do that, I'll do that," what were you expressing to
23 John Sampson?

24 A If he wanted me to lie to the government, that's fine,
25 I would lie to them.

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1 Q On page 11, we're on the same page, line 12, John
2 Sampson stated, "You have to call that guy," what did you
3 understand him to be telling you to do?

4 A To call Warren Flagg, the private investigator.

5 Q And in line 24 when you said -- where you stated, "Tell
6 you, it will show the inconsistent," what were you
7 expressing at that point?

8 A That if I took out the checks that he had requested me
9 to take out when turning over the documents to the
10 government, obviously there will be an inconsistency in the
11 numeric numbers of the checks.

12 Q And sorry, touching back to line 16 when John Sampson
13 stated, "I don't want this guy saying I don't have it, but I
14 have other unintelligible, that's it. If you've got a
15 couple unintelligible, you know what I'm saying,
16 unintelligible." Do you remember what John Sampson was
17 stating there?

18 A I don't recall, sir.

19 Q Okay. On line 34 on page 11, when John Sampson stated,
20 "The lease she gives me never had any preference," what did
21 you understand that to mean?

22 A I'm not sure what he meant there.

23 Q On line 38 when he stated -- John Sampson stated, "It
24 never had any referrals," what did you understand that to
25 mean?

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1 A I don't recall, sir.

2 Q Okay. And do you recall what John Sampson was stating
3 on lines 42 and 46 of page 11?

4 A I don't recall, sir.

5 Q On page 12 at the very top when you stated, "Listen, I
6 don't want to give them until I show it to you, okay," what
7 were you asking John Sampson?

8 A That I didn't want to turn over the documents to the
9 government until I showed to him and get some guidance as to
10 what to do with it.

11 Q Okay. In line 20 on page 12 or line 19 and 20, you
12 stated, "Yeah, but John this guy you introduced me to, you
13 told me that \$250 an hour to go to trial with me," what were
14 you expressing to John Sampson?

15 A That I didn't want to pay Warren Flagg, the private
16 investigator that he wanted me to hire, \$250 to sit with me
17 at trial.

18 Q And where did you come up with the rate \$250 per hour?

19 A Warren Flagg had told me and also John had told me.

20 Q That was the rate?

21 A Yes, sir.

22 Q Turning ahead to page 13, on line 19 when you asked,
23 "Was it 645-0808," which number were you referring to?

24 A That was Warren Flagg's number.

25 Q Where did you get that number from?

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1 A That number was given to me by John Sampson.

2 Q On line 33 when John Sampson was asking, "Yeah, may I
3 speak to Warren, please," was he talking to you or talking
4 to someone else?

5 A No, he was on the phone trying to get ahold of Warren
6 Flagg.

7 Q Did you participate in that conversation with John
8 Sampson?

9 A No, I did not.

10 Q What was your understanding of how that conversation
11 between John Sampson and Warren Flagg was resolved?

12 A That John Sampson initially made the call to set up an
13 appointment and he was going to call Warren Flagg on Sunday
14 to confirm the appointment for Monday.

15 Q On line -- on page 14, the next page, line six John
16 Sampson stated, "Unintelligible I gave John an advance, a
17 legal salary, and he represents me through all these years."
18 What do you understand that to mean?

19 A So one of the theory in the conversation was also to
20 tell the government if they came across the 188,500, that
21 this was money gave to him for legal work he had done for me
22 over the years.

23 Q And your previous question to John Sampson on line
24 four, "Where is his office," whose office were you referring
25 to?

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1 A Warren Flagg.

2 Q When John Sampson stated, "I don't know," what did you
3 understand him to mean?

4 A He didn't know where Warren Flagg's office was.

5 Q So on line six when John Sampson then stated, "I gave
6 John an advance," was that a change in topic or was that the
7 same topic of conversation?

8 A No, it was a change, a change of topic.

9 Q On line nine when you asked if John Sampson was joking,
10 "188,500, that's funny," what were you expressing to him?

11 A That was in response to him when he told me that
12 188,500 I could tell the government that this money was for
13 legal work he had done for me for the year.

14 Q In line 11 when John Sampson stated, "But you don't
15 unintelligible. I was kind of unintelligible, you know what
16 unintelligible." Do you remember what he stated there?

17 A I don't recall, sir.

18 Q And in line 17 when John Sampson stated,
19 "Unintelligible I don't want you to say anything. I want
20 you to say unintelligible." Do you know what John Sampson
21 stated?

22 A Yes. He told me I don't want you to say anything, just
23 say you can't find it.

24 Q And in line 22 on page 14 when John Sampson stated,
25 "What you say is that you don't say anything unintelligible

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1 have -- this is all I have unintelligible. As long as you
2 don't, you know, it's not bad, you've got other things, too.
3 You know what I'm saying?" What did you understand John
4 Sampson to be telling you?

5 A Just tell the government this is all I have, as far as
6 the information.

7 Q And when you say, "This is all I have," what did you
8 mean?

9 A After I take out the checks and turn over the
10 information to the government, and if they ask me to just
11 tell them this is what I got.

12 Q And in line 28 where John Sampson stated,
13 "Unintelligible you're asking unintelligible go away,
14 unintelligible appreciate you, unintelligible," do you
15 remember what John Sampson stated?

16 A No, sir, I don't recall.

17 Q And finally on the bottom of page 14 between lines 38
18 and 42, do you remember what John Sampson was saying during
19 the unintelligible portions of the conversation?

20 A I'm sorry, could you repeat the lines?

21 Q 38 through 42.

22 A Yes. So starting from line 38 he's telling me to tell
23 the government that I have some in, some out when handing
24 over the information to them.

25 Q What do you understand "some in and some out" to mean?

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1 A The missing documents, that I should take out the
2 missing checks and give them some and don't give them the
3 others.

4 Q What were you supposed to say?

5 A This is all I got.

6 Q On page 15 on line two when you asked, "So you're going
7 to set it up on Monday," what were you referring to?

8 A The meeting with Warren Flagg.

9 Q On line 22 when John Sampson asked, "Who are they
10 talking to, anybody in the office they're still talking to,"
11 what did you understand him to mean?

12 A Whether the government was talking to anyone person in
13 my office, potential cooperators.

14 Q And in line 28 when John Sampson stated, "Jay said
15 unintelligible young lady that used to work for you," what
16 are you understanding him to be referring to?

17 A That Jay Sharma had told him that the government was
18 talking to someone who was working in my office.

19 Q And when you say on line 30 who Annie, "Who are you
20 referring to?

21 A Annie, a former employee in my office.

22 Q What's Annie's full name?

23 A Radhika, R-a-d-h-i-k-a, Dhori, D-h-o-r-i.

24 Q Did you ever do mortgage fraud with Radhika Dhori?

25 A Yes, I have, sir.

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1 Q What was her role in the mortgage fraud?

2 A She purchased the house and I did the mortgage for her.

3 Q Were there lies in the mortgage?

4 A Yes, sir.

5 Q And in line 36 when John Sampson asked you, "What's the
6 deals that you did with Jay," what did you understand him to
7 be asking you?

8 A What kind of business I had done with Jay Sharma.

9 Q And again, who is Jay Sharma?

10 A Jay Sharma is an attorney in Queens that I've done
11 foreclosure fraud with.

12 Q Directing your attention to page 16 on line 20 in
13 response to your question, "Who is he talking about," John
14 Sampson stated, "The woman that just went in." What did you
15 understand that to mean?

16 A That Jay Sharma had told him that Annie had gone in to
17 see the government.

18 Q And in line 24 when John Sampson stated, "They're
19 trying to get her to come in," what did you understand John
20 Sampson to mean?

21 A That the government was trying to get Annie to
22 cooperate with them.

23 Q And on line 26 when you asked, "How would Jay know
24 that," what were you trying to inquire?

25 A How did Jay get this information.

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1 Q And on line 28 when John Sampson responded, "Because in
2 the records he subpoenaed unintelligible records, there's
3 transactions he did for you." What did you understand that
4 to mean?

5 A That the government subpoenaed records from Jay Sharma.

6 Q At the bottom of page 16, line 41 when you asked, "Let
7 me ask you a question, this guy that you have in there, he
8 can't give us some information," what were you referring to?

9 A I was referring to his source in the Eastern District
10 office.

11 Q In line 44 there is an unintelligible notation. Do you
12 remember what John Sampson said in response to your
13 question?

14 A Tight lipped.

15 Q And what did you say in response or what did you mean
16 in response line 46 when you stated that he's BS'ing you?

17 A That the information he's giving is of no value really.

18 Q Turning ahead to page 17 when John Sampson stated,
19 "He's the type of person I would trust with my own sister,"
20 what did you understand that to mean?

21 A I'm sorry, what number are you on?

22 Q Page 17, line six.

23 A Yes. He was saying he's got so much confidence in this
24 gentleman in the Eastern District office, that he would
25 trust his own sister with him.

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1 Q And when you stated in response on line eight, "I find
2 it hard to believe that he's working there and he can't find
3 zero," what did you understand that to mean -- or, I'm
4 sorry, what were you trying to express?

5 A That the information that I keep asking John Sampson
6 for keep telling me that everything is tight lipped, hush,
7 hush in there, and that this guy didn't really produce no
8 kind of information.

9 Q When John Sampson stated in lines 11 and 15, everything
10 is tight lipped, did you assess whether he was willing to
11 talk to you about his source in the US Attorney's office?

12 A No, I didn't think that he was willing to speak about
13 the source.

14 Q On line 19 when John Sampson stated, "He's worked on
15 mob cases, stuff like that," what did you understand that to
16 mean?

17 A That his contact in the Eastern District office had
18 worked on big confidential cases such as mob cases and
19 others.

20 Q And in line 37 -- I'm sorry, line 33 when John Sampson
21 stated, "Nobody else knows about that," and then on line 37,
22 "About what you did." What did you understand that John
23 Sampson was referring to?

24 A He was asking me whether anyone knew about the loan
25 that I gave him or if I had spoken to anybody about it.

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1 Q Was that coded language?

2 A Yes, sir.

3 Q Turning ahead to page 18. On line eight when John
4 Sampson stated, "I gave you a contact in exchange for
5 unintelligible, none of that happened. You know what, how
6 much money you gave me over the years. A lot." What did
7 you understand John Sampson to be saying?

8 A That I had gave him this loan or I gave him this money
9 in exchange for all the information and work that he had
10 done for me over the years.

11 Q Was that true?

12 A No.

13 Q On line 16 when you stated, "You're probably holding on
14 to my life savings," what were you trying to express?

15 A That the money that I loaned him is a lot of money and
16 it's the money that I had savings that I loaned him.

17 Q On page 38 when you refer to "the bill," what happened
18 to the bill during this meeting?

19 A I'm sorry, which line are you on?

20 Q Line 38.

21 A Are we on page 18?

22 Q Yes.

23 A Yes.

24 Q Line 38 where you state, "Give me the bill for over
25 here now?"

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1 A I asked for the bill to pay.

2 Q What happened with the bill?

3 A I paid the bill.

4 Q Did John Sampson offer to pay the bill?

5 A Yes, I think he did.

6 Q On page 19 when John Sampson in line one stated, "I'd
7 like to down tonight and unintelligible," do you remember
8 what he was stating?

9 A I don't recall, sir.

10 Q And in line 13 when John Sampson stated, "I mean, what
11 you know unintelligible, you know, he's helped me out early
12 on in my long career and things like that unintelligible.
13 You follow me?" What did you understand John Sampson to be
14 referring to?

15 A He was referring to the loan in the event that question
16 about the government about this loan, that I should tell
17 them that John Sampson has helped me a long time, for a long
18 period, and this was a repayment for that.

19 Q Was that true?

20 A No, sir.

21 Q And when you said in line 17, "For a safety loan," what
22 were you expressing?

23 A So this was a loan on the basis of the work that he had
24 done for me over the years.

25 Q On line 19 when John Sampson stated, "Yeah, I said

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1 forget it. You know what I said. I said, 'don't even worry
2 about it. I don't, I don't remember unintelligible. I
3 don't remember." What did you understand that to mean?

4 A That that is the information that I should convey to
5 the government that I don't remember.

6 Q And when he stated, "Don't even worry about it," what
7 did you understand that to mean?

8 A That I should not worry about it if the government
9 asked me about this information.

10 Q Was it true that you didn't remember at the time what
11 the loan was for?

12 A No, sir, I knew what the loan was.

13 Q On line 24 through 30 where John Sampson states,
14 "Unintelligible this is all I have, you know, some things I
15 miss, some things I don't. But God forbid, you know,
16 unintelligible so I forgave that. This guy's done so much
17 for me in my life, I just said forget about it. You know
18 what I'm saying? I mean, where Johnny, me and him are
19 brothers unintelligible. I look at him as a brother
20 unintelligible life. He's done things for me that no, I
21 can't, he's done things for me unintelligible price tag."
22 What did you understand that to mean?

23 A That is the information that I should convey to the
24 government in an event they found a copy of the checks for
25 the loan.

E. AHMAD - DIRECT - MR. SOLOMON

610

1 Q What did John Sampson tell you to say?

2 A That this was a loan that I gave to him and I forgive
3 the loan, because of the work that he had done for me over
4 the years.

5 Q And directing your attention -- I'm sorry, withdrawn.

6 Was that true that you forgave the loan?

7 A No, sir.

8 Q And directing your attention to line 38 through 44 when
9 John Sampson stated, "Unintelligible I mean, unintelligible
10 you've done so much for me all my life unintelligible, it
11 doesn't matter what he's done for me unintelligible
12 relationship unintelligible guy's done so much for me.
13 Helped me out with, you know, immigration issues of, you
14 know, unintelligible people. Whole bunch of things this
15 guy's done for me. That's the least I can do for him,
16 because even in the unintelligible when my mother was sick,
17 he was here with me unintelligible. Are you following me?"
18 What did you understand John Sampson to be telling you?

19 A That that is the information I should convey to the
20 government if they found evidence of the loan I gave to him.

21 Q What were you supposed to say?

22 A Supposed to say that he had helped me over the years.
23 He's always been there for me including when my mom was
24 sick. He had done immigration work for me and that we have
25 a brotherly relationship.

E. AHMAD - DIRECT - MR. SOLOMON

611

1 Q Was that true?

2 A Yes. We had a brotherly relationship at the time; the
3 immigration work I don't recall him doing for me.

4 Q And was it true that these facts were the basis of your
5 forgiveness for the loan?

6 A No, it wasn't.

7 Q On page 20, line seven when John Sampson stated, "I'm
8 not unintelligible basically what I'm saying is you give
9 them the documentation that you have, some documentation
10 unintelligible just don't have documentation." Do you
11 remember what he was telling you?

12 A Yes.

13 Q What was he telling you?

14 A He was saying, again, give them the information, make
15 sure some is missing and if they ask, this is what you got.

16 Q Is that a paraphrase?

17 A Yes, sir.

18 Q And in line 13 when John Sampson stated, "That's it,
19 you know, unintelligible go over it. Unintelligible. You
20 know intelligible. I forgave him unintelligible. Forget
21 about it. I don't need it. Forget about it. You tell him
22 unintelligible." What was John Sampson tell you there?

23 A It's the same conversation; that if they found the
24 check, that I should tell them that I don't know.

25 Q And what did the word in line 14 "forgave" refer to?

E. AHMAD - DIRECT - MR. SOLOMON

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1 A That I forgive the loan, that I gave for him -- to him,
2 sorry.

3 Q And on line 19 through 22 when John Sampson stated,
4 "And it's like -- we're like that. I said, you know, we're
5 like that. That's how we are. With him, you know, he would
6 do anything for me and I would do anything for him
7 unintelligible. I think that's you know unintelligible."
8 What was John Sampson telling you?

9 A That this loan was given to him based on the
10 relationship that we have had over the years. We would do
11 anything for each other.

12 Q And was that true?

13 A No, sir, this loan was not.

14 Q On line 29 in response to your statement, "You're the
15 Brooklyn lawyer," John Sampson stated, "Unintelligible say
16 no. Unintelligible said no." Do you remember what he
17 stated?

18 A Yeah. Again, if I was asked what happened to the
19 information that the government was requesting, just say you
20 don't know.

21 Q And in line 33 when John Sampson asked you or told you,
22 "Did you ever loan John the money to get it through the
23 unintelligible. You say no." What did you understand that
24 to mean?

25 A That if I was asked whether this loan -- whether I gave

E. AHMAD - DIRECT - MR. SOLOMON

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1 John the loan and say no.

2 Q Do you remember the exact words he used that were
3 unintelligible following the phrase, "Loan John money to get
4 it through the unintelligible."?

5 A I don't recall the exact words, sir.

6 Q And in line 38 when John Sampson stated, "Because no, I
7 got unintelligible, and that's consistent to what you always
8 been saying," do you remember what he was telling you?

9 A Yes. He was saying, umm, that I said before that I
10 never gave him a loan. I never gave a loan to him. And
11 that if I said that this loan was forgiven because of work
12 that he had done for me in the past and our relationship, I
13 would be consistent with what I've always said.

14 Q And when previously did you state that you had never
15 given John Sampson the loan?

16 A When I had gone to see the US Attorney in the Southern
17 District.

18 Q And did you relay the fact that you lied to the US
19 Attorney's office in the Southern District to John Sampson?

20 A I don't recall. I don't recall that I told him that.

21 Q And in line 43 when John Sampson stated, "Well, best
22 case unintelligible." Do you remember what he said to you?

23 A I don't remember.

24 Q On page 21, on line 21 through 22 when John Sampson
25 stated, "Yo boss, I'm going to tell you this, whatever

E. AHMAD - DIRECT - MR. SOLOMON

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1 little money I have, you're entitled to it now." What
2 volume of voice did he use there?

3 A It was very loud.

4 Q Did you understand what that meant?

5 A He was saying to me that whatever little money he has
6 I'm entitled to it, so I don't know -- because part of this
7 conversation I talked about, you know, business was bad and
8 I don't have money and that this loan, you know, I could use
9 it. And he responded when I said this -- you probably
10 holding my life savings. I was trying to tell him that you
11 know, this was money in my savings that I could use now.
12 And somewhere in the conversation here in line 21 he
13 responded, "whatever little money I have, you can use -- you
14 can have it."

15 Q And on lines 26 through 27 when he stated, "Listen to
16 me Eddie, Eddie, listen to me loud and clear, whatever
17 little money I have, you're entitled to". What was the
18 volume of his voice during that comment?

19 A That was very loud.

20 Q And directing your attention to the end of the
21 recording, page 23, when you asked on line 11 of page 23,
22 "In the meantime see if you can get anything from your guy
23 now," what were you referring to?

24 A See what information he could get from his source in
25 the Eastern District office.

E. AHMAD - DIRECT - MR. SOLOMON

615

- 1 Q Where were you when you made this comment to John
2 Sampson?
- 3 A We were standing outside.
- 4 Q Outside the restaurant?
- 5 A Yes, sir.
- 6 Q And did John Sampson talk about the source in response?
- 7 A No, he did not.
- 8 Q And in line 15 when you asked, "What is this guy doing.
9 I'll see you brother." What were you referring to?
- 10 A I think I was talking to -- talking about the guy who
11 was the parking lot attendant.
- 12 Q And did you recognize the voices in this recording?
- 13 A Yes, I do, sir.
- 14 Q Whose voices were in the first portion of the recording
15 through page 23, line?
- 16 A Myself and John Sampson.
- 17 Q And at the very end when -- on line 36 of page 23 when
18 there is a comment, "The time is approximately 6:40," did
19 you recognize that voice?
- 20 A Yes, I did.
- 21 Q Whose voice was that?
- 22 A That is Agent Ken Hosey.
- 23 Q Did you meet with Ken Hosey after meeting with John
24 Sampson at the restaurant?
- 25 A Yes, sir.

SIDEBAR CONFERENCE

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1 (Sidebar conference begins.)

2 THE COURT: Could I see the document?

3 MR. AKERMAN: Sure.

4 THE COURT: Thank you.

5 MR. SOLOMON: Your Honor, I'm not aware where this
6 document came from. We've made repeated reciprocal requests
7 for discovery. And to the extent that the defense had this
8 document and its just showing it to Mr. Ahmad now, I feel
9 like we're being sandbagged a little bit, because we
10 prepared him on the basis of the documents that we had
11 pertaining to the loan. I don't know if there is much more
12 I can ask for at this point.

13 MR. AKERMAN: Well, first of all, this was not
14 responsive to any discovery request. This is
15 cross-examination. We're simply using this to impeach
16 Mr. Ahmad.

17 He testified that he had never heard of these
18 companies before. Here he is writing it. This was done the
19 day the loan was made. It's got the name Mr. Sampson --

20 THE COURT: Well, in the first place, how do we
21 know that was the day the loan was made, when there is no
22 date on the document? But more importantly than that, the
23 government made a demand for reciprocal discovery, and now
24 you're purporting to submit this as a document that was made
25 by this witness, and it has not been turned over to the

SIDEBAR CONFERENCE

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1 government.

2 MR. AKERMAN: We're only using this for
3 impeachment, your Honor. This is only impeachment.

4 MR. TUCHMANN: Your Honor, it's not impeachment.

5 THE COURT: It doesn't matter. The government
6 made a request for reciprocal discovery.

7 MR. COLANGELO-BRYAN: We would not have used our
8 document in the defense absent the testimony that we didn't
9 anticipate.

10 THE COURT: That's not a defense for lack of
11 turning over the document on the demand for reciprocal
12 discovery.

13 MR. COLANGELO-BRYAN: But Rule 16 calls for
14 documents.

15 MR. AKERMAN: Direct case. This is not direct
16 case, we're putting it in for each impeachment.

17 MR. TUCHMANN: But the difference even for
18 impeachment purposes and moving it into evidence, we do not
19 object to them showing it to the witness, cross-examining
20 him about it, the difference between doing that and moving
21 it into evidence, which the defense has requested, if they
22 were going to do that, they have to provide it to us ahead
23 of time.

24 THE COURT: That's the point. The point is the
25 defense is now moving the document into evidence. All

SIDEBAR CONFERENCE

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1 establishing it's the witness' handwriting. It doesn't say
2 anything about where you found it, who wrote it, when it was
3 written in connection with what. There's been no other
4 foundation made other than it appears to be this witness'
5 handwriting.

6 MR. AKERMAN: Can I ask for some additional
7 questions then?

8 THE COURT: I am troubled by the fact that the
9 government asked for reciprocal discovery and it was not
10 turned over.

11 MR. AKERMAN: This was not going to be used in our
12 direct case, this was purely for impeachment. We do not
13 have to turn over impeachment documents, of which we have
14 many.

15 THE COURT: But now you're using it for more
16 because you're seeking to introduce it into evidence.

17 MR. AKERMAN: I'll withdraw the evidence and I'll
18 use it for impeachment. We have the right to impeach the
19 witness. This completely contradicts his testimony about
20 what he said.

21 THE COURT: Stand here one second. When is the
22 first time that you saw this document?

23 MR. SOLOMON: When it was just shown to the
24 witness.

25 THE COURT: So you didn't even give a copy of this

SIDEBAR CONFERENCE

674

1 to the government now before the witness was shown this
2 document?

3 MR. AKERMAN: No. I showed it to the witness.
4 We're not obligated to do that under the rules, this is not
5 putting in our direct case.

6 THE COURT: Well, you know what, if you're going
7 to try a case in my courtroom, anything that gets presented
8 to the witness gets presented to the opposite party. I
9 don't play the sandbagging game. If you are going to start
10 playing sandbagging, I'm going to start precluding; and that
11 goes for both sides. I don't permit any sandbagging from
12 any party. Just one moment, please.

13 (Pause.)

14 THE COURT: The rule does say that the defendant
15 must permit the government, upon request, to inspect and
16 copy photographs, books, papers, documents, dated
17 photographs, tangible objects, buildings or places, or
18 copies or portions of any of these items if the item is
19 within the defendant's possession, custody or control and
20 the defendant intends to use the item in the defendant's
21 case in chief at trial.

22 MR. AKERMAN: And we're not. We're using it for
23 cross-examination of this witness.

24 MR. COLANGELO-BRYAN: If anyone has the knowledge
25 of this document, it's Mr. Ahmad as to why he didn't give

SIDEBAR CONFERENCE

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1 them the document, we have no idea.

2 THE COURT: Well, how did you get it?

3 MR. AKERMAN: Mr. Sampson had it. In fact,
4 Mr. Sampson told them about this document in his proffer.

5 MR. TUCHMANN: The distinction between direct
6 case, your Honor, I think is that, again, if they're going
7 to show the witness the document or examine him about that,
8 we're not objecting to that. The point is we have the right
9 ahead of time to see the document they're going to move into
10 evidence. When they say put in their direct case in terms
11 of -- in the sense of what the defense case is, they're
12 moving it into evidence.

13 THE COURT: If you're going to move it, I agree.
14 And if you're going to be moving it into evidence, that's
15 another animal altogether. But I do not permit in my
16 courtroom to just all of a sudden show some document to a
17 witness that has not previously been shown to counsel, even
18 if it's before just showing it to the witness, and I'm just
19 not going to tolerate that.

20 MR. AKERMAN: Under the Federal Rules we're
21 entitled to at least impeachment.

22 THE COURT: You're not understanding what I'm
23 saying. Before you showed that document to the witness, you
24 should have shown it to the counsel for the government. I
25 don't know how much plainer I can get than that, even if it

SIDEBAR CONFERENCE

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1 was right before showing it to the witness, but you just
2 went ahead and showed it to the witness without showing it
3 at all to the government.

4 I'll allow you to question the witness, but I'm
5 not going to allow you to enter it into evidence.

6 MR. AKERMAN: Okay.

7 MS. SPIEGELMAN: Thank you, your Honor.

8 (End of sidebar conference.)

9 (Continued on the next page.)

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E. AHMAD - CROSS - MR. AKERMAN

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1 A I'm not sure on the timing when this was written, sir.

2 Q This was not written since you've been cooperating with
3 the government, has it?

4 MR. SOLOMON: Objection.

5 THE COURT: I will allow it. It would be better
6 if you didn't ask the question in a double negative. If you
7 would rephrase it.

8 BY MR. AKERMAN:

9 Q Mr. Ahmad, you didn't write the document since the time
10 you began cooperating with the government?

11 A Sir, I don't recall the timing when this document was
12 written.

13 Q Sir, you see the name "Yvette Sampson" on the document,
14 right?

15 THE COURT: You can't read a from a document
16 that's not in evidence.

17 Q You see the name "Yvette Sampson?"

18 A Yes, sir.

19 Q Yvette Sampson is Mr. Sampson's sister, correct?

20 A I don't know that.

21 Q The address that 111-03 Thomas Boyland Street, that was
22 a property that belonged to Mr. Sampson, correct?

23 MR. SOLOMON: Objection.

24 THE COURT: Sustained.

25 Q Was that a property that belonged to Mr. Sampson?

E. AHMAD - CROSS - MR. AKERMAN

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1 MR. SOLOMON: Objection.

2 THE COURT: Sustained.

3 Q Did Mr. Sampson own property at 111-03 Thomas Boyland
4 Street?

5 MR. SOLOMON: Objection.

6 THE COURT: Let me see counsel at the side,
7 please.

8 (Continued on the next page for sidebar.)

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SIDEBAR CONFERENCE

680

1 (Sidebar conference begins.)

2 THE COURT: You can't read from the document
3 that's not in evidence. You're sidestepping the ruling that
4 you can't read from the document not in evidence. There's
5 no foundation for the question at all, because there's been
6 nothing in the evidence about Mr. Sampson owning any
7 property at that particular address.

8 I warned all counsel, this will go for the
9 government as well, if the government has to cross-examine
10 any witnesses, I will not have attorneys testifying. You
11 have a lot of leeway on cross, but you're not going to be
12 testifying as to facts and just add "is that correct" at the
13 end.

14 So you'll need to rephrase. Be careful about how
15 you phrase your questions.

16 MR. AKERMAN: Your Honor, you're precluding what I
17 normally would be able to do under Rule 106, which is to ask
18 leading questions. Even the Advisory Committee says
19 basically the attorney is testifying, that's what the
20 Advisory rules state.

21 THE COURT: No, you're not permitted to testify.

22 MR. AKERMAN: It says it under Rule 106, under the
23 Advisory Committee.

24 THE COURT: You're not permitted to testify.
25 You're not a witness.

SIDEBAR CONFERENCE

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1 MR. AKERMAN: I'm not testifying. I'm permitted
2 to ask leading questions.

3 THE COURT: Leading questions is one thing,
4 testifying is another thing.

5 MR. AKERMAN: I can certainly ask him, "isn't it a
6 fact that," that is a typical leading question that's held
7 by the Second Circuit and by the Rule 106 and the Advisory
8 Committee.

9 THE COURT: But that's not what you're doing, are
10 you?

11 MR. AKERMAN: Yes, it is.

12 THE COURT: No, it's not what you're doing. And
13 you're arguing with me, and I don't appreciate it. This is
14 wasting a lot of time.

15 MR. AKERMAN: We'll proceed. I'll do the best I
16 can.

17 THE COURT: I'm going to allow the document to go
18 in evidence as Defendant's Exhibit A, but I have to tell
19 you, the next time that something like this happens, you are
20 warned that you will be precluded, and you will be precluded
21 from the entire line of questioning if you sandbag the
22 government again like this. I'm appalled.

23 MR. SOLOMON: Your Honor?

24 MR. TUCHMANN: Your Honor, just briefly?

25 THE COURT: Yes.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, <p style="text-align: center;">-against-</p> JOHN SAMPSON, <p style="text-align: center;">DEFENDANT.</p>	: : 13-CR-269. : (DLI) : : : United States Courthouse : Brooklyn, New York : : : Thursday, July 2, 2015 : 9:30 a.m. : :
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TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE DORA L. IRIZARRY
UNITED STATES DISTRICT COURT JUDGE

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

For the Government:	KELLY T. CURRIE, ESQ. Acting United States Attorney BY: ALEXANDER A. SOLOMON, ESQ. PAUL A. TUCHMANN, ESQ. MARISA SEIFAN, ESQ. Assistant United States Attorneys
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For the Defendant John Sampson:	Dorsey & Whitney BY: JOSHUA N. COLANGELO-BRYAN, ESQ. NATHANIEL H. AKERMAN, ESQ.
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Also Present:	Ken Hosey, FBI Case Agent Megan Hynes, Paralegal Joseph Garguilo, Paralegal
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Courtroom Deputy: Christy Carosella
Court Reporter: Mary Agnes Drury, RPR
E-mail: Mad78910@yahoo.com

Proceedings recorded by computerized stenography. Transcript produced by Computer-aided Transcription.

E. AHMAD - CROSS - MR. AKERMAN

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1 was not a sale, it is a property transfer. And the 60,000
2 that I got was in consideration of the transfers. The 475
3 that you are looking at here represented the mortgage on the
4 property.

5 Q It doesn't say that though, does it, sir?

6 MR. SOLOMON: Objection.

7 THE COURT: Sustained. The document is not in
8 evidence.

9 Q Isn't it a fact that when you entered into this
10 addendum into your cooperation agreement, which governed the
11 sale of that property, you had already sold it some nine
12 months before?

13 THE COURT: Asked and answered.

14 Q Isn't it a fact that this sale took place nine months
15 before you agreed with the government to give them all the
16 paperwork --

17 THE COURT: Asked and answered. What part of the
18 objection to that question and my ruling did you not
19 understand?

20 BY MR. AKERMAN:

21 Q Mr. Ahmad, isn't it a fact that you never gave the
22 government any paperwork on this sale?

23 A That is correct, sir.

24 Q Isn't it a fact that you did not volunteer this
25 information to the government, the government approached you

E. AHMAD - CROSS - MR. AKERMAN

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1 on it?

2 A No, sir. I volunteered the information to the
3 government, I've only done it recently.

4 Q Isn't it a fact that the sale of this property is a
5 direct violation of your cooperation agreement?

6 A It's not a sale, sir, it's a transfer. And, yes, it
7 is.

8 Q As a result of this failure to notify the US Attorney's
9 office, has anyone at the US Attorney's office ripped up
10 your cooperation agreement?

11 A I haven't seen they ripped it up.

12 Q Has anyone from the US Attorney's office told you why
13 they are ignoring this breach?

14 MR. SOLOMON: Objection.

15 THE COURT: Sustained. I want to see counsel at
16 the side.

17 (Continued on the next page for sidebar.)

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SIDEBAR CONFERENCE

995

1 (Sidebar conference begins.)

2 THE COURT: First, I don't know if the government
3 has anything that they want to say before I say anything?

4 MR. SOLOMON: I think it's fair enough, your
5 Honor, the government is not on trial here, and I think
6 Mr. Akerman has made his point already about this witness'
7 conduct and we should move on.

8 THE COURT: In the first place, whether or not the
9 government is going to give this witness a 5K1 letter based
10 on either his testimony at the trial or any breaches that
11 there may have been in connection with the cooperation
12 agreement is a decision that the government is going to make
13 at the appropriate time in connection with sentencing of
14 this witness. That was an entirely inappropriate question.

15 Moreover, I'm not going to tell you again, because
16 the next time that you do it, I'm going to remove the jury
17 and we're going to discuss sanctions outside the presence of
18 the jury. When I sustain an objection to the question or if
19 I strike a question or do not allow the asking of the
20 question, you don't ask the same question over and over
21 again. You've done that several times. You need to stop
22 that. You need to obey my rulings or else, you know what, I
23 have contempt power or did you forget that? Move on. Do
24 you have anything else in connection with this?

25 MR. AKERMAN: I just have another question or two

SIDEBAR CONFERENCE

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1 and I'll be done with this witness.

2 THE COURT: Yeah, that means five more questions.

3 Let's do.

4 (End of sidebar conference.)

5 (Continued on the next page.)

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E. AHMAD - CROSS - MR. AKERMAN

997

1 THE COURT: You may continue. Objection to the
2 last question is sustained.

3 BY MR. AKERMAN:

4 Q Mr. Ahmad, as of today, has anyone from the government
5 told you definitively what the consequences for having
6 violated --

7 THE COURT: Sustained. Sustained. This is a good
8 time for a break for the jury.

9 MR. AKERMAN: I have no further questions.

10 THE COURT: Are you done with the
11 cross-examination of this witness?

12 MR. AKERMAN: Yes, I am, your Honor.

13 THE COURT: Okay. So very good time for a break
14 for the jury.

15 Remember, ladies and gentlemen, to keep an open
16 mind, not to form or draw any conclusions in connection with
17 anything that you've seen or heard here thus far.

18 And of course, you remember you can't talk about
19 the case among yourselves or with anybody else over any kind
20 of media, you can't do any research or investigation on your
21 own about anything at all connected with this case, anyone
22 connected with this case or any entity or anything else that
23 might be connected with this case.

24 So we will resume at about -- I've got -- I'm
25 looking at three different clocks and everybody has a

PROCEEDINGS

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1 different time. How's that? We will start at 11:10.

2 MR. SOLOMON: Your Honor, I'm sorry to interrupt,
3 but we have no re-direct, so perhaps we could dismiss the
4 witness.

5 THE COURT: Oh, you have no re-direct?

6 MR. SOLOMON: Yes.

7 THE COURT: Okay. So you are dismissed, sir. The
8 government does not have any further questioning for you.

9 THE WITNESS: So I'm finished, Judge?

10 THE COURT: Yes. You are done. You are free to
11 go.

12 THE WITNESS: Thank you very much.

13 (Witness leaves the witness stand.)

14 THE COURT: All right. So we'll resume at 11:10,
15 okay? Thank you.

16 (Jury is out of the courtroom at 10:50 a.m.)

17 THE COURT: All right. The jury is no longer
18 present. Please be seated for just a minute.

19 I cannot believe, Mr. Akerman, after what we
20 discussed at the sidebar, that you went ahead and asked that
21 last question after I said that that kind of question was
22 completely inappropriate, and that I had sustained an
23 objection to it, and after I had advised you or reminded you
24 that the Court has contempt power.

25 Now, apparently you want to push me to the wall on

PROCEEDINGS

999

1 that.

2 MR. AKERMAN: I'm sorry, your Honor.

3 THE COURT: I strongly advised you against it.

4 MR. AKERMAN: I'm sorry, your Honor.

5 THE COURT: This is the first case you've had with
6 me; but trust me, I follow through with my promises and I
7 will not take anymore contemptuous conduct.

8 MR. AKERMAN: I'm sorry, your Honor, I -- anyway,
9 I'm sorry.

10 THE COURT: Who is going to be the next witness?

11 MR. SOLOMON: It's Courtney Capalupo, who is a
12 special agent with the FBI.

13 THE COURT: All right. So 11:10 everybody.

14 (Proceedings were recessed and recalled.)

15 (Time Noted: 11:19 a.m.)

16 (Honorable Dora L. Irizarry takes the bench.)

17 THE COURT: I understand all of our jurors are
18 here. So if you want to bring your next witness in, and
19 we'll put her on. Can I get the spelling of her name?

20 MS. SEIFAN: Yes, your Honor. Courtney Capalupo,
21 C-a-p-a-l-u-p-o.

22 THE COURT: I'm sorry, give that to me again,
23 C-a-p-a?

24 MS. SEIFAN: L-u-p-o.

25 THE COURT: Okay.

C. CAPALUPO - DIRECT - MS. SEIFAN

1001

1 THE COURT: Okay. And this is the continuation of
2 the government's case in chief. You may call your next
3 witness.

4 MS. SEIFAN: Thank you, your Honor. The
5 government calls Agent Courtney Capalupo.

6

7 **COURTNEY CAPALUPO**, called by the Government, having been
8 first duly sworn, was examined and testified as follows:

9

10 COURTROOM DEPUTY: Please state and spell your
11 name.

12 THE WITNESS: Courtney Capalupo. C-o-u-r-t-n-e-y
13 and Capalupo, C-a-p-a-l-u-p-o.

14 COURTROOM DEPUTY: Thank you.

15 THE COURT: And good morning, ma'am. And you can
16 adjust the mic so that you're comfortable. It should be
17 powerful enough so that you don't have to speak right on top
18 of it. And there is water there, just be careful with the
19 pitcher. We want you to drink the water, not wear it.

20 You may inquire when you are ready. This is
21 questioning by Ms. Seifan.

22 MS. SEIFAN: Thank you, your Honor.

23 DIRECT EXAMINATION

24 BY MS. SEIFAN:

25 Q Good morning.

C. CAPALUPO - DIRECT - MS. SEIFAN

1002

1 A Good morning.

2 Q What do you do for a living?

3 A I'm a supervisory special agent with the FBI.

4 Q How long have you worked for the FBI?

5 A Approximately seven years.

6 Q Where do currently work in the FBI?

7 A I currently work at FBI headquarters in Washington, DC
8 in the Domestic Terrorism Operations Unit.

9 Q Where did you work in the FBI prior to the Domestic
10 Terrorism Operations Unit?

11 A I was assigned to the New York field office for the
12 Public Corruption Squad.

13 Q Where was the New York field office located?

14 A 26 Federal Plaza, New York, New York.

15 Q What was your title when you worked on the Public
16 Corruption Squad at the New York field office?

17 A Special agent.

18 Q How long did you work on the public corruption squad?

19 A Approximately four and a half years.

20 Q What were your duties and responsibilities as an FBI
21 agent on the public corruption squad?

22 A To investigate violations of federal law as they
23 related to elected officials and those that held a position
24 of public trust.

25 Q Were you involved in the investigation of John Sampson?

C. CAPALUPO - DIRECT - MS. SEIFAN

1003

1 A Yes.

2 Q What was your role?

3 A I was not the primary case agent or co-case agent;
4 however, I assisted those case agents when they needed extra
5 help.

6 Q Who were the case agents assigned to the John Sampson
7 investigation?

8 A Special Agent Kenneth Hosey and Special Agent Erin
9 Zacher.

10 Q I would like to draw your attention to February 22nd,
11 2012. Were you working that day?

12 A Yes.

13 Q What was your assignment that day?

14 A My assignment was to conduct surveillance of a meeting
15 between John Sampson and Ed Ahmad.

16 Q Where?

17 A At the Vetro Restaurant & lounge.

18 Q What kind of restaurant is the Vetro Restaurant &
19 Lounge?

20 A It's a restaurant and bar/lounge area, and also an
21 event venue.

22 Q Where is Vetro Restaurant located?

23 A In Howard Beach, Queens, New York.

24 Q Did you, in fact, surveil a meeting on February 22nd,
25 2012, between Ed Ahmad and John Sampson?

C. CAPALUPO - DIRECT - MS. SEIFAN

1004

1 A Yes.

2 Q Was that meeting recorded?

3 A Yes.

4 Q It how was recorded?

5 A Via hidden video recording device.

6 MS. SEIFAN: Your Honor, may I please publish
7 Government Exhibit 1, which is already in evidence?

8 THE COURT: Yes, you may.

9 MS. SEIFAN: Thank you.

10 Q Agent Capalupo, do you recognize this photograph?

11 A Yes, I do.

12 Q What is it?

13 A It is a photograph of the outside of the Vetro
14 Restaurant & Lounge.

15 Q Where you conducted surveillance on February 22nd,
16 2012?

17 A That's correct.

18 Q Agent Capalupo, were any other FBI agents assigned to
19 conduct surveillance with you on February 22nd, 2012?

20 A Yes.

21 Q Who?

22 A Special Agent Jennifer Kibler was assigned to work
23 inside Vetro with me.

24 Q What about outside the restaurant?

25 A There were other agents assigned outside the restaurant

C. CAPALUPO - DIRECT - MS. SEIFAN

1005

1 as well.

2 Q Before you began your surveillance, did you know what
3 John Sampson and Ed Ahmad looked like?

4 A Yes.

5 Q How?

6 A I was shown photographs of both of them prior to
7 conducting surveillance.

8 Q Do you see anyone in the courtroom who you recognize?

9 A Yes.

10 Q Who?

11 A The defendant, Mr. Sampson.

12 Q Can you please identify him by a piece of clothing he's
13 wearing?

14 A A dark jacket and eyeglasses.

15 MS. SEIFAN: Let the record reflect --

16 THE COURT: Well, we have two gentlemen at that
17 table that match that description.

18 THE WITNESS: The African-American gentleman.

19 THE COURT: Let the record reflect the witness has
20 identified Mr. Sampson.

21 BY MS. SEIFAN:

22 Q Approximately what time did you arrive at Vetro
23 Restaurant on February 22nd, 2012?

24 A Approximately 5:15 p.m.

25 Q Did you arrive with anyone else?

C. CAPALUPO - DIRECT - MS. SEIFAN

1006

1 A Yes.

2 Q Who?

3 A Special Agent Jennifer Kibler.

4 Q Were Ed Ahmad and John Sampson at Vetro Restaurant when
5 you arrived?

6 A No.

7 Q Can you explain to the jury what happened when you
8 arrived at Vetro Restaurant?

9 A When Agent Kibler and I arrived at the restaurant, we
10 entered the bar/lounge area and sat down at a table near the
11 bar.

12 Q What happened next?

13 A We awaited the arrival of Mr. Sampson and Mr. Ahmad.

14 Q What happened after Mr. Sampson and Mr. Ahmad arrived
15 at Vetro Restaurant?

16 A After they arrived, they entered the bar/lounge area
17 where Agent Kibler and I were already seated, and they sat
18 down at a table approximately eight to ten feet away from
19 us.

20 Q What did you do next?

21 A I faced the hidden video recording device so that it
22 was facing Mr. Sampson and Mr. Ahmad.

23 Q Did the hidden recording device have sound?

24 A No, it did not.

25 Q Can you explain.

C. CAPALUPO - DIRECT - MS. SEIFAN

1007

1 A It did not have sound, because we were entering a
2 restaurant and bar and didn't want to pick up any background
3 noise from music or other conversations.

4 Q Were you aware that Mr. Ahmad was wearing a recording
5 device as well?

6 A Yes. I was told that Mr. Ahmad would be wearing audio
7 recording device on him.

8 MS. SEIFAN: Your Honor, may we please publish
9 Government Exhibit 705, which is already in evidence?

10 THE COURT: Yes, it may be shown to the witness.

11 MS. SEIFAN: Thank you, your Honor.

12 Q Agent Capalupo, do you recognize what we're looking at?

13 A Yes, I do.

14 Q What is it?

15 A It is a photograph of the inside of the bar/lounge area
16 of the Vetro Restaurant & Lounge.

17 Q Can you mark on the screen where Ed Ahmad and John
18 Sampson were sitting?

19 A (Witness complies.) They were sitting on a couch right
20 here, on that second couch.

21 MS. SEIFAN: Ms. Hynes, can you slightly move the
22 interactive photograph to the right a little bit? Yeah.

23 And back a little bit?

24 (Photograph turning.)

25 MS. SEIFAN: Keep going. Can you stop, please.

C. CAPALUPO - DIRECT - MS. SEIFAN

1008

1 Thank you.

2 BY MS. SEIFAN:

3 Q Agent Capalupo, where were you sitting?

4 A I was sitting at the first table, right here,
5 (indicating.) I'm not sure if this photograph is -- if the
6 furniture had been moved slightly closer that day, but
7 approximately, I'm sorry, right here, (indicating.)

8 Q Okay. And where was Agent Kibler sitting?

9 A Right there, (indicating.)

10 THE COURT: So indicating a grouping of chairs and
11 a table on the left side of the photograph, lower left side
12 of the photograph.

13 Q Agent Capalupo were you directly facing Ed Ahmad and
14 John Sampson?

15 A Yes, I was.

16 Q What about Agent Kibler?

17 A She was not. She had a view of the front door when
18 they arrived, but when they sat down, her back was to them.

19 Q Approximately how long did the meeting between Ed Ahmad
20 and John Sampson last?

21 A Approximately 50 minutes.

22 Q Were you able to observe the entire meeting between Ed
23 Ahmad and John Sampson?

24 A Yes, I was.

25 Q Were you able to hear what Ed Ahmad and John Sampson

C. CAPALUPO - DIRECT - MS. SEIFAN

1009

1 were saying?

2 A No, I was not.

3 Q Why not?

4 A They were speaking very softly, and there was music in
5 the background as well.

6 Q At the meeting did you observe Ed Ahmad hand anything
7 to John Sampson?

8 A Yes, I did.

9 Q What?

10 A A piece of paper.

11 Q Do you recall what, if anything, John Sampson did with
12 that piece of paper?

13 A He held it in his hand for a longer period of time as
14 they continued talking, and at the end of the meeting he put
15 the piece of paper in his breast pocket.

16 Q Who is "he"?

17 A I'm sorry, Mr. Sampson put the piece of paper in his
18 own breast pocket.

19 Q Did you observe John Sampson return the piece of paper
20 to Ed Ahmad after he put it in his pocket?

21 A No, I did not.

22 Q Can you please describe John Sampson's demeanor during
23 this meeting?

24 A Distressed.

25 Q What happened after the meeting between Ed Ahmad and

C. CAPALUPO - DIRECT - MS. SEIFAN

1010

1 John Sampson ended?

2 A They exited the restaurant.

3 Q Did you make a video recording of the meeting between
4 Ed Ahmad and John Sampson on February 22nd, 2012 with the
5 hidden recording device you brought to the restaurant?

6 A Yes, I did.

7 Q Did you record the entire meeting between John Sampson
8 and Ed Ahmad?

9 A Yes, I did.

10 Q In preparation for your testimony today, did you review
11 that recording?

12 A Yes, I did.

13 MS. SEIFAN: Your Honor, may we please show
14 Government Exhibits 701, 701-V and 701-V1 to the witness
15 only?

16 THE COURT: I'm sorry, is that "V" as in Victor?

17 MS. SEIFAN: "V" as in Victor.

18 THE COURT: That's 701, 701-V and 701-V1?

19 MS. SEIFAN: Yes.

20 THE COURT: Okay /all right. It may be shown to
21 the witness only. Do you want to remove the markings from
22 the screen?

23 MS. SEIFAN: Yes.

24 BY MS. SEIFAN:

25 Q Agent Capalupo, I'm showing you two discs that have

C. CAPALUPO - DIRECT - MS. SEIFAN

1011

1 been marked for identification as 701 "V" as in Victor and
2 701 "V" as in Victor "1". Do you recognize these discs?

3 A Yes, I do.

4 Q How do you recognize them?

5 A They bear my initials and date that I reviewed them.

6 Q What is contained on these discs?

7 A 701-V is a -- the full-length video of the surveillance
8 I conducted on February 22nd, 2012. And 701-V1 are several
9 excerpts of that meeting.

10 Q Are these videos a fair and accurate recording of the
11 meeting between Ed Ahmad and John Sampson on February 22nd,
12 2012 at Vetro Restaurant and excerpts of that video?

13 A Yes, they are.

14 MS. SEIFAN: Your Honor, we move to admit
15 Government Exhibits 701-V and 701-V1.

16 THE COURT: Any objection?

17 MR. AKERMAN: No, no objection.

18 THE COURT: They are admitted.

19 (Government Exhibits 701-V and 701-V1 are admitted
20 into evidence.)

21 MS. SEIFAN: Thank you, your Honor. Your Honor,
22 may we please play 701-V1 from the trial laptop?

23 THE COURT: Yes.

24 MS. SEIFAN: Thank you.

25 (Video being played.)

C. CAPALUPO - DIRECT - MS. SEIFAN

1012

1 BY MS. SEIFAN:

2 Q Agent Capalupo, can you describe what was depicted in
3 that video?

4 A That was the depiction of the meeting between Mr. Ahmad
5 and Mr. Sampson. Mr. Ahmad handed Mr. Sampson a piece of
6 paper, and Mr. Sampson held it in his hand for awhile and
7 they continued talking.

8 Q Thank you.

9 (Video being played.)

10 Agent Capalupo, what was depicted in that video
11 excerpt?

12 A A continuation of Mr. Sampson and Mr. Ahmad's meeting.
13 In that clip Mr. Sampson is holding a piece of paper and
14 reading it. At one point he gave it to Mr. Ahmad, and then
15 gave it back to him, Mr. Sampson.

16 Q Agent Capalupo, there was a chair in the foreground of
17 that video. Who was sitting in that chair?

18 A Agent Kibler.

19 MS. SEIFAN: Ms. Hynes, will you play the next
20 clip, please. Thank you.

21 (Video being played.)

22 Q Agent Capalupo, what was depicted in that video
23 excerpt?

24 A Mr. Sampson is holding that piece of paper that
25 Mr. Ahmad gave him, and they are continuing to talk.

C. CAPALUPO - DIRECT - MS. SEIFAN

1013

1 Q Thank you.

2 MS. SEIFAN: Can you please play the next excerpt?

3 Thank you.

4 (Video being played.)

5 Q Once again, what was depicted in that video excerpt?

6 A Mr. Sampson is holding the piece of paper that

7 Mr. Ahmad gave him and they are continuing to talk.

8 MS. SEIFAN: Can you please play the next video

9 excerpt?

10 (Video being played.)

11 Q Once again, Agent Capalupo, what was depicted in that

12 video excerpt?

13 A Mr. Sampson is holding a piece of paper that Mr. Ahmad

14 gave him in his hands, and they appear to be talking for

15 part of that clip, but also not talking as well.

16 MS. SEIFAN: Will you please play the next

17 excerpt?

18 (Video being played.)

19 Q Once again, Agent Capalupo, can you describe what was

20 depicted in that video excerpt?

21 A Mr. Sampson is holding the piece of paper in his hand

22 that Mr. Ahmad gave him and he is leaning back on the couch.

23 Q How would describe his demeanor?

24 A Distressed.

25 MS. SEIFAN: Will you please play the next

C. CAPALUPO - DIRECT - MS. SEIFAN

1014

1 excerpt?

2 (Video being played.)

3 Q Agent Capalupo, what was depicted in that video
4 excerpt?

5 A Mr. Sampson gave the paperwork that Mr. Ahmad gave him
6 and placed it in the breast pocket underneath his sports
7 coat.

8 Q Thank you.

9 MS. SEIFAN: Last video excerpt, can you please
10 play it? Thank you.

11 (Video being played.)

12 Q Agent Capalupo, what was depicted in that video
13 excerpt?

14 A Mr. Sampson took off his glasses and was rubbing his
15 face and head and staring at the ground.

16 Q Thank you.

17 MS. SEIFAN: Your Honor, may we please show 701
18 "V" as in Victor "2" to "V" as in Victor "7" to the witness
19 only using our laptop?

20 THE COURT: Yes.

21 Q Excuse me, Agent Capalupo, were those video excerpts
22 that we watched in chronological order?

23 A Yes, they were.

24 Q Okay. Thank you. 701-V2. And the next one, please?
25 701-V3. 701-V4. 701-V5. 701-V6. 701-V7.

C. CAPALUPO - DIRECT - MS. SEIFAN

1015

1 Do you recognize these?

2 A Yes, I do.

3 Q What do you recognize them to be?

4 A Still photographs of portions of the meeting between
5 Mr. Sampson and Mr. Ahmad.

6 Q Are these still photographs fair and accurate
7 representations of Ed Ahmad and John Sampson at different
8 times during the February 22nd, 2012, meeting?

9 A Yes, they are.

10 MS. SEIFAN: Your Honor, at this time the
11 government offers Exhibits 701-V2 to V7.

12 MR. AKERMAN: No objection.

13 THE COURT: They are admitted.

14 (Government Exhibits 701-V2 to 701-V7 were
15 admitted into evidence.)

16 MS. SEIFAN: Your Honor, may we please publish
17 them to the jury?

18 THE COURT: They may be published.

19 MS. SEIFAN: Thank you.

20 BY MS. SEIFAN:

21 Q Agent Capalupo, what are we looking at in this?

22 A Mr. Sampson is holding a piece of paper and Mr. Ahmad
23 is pointing to it.

24 MS. SEIFAN: Can we please publish 701-V3. Can
25 you please publish 701-V4. 701-V5. 701-V6. 701-V7.

C. CAPALUPO - DIRECT - MS. SEIFAN

1016

1 (Photographs being shown.)

2 Q Are these video stills in chronological order?

3 A Yes, they are.

4 MS. SEIFAN: Your Honor, may I please publish to
5 the jury Government Exhibit 6, which is already in evidence?

6 THE COURT: Yes. This is from the Elmo, correct?

7 MS. SEIFAN: Yes, your Honor.

8 Your Honor, I have a board to show the witness,
9 may I please approach?

10 THE COURT: Yes.

11 BY MS. SEIFAN:

12 Q Agent Capalupo, I'm showing you what's been marked for
13 identification for identification as Government 701-V8. Do
14 you recognize this?

15 A Yes, I do.

16 Q What do you recognize it to be?

17 A On the left-hand side is Government Exhibit 6, and
18 there are six video stills that are Government
19 Exhibit 701-V2 through V7.

20 MS. SEIFAN: Your Honor, at this time the
21 government offers 701-V8 into evidence.

22 THE COURT: Have you had a chance to examine it?

23 MR. AKERMAN: We have, your Honor.

24 MR. COLANGELO-BRYAN: Can you repeat the number?

25 MS. SEIFAN: 701-V8. "V" as in Victor.

C. CAPALUPO - DIRECT - MS. SEIFAN

1017

1 THE COURT: Victor 8. Any objection?

2 MR. AKERMAN: No.

3 THE COURT: It's in evidence.

4 MS. SEIFAN: Your Honor, may I publish it to the
5 jury?

6 THE COURT: Yes, you may publish it.

7 (Government Exhibit 701-V8 is admitted into
8 evidence.)

9 MS. SEIFAN: Your Honor, we rest that the witness
10 be permitted to step down from the witness stand?

11 THE COURT: You may step down. Counsel, if you
12 want to move maybe over to that side, so you can observe it.

13 MR. AKERMAN: Great.

14 BY MS. SEIFAN:

15 Q Agent Capalupo, can you have explain what's on this
16 board?

17 A It is a combination of --

18 THE COURT: I'm going to have to ask the agent to
19 keep your voice up really nice and loud, so that we can all
20 hear you.

21 THE WITNESS: Yes, your Honor. This is a
22 combination of Government Exhibit 6 and six video stills,
23 which are depicted in Government Exhibit 701-V2 through V7.

24 BY MS. SEIFAN:

25 Q And these are in chronological order?

C. CAPALUPO - DIRECT - MS. SEIFAN

1018

1 A Yes, they are.

2 Q Can we start at the top left video still?

3 A Sure. This is a still photograph of Mr. Sampson
4 holding a piece of paper in his hand that Mr. Ahmad had
5 given him, and Mr. Ahmad is pointing to the paperwork.

6 Q Okay. Can you -- keep going.

7 A Okay. The second video photograph Mr. Sampson is
8 holding the paperwork in his left hand and leaning on his
9 right fist.

10 The third photograph is a picture I have
11 Mr. Sampson holding the paperwork in his left hand and
12 looking at it.

13 The fourth is a photograph of Mr. Sampson leaning
14 back on the couch holding the paperwork in his left hand
15 staring off.

16 The fifth Mr. Sampson is holding the paperwork in
17 his left hand leaning back on the couch.

18 And the sixth is Mr. Sampson is sitting up on the
19 couch staring straight off with his hands clasped together
20 in front of him.

21 Q Agent Capalupo, look at Government Exhibit 6, which is
22 to the left, there is a number that's underlined, double
23 underlined. Can you please read that number?

24 A \$188,500.

25 Q And up at the top, next to the word "to"?

C. CAPALUPO - DIRECT - MS. SEIFAN

1019

1 A It says, "John Sampson."

2 Q And under that?

3 A It says "loan to Sampson."

4 MS. SEIFAN: Thank you.

5 THE WITNESS: Thank you.

6 MS. SEIFAN: Your Honor, at this time the
7 government would like to read Government Exhibit 33-S, which
8 is a stipulation.

9 THE COURT: Yes.

10 MS. SEIFAN: "It is hereby stipulated and agreed
11 by and between the United States of America and John Sampson
12 that Marian Frola (phonetic), a shorthand reporter and a
13 notary public within and for the State of New York would
14 testify that Government Exhibit 33 is a true and accurate
15 copy of a verbatim transcript of a hearing held at the
16 office of the New York State Department of State Division of
17 Licensing Services on Tuesday, July 29th, 2008, in the
18 matter Division of Licensing Services against Edu1 Ahmad,
19 Century 21 Ahmad Realty. Government Exhibit 33 is
20 self-authenticating.

21 This stipulation which is marked Government
22 Exhibit 33-S is admissible evidence at trial, except that
23 the defendant reserves the right to object to its admission
24 on relevance grounds, dated June 19, 2015."

25 Your Honor, at this time the government offers

C. CAPALUPO - DIRECT - MS. SEIFAN

1020

1 33-S and government 33 into evidence.

2 THE COURT: Any objection?

3 MR. COLANGELO-BRYAN: Could we have a moment, your
4 Honor?

5 THE COURT: Yes.

6 (Continued on the next page for sidebar.)

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SIDEBAR CONFERENCE

1021

1 (Sidebar conference begins.)

2 THE COURT: Yes?

3 MR. COLANGELO-BRYAN: I have a concern that
4 relates to what this witness would be doing with this
5 transcript, which is a completely, you know, unrelated
6 matter that she did not attend.

7 MS. SEIFAN: Your Honor, the purpose of
8 introducing it at this point was we were going to do a read
9 back of certain portions of the transcript. I was going to
10 play one role and she was going to play another role.
11 That's the only purpose. She doesn't have any personal
12 knowledge of this transcript, but she is an agent, so we
13 thought that would be the best way to present it.

14 THE COURT: You got three attorneys and a
15 paralegal. You can use your paralegal to help you with the
16 readback.

17 MS. SEIFAN: That's fine.

18 THE COURT: We don't need this agent. She
19 probably has more important things to do, and if you're done
20 with this witness, then we can turn her over to the cross by
21 defense counsel.

22 MS. SEIFAN: That's fine, your Honor.

23 MR. COLANGELO-BRYAN: Let her fight crime.

24 THE COURT: Yeah, exactly.

25 MR. AKERMAN: Especially domestic terrorism.

PROCEEDINGS

1029

1 specifically, mortgage fraud. The fact that the witness
2 testified that he pled guilty to this crime and that he may
3 have engaged in certain conduct with the defendant on trial
4 goes only to the guilt of the witness; that's Mr. Ahmad, and
5 may not be used as proof that the defendant is guilty.

6 The defendant has pled not guilty to the charges.
7 You may consider the rest of the testimony of Mr. Ahmad to
8 determine whether or not the government has proven the
9 charges against the defendant and the Court will give you
10 more detailed instructions at the end of the case on how to
11 evaluate any of that testimony.

12 In addition, you heard evidence from Mr. Ahmad
13 indicating that the defendant may have engaged offenses
14 concerning embezzlement and public corruption. The
15 defendant is only trial only for the crimes charged in the
16 indictment. You may not consider any evidence of these
17 offenses as a substitute for proof that the defendant
18 committed the crime charged -- the crimes charged by the
19 government.

20 You also may not consider evidence of these crimes
21 as proof that the defendant has a bad character or a
22 propensity to commit the crimes charged in the indictment.

23 This evidence may be considered by you only to put
24 in context the series of events that led to the defendant's
25 arrest in this case. And I will give you more detailed

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA,	:	13-CR-00269(DLI)
	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	Tuesday, July 7, 2015
JOHN SAMPSON,	:	1:00 p.m.
	:	
Defendant.	:	

- - - - - X

TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
BEFORE THE HONORABLE DORA L. IRIZARRY
UNITED STATES DISTRICT JUDGE, and a jury

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

For the Government: KELLY T. CURRIE, ESQ.
 United States Attorney
 Eastern District of New York
 271 Cadman Plaza East
 Brooklyn, New York 11201

BY: ALEXANDER SOLOMON, ESQ.
 PAUL A. TUCHMANN, ESQ.
 MARISA SEIFAN, ESQ.
 Assistant United States Attorney

For the Defendant: BY: NATHANIEL H. AKERMAN, ESQ.
 JOSHUA N. COLANGELO-BRYAN, ESQ.

Court Reporter: VICTORIA A. TORRES BUTLER, CRR
 225 Cadman Plaza East / Brooklyn, NY 11201
 VButlerRPR@aol.com

Proceedings recorded by mechanical stenography, transcript produced by Computer-Assisted Transcription.

Proceedings

1310

1 people were really working in here really late last night
2 getting everything fixed, so hopefully everything is in good
3 working order. So, we are ready to rock and roll. I am glad
4 that we didn't have to move everything to a different
5 courtroom, since we've all gotten kind of comfortable in our
6 space. We humans are creatures of habit somewhat, right?

7 So, before we continue with our witness who was on
8 the stand yesterday, as you will recall, Ms. Rholda Ricketts,
9 I just have a brief instruction on the law to give you in
10 connection with the testimony that you heard from Mr. Neiman
11 yesterday.

12 You heard evidence from him that the defendant may
13 have misused his public office and authority. This evidence
14 was admitted as background evidence and to show the
15 defendant's motive for committing the charged crimes. This
16 evidence may be considered by you to put in context the series
17 of events that led to the defendant's arrest in this case. I
18 remind you that the defendant is on trial only for committing
19 the acts alleged in the indictment. The defendant is not
20 charged with misusing his public office and authority.

21 I will give you more detailed instructions with
22 respect to the elements of the charged crimes and how to
23 assess the evidence presented at the end of trial.

24 The Government may call its witness.

25 MR. TUCHMANN: The Government calls Rholda Ricketts.

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UNITED STATES DISTRICT COURT.
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)	
Plaintiff,	)	13CR00269 (DLI)
)	
V.	)	United States Courthouse
	)	Brooklyn, New York
)	
JOHN SAMPSON,	)	MONDAY, JULY 13, 2015
	)	9:30 a.m.
Defendant.)	

TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE DORA L. IRIZARRY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: KELLY T. CURRIE
United States Attorney
BY: ALEXANDER SOLOMON
BY: PAUL TUCHMANN
BY: MARISA SEIFAN
Assistant United States Attorneys
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

FOR THE DEFENDANT: DORSEY & WHITNEY
BY: NATHANIEL H. AKERMAN, ESQ.
BY: JOSHUA N. COLANGELO-BRYAN, ESQ.
51 West 52nd Street
New York, New York 10019

THE COURT REPORTER: NICOLE CANALES, RPR, CSR
225 Cadman Plaza East
Brooklyn, New York 11201
cnlsnic@aol.com

Proceedings recorded by mechanical stenography, transcript
produced by Computer-Assisted Transcript.

Hosey - direct - Tuchmann

2008

1 regarding the defendant's willingness to discuss with Ahmad
2 the \$188,500 loan?

3 MR. AKERMAN: I object, Your Honor.

4 THE COURT: Can I have the question read back
5 please.

6 (Whereupon, the record was read.)

7 THE COURT: Overruled.

8 You may answer the question.

9 A I believed the defendant was unwilling to discuss the
10 loan.

11 Q Did you develop a plan to have Ahmad raise the issue of
12 the loan with the defendant in a way that would compel the
13 defendant to speak about it?

14 A Yes.

15 Q And so, what did -- what plan did you have?

16 A I instructed -- the plan was to -- there was the existing
17 check register which has been shown to you with the \$188,500
18 on it. I instructed Ahmad to take that check register and
19 recreate a copy of it and after recreating the copy I
20 instructed him to meet with Sampson, show him this, show him
21 the check register, the duplicated one and say to him, my
22 records have been subpoenaed by the government, this document
23 falls under the subpoena, would be responsive to the subpoena,
24 what do you think I should do with it.

25 Q So, I'm now going to show you what's admitted in evidence

Hosey - direct - Tuchmann

2009

1 as Government Exhibit 6.

2 Do you recognize this document?

3 A Yes.

4 Q What is it?

5 A It's the duplicate copy of the check register.

6 Q And to be clear, when you say, "duplicate copy," is it
7 the original version of the duplicate copy?

8 A It's a copy of the duplicate copy.

9 Q Why did you instruct Ed Ahmad to hand write a duplicate
10 copy of the check register?

11 MR. AKERMAN: Object, asked and answered.

12 THE COURT: Overruled.

13 A I didn't want to provide him with the original document
14 during the meeting in the event Sampson either took, destroyed
15 or otherwise kept the original, so we didn't want to lose the
16 original document, that's why I instructed him to make a
17 duplicate.

18 Q So, now also putting up on the screen next to Exhibit 6
19 what's been admitted into evidence as Exhibit 5, do you
20 recognize that document?

21 A Yes.

22 Q What's that?

23 A That's the original check register document received from
24 Ahmad when we started initially debriefing him in November of
25 2011.

Hosey - direct - Tuchmann

2010

1 Q And so, is everything on these two documents, other than
2 the serial numbers at the top, identical in terms of what's
3 written there?

4 A It is identical in terms of what's written there. The
5 only difference would be on the original document it's written
6 \$188,500 with one line under it, on the duplicate document I
7 wrote \$188,500 with two lines under it so I'd be sure that I
8 knew which one was the right one.

9 Q So, circling that; where I've circled, is that what you
10 wrote in?

11 A Yes.

12 Q And who wrote \$188,500 on Exhibit 5, the original check
13 register page?

14 A It's my understanding it was Ahmad's accountant at the
15 time.

16 Q So, Special Agent Hosey, I'm going to direct your
17 attention to February 22nd, 2012. What happened in connection
18 with your investigation on that evening?

19 A Ahmad had a recorded meeting with the defendant at Vetro
20 Restaurant again.

21 Q And before this meeting did you meet with Ahmad?

22 A Yes.

23 Q Did you give him anything at that meeting?

24 A Yes, I provided him with two recording devices. I also
25 provided him with the duplicate check register.

Hosey - direct - Tuchmann

2011

1 Q And that's the Xerox copy, Exhibit 6, that we looked at a
2 minute ago?

3 A Right.

4 Q Did you give Ahmad any instructions regarding what he
5 should do at the meeting with Exhibit 6, the duplicate check
6 register?

7 A Yes. As stated before, I told him -- I instructed him to
8 say to Sampson, I had received a federal grand jury subpoena,
9 this document would be produced in response to that subpoena,
10 what do you want me to do.

11 Q Before you gave Ahmad those instructions, had you had any
12 communications with anyone else about giving Ahmad those
13 instructions?

14 A Yes.

15 Q And can you explain about that?

16 A I discussed the instructions with both my supervisor at
17 the time as well as the prosecution team.

18 Q Did you instruct Ahmad to try and convince the defendant
19 to take the check register page?

20 A No.

21 Q Did you instruct Ahmad to offer that Ahmad would lie to
22 the government about the check register page?

23 A No.

24 Q Did you observe Ahmad take the check register page copy
25 with him when he left you to go meet with Sampson at Vetro

Hosey - direct - Tuchmann

2012

1 Restaurant on February 22nd, 2012?

2 A Yes.

3 Q Did you perform surveillance at this meeting?

4 A Yes.

5 Q Where were you situated with respect to the restaurant?

6 A I was across the street on the other side of Cross Bay
7 Boulevard.

8 Q Were there other agents in the vicinity as well?

9 A Yes.

10 Q What did you observe during your surveillance?

11 A I'd have to check my notes. I believe I saw them on the
12 way in and I can't remember if I saw them on the way out.

13 Q Is there a document that might refresh your recollection?

14 A My notes.

15 MR. TUCHMANN: Permission to show the witness what's
16 been marked for identification as Government Exhibit 3500
17 KH-65?

18 THE COURT: Yes.

19 (Pause.)

20 Q Please take a look at that.

21 A Okay.

22 Q Does that refresh your recollection as to what you saw
23 when you were performing surveillance on February 22nd, 2012?

24 A Yes.

25 Q And what did you see?

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UNITED STATES DISTRICT COURT.
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)	
Plaintiff,	)	13CR00269 (DLI)
)	
V.	)	United States Courthouse
	)	Brooklyn, New York
)	
JOHN SAMPSON,	)	TUESDAY, JULY 14, 2015
	)	9:30 a.m.
Defendant.)	

TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE DORA L. IRIZARRY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: KELLY T. CURRIE
United States Attorney
BY: ALEXANDER SOLOMON
BY: PAUL TUCHMANN
BY: MARISA SEIFAN
Assistant United States Attorneys
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

FOR THE DEFENDANT: DORSEY & WHITNEY
BY: NATHANIEL H. AKERMAN, ESQ.
BY: JOSHUA N. COLANGELO-BRYAN, ESQ.
51 West 52nd Street
New York, New York 10019

THE COURT REPORTER: NICOLE CANALES, RPR, CSR
225 Cadman Plaza East
Brooklyn, New York 11201
cnlsnic@aol.com

Proceedings recorded by mechanical stenography, transcript
produced by Computer-Assisted Transcript.

Hosey - direct - Tuchmann

2114

1 (In open court; sidebar ends.)

2 Q Special Agent Hosey, in what year were the articles
3 regarding the loan from Ahmad to Gregory Meeks, in what year
4 were those articles published?

5 A 2010.

6 Q Special Agent Hosey, did Defendant say anything else
7 about the loan during this meeting on August 23, 2012?

8 A Yes.

9 Q What did he say?

10 A When asked if he was concerned the \$188,500 loan with
11 Ahmad would come to light, Sampson stated he was. Sampson was
12 concerned the loan would be perceived as a quid pro quo for
13 political favors.

14 Q Special Agent Hosey, did the Defendant later during that
15 same meeting say anything else regarding the loan?

16 A Yes.

17 Q What did he say?

18 A He said he did not want the public or the government to
19 find out about the loan. He did not want Ahmad to feel as
20 though he had been abandoned in part because he was concerned
21 Ahmad would say he loaned Sampson the money.

22 Q Later during the same meeting did the Defendant say
23 anything else about the loan he had received from Ahmad?

24 A Yes.

25 Q What did he say?

Hosey - direct - Tuchmann

2115

1 A Sampson claimed he did not return the check register to
2 Ahmad at the meeting because Sampson wanted to avoid the
3 embarrassment if the loan became known. Sampson claimed that
4 the public perception would be that it was a bribe payment
5 rather than a loan between friends. When asked if he was also
6 concerned that it may cause his transactions with the referee
7 account to become known, Sampson stated it was.

8 Q Did Sampson say anything else during this meeting about
9 check register tape?

10 A Yes.

11 Q What did he say?

12 A He acknowledged that he had kept the check register so
13 that Ahmad could not turn it over to the government.

14 Q And when you referred to that check register, what check
15 register are you referring to?

16 A The duplicate check register page provided to him by
17 Ahmad on February 22, 2012 at Vetro.

18 Q And regarding the phrase "transactions with the referee
19 accounts," what did you understand that to refer to?

20 MR. AKERMAN: Objection.

21 THE COURT: Overruled.

22 A The embezzlement of funds from the referee account.

23 Q Again, what are referee accounts?

24 A The accounts for which he was provided to act as the
25 referee in the foreclosure auctions of property that he was

Hosey - cross - Akerman

2128

1 THE COURT: Do you wish to cross-examine?

2 MR. AKERMAN: Yes, Your Honor.

3 THE COURT: You may proceed.

4 CROSS-EXAMINATION

5 BY MR. AKERMAN:

6 Q Good afternoon, Agent Hosey.

7 A Good afternoon.

8 Q You testified this morning about your investigation into
9 federal program bribery, do you recall that testimony?

10 A Yes.

11 Q As a result of your investigation into federal program
12 bribery, has John Sampson ever been charged with the crime of
13 bribery?

14 MR. TUCHMANN: Objection.

15 THE COURT: Sustained. I've already instructed the
16 jury that the defendant has not been charged with bribery or
17 embezzlement.

18 Q This morning you testified about the liquor store matter,
19 do you recall that testimony?

20 A Yes.

21 Q Was the sales tax liability that was incurred, was that
22 incurred by Sabrina Parham?

23 A Yes.

24 Q Was she the prior owner of -- well, the owner of S&S
25 Liquor Store?

Side-Bar

2153

1 THE COURT: Excuse me, can I see you on the side.

2 MR. AKERMAN: Okay.

3

4 (The following takes place at side-bar.)

5 THE COURT: Number one, I can't believe that here we
6 are at the end of this trial practically and I still have to
7 give instruction on how to put things into evidence.

8 Number two, you do not ever make reference in front
9 of the jury to any of my prior legal rulings, that is
10 inappropriate and you just don't do that. That's what
11 side-bars are for. You want to just willy-nilly without
12 identifying what it is that's being introduced into evidence
13 introduce something into evidence.

14 Now, either you have a stipulation that you've got
15 written out that's agreed to by the parties in connection with
16 introducing this into evidence, whether or not I ruled it
17 admissible previously, you still have to comply with the basic
18 rules of foundation and presenting it to the jury so that we
19 have a complete record as to what this is.

20 MR. AKERMAN: Okay, Your Honor, if we could just --
21 maybe I could just talk to the prosecution? I think we pretty
22 much agree.

23 THE COURT: I don't know why this wasn't done in
24 advance. You've had all the time in the world to do it.

25 (Pause.)

Side-Bar

2154

1 THE COURT: There's nothing on the record here.
2 What is it that the parties are going to do?

3 MR. AKERMAN: We're going to just do a two sentence
4 stipulation and then --

5 THE COURT: That should have been done in advance of
6 today.

7 MR. AKERMAN: Sorry, Your Honor.

8 (End of side-bar.)

9 (Continued on next page.)

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Sidebar

2182

1 (Outside the presence of the jury.)

2 THE COURT: May I have the government state its
3 objection on the record so we can address it?

4 MR. TUCHMANN: Yes, your Honor. The government
5 objects to the hearsay that the defendant counsel is
6 attempting to elicit. He's attempting to elicit statements
7 not of a party opponent but of his own client.

8 MR. AKERMAN: I'm not trying to do that at all. I'm
9 just trying to put in context what else was asked as to the
10 part they're charging as a crime. They're charging something
11 he said is false, and I have a right to put it in context as
12 to everything that was said. I'm not going much further, but
13 the order of how it was said and what was said afterwards and
14 before.

15 THE COURT: I have a concern that you're trying to
16 do what you have done throughout this trial, which is to work
17 an end run around my rulings. I said that that document
18 that's a Defendant Exhibit C5, which is Agent Zacher's notes,
19 does not come into evidence, and what you're basically doing
20 is constructing questions, going line by line down that
21 document, and phrasing your questions that way. And I'm not
22 going to allow you to do it.

23 MR. AKERMAN: Your Honor, this is completely
24 relevant as to the order of questions and how the government
25 jumped around, and asked questions of him in this interview,

Sidebar

2183

1 which is a key part of our defense. It's all disjointed. It
2 was all different parts, and I think I have a right to explore
3 that with this witness. I'm not going to do much more.

4 MR. TUCHMANN: The government hasn't objected to the
5 defense asking questions about what Special Agent Hosey said
6 the objection is to questions that have just been asked, which
7 call for hearsay about what the defendant's response was to
8 Special Agent Hosey's questions.

9 MR. AKERMAN: Why don't I just stick to the topic.
10 I'll ask him what topic was covered next.

11 MR. TUCHMANN: I haven't objected to those
12 questions.

13 MR. AKERMAN: Okay. Fine.

14 (Sidebar concluded.)

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Proceedings

2204

1 MR. AKERMAN: We may do that after hours.

2 (In the presence of the jury.)

3 THE COURT: The jury is entering.

4 THE CLERK: Somebody's just removing their hat.

5 THE COURT: Okay. Everyone may be seated. Welcome
6 back.

7 THE CLERK: You're missing one.

8 THE COURT: We're missing somebody. Okay. Thank
9 you. You may all be seated. Parties all agree that all of
10 our jurors are present and properly seated?

11 MS.. SEIFAN: Yes, your Honor.

12 MR. AKERMAN: Yes, your Honor.

13 THE COURT: So, ladies and gentlemen, I just want to
14 give you this instruction with respect to the testimony of
15 Special Agent Hosey. You heard evidence that the defendant
16 may have embezzled money, misused his public office and
17 authority, or engaged in bribery. This evidence was admitted
18 as background evidence, generally, and to show the defendant's
19 motive for committing the charged crimes. This evidence may
20 be considered by you to put in context the series of events
21 that led to the charges brought against the defendant in this
22 case.

23 I remind you that the defendant is on trial only for
24 committing the acts alleged in the indictment. The defendant
25 is not charged with embezzlement, bribery, or misusing his

Proceedings

2205

1 public office and authority. I will give you more detailed
2 instructions with respect to the elements of the charged
3 crimes and how to assess the evidence presented at the end of
4 the trial.

5 Does the government have any additional evidence to
6 present?

7 MS. SEIFAN: No, your Honor. The government rests.

8 THE COURT: The government has rested. As I told
9 you in the very beginning of this case, the defendant has no
10 obligation to present any evidence.

11 Nevertheless, I'm going to ask does the defense wish
12 to produce any evidence?

13 MR. AKERMAN: Your Honor, the defense has a
14 stipulation with the government, Defendant's Exhibit Z-5, is
15 admissible in evidence.

16 THE COURT: Do you wish to present that to the jury,
17 at this time?

18 MR. AKERMAN: We could -- no, not at this time. We
19 can use it for summation.

20 THE COURT: Okay. All right. And I'm going to
21 remind you, ladies and gentlemen, that in connection with any
22 of the evidence that was presented, there were documents, and
23 charts, and things of that sort, of the recordings as to any
24 of the testimony that you heard. All of that if you wish to
25 hear it, or see it again, in your deliberations, just ask us,

2246

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)	
Plaintiff,	)	13CR00269 (DLI)
)	
V.	)	United States Courthouse
	)	Brooklyn, New York
)	
JOHN SAMPSON,	)	WEDNESDAY, JULY 15, 2015
	)	9:30 a.m.
Defendant.)	

TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE DORA L. IRIZARRY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: KELLY T. CURRIE
 United States Attorney
 BY: ALEXANDER SOLOMON
 BY: PAUL TUCHMANN
 BY: MARISA SEIFAN
 Assistant United States Attorneys
 Eastern District of New York
 271 Cadman Plaza East
 Brooklyn, New York 11201

FOR THE DEFENDANT: DORSEY & WHITNEY
 BY: NATHANIEL H. AKERMAN, ESQ.
 BY: JOSHUA N. COLANGELO-BRYAN, ESQ.
 BY: GINA SPIEGELMAN, ESQ.
 BY: VIKRAM KUMAR, ESQ.
 51 West 52nd Street
 New York, New York 10019

THE COURT REPORTER: NICOLE CANALES, RPR, CSR
 225 Cadman Plaza East
 Brooklyn, New York 11201
 cn1snic@aol.com

Proceedings recorded by mechanical stenography, transcript produced by Computer-Assisted Transcript.

NICOLE CANALES, CSR, RPR

Summation - Tuchmann

2254

1 truth, a lawyer and law maker who thought he was above the law
2 and acted like he was above the law.

3 The defendant's lying and stealing began quite a
4 while ago, the late 1990's, early 2000's when he deceived the
5 judges who entrusted him with other people's money and
6 embezzled, stole hundreds of thousands of dollars from referee
7 accounts that he controlled. Then, as you heard, in July 2006
8 the defendant got worried, worried that his thefts from
9 referee accounts would be discovered so he went to his friend,
10 Ed Ahmad, and asked for a secret \$188,500 loan, a loan with no
11 interest and no date of repayment, a loan the defendant never
12 reported on his Senate financial disclosure forms like he was
13 required to do, a loan the defendant never repaid, at least
14 not with money.

15 Instead, between July 2006 and July 2011, the
16 defendant repaid the loan by doing political favors for Ahmad,
17 favors like helping Ahmad get REO listings, favors like
18 interfering with investigations of Ahmad's businesses, and
19 favors like easing penalties imposed on Ahmad's mortgage
20 business.

21 Then when Ahmad was arrested for mortgage fraud in
22 July 2011, the defendant knew he had to do anything he could
23 to keep Ahmad from cooperating with the government and telling
24 the government about the loan because if Ahmad told the
25 government about the loan, the government would both trace it

Summation - Tuchmann

2255

1 back to the defendant's embezzlement from referee accounts and
2 investigate the defendant for bribery for the political favors
3 he had done for Ahmad after Ahmad loaned him the money. As
4 the defendant told Ahmad on February 22nd, 2012 when Ahmad
5 asked whether he should give evidence of the loan, the check
6 register page to the government, the defendant said: That's a
7 problem, I mean for me.

8 So, in July 2011 the defendant hatched a plan to
9 prevent Ahmad from cooperating. That plan was to interfere
10 with the prosecution of Ahmad by any means necessary in order
11 to help Ahmad defeat the government's case against Ahmad,
12 because if Ahmad thought he could win his case he would go to
13 trial and he wouldn't cooperate with the government which
14 meant he wouldn't tell the government about the loan.

15 And at first Ahmad wanted to win his case too. So,
16 between July of 2011 and November 2011 Ahmad and the defendant
17 agreed to try to get confidential information they could use
18 to give Ahmad an improper advantage in his case, like the
19 identities of the witnesses who were cooperating against Ahmad
20 and the statements they had made. They tried to get that
21 information from the U.S. Attorney's Office files using
22 defendant's inside source, Sam Noel.

23 The defendant put that plan into action by meeting
24 Noel on a street corner near Noel's house, giving him the
25 names of people the defendant suspected of being cooperating

Summations - Tuchmann

2298

1 register page over to the government; he said that over and
2 over again. He knew that Ahmad had to turn it over, because
3 Ahmad had received a subpoena for it. You saw the defendant's
4 body language on the video. You know he lied about check
5 register page during his July 27th, 2012 interview with the
6 agents.

7 You know from his admissions at the August 2012
8 meeting with his attorney that he did it because he didn't
9 want to get found out and investigated for embezzlement and
10 bribery. And you know from his admissions during the same
11 meeting that he kept the check register page so Ahmad couldn't
12 turn it over to the government. The evidence shows the
13 defendant is guilty of Count Three.

14 So for Count Four, the crime charged is the same
15 crime charged as in Count Three. The only difference is that
16 in Count Three the information that the defendant is charged
17 with keeping from being communicated to the government was the
18 check register page itself. And in Count Four, the
19 information at issue is any information about the hundred
20 eighty-eight thousand five hundred loan.

21 So, again, you should look at the recording and
22 transcript of the February 22nd, 2012 meeting, and you see
23 that the defendant attempted to corruptly persuade Ed Ahmad to
24 lie to the government about the loan he'd received from Ahmad,
25 not to tell the government about it at all, tell the

Summations - Akerman

2317

1 12 years before the crimes charged in this indictment took
2 place. But I also might add that the evidence shows that
3 about \$360,000 was paid back to the court, to parties in this
4 case, or to the escrow accounts over time. There is about a
5 hundred -- about \$86,000 outstanding, but the fact remains
6 that this happened, and we do not deny it.

7 As the judge has repeatedly instructed you
8 throughout this proceeding, John Sampson is not charged in
9 this case for failing to deposit these funds that he clearly
10 should have deposited. Your task is not to determine whether
11 in this case John Sampson should be convicted of embezzlement.
12 Similarly, bribery is not something that's charged in this
13 case. You heard Agent Hosey tell you about the substantial
14 investigation he did into bribery in an effort to corroborate
15 Ed Ahmad.

16 There was lots of subpoenas. There was lots of
17 records. There was 20 years of Mr. Sampson being a state
18 senator, but the fact remains there are no bribery charges in
19 this case. In fact, what the government claims is bribery in
20 this case is simply not bribery, as I will address with you in
21 a few moments. But putting that aside, the judge repeatedly
22 instructed you throughout this case that bribery is not
23 charged in this case.

24 Now, I also mentioned to you at the beginning of my
25 opening that there was no question that the government's

Summations - Akerman

2318

1 evidence would reflect other episodes of bad judgment by John
2 Sampson. John Sampson did not report Ahmad's loan on ethics
3 disclosures for a number of years. He certainly should have,
4 even if he was worried about the public perception that might
5 result from the disclosure. This, again, is at most a New
6 York State violation and has never been charged.

7 Another example is the liquor store license filed
8 with the State Liquor Authority, which failed to list John
9 Sampson as a partner, although he did disclose his interest on
10 the ethics forms in a timely manner. The liquor store
11 application, again, is a state matter that has never been
12 charged.

13 MR. SOLOMON: Objection.

14 THE COURT: I'm sorry. Can you read back the last
15 comment to me.

16 (The reporter reads back.)

17 THE COURT: Sustained. There are matters concerning
18 the liquor store that are charged in this indictment. And,
19 again, I remind you, ladies and gentlemen, that attorneys'
20 comments in summation are just that, they are comments; they
21 are argument; they are not evidence. It's up to you to decide
22 what the evidence shows and what the facts are, and then apply
23 them to the law as I give them to you. I also instruct you
24 that whether or not the defendant deposited funds in the Kings
25 County Clerk's Office at any point in time is not a defense to

Summations - Akerman

2319

1 the embezzlement charges or his -- doesn't counter his duty as
2 a referee, as required by law. In any event, the defendant is
3 not charged with bribery or embezzlement counts, as just
4 stated.

5 You may continue.

6 MR. AKERMAN: Let me say I will address the liquor
7 store count, which relates to a false statement, later on in
8 my summation. The bottom line is that you can't convict John
9 Sampson in this case simply because you conclude he did
10 something else that is not charged as a crime in this case.
11 On a separate front, there is nothing nefarious about John
12 Sampson helping people outside of the boundaries of his
13 district in Brooklyn, contrary to the government's
14 insinuations.

15 The government repeatedly implied that it was
16 improper for John Sampson to be helping Ahmad because Ahmad
17 lived and worked in Queens and not in John Sampson's
18 senatorial district. According to the government, John
19 Sampson could only help someone from Queens because of a
20 bribe, but the testimony of Ahmad completely disproves that
21 theory. Ahmad said that at the time of the loan, John Sampson
22 had, quote, "always," closed quote, helped him. So it is
23 clear that John Sampson had always helped Ahmad over the years
24 between when they met, in 2006, even though Ahmad was not
25 formally a constituent and had not loaned John Sampson any

Summation - Akerman

2331

1 First, let me address the obstruction of justice
2 involving Sam Noel and the case of Ed Ahmad. This relates
3 specifically to Counts One and Two in the indictment. The
4 government must prove that John Sampson had a corrupt intent,
5 which includes an improper purpose to obstruct the prosecution
6 against Ed Ahmad, as the judge will instruct you at the end.
7 So, it is not enough just to say that John Sampson asked Sam
8 Noel for information. How does the government try to
9 establish corrupt intent? The government seems to claim John
10 Sampson's request to Noel for the names of witnesses was for
11 the purpose of doing three things: First, to, quote, take out
12 witnesses, close quote; second, quote, take steps to influence
13 their testimony, close quote, as they said in their opening;
14 and third, to do background research on witnesses.

15 On the first point, there is no credible evidence
16 that John Sampson actually ever suggested that witnesses
17 should be harmed. In fact, the proof on that was literally
18 laughable. You heard that on a recording when the government
19 instructed Mr. Ahmad to bring up to John Sampson that idea.
20 Perhaps we could show you the excerpt and play the recording.
21 Page 27 of that transcript is located beneath your chair.

22 And perhaps we could play that recording.

23 (Audio plays.)

24 MR. AKERMAN: Not even Ed Ahmad could keep himself
25 from laughing at how absurd this idea was. Related to this,

Summation - Akerman

2332

1 Ahmad testified that during unrecorded meeting, John Sampson
2 used a scary term which motivated him to cooperate with the
3 government. Well, on four hours of recordings after the time
4 when John Sampson supposedly used this threatening tone, did
5 you hear John Sampson use tone that even sounded the least bit
6 threatening on any of these tape recordings? The slightest
7 bit intimidating? No. In fact, there was no such
8 conversation. In fact, what John Sampson did was to
9 repeatedly profess his love for Ed Ahmad. As Ed Ahmad himself
10 said, John Sampson consistently said he would be there until
11 the end for Ahmad, even if people were saying Ahmad was
12 cooperating. Also, with respect to cooperating, it's also
13 obvious that Ahmad's decision to cooperate was based on the
14 fact of his massive documented and indisputable mortgage
15 fraud.

16 Now Agent Hosey in his testimony put a new spin on
17 this whole issue. He said that what Ahmad was really
18 frightened about was John Sampson, not other witnesses, and
19 that this was the concern about the killing witnesses. And
20 this, of course, is after the fact that Agent Hosey instructed
21 Ahmad to go to John Sampson and raise this whole issue of
22 killing witnesses, which, basically, John Sampson and Ahmad
23 put the kabash to with respect to the way they reacted to the
24 entire incident.

25 But this new spin about the concern about Ahmad's

Summation - Akerman

2333

1 safety is equally ridiculous. You had heard Agent Hosey
2 testify yesterday that when Ahmad met with John Sampson, he
3 wasn't listening to the conversation in realtime, as it
4 occurred, he was a couple blocks away. If he was really,
5 really concerned about any safety issue here, there would have
6 been a transmitter that would have given you realtime
7 conversation that Agent Hosey would have heard as these
8 conversations went on.

9 Second, you may recall the government saying in its
10 opening statement -- this is the second basis that the
11 government gives you as to why there is guilt on Counts One
12 and Two on this obstruction. The government said in its
13 opening that John Sampson and Ed Ahmad had, quote, a plan,
14 close quote, to take steps to influence their testimony,
15 meaning to influence the testimony of the witnesses. The
16 government failed to offer even a hint of proof that there
17 ever was such a plan. There is not a word on any of the
18 recordings about trying to influence testimony. Ed Ahmad did
19 not even claim that such a plan had ever, ever existed. So
20 the government offered no evidence at all to support that
21 reckless assertion.

22 Why did the government present literally laughable
23 evidence of the supposed threat and talk about a plan to
24 influence testimony for which there is no evidence? Because
25 it knows that a request for information without a corrupt

Summation - Akerman

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1 purpose is not a federal crime. Unfortunately for the
2 government, there never was a corrupt purpose in this plan.

3 Now let's talk about the actual purpose behind the
4 request, and you heard this from Ed Ahmad. I put this on a
5 chart because this is extremely important with respect to
6 Counts One and Two. Ed Ahmad acknowledged in his testimony it
7 was simply to get information with which to cross-examine
8 witnesses. The question: What type of dirt did you discuss
9 with John Sampson with respect to these potential cooperating
10 witnesses?

11 Notice how the government puts a spin of some kind
12 of nefarious inference here by talking about dirt.

13 Answer, Dirt can mean anything that they have that
14 will negatively impact their credibility.

15 Ahmad acknowledged that this was simply to get
16 information with which to cross-examine witnesses. There's
17 obviously nothing wrong with looking for information that will
18 negatively impact a witness' credibility. That's the
19 obligation of every defense lawyer in every criminal case.
20 Ahmad as a witness here is obviously a case in point. We look
21 for and found a lot of information that was presented before
22 you to negatively impact Ahmad's credibility. Mr. Flag, who
23 is the former FBI agent and investigator who the government
24 agrees was on the up-and-up, discussed the need for a criminal
25 defendant to drill down on who potential cooperating witnesses

Summation - Akerman

2335

1 are and, quote, dig up shit on them, close quote. Not exactly
2 put in the best way, but at the end of the day it means the
3 same thing: Finding information that will negatively impact
4 their credibility.

5 Even Agent Hosey testified that witness information
6 provided by the government is used to negatively impact the
7 credibility of cooperating witnesses at trial. The bottom
8 line on all this is background research is normal and it's not
9 corrupt. There was no corrupt intent that the government can
10 prove beyond a reasonable doubt on Counts one and two.
11 There's also no evidence that John Sampson obtained any
12 confidential information from Sam Noel.

13 Sam Noel on cross-examination cleared up any
14 confusion created by the recordings as to whether he had
15 disclosed any confidential information attributed to him. He
16 never told -- he testified that he never told John Sampson
17 that Ramrattan was a cooperating witness in the Ahmad case.
18 He testified that he never told John Sampson that Roger Khan
19 was a cooperating witness in the Ahmad case. Mr. Noel
20 testified that he never told John Sampson whether or not Glenn
21 Hirsch was a cooperating witness in the Ahmad case. Mr. Noel
22 testified that he never told John Sampson that an individual
23 named Greg was connected to the Ahmad case. Mr. Noel
24 testified that he never told John Sampson that an individual
25 named Bourne was connected to the Ahmad case. Mr. Noel never

Summation - Akerman

2352

1 really, really simple because if we take what the government
2 says, start with its opening statement, quote: In the summer
3 of 2011, Ed Ahmad was arrested and charged in an unrelated
4 mortgage fraud scheme here in the Eastern District of New
5 York. This arrest was a big problem for the Defendant, a
6 really big problem. He was worried that Ahmad would cooperate
7 with the government and spill Sampson's secret that Ahmad
8 would try to help himself by telling the government about the
9 secret \$188,000 loan. If Ahmad cooperated with the
10 government, the government would discover that Sampson had
11 stolen hundreds of thousands of dollars. And if Ahmad
12 cooperating with the government, the government would
13 investigate Sampson for bribery because of the political
14 favors he had done for Ahmad.

15 Now, this morning you heard Mr. Tuchmann say that
16 after Ahmad was arrested, that John Sampson was desperate --
17 used the word "desperate" -- to keep Ahmad from disclosing the
18 loan and that they would do, quote, everything, close quote,
19 that John Sampson would do everything to keep him quiet.
20 Well, let's see what the evidence actually shows happens.

21 We have before you a chart. On July 22, 2011,
22 that's when Ahmad is arrested. All through that remaining
23 part of July, there is no evidence that John Sampson ever once
24 raised the loan with Ed Ahmad. We have August. All through
25 August, there is zero evidence that John Sampson ever once

Summation - Akerman

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1 register, he never destroyed. In fact, as you heard, his
2 lawyer did return it to the government.

3 Now, let's look at this other supposed motive for
4 obstructing justice, this so-called bribery, what the
5 government referred to this morning as the political favors
6 from 2006 on that John Sampson supposedly gave to Mr. Ahmad.

7 As you heard Agent Hosey testify yesterday that
8 during his interview with John Sampson on his driveway, John
9 Sampson repeatedly told him that he never did anything to
10 compromise his position as a public official, that he never
11 did anything in his capacity as a state senator, in return for
12 money. Now, the government claims that with respect to the
13 loan that John Sampson the lawmaker, and I quote -- this is
14 from the opening -- paid his friend back in political favors,
15 you will hear how John Sampson used his power and his
16 influence to benefit his friend, close quote.

17 The evidence, however, tells a completely different
18 story, where John Sampson had been helping Ahmad since they
19 first met some twenty years before. Ahmad testified that he
20 gave the loan to John Sampson because John, quote, had always
21 been there for me, close quote. And he claims he was worried
22 that John Sampson might stop helping him if he didn't loan him
23 the money. But there is no legitimate evidence that John
24 Sampson would have stopped helping his friend if Ahmad had not
25 loaned him the money. Ahmad did not say that John Sampson

Summation - Akerman

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1 said anything to even hint that this so-called help that had
2 always been provided until that point would stop. So, this
3 notion was in Ed Ahmad's head and only in Ed Ahmad's head.
4 You cannot conclude that there was bribery based on what Ahmad
5 tells you was just in his head.

6 Ahmad does not even appear to say that all of this
7 supposed help provided to him by John Sampson was in exchange
8 for the loan. And I quote from the transcript: Did there
9 come a point in time when you decided to take action with
10 respect to the loan to John Sampson?

11 Answer, This is around 2008, 2009, somewhere around
12 there. I took care of, you know, and now the business is not
13 so good. If you could assist me with getting REO properties
14 from banks and REO companies. So, Ahmad is not even sure when
15 he even started treating this loan as a bribe. But let's take
16 a look at the supposed evidence that John Sampson used his
17 power and influence to help Ahmad because of the loan.

18 Before the loan, John Sampson had always helped
19 Ahmad, as Ahmad testified over and over again before he -- in
20 fact, Ahmad was glowing about the help John Sampson provided
21 before the loan. Ahmad then testified about the help after
22 the loan. But given Ahmad's testimony, this help seems
23 actually to have gotten worse after he loaned the money to
24 John Sampson.

25 What does the government say John Sampson did in

Summation - Akerman

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1 \$7,000 deal with Atlas REO, the critical piece that is missing
2 is any documentary connection between Ahmad receiving the
3 single commission and Emily Whalen or John Sampson or Shelly
4 Mayer. Atlas has no documents referencing John Sampson, Emily
5 Whalen, or anyone else in the New York State Senate despite
6 the government's claim that it was John Sampson's huge
7 influence that connected Atlas with Ahmad. You know that if
8 Ahmad and, in turn, the government had any documentary
9 evidence that tied in John Sampson or Emily Whalen to the one
10 Atlas REO job Ahmad claims he received from the Emily Whalen
11 meeting it would have been presented before you.

12 Perhaps most critically John Sampson had attempted
13 to help Ahmad get REO work years earlier by attending meetings
14 in Washington, D.C., and New York before Ahmad says there was
15 any bribery or loan whatsoever. The government claimed in its
16 opening that John Sampson, quote, intervened with state
17 agencies during investigations of his friend's businesses,
18 close quote.

19 Well, let's look at the Thompson investigation.
20 Ahmad was found to have sent brochures to Ms. Thompson, who is
21 on a nonsolicitation list. Ahmad asked John Sampson for
22 assistance. John Sampson told Ahmad he could not appear
23 before the Secretary of State on this matter. John Sampson
24 got another lawyer to handle this matter from his firm. The
25 government read from the transcript relating to a hearing in

Summation - Akerman

2365

1 this matter where you heard John Sampson fumbling around as to
2 why he was there. He made no substantive argument and he said
3 he was not formerly appearing. Ahmad asked John Sampson to
4 make sure a subsequent hearing was covered. John Sampson said
5 he would make sure a subsequent hearing was covered. No
6 lawyer showed up at the hearing. As a result, Ahmad's real
7 estate broker's license was suspended for thirty days. Ahmad
8 was, in fact, very upset about John Sampson's failure to help
9 him on this matter. To call this as a bribe is absolutely
10 ridiculous.

11 You also remember the testimony about the two
12 auditors that showed up unannounced at Ahmad's office on
13 July 17, 2007. This incident occurred at least a year before
14 Ahmad testified that he decided to treat the loan any
15 differently and asked John Sampson for help based on the loan.
16 So, even if you believe Ahmad, this incident cannot be part of
17 any bribery theory. But, in any event, the two auditors
18 showed up and asked for mortgage documents on July 17. Ahmad
19 lied to them about the documents being in a different location
20 so he could falsify the documents to make everything look up
21 to snuff and legal overnight.

22 Now, right after that, Ahmad claims he called John
23 Sampson to ask him to get rid of the audit. There is no
24 evidence that such a request was made other than Ahmad's
25 testimony. But let's assume Ahmad asked John Sampson to get

Summation - Akerman

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1 was mentioned this morning, Mr. Muller. Ahmad said he asked
2 John Sampson to move an application along with the Department
3 of Environmental Protection. And according to Ahmad, he said
4 he would. As it turns out, John Sampson was never in touch
5 personally with the DEP. Instead, a staff member from John
6 Sampson's office exchanged some email with Richard Muller from
7 the DEP. Mostly, the staffer just asked about the status of
8 the application. When she was told by Muller that the
9 application was going to be denied, she made zero attempt to
10 have that decision reversed. As Muller testified, these are
11 run-of-the-mill requests in response to which he never
12 provides special treatment. And as Ed Ahmad himself said,
13 quote, nothing changed, close quote, with respect to the
14 application. That this supports bribery is total overreach.

15 But, ultimately, what is the best evidence that .
16 there was no bribe is the fact that Ed Ahmad testified on
17 direct examination that, in fact, he had never forgiven the
18 loan to John Sampson for the work that John Sampson had done
19 for him over the years. So, Ahmad never forgave any part of
20 the loan in exchange for the work that John Sampson did for
21 him over the years. Ahmad was still expecting to be paid in
22 full. Well, then, is there simply no -- there's just simply
23 no legitimate basis for the government to argue that John
24 Sampson was working off the loan by assisted Ahmad. It is
25 impossible for the government to say that this was a bribe.

LAM OCR RPR

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)	
Plaintiff,	)	13CR00269 (DLI)
)	
V.	)	United States Courthouse
	)	Brooklyn, New York
)	
JOHN SAMPSON,	)	THURSDAY, JULY 16, 2015
	)	9:30 a.m.
Defendant.)	

TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE DORA L. IRIZARRY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: KELLY T. CURRIE
United States Attorney
BY: ALEXANDER SOLOMON
BY: PAUL TUCHMANN
BY: MARISA SEIFAN
Assistant United States Attorneys
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

FOR THE DEFENDANT: DORSEY & WHITNEY
BY: NATHANIEL H. AKERMAN, ESQ.
BY: JOSHUA N. COLANGELO-BRYAN, ESQ.
51 West 52nd Street
New York, New York 10019

THE COURT REPORTER: NICOLE CANALES, RPR, CSR
225 Cadman Plaza East
Brooklyn, New York 11201
cnlsnic@aol.com

Proceedings recorded by mechanical stenography, transcript
produced by Computer-Assisted Transcript.

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1 and may not be used as proof that the defendant is guilty.
2 The defendant has pled not guilty to the charges; however, you
3 may consider the rest of the testimony of Samuel Noel and Edu
4 Ahmad in determining whether or not the government has proven
5 the charges against the defendant beyond a reasonable doubt.

6 Throughout this trial, you heard evidence that the
7 defendant engaged in other prior bad acts or crimes, such as
8 embezzlement, bribery, misuse of his public office and
9 authority, perjury, and violations of certain reporting
10 requirements pursuant to New York State law. This evidence
11 was admitted as background evidence, generally, and to show
12 the development of a relationship of trust with Edu Ahmad, as
13 well as defendant's motive for committing the charged crimes.
14 This evidence may be considered by you to put in context the
15 series of events that led to the charges brought against the
16 defendant in this case.

17 In addition, if you determine that the defendant
18 committed the acts charged in the indictment, and these acts
19 as well, then you may, but need not, draw an inference that in
20 doing the acts charged in the indictment, the defendant acted
21 knowingly and intentionally and not because of some mistake,
22 accident, ignorance, carelessness or some other innocent
23 reason. This evidence also may be considered in connection
24 with the defendant's entrapment defense.

25 I remind you that the defendant is on trial only for

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1 committing the acts alleged in the indictment. The defendant
2 is not charged with any of the offenses I just mentioned. You
3 will be provided with detailed instructions with respect to
4 the elements of the charged crimes and the defense of
5 entrapment. You are to apply the instructions I will give you
6 throughout this charge as to how to assess the evidence
7 presented.

8 You may not infer that the defendant is guilty of
9 participating in any criminal conduct merely from the fact
10 that he is associated with other people who are guilty of
11 wrongdoing. There are several persons whose names you have
12 heard during the course of the trial but who did not appear
13 here to testify. I instruct you that each party had an equal
14 opportunity or lack of opportunity to call any of these
15 witnesses. Therefore, you should not draw any inferences or
16 reach any conclusions as to what they would have testified to
17 had they been called. Their absence should not affect your
18 judgment in any way.

19 You may not draw any inference, favorable or
20 unfavorable, towards the government or the defendant from the
21 fact that certain persons were not named as defendants in the
22 indictment filed in this case. The fact that these persons
23 are not on trial in this case is of no concern to you and must
24 play no part in your deliberations. You must not draw any
25 inference from the fact that no other defendants are present

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1 actions, as long as the proceeding was foreseeable such that
2 the defendant knew that his actions were likely to affect the
3 proceeding. In addition, the government does not have to
4 prove that the proceeding would be in federal court.

5 The second element the government must prove beyond
6 a reasonable doubt in order to sustain a charge of obstruction
7 of justice is that the defendant acted corruptly. To act
8 corruptly means to act with an improper purpose and to engage
9 in conduct knowingly and dishonestly, and with the intent to
10 obstruct, impede or influence the due administration of
11 justice. A defendant does not need to know with certainty
12 that his conduct would effect judicial proceedings, nor does
13 his conduct need to actually obstruct justice. Instead the
14 defendant's conduct must only have the natural and probable
15 effect of interfering with the due administration of justice.

16 The due administration of justice refers to the
17 fair, impartial, uninterrupted and unimpeded investigation,
18 prosecution, disposition or trial of any matter, civil or
19 criminal, in the courts of the United States. It includes
20 every step in a matter or proceeding in the federal courts to
21 assure the just consideration and determination of the rights
22 of parties, whether government or individual. Thus, the due
23 administration of justice includes, but is not limited to, a
24 federal grand jury investigation or a federal prosecution and
25 criminal trial.

1 impede the due administration of justice, shall be guilty of a
2 crime.

3 The due administration of justice has the same
4 definition I just gave you with respect to Count One, and it
5 applies here. It refers to the fair, impartial, uncorrupted
6 and unimpeded investigation, prosecution, disposition or trial
7 of any matter, civil or criminal, in the courts of the United
8 States. It includes every step in a matter or proceeding in
9 the federal courts, to assure the just consideration and
10 determination of the rights of parties, whether government or
11 official. Thus, due administration of justice includes, but
12 is not limited to, a federal grand jury investigation or a
13 federal prosecution and criminal trial. I have already
14 defined knowingly and intentionally for you, and those same
15 definitions apply here.

16 I remind you that a person acts knowingly and
17 intentionally if he acts voluntarily, purposefully and
18 deliberately and not because of ignorance, mistake, accident
19 or carelessness. To endeavor means any effort or any act,
20 however contrived, to obstruct, impede or interfere with a
21 federal grand jury investigation or federal prosecution and
22 criminal trial. It is the endeavor which is the gist of this
23 crime. Success of the endeavor is not an element of the
24 crime. Any effort, whether successful or not, that is made
25 for the purpose of corrupting, obstructing or impeding the

1 proceeding is condemned. The word "corruptly" as used in this
2 statute has the same meaning as in Count One; that is to act
3 with an improper purpose and to engage in conduct knowingly
4 and dishonestly and with the intent to obstruct, impede or
5 influence the due administration of justice.

6 A defendant does not need to know with certainty
7 that his conduct would affect judicial proceedings, nor does
8 his conduct need to actually obstruct justice. Instead, the
9 defendant's conduct must only have the natural and probable
10 affect of interfering with the due administration of justice.

11 In order to prove the defendant guilty of Count Two,
12 the government must prove each of the following three elements
13 beyond a reasonable doubt:

14 First, that on or about the dates set forth in the
15 indictment, there was a proceeding pending before a federal
16 court or federal grand jury; second, that the defendant knew
17 of the proceeding; and, third, that the defendant corruptly
18 acted to obstruct, impede or influence, or endeavor to
19 obstruct, impede, or influence the proceeding. I will explain
20 each of these elements to you in more detail.

21 The first element the government must prove beyond a
22 reasonable doubt is that in or about in between July 2011 and
23 July 2012, there was a federal proceedings pending before a
24 federal judge or court; that is the federal prosecution of
25 Edu1 Ahmad in the United States District Court of the Eastern

1 The material endeavor means any effort or act, however
2 contrived. The term endeavor is designed to reach all conduct
3 which is aimed at obstructing, impeding or influencing an
4 official proceeding, to wit, the federal prosecution of Edu1
5 Ahmad. Thus, it is sufficient to satisfy this element if you
6 find that the defendant knowingly acted in a way that
7 obstructed or had the natural and probable affect of
8 obstructing justice from being duly administered.

9 In sum, if you find the government has not proven
10 any one or all three of these elements beyond a reasonable
11 doubt, then you must find the defendant not guilty of Count
12 Two. On the other hand, if you find that the government has
13 proven all of these three elements beyond a reasonable doubt,
14 then you must find the defendant guilty of Count Two. Count
15 Two of the indictment also charges the defendant with aiding
16 and abetting -- I'm sorry -- charges the defendant with
17 violating Section 2, Title 18 of the United States Code, the
18 aiding and abetting statute. The statute provides in
19 pertinent part: B, whoever willfully causes an act to be
20 done, which if directly performed by him or another, would be
21 an offense against the United States, as punishable as a
22 principal.

23 In addition to charging the defendant as a
24 principal, the government has charged the defendant under
25 alternate theory that even if the defendant did not commit the

1 crime charged in Count Two, the defendant willfully caused
2 another person to physically commit the crime. Thus, you may
3 find that the defendant acted as an aider and abettor if you
4 find that the government has proven beyond a reasonable doubt
5 that he knowingly, willfully and corruptly caused another
6 person to obstruct justice, as I just defined it. I
7 previously defined knowingly, willfully and corruptly to you.
8 Those same definitions apply here, and I need not repeat them.

9 What does the term "willfully caused" mean? It
10 does not mean that the defendant himself need have physically
11 committed the crime, or supervised, or participated in the
12 actual criminal conduct charged in the indictment. The
13 meaning of the term "willfully caused" can be found in the
14 answers to the following questions:

15 Did the defendant in or about and between July 2011
16 and July 2012 know that there was a federal proceedings
17 pending before a federal judge or a court; that is the federal
18 prosecution of Edu1 Ahmad, in the United States District Court
19 of the Eastern District of New York?

20 Did the defendant intentionally cause another person
21 to obstruct, impede, or influence or corruptly endeavor to
22 obstruct, impede or influence the federal prosecution of Edu1
23 Ahmad by obtaining nonpublic information contained in the
24 government's files or computer databases?

25 If the jury is unanimously persuaded beyond a

1 beyond a reasonable doubt that the defendant caused or induced
2 Edu1 Ahmad to commit one, or more, or all of these acts.

3 In sum, if you find that the government has failed
4 to prove any one or both of these elements beyond a reasonable
5 doubt, you must find the defendant not guilty of Count Three
6 pursuant to Section 1512(b)(2). On the other hand, if you
7 find that the government has proven both elements beyond a
8 reasonable doubt, then you must find the defendant guilty of
9 Count Three, pursuant to Section 1512(b)(2).

10 In order to prove the defendant guilty pursuant to
11 Section 1512(b)(3) in Count Three, the government must prove
12 each of the following two elements beyond a reasonable doubt:

13 The first element the government must prove beyond a
14 reasonable doubt is that the defendant knowingly and corruptly
15 persuaded Edu1 Ahmad or attempted to do so. This is the same
16 element I explained to you in connection with Section
17 1512(b)(2), and that same instruction applies here. I need
18 not repeat it.

19 The second element the government must prove beyond
20 a reasonable doubt, in connection with Section 1512(b)(3), is
21 that the defendant acted knowingly and with the intent to
22 hinder, delay or prevent the communication to a law
23 enforcement officer or judge of the United States, of
24 information relating to the commission, or possible
25 commission, of a federal offense, to wit, federal program

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1 embezzlement or Federal program bribery, in connection with
2 the check register page. I previously explained to you what
3 it means to act knowingly and intentionally, and those same
4 definitions apply here.

5 If you find that the defendant acted with the intent
6 to hinder or prevent communication by Edu1 Ahmad to a specific
7 law enforcement officer, or group of officers, this element is
8 satisfied if that officer, or one of the group of officers,
9 was a federal law enforcement officer. The government is not
10 required to prove that the defendant knew that the officer was
11 a federal law enforcement officer. A federal law enforcement
12 officer is an officer or employee of the federal government
13 who was authorized to act on behalf of the federal government
14 in the prevention, detection, investigation or prosecution of
15 federal crimes.

16 I instruct you that the Federal Bureau of
17 Investigation or FBI agents and federal prosecutors are
18 federal law enforcement officers, and that federal program
19 embezzlement, as set forth in Title 18 of the United States
20 Code, in Sections 666(a)(1)(A) and federal program bribery as
21 set forth in Title 18 of the United States Code, Section
22 666(a)(1)(B) are federal offenses. It is not necessary for
23 you to determine whether the defendant committed federal
24 program embezzlement or federal program bribery, because he is
25 not on trial for these offenses.

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2016 WL 756565

2016 WL 756565
Only the Westlaw citation is currently available.
United States District Court,
E.D. New York.

United States of America,
v.
John Sampson, Defendant.

13-cr-269 (DLI)
|
Signed 02/26/2016

OPINION AND ORDER

DORA L. IRIZARRY United States District Judge:

*1 On July 24, 2015, the defendant John Sampson (“Defendant” or “Sampson”) was convicted after a trial by jury of obstruction of justice in violation of 18 U.S.C. § 1503 (Count Two), and making false statements in violation of 18 U.S.C. § 1001 (Counts Seven and Nine). By motion dated September 14, 2015, Defendant seeks judgments of acquittal on Counts Two and Seven pursuant to Rule 29 of the Federal Rules of Criminal Procedure. Defendant does not challenge his conviction on Count Nine. The government opposes the motion. Defendant’s motion is denied in its entirety for the reasons described more fully herein.

In sum, as to Count Two, Defendant waived the argument that the indictment was defective by not raising the issue before trial pursuant to Rule 12(b)(3)(B)(v). Alternatively, even if Defendant did not waive this argument, it still would fail because Defendant was not convicted of witness tampering and there was sufficient evidence of intent and nexus for a rational jury to find Defendant guilty beyond a reasonable doubt. As to Count Seven, Defendant’s arguments that his statements to the FBI were “literally true” and immaterial are not persuasive and are insufficient to overturn the jury verdict as to this count.

BACKGROUND¹

Defendant is an experienced civil and criminal attorney and prominent politician. As a lawyer, he represented

criminal defendants and, *inter alia*, served as a court-appointed referee in real estate foreclosure proceedings. As a politician, he represented the 19th Senate District in the New York State Senate (the “Senate”), serving terms as both the leader of the Democratic Conference and Minority Leader. In 2005, attempting to combine his talents as lawyer and politician, Defendant ran unsuccessfully for Kings County District Attorney.

Defendant’s legal issues arose out of his work as a court-appointed referee, where he controlled escrow accounts that held the proceeds of foreclosure sales. Defendant was responsible for applying the funds in these accounts to any outstanding mortgages, taxes, or other liens on the foreclosed properties. If a surplus remained after all creditors were satisfied, Defendant was required to remit any excess funds to the Kings County Clerk within five days of filing his referee report. Between 1998 and 2006, Defendant embezzled approximately \$440,000 of these surplus funds.²

Around July 2006, Defendant embarked on an unsuccessful scheme to conceal this embezzlement. He approached his longtime friend, Edul Ahmad (“Ahmad”), to obtain a loan Defendant could use to replace the embezzled funds. Ahmad lent Defendant \$188,500, memorializing the loan on a check register page. Defendant failed to declare the loan on his Senate financial disclosure forms as required by law. Although Sampson never repaid the loan in cash, he did provide his friend with political favors. Specifically, Defendant used his position as a state senator to interfere with state agency audits of Ahmad’s real estate businesses, among other favors.

I. The Mortgage Fraud Case and Defendant’s Attempts to Obtain Confidential Information

*2 In July 2011, the United States Attorney’s Office for the Eastern District of New York (the “USAO”) filed a criminal complaint against Ahmad, alleging bank and wire fraud as part of a mortgage fraud scheme (the “Mortgage Fraud Case”). Shortly after his arrest on these charges, Ahmad began meeting with Sampson at Ahmad’s office to discuss the Mortgage Fraud Case. Specifically, Ahmad and Sampson discussed a list of potential witnesses who they believed were cooperating with the government and might testify against Ahmad. They formulated a plan whereby they would endeavor

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to “find out who [the cooperating witnesses were] and ... get a private investigator to dig up dirt on them.” Tr. 368:25-369: 5. Ahmad testified that “dirt” meant “anything ... that will negatively impact [the cooperating witnesses] credibility.” Tr. 369:6-7.

Although Sampson and Ahmad suspected that certain of Ahmad's co-conspirators were cooperators, they were not content to rely on mere supposition. Instead, they sought to confirm the identities of the witnesses against Ahmad by obtaining confidential, non-public information from three different sources: (1) a paralegal in the USAO named Samuel Noel (“Noel”) who testified against Sampson at trial; (2) counsel for Ahmad's co-conspirators; and (3) a retired FBI agent named Warren Flagg (“Flagg”). Their attempts to access this information began in fall 2011 and continued through winter 2012. During this period, in November 2011, Ahmad himself began cooperating with the government, which included recording his conversations with Sampson.

A. Samuel Noel

Noel was a close, longtime friend of Defendant and Defendant's family, who worked as a supervisory paralegal in the USAO at the time of Ahmad's prosecution in the Mortgage Fraud Case. In fall 2011, Sampson contacted Noel and provided him with the names of four individuals who Defendant believed were potential government witnesses.³ Defendant asked Noel to determine whether these four individuals were, in fact, government cooperators, and, if so, what they had told the government about Ahmad and Defendant. Noel understood that Sampson was asking him to access non-public information from the USAO's records, and to pass that information to Sampson. Although Noel told Sampson that he would attempt to obtain publicly available information, Noel testified at trial that this was only a “cover story.” Tr. 1703:3. Defendant cautioned Noel not to “get [himself] jammed up,” which Noel interpreted as a warning not to get caught accessing non-public information. Tr. 1702:4-6.

During a recorded conversation with Ahmad, Sampson stated that Noel needed to be “careful,” because he was providing Sampson with “information that he's not legally [unintelligible]” GX 502T at p. 3. Sampson also told Ahmad that he was not sure if Noel was being “watch[ed],” and that Sampson did not “want to

jeopardize [Ahmad's case] when they catch [Noel] looking at something and ask him a whole big question.” *Id.* at 3-4. Sampson also engaged in numerous counter-surveillance measures, such as refusing to talk about Noel on the telephone (GX 501T at 6:43-7:1-2, Tr. 415:18-22), writing notes to Ahmad instead of speaking out loud (Tr. 390:2-3), and demanding that Ahmad remove the batteries from his cellular telephone before conversation (Tr. 472:11-13).

On September 19, 2011, Noel used his government-issued identification and password to search a public database known as Public Access to Court Electronic Records, or “PACER.” Noel ran searches using the names, Ahmad, Sampson, and Shapiro. After finding Ahmad's case, Noel discovered that Assistant United States Attorney Alex Solomon (“AUSA Solomon”) was the prosecutor assigned to the case, and that Ahmad was being prosecuted for mortgage fraud.

*3 Noel also used his government account to access another database, the Legal Information Office Network System, or “LIONS.” LIONS is a non-public, Department of Justice database that contains the names of individuals who have been charged with crimes or are under investigation. Noel searched LIONS for the names, Ahmad, Khan, Hansraj, Sampson, and Shapiro, but only found results for Ahmad, Khan and Hansraj. Noel then called Defendant to inform him that he had not found Sampson's name in the system.

Noel then spoke with the paralegal assigned to AUSA Solomon, Joyetta Brazil (“Brazil”), about Defendant and the Mortgage Fraud Case. Specifically, Noel asked Brazil to notify him if she discovered “any information on the [Mortgage Fraud Case] ... or information related to [Defendant]” Tr. 1714:23-25. He also requested that Brazil leave open any relevant USAO files for Noel's inspection. When Brazil did not leave out any files, Noel followed up by calling Brazil and leaving a voice message. Noel did not receive a response to his voice message, and he did not pursue the matter further with Brazil.

Noel also approached Melissa Bennett (“Bennett”), a USAO paralegal working in the public corruption section whom Noel supervised. Noel asked Bennett to inform him if she “came across any names of these people, talking anything about [Defendant].” Tr. 1718:2-6. Noel's intent in making this request was to “look through whatever records [were] available,” and pass along any relevant

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information he discovered to Defendant. Tr.1718:10-12. However, despite these efforts, Bennett did not provide Noel with any information, and Noel never followed up with her about it.

During two separate visits to Defendant's home, Noel spoke with Defendant about his attempts to obtain confidential government information concerning the Mortgage Fraud Case. On the first of these visits, which occurred sometime during fall 2011, Sampson arranged for Noel to speak with Ahmad over the telephone. During the course of that conversation, Ahmad thanked Noel for his efforts,⁴ and Noel informed Ahmad that he would continue to try to get information about the Mortgage Fraud Case. During the second visit, which occurred in December 2011, Sampson asked Noel if he had obtained any information and Noel replied that he had not.

B. Counsel for Ahmad's Co-Conspirators

Sometime during summer or fall 2011, Ahmad learned that the FBI had questioned one of his co-conspirators, Qayaam Farrouq ("Farrouq"). Ahmad became concerned that, if Farrouq was arrested, he would cooperate with the government against Ahmad. This concern prompted Ahmad to ask Sampson if he could recommend an attorney to represent Farrouq. Ahmad believed that Sampson's recommended attorney would provide Ahmad and Sampson with attorney-client communications about whether Farrouq was cooperating with the government. Sampson agreed to the proposal, and arranged for an attorney named Michael Mays ("Mays") to represent Farrouq. Sampson stated that he would communicate with Mays, and instructed Ahmad not to communicate with Mays for fear that doing so might "implicate" Ahmad. Tr. 383:25. After Farrouq's arrest on November 22, 2011, Mays represented Farrouq at the arraignment and detention hearing, but the representation terminated shortly thereafter on December 9, 2011. Sampson communicated with Mays about Farrouq and other mortgage fraud co-conspirators, but Defendant never learned any privileged information.

*4 On November 22, 2011, the same day Farrouq was arrested, law enforcement authorities arrested two other co-conspirators, Nazir Gurmohamed ("Gurmohamed") and Steve Massiah ("Massiah"). During a meeting with Ahmad later that day, Sampson attempted to have a lawyer named John Rodriguez ("Rodriguez") represent

Gurmohamed in order to "keep an eye on him." GX 502T at p. 17. In other words, Defendant sought to arrange the Rodriguez representation for the same reason he arranged the Mays representation: to learn whether one of Ahmad's co-conspirators was cooperating with the government. Ultimately, Rodriguez never represented Gurmohamed, and Ahmad never received any confidential information from Rodriguez.

C. Warren Flagg

The third avenue through which Defendant and Ahmad attempted to access non-public information about the Mortgage Fraud Case was Flagg, a retired FBI special agent who worked as a private investigator. In a recorded conversation, Sampson suggested that Ahmad hire a former FBI agent, because doing so would "open doors we can't get in." GX 506T at p. 22. Ahmad testified that he understood Sampson's reference to "opening doors" to indicate that a former FBI agent could obtain non-public information.

On February 28, 2012, Ahmad and Sampson met with Flagg, and the three discussed the Mortgage Fraud Case. During the conversation, which was recorded, Flagg told Defendant and Ahmad that, with respect to potential cooperating witnesses, they should be "very careful" not to engage in witness tampering. GX 510T at p. 2. Flagg also emphasized that the government would eventually be required to produce "3500 material,"⁵ which would contain information about cooperating witnesses. When Ahmad asked if there was "any way of finding out who's testifying against [me]," Flagg replied: "Not until the 3500 material – you don't want to do that." *Id.* at 2-3.

On March 5, 2012, during a recorded telephone conversation with Sampson, Ahmad expressed reluctance about retaining Flagg, given Flagg's unwillingness to obtain non-public information. In response, Sampson stated that Flagg "will help us get the information that we need." GX 511T at p. 1. Ahmad repeatedly emphasized that he wanted information about witnesses "now," before the government was required to produce 3500 material. *Id.* Because Flagg was averse to obtaining that information before the government's 3500 production, Ahmad saw no reason to hire him. Throughout the conversation, Sampson repeatedly sought to mollify Ahmad's concerns, stating that "[Flagg] will do it now" and that Flagg was "ready to go in." *Id.* At the end of the conversation,

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Sampson concluded by saying: “You always gotta have somebody who always plays, plays between the lines, but you also have to have somebody who knows the gray area. [Flagg] knows the gray area. And he knows people in [the USAO].” *Id.* at 5. Ahmad testified at trial that he understood Sampson's statements to mean that Flagg would obtain non-public information from his contacts in law enforcement and the USAO.

II. Ahmad and Sampson Discuss Murdering Cooperating Witnesses

According to Ahmad, in October 2011, Sampson told him that if Sampson “ever found out who the cooperators are, he would take them out.” Tr. 392:2-16. After Ahmad himself began cooperating with the government, the FBI instructed him to ask Sampson about this statement, to test whether Sampson was serious about murdering witnesses. On December 30, 2011, Ahmad recorded the following conversation:

*5 Ahmad: Let me ask you something. Remember the day you came to my office, and I never forget that day. And you say if we find out who's going to testify against me, you'd fucking kill them?

Sampson: Yeah.

Ahmad: Listen, it get to a point, okay, if I find out – that's why I want you to talk to your guy – let me find out who is testifying against me. Okay?

Sampson: We ain't going to kill – we ain't killing nobody. Now what are you talking about, man?

Ahmad: You think I wouldn't fucking kill –

Sampson: No, you ain't killing nobody, man. Come on, that's bullshit. Come on, man. That's bullshit. You know you, you know you're a harmless – come on, man.

Ahmad: No, you, not me. You –

Sampson: Come on, you know that, man. You're a harmless motherfucker.

Ahmad: Yeah. No, I get the point, I get the point. Come on.

GX 506T at p. 27.

Following this exchange, Ahmad and Defendant laughed and went on to discuss other topics.

III. The Check Register Page

As part of Ahmad's cooperation with the government, the FBI instructed Ahmad to create a phony, duplicate version of the original check register page Ahmad used to memorialize the \$188,500 loan to Sampson. On February 22, 2012, Ahmad met Sampson at a Queens restaurant and showed him the duplicate check register page. Ahmad informed Sampson that the government had subpoenaed Ahmad's records, and that he believed the check register page was responsive. Ahmad then sought Defendant's advice on how to proceed. Sampson told Ahmad to withhold the check register page, and further instructed Ahmad on how to conceal the existence of the check register page, as well as the loan itself. In the event the government independently discovered the loan, Sampson told Ahmad to state falsely that the \$188,500 was payment for legal services previously rendered by Sampson for Ahmad.⁶ Defendant then took the duplicate check register page from Ahmad, placed it in his jacket pocket, and did not return it. The FBI recorded the entire conversation on video and audio, and the government played them for the jury at trial.

Later, on February 22, 2012, during a recorded telephone conversation, Ahmad told Sampson that Sampson had the only copy of the check register page. In fact, at that time, there existed three versions of the check register page: the original check register page (the “Original Register Page,” GX 5), the duplicate check register page (the “Duplicate Register Page,” GX 6A), and a photocopy of the Duplicate Register Page the government made before the restaurant meeting on February 22, 2012 (the “Photocopy Register Page,” GX 6). The Photocopy Register Page was printed on a standard sized copy paper (eight and one-half inches wide by eleven inches tall). By contrast, the Duplicate Register Page was created on check paper (approximately four inches wide by eight and one-half inches tall) and bore watermarks.

IV. Defendant's False Statements

*6 On July 27, 2012, FBI agents interviewed Sampson in front of his Brooklyn home. During this interview, FBI Special Agent Kenneth Hosey (“Special Agent Hosey”) showed Sampson the Photocopy Register Page, and asked him if he had ever seen it before. At trial, Special Agent

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Hosey testified concerning the following exchange with Sampson:

Q: And what was the defendant's response when you asked him if he had seen the check register page before?

A: When I asked him if he had seen it before, he said he had not.

Q: Did the defendant appear to you to have any problem understanding your question regarding whether he'd seen this check register page before?

A: No. In fact, he said – his quotes were it didn't ring a bell, and he didn't have a recollection from it.

Q: Did he ask for any clarification regarding the question you asked about the check register page?

A: He said if he could check his files or there was more information, he may be able to recall ...

Q: Did you ask the defendant again if he had a recollection of seeing the check register page before?

A: Yes.

Q: What did he say?

A: He stated he did not.

Tr. 2054:10-2055:11.

In August 2012, Defendant and his counsel met with the USAO. During this meeting, Defendant stated that he was concerned that the \$188,500 loan would be perceived as a “quid pro quo for political favors.” Tr. 2114:11-13. He further admitted that he did not want the public or the government to know about the loan. Also during this meeting, Defendant's counsel gave Special Agent Hosey the Duplicate Register Page that Sampson had taken from Ahmad on February 22, 2012.

V. The Indictment

The operative indictment in this case is the sixth superseding indictment, dated March 17, 2015 (the “S-6 Indictment, Dkt. Entry No. 120-2”). The S-6 Indictment contains a heading titled “JOHN SAMPSON's Obstruction of Justice,” (the “Heading”), underneath which are subheadings titled “A. JOHN SAMPSON's Use of a USAO employee to Obstruct Justice” (“Subheading A”), and “B. JOHN SAMPSON's Witness Tampering

and Evidence Tampering” (“Subheading B”). *Id.* at 6-7. Subheading A, as the title suggests, discusses Sampson's attempts to obtain non-public information from Noel, and includes the following sentence: “During one meeting, SAMPSON told the Associate [Ahmad] that, if SAMPSON and the Associate were able to identify the [cooperators in the Mortgage Fraud Case], SAMPSON could arrange to ‘take them out.’” *Id.* Subheading B details the February 22, 2012 restaurant meeting between Ahmad and Sampson, as well as their discussion of the check register page.

Count Two of the S-6 Indictment realleges paragraphs one through forty-one, and further alleges that “[i]n or about and between July 2011 and July 2012, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant JOHN SAMPSON, together with others, did knowingly, intentionally, and corruptly endeavor to influence, obstruct and impede the due administration of justice in an official proceeding, to wit: the Mortgage Fraud Case.” *Id.* at 14. Counts Three and Four, the witness tampering charges, also reallege paragraphs one through forty-one, and further charge Sampson with witness tampering pursuant to 18 U.S.C. § 1512 in connection with the February 22, 2012 restaurant meeting.⁷

DISCUSSION

I. The Legal Standard

*7 Rule 29 “imposes a heavy burden on the defendant, whose conviction must be affirmed ‘if *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt[.]” *United States v. Cote*, 544 F.3d 88, 98 (2d Cir. 2008) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original)). For a defendant to succeed on a post-trial motion for a judgment of acquittal, the Court must find that “the evidence that the defendant committed the crime alleged is nonexistent or so meager that no reasonable jury could find guilt beyond a reasonable doubt.” *United States v. Guadagna*, 183 F.3d 122, 130 (2d Cir.1999) (internal quotation marks and citation omitted). A court's conclusion that “no rational trier of fact could have found the defendant guilty beyond a reasonable doubt” must be based on its consideration of “all of the evidence, direct and circumstantial[.]” *United States v. Eppolito*, 543 F.3d 25, 45 (2d Cir. 2008) (citation omitted).

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On a post-verdict motion for a judgment of acquittal, a trial court may not “substitute its own determination of the weight of the evidence and the reasonable inferences to be drawn for that of the jury.” *Cote*, 544 F.3d at 99 (internal quotation and typographical marks omitted). Instead, “[t]he court must give full play to the right of the jury to determine credibility, and must draw all possible inferences in favor of the government.” *Id.*; see also *United States v. Anderson*, 747 F.3d 51, 60 (2d Cir.2014) (“[I]t is the task of the jury, not the court, to choose among competing inferences that can be drawn from the evidence.”). In other words, the court must “[v]iew[] the evidence in the light most favorable to the government,” which means “crediting every inference that the jury may have drawn in favor of the government, and recognizing that the government’s evidence need not exclude every other possible hypothesis.” *Eppolito*, 543 F.3d at 45 (internal quotation marks and citations omitted). However, “specious inferences are not indulged, because it would not satisfy the Constitution to have a jury determine that the defendant is *probably* guilty.” *United States v. Lorenzo*, 534 F.3d 153, 159 (2d Cir. 2008) (internal quotation marks and citations omitted).

II. Count Two – Obstruction of Justice, 18 U.S.C. § 1503

A. Defendant Waived One of His Arguments With Respect to Count Two

i. The Parties' Arguments

Defendant’s first argument with respect to Count Two is that he was improperly convicted under § 1503, “based on acts taken in connection with witnesses.” Def. Mem. at 16. Defendant cites *United States v. Hernandez*, 730 F.2d 895 (2d. Cir. 1984) and *United States v. Masterpol*, 940 F.2d 60 (2d Cir. 1991) for the proposition that a criminal defendant accused of witness tampering may be convicted under 18 U.S.C. § 1512, but may not be convicted under § 1503. *Id.* at 16-19. Accordingly, Sampson argues that, because he was convicted under § 1503 for witness tampering, his conviction should be reversed. *Id.*

In response, the government contends that Defendant waived this argument by not raising it before trial pursuant to Rule 12(b)(3)(B) of the Federal Rules of Criminal Procedure. Gov’t Opp. at 12-15. The government

cites the version of Rule 12(b) in effect prior to December 1, 2014 (“2014 Rule 12(b)”),⁸ which states:

(3) The following must be raised before trial:

(B) a motion alleging a defect in the indictment or information – but at any time while the case is pending, the court may hear a claim that the indictment or information fails to invoke the court’s jurisdiction or state an offense[.]

*8 The government notes that, under 2014 Rule 12(b), a defect in the indictment must be raised before trial, whereas a claim that the indictment fails to state an offense may be raised at any time. Gov’t Opp. at 13. Because Sampson claims he was charged with witness tampering under the wrong statute, he alleges the indictment is defective. *Id.* at 13-14. As such, the government contends, Rule 12(b) mandates that he should have raised issue before trial. *Id.* at 14.

Defendant agrees with the government’s citation to 2014 Rule 12(b). Def. Rep. at 7, n.6. Further, Defendant agrees with the government that a defect must be raised pretrial and a motion for failure to state an offense can be made at any time. *Id.* However, Sampson disagrees with the government’s contention that his argument alleges a defect in the indictment. *Id.* Instead, he presents his argument as a failure to state an offense, because § 1503 does not criminalize the conduct for which he allegedly was charged and convicted, witness tampering. *Id.* Thus, he claims that he properly may raise the issue “at any time.” *Id.* (quoting 2014 Rule 12(b)). In the alternative, Sampson contends that, even if the Court construes his argument as raising a defect, there still is no waiver because said defect was not apparent until trial. *Id.* at 8 (citing *United States v. Sturdivant*, 244 F.3d 71, 76 (2d Cir. 2001) and *Freeman v. United States*, 2010 WL 4026067, at *6 (S.D.N.Y. Oct. 14, 2010)).

ii. The Version of Rule 12(b) Effective December 1, 2014 (“2015 Rule 12(b)”) Applies in Determining the Waiver Issue

According to Sampson, 2014 Rule 12(b) controls in this instance because Sampson’s pretrial motions were due before December 2014.⁹ This argument rests on the erroneous assumption that *all* of his pretrial motions were

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due by November 31, 2014. In fact, the record shows that *motions in limine that could have been made at that time* were due by December 1, 2014.

At a status conference dated October 31, 2014, the following exchange occurred:

THE COURT: What I would like to do is propose a schedule for motions in limine. Can those motions be in by November 14th?

MR. SOLOMON: Your Honor, I'm on trial for the next two weeks. If we can have a week after that?

THE COURT: You have able co-counsel that can work on the motions in limine. The problem is that I'm going to be on trial as well, and I have committed time, plus there are the holidays. I will give you to the 21st.

MR. TUCHMANN: Thank you, your Honor.

THE COURT: That will be for a simultaneous schedule, that is for the defense as well. Will that work for you, too?

MR. AKERMAN: If we could have December 1st, because we have a number of things going on.

THE COURT: All right. December 1st will be for the motions in limine....

Tr. of Oct. 31, 2013 Conf. at 19:10-20:1.

First, the Court clearly directed the parties to file their *motions in limine*, not all pretrial motions, by December 1, 2014. Motions in limine are one type of pretrial motion, but not all pretrial motions are motions in limine. *Motion in Limine*, BLACKS LAW DICTIONARY (10th ed. 2014) (“A pretrial request that certain inadmissible evidence not be referred to or offered at trial.”). The grand jury returned three additional superseding indictments after December 1, 2014, including the S-6 Indictment, dated March 17, 2015, which was the indictment upon which this case was tried. Suppose the S-6 Indictment included an additional count charging Defendant with an unrelated murder. Obviously, the December 1, 2014 deadline for motions in limine would not have prevented Defendant from filing a motion to dismiss that erroneous count of the indictment after the deadline had lapsed.

*9 Second, the Court directed the parties to file their motions in limine by December 1, 2014, not “prior to December 2014” as Defendant contends. This matters, because the effective date of 2015 Rule 12(b) was December 1, 2014. *See* 2014 Rule 12(b) (“Text of subsection (b) effective December 1, 2014, absent contrary Congressional action.”). Accordingly, even if the Court had directed the parties to file any and all pretrial motions by December 1, 2014, which it did not, 2015 Rule 12(b) would still apply.

Finally, the parties exchanged a substantial amount of correspondence and discovery *after* December 1, 2014, some of which generated two additional motions in limine from the government, dated May 14, 2015 and June 2, 2015, respectively, (Dkt. Entry Nos. 141 and 151). The Court did not preclude these motions because the government did not have the necessary information before December 1, 2014. Certainly, had Defendant filed any motions in limine after December 1, 2014 based on information acquired on or after that date, the Court would have considered them as well. Accordingly, the Court rejects the notion that *all* motions in limine, much less all pretrial motions, were due before December 1, 2014.

In short, Sampson complains that the S-6 Indictment, which is the operative indictment in this case, failed to state an offense or provide adequate notice. The S-6 Indictment is dated March 17, 2015, and the record reflects that the Court did not prevent Sampson from filing pretrial motions at that time, or at any time before trial. Accordingly, the Court will analyze the S-6 Indictment using the version of Rule 12(b) in effect at the time the S-6 Indictment was returned.

iii. Defendant Waived His Argument Under 2015 Rule 12(b)

2015 Rule 12(b) states, in relevant part:

(2) Motions That May Be Made at Any Time.

A motion that the court lacks jurisdiction may be made at any time while the case is still pending.

(3) Motions That Must Be Made Before Trial.

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The following defenses, objections, and requests must be raised by pretrial motion if the basis for the motion is then reasonably available and the motion can be determined without a trial on the merits:

- (B) a defect in the indictment or information, including:
 - (v) failure to state an offense[.]

The differences between 2014 Rule 12(b) and 2015 Rule 12(b) are material. Under 2015 Rule 12(b), the only issue a defendant may raise “at any time” is that the court lacks jurisdiction. A claim that the indictment fails to state an offense is now treated as a defect that must be raised before trial. Thus, the parties’ disagreement over whether Defendant’s argument raises a defect or a failure to state an offense is moot; per the version of Rule 12(b) currently under consideration, an allegation that an indictment fails to state an offense *is* an allegation that the indictment is defective.

The issue before the Court is whether Defendant waived his ability to raise this alleged defect by not doing so before trial. To determine this question, the Court must look to the introductory language of 2015 Rule 12(b) (3), which provides that a defect in the indictment must be raised before trial if: (i) “the basis for the motion is then reasonably available”; and (ii) “the motion can be determined without a trial on the merits.” FED. R. CRIM. P. 12(b)(3); *see also United States v. Walsh*, 2016 WL 211916, at *3 (E.D.N.Y. Jan. 15, 2016) (quoting FED. R. CRIM. P. 12(b)(3)(B)(v)) (“Fed. R. Crim. P. 12(b)(3) (B)(v) provides that a defendant can raise a defect in the indictment for ‘failure to state an offense’ prior to trial ‘if the basis for the motion is then reasonably available and the motion can be determined without a trial on the merits.’”).

*10 As to the “reasonably available” basis prong, Defendant argues that he did not know, based on the face of the S-6 Indictment, what evidence the government would offer in support of Count Two.¹⁰ Def. Rep. at 9 (“Count Two is worded in broad, general terms”); *Id.* (“Count Two also incorporated all prior paragraphs in the [S-6 Indictment], underscoring its ample breadth.”). He also claims that the speaking portion of the S-6 Indictment did not forewarn him of the government’s intention to “argue Sampson committed witness tampering in connection with Count Two.” *Id.* at 10. This lack of notice,

he maintains, was a byproduct of the S-6 Indictment’s “counterintuitive” organization. *Id.* (observing that the “allegations relating to charges *other* than Count Two appeared under the heading ‘Witness Tampering’....”) (emphasis in original).

To the extent Defendant attacks the S-6 Indictment as overly “broad,” he essentially argues that it was vague or “insufficiently specific.” *United States v. Crowley*, 236 F.3d 104, 108 (2d Cir. 2000). Even if the Court agreed with this characterization, knowledge of this supposed defect was more than “reasonably available” before trial. The S-6 Indictment currently at issue is the same document Defendant reviewed before trial; so if that document is vague now, then it was vague then, which is when Defendant should have voiced his concerns. *Crowley*, 236 F.3d at 108 (“Federal Rule of Criminal Procedure 12(b)(2) explicitly provides that a claim that an indictment is insufficiently specific ‘must be raised prior to trial.’” (quoting FED. R. CRIM. P. 12(b)(2))); *United States v. Spero*, 331 F.3d 57, 61 (2d Cir. 2003) (because claim that indictment was “insufficiently specific ... was not raised prior to trial, as unambiguously required by the law of the Circuit, the claim must be rejected.” (citing *Crowley*, 236 F.3d at 108)). *Crowley* explained that defendants must raise specificity challenges before trial because:

This mandate is no mere pleading technicality. Rather, it serves a number of important purposes, including deterrence of gamesmanship—Rule 12(b)(2) prevents a defendant from deciding whether to object to an indictment’s purported lack of specificity based solely on whether he is convicted or acquitted—and insuring that indictments are not routinely challenged (and dismissed) after the jury has been seated and sworn, a result that would waste jurors’ time and force courts frequently to confront complex Double Jeopardy questions.

Id. (citing *Davis v. United States*, 411 U.S. 233, 241 (1973)).

Although *Crowley* interpreted a prior version of Rule 12(b), this rationale applies with equal force here, where

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the jury sat attentively throughout a trial that lasted over one month. If Sampson was concerned at all about the S-6 Indictment's "ample breadth," the time to raise that issue was before the considerable expenditure of time and resources occasioned by this trial. Accordingly, the Court will not permit Defendant to raise a vagueness argument at this late stage, as doing so would subvert the letter of Rule 12(b)(3)(B)(v) and the rationale supporting it.

Sampson also complains that the "counterintuitive" organization of the S-6 Indictment did not put him on notice that the government would argue witness tampering under Count Two. Def. Rep. at 10. He highlights the fact that the government charged witness tampering under Counts Three and Four, not Count Two. *Id.* He further notes that the factual allegations under Subheading B ("JOHN SAMPSON'S Witness Tampering and Evidence Tampering") are unrelated to Count Two. *Id.* In short, he claims that the face of the S-6 Indictment discloses no connection between witness tampering and Count Two.

*11 The problem with this argument is that it simply fails to account for the following sentence: "During one meeting, SAMPSON told [Ahmad] that, if SAMPSON and [Ahmad] were able to identify the [cooperating witnesses in the Mortgage Fraud Case], SAMPSON could arrange to 'take them out.'" This sentence appears under Subheading A ("JOHN SAMPSON'S Use of a USAO Employee to Obstruct Justice"), which obviously relates to Count Two. Thus, the S-6 Indictment presents an allegation that Sampson would "take out," *i.e.*, tamper with, witnesses under a subsection that clearly supports Count Two. It is irrelevant that the evidence presented at trial undermined this allegation because the issue here concerns the information available from the face of the indictment. The face of the S-6 Indictment alleged, in support of Count Two, that Sampson offered to tamper with witnesses by "tak[ing] them out." Accordingly, Sampson's "counterintuitive" organization argument fails.

The second prong of the 2015 Rule 12(b)(3) introductory language is whether "the motion can be determined without a trial on the merits." As discussed above, the issues Sampson raises presently could have been determined by examining the face of the S-6 Indictment. Certainly, the parties and the Court were capable of such a legal analysis "without a trial on the merits."

Based on the foregoing, the Court finds that Sampson waived the argument that he was convicted improperly under § 1503. However, in the alternative, the Court will address the substantive merits of this argument. Defendant's claim still fails.

B. Defendant Was Not Convicted Improperly of Witness Tampering

Defendant advances two arguments concerning his allegedly improper conviction under Count Two for witness tampering. First, Sampson argues that, under *Hernandez* and *Masterpol*, his § 1503 conviction should be vacated, because it was based on "witness related conduct," or "acts taken in connection with witnesses." Def. Rep. at 5; Def. Mem. at 16. Second, Defendant complains that the government improperly urged the jury to convict him of witness tampering during its summation. Def. Rep. at 2-5. Both arguments lack merit.

In *Hernandez*, the Second Circuit held that a defendant was convicted improperly under § 1503 because his conduct, threatening a witness, was not proscribed by that statute. 730 F.2d at 899. The court focused its analysis on the changes made to the text of § 1503 by the Victim and Witness Protection Act of 1982 (the "Act"). *Id.* at 898. Specifically, the court found that the Act "removed from § 1503 all references to witnesses, leaving that section to protect jurors and court officers, and enacted a new section, § 1512, addressed specifically and in more detail to the protection of witnesses, informants, and crime victims from intimidation." *Id.*

The government in *Hernandez* argued that Congress enacted § 1512, "in effect, to create two crimes, making witness intimidation and harassment punishable not only under § 1512, but also under the residual clause of § 1503." *Id.* Rejecting this argument, the court found that "congress affirmatively intended to remove witnesses entirely from the scope of § 1503." *Id.* Accordingly, because the defendant was convicted under § 1503 for witness intimidation, the court reversed.

The Second Circuit reaffirmed this holding in *Masterpol*, where the defendant, like the defendant in *Hernandez*, was convicted under the residual clause of § 1503 for witness tampering. 940 F.2d at 761. The government in *Masterpol* attempted to distinguish *Hernandez* on the ground that *Masterpol* engaged in non-coercive witness tampering,

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while Hernandez had used coercion. *Id.* at 762. The court rejected this argument, noting that, “in view of... the plain import of Congress' action in both adopting section 1512 and deleting from section 1503 all references to witnesses, we see no reason at this juncture to retreat from the position we took in *Hernandez*....” *Id.*¹¹

*12 Defendant's argument, that *Hernandez* and *Masterpol* prohibit § 1503 convictions based on “witness related conduct,” depends on an excessively broad construction of those opinions. In fact, the sheer breadth of the phrase “witness related conduct” renders it essentially meaningless, which is presumably why it does not appear in any of the cases cited by Defendant. What *Hernandez* and its progeny actually forbid are § 1503 convictions based on conduct proscribed by § 1512, *i.e.*, witness tampering.

As Defendant correctly observes, the conduct supporting Count Two consisted of Sampson's efforts to: (1) solicit Noel to ascertain information about witnesses; (2) arrange for certain attorneys to represent potential witnesses against Ahmad; and (3) hire Flagg to obtain confidential information about witnesses. Def. Mem. at 18-19. That such conduct may be categorized as “witness related” is both obvious and irrelevant. The conduct at issue in *Hernandez*, *Masterpol*, and every subsequent Second Circuit case to consider the issue was witness tampering, a behavior far more circumscribed than the nebulous “witness related conduct.” See *Hernandez*, 730 F.2d at 897 (defendant threatened to kill a witness); *Masterpol*, 940 F.2d at 761 (defendant urged witnesses to make false statements); *Russo*, 302 F.3d at 40 (affirming district court's dismissal of § 1503 conviction for secreting witness subpoenaed by grand jury); *Kumar*, 617 F.3d 612, 622, n.9 (finding witness bribery not punishable under § 1503 pursuant to *Masterpol*, but also finding that lying to SEC investigators, *i.e.*, conduct other than witness tampering, is properly charged under § 1503).

Defendant emphasizes one sentence from *Hernandez* that states, when Congress enacted § 1512, it “affirmatively intended to remove witnesses entirely from the scope of § 1503.” Def. Mem. at 17 (quoting *Hernandez*, 730 F.2d at 898). Taken out of context, this language arguably supports Defendant's position that “witness related conduct” may not be prosecuted under § 1503. However, this argument ignores the fact that the sentence quoted by Defendant appears within *Hernandez*'s broader

discussion of Congressional intent. *Id.* In the paragraph immediately preceding the “remove witnesses entirely” language, *Hernandez* found that Congress “delet[ed] from § 1503 all references to witnesses,” to clarify that “threats against witnesses would fall *solely* under § 1512.” *Id.* (emphasis added); see also *Id.* (rejecting argument that Congress intended to create two crimes for witness tampering). In other words, Congress completely excised all witness related words from the language of § 1503 for the purpose of punishing witness tampering under § 1512 *only*. Congress did not intend to alter the conduct being criminalized; it simply removed that prohibited conduct from one section of the statute (§ 1503) and placed it in another (§ 1512).¹²

Next, Defendant argues that he was convicted on Count Two for witness tampering, as opposed to “witness related conduct,” based on the government's summation. Def. Rep. at 2-5. He highlights the following portion of the government's summation as especially prejudicial:

*13 So what was [Sampson] trying to accomplish by trying to get all of this confidential information from Noel, from [Mays], and the other attorneys, and from Flagg? He was trying to get an unfair advantage for Ahmad in Ahmad's case, trying to give Ahmad more time than Ahmad had a right to have to dig up dirt on cooperating witnesses, trying to give Ahmad the names and identities of cooperating witnesses so Ahmad could *tamper with them*. *You saw the defendant tamper with witnesses* in this case; he knew how it's done. What else was the defendant trying to accomplish? He was trying to give Warren Flagg the opportunity to do dirty work with cooperating witnesses in the gray area, not between the lines, things that Ahmad's real attorney shouldn't know about. All of this evidence shows that the defendant is guilty of Count Two, endeavoring to obstruct Ahmad's case.

Id. at 3 (citing Tr. 2294:9-2296:1) (emphasis Defendant's).

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From this, Defendant draws the conclusion that “the government emphasized repeatedly that Sampson’s conduct amounted to witness tampering.” *Id.* at 3. Defendant completely misconstrues the government’s argument.

The government did not contend at trial, nor does it contend now, that Defendant tampered with witnesses or attempted to tamper with witnesses in connection with Count Two. Rather, the government has consistently argued that Sampson’s *corrupt purpose* was to tamper with witnesses. This is readily apparent from the block quote above, wherein the government argued that Sampson attempted to provide witness information to Ahmad “so Ahmad could tamper with them.” Tr. 2294:9-2296:1 (emphasis added). In other words, the government argued that Sampson gave Ahmad witness information for the purpose of facilitating Ahmad’s potential witness tampering. The mere appearance of the term “witness tampering” within this quote does not mean the government urged the jury to convict Sampson under Count Two for the substantive crime of witness tampering.

In response, Defendant counters that the government conflated the *mens rea* and *actus reus* elements of Count Two before the jury. Def. Rep. at 4 (“The government attempts to justify its position that Sampson was not convicted of witness tampering ... by contending that evidence and arguments relating to witnesses were offered to establish corrupt intent, not *actus reus*. However, the government did not explain this distinction to the jury.”). In fact, it is Defendant who obfuscates the difference between witness tampering as a corrupt purpose, and witness tampering as the *actus reus* of the obstruction charge. One of the more egregious examples from Defendant’s reply brief will illuminate this point.

Defendant notes that, during its summation, the government “argued it was ‘witness tampering’ for Sampson to arrange for ‘close associates like Michael Mays to represent people like Qayaam Farrouq.’” Def. Rep. at 3 (quoting Tr. 2412:1-3). The entire sentence from the transcript actually reads: “And when [Sampson] is arranging for close associates like Michael Mays to represent people like Qayaam Farrouq, that’s witness tampering, *that’s a corrupt purpose.*” Tr. 2412:1-4 (emphasis added). Moreover, this quote appears in the middle of the government’s broader argument

concerning Sampson’s corrupt purpose. That portion of the government’s summation, in which it clearly and repeatedly urged the jury to find that Sampson acted with a corrupt purpose, covers five pages of the transcript. *See* Tr. 2410:2-2415:24 (mentioning the phrase “corrupt purpose” 14 times and “witness tampering” once). The government’s singular misuse of the phrase “witness tampering” in this context appears to have been inadvertent, and in any event, was clearly immaterial and non-prejudicial. Defendant’s misguided attempt to portray the government’s argument as something other than what it was is unavailing.

C. The Government Presented Sufficient Evidence of Intent and Nexus

i. A Rational Jury Could Have Found Defendant Acted With a Corrupt Intent

*14 The omnibus clause of § 1503 states that “whoever ... corruptly ... endeavors to influence, obstruct, or impede, the due administration of justice shall” be guilty of a crime. 18 U.S.C. § 1503. To sustain a conviction under the omnibus clause of § 1503, the government must establish, *inter alia*, “that the defendant acted with the wrongful intent or improper purpose to influence [a] judicial or grand jury proceeding, whether or not the defendant is successful in doing so – that is, ‘that the defendant corruptly intended to impede the administration of that judicial proceeding.’”¹³ *United States v. Quattrone*, 441 F.3d 153, 170 (2d Cir. 2006) (quoting *United States v. Fassnacht*, 332 F.3d 440, 447 (7th Cir. 2003) (additional citations omitted)). In this context, the Supreme Court has defined “corruptly” as “normally associated with wrongful, immoral, depraved, or evil.” *Id.* (quoting *Arthur Anderson LLP v. United States*, 544 U.S. 696, 705 (2005) (quotation marks omitted)).

Defendant claims that the government offered insufficient evidence that he acted with the requisite corrupt intent. Def. Mem. at 19-22. Defendant acknowledges that he sought information on cooperating witnesses before the government was obligated to produce its “3500 material.” *Id.* at 20. He further concedes that he tried to obtain this information from non-public sources. *Id.* at 21. However, he stresses that the only purpose behind these actions was to uncover impeachment material on government witnesses. *Id.* Pursuing this “basic defense function,” he

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argues, was neither corrupt nor even improper. *Id.* at 21-22 (citing *United States v. Jadue*, 31 F. Supp. 3d 794, 798-99 (E.D. Va. 2014)).

The government presents a different theory concerning Sampson's state of mind. First, as discussed above, the government contends that Sampson's corrupt purpose was to tamper with witnesses.¹⁴ Gov't Opp. at 20. Further, the government maintains that Sampson's efforts to provide Ahmad with confidential information were intended to prevent Ahmad from disclosing the \$188,500 loan to the government. *Id.* at 20-21. The government's rationale is that, if Sampson could bolster Ahmad's chances against the government in the Mortgage Fraud Case by providing him confidential information, then Ahmad would be less likely to plead guilty, cooperate with the government, and disclose the loan. *Id.* at 21. Moreover, there was ample evidence presented at trial that Defendant had violated ethical codes of conduct applicable to state senators by virtue of favors he had done for Ahmad before the loan was made and before the Mortgage Fraud Case was filed. Ahmad had a wealth of information about Defendant's misconduct generally, and the jury was entitled to consider all the evidence presented.

Defendant and the government clearly and skillfully presented to the jury these competing theories regarding Sampson's *mens rea*. Both sides' theories are reasonable, but the question before the Court is not whether the government's inferences are more likely than Defendant's. *United States v. Anderson*, 747 F.3d 51, 60 (2d Cir. 2014) (“[I]t is the task of the jury, not the court, to choose among competing inferences that can be drawn from the evidence.”). Rather, the issue is whether the evidence, viewed in the light most favorable to the government, “is nonexistent or so meager that no reasonable jury could find” that Sampson acted with a corrupt intent. *Guadagna*, 183 F.3d at 130.

*15 Viewed in this light, the evidence demonstrates that Defendant tried to obtain sensitive and confidential law enforcement information to which he was not entitled. By attempting to access this information *before* the government was obligated to produce it, he sought to circumvent the law. See 18 U.S.C. § 3500(a) (“In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) shall be

the subject of subpoena, discovery, or inspection *until said witness has testified* on direct examination in the trial of the case.”) (emphasis added).

Defendant relies on the fact that, “as part of the trial process, the government produces 3500 material” to conclude that his attempts to access this material prematurely were not improper. Def. Mem. at 20. If the Court were to adopt this logic, it would be impossible to punish the unlawful disclosure of sensitive information, such as the existence of wiretaps or confidential informants, so long as the defendant could show that the government eventually would have produced the information anyway. Common sense dictates that, during certain stages of an investigation or prosecution, sensitive information must be kept secret from the target of the investigation or prosecution for obvious reasons. Accordingly, attempts to thwart that secrecy have long been treated as crimes, regardless of whether the defendant eventually discovers the information at trial. See e.g. *United States v. Giovanelli* 464 F.3d 346, 350 (2d Cir. 2006) (upholding a § 1503 conviction where the defendant provided sensitive information to the target of an ongoing grand jury investigation). Thus, Defendant's “inevitable discovery” argument is meritless.

Not only did Defendant brazenly disregard the strictures of § 3500, he did so in a manner that was grossly unethical, particularly for a lawyer. To summarize, Sampson (1) asked one of his closest friends to betray the trust and confidence of the United States government, and, as a result, (2) proximately caused his friend to commit and be convicted of a crime, (3) attempted to cause a former FBI agent to do the same, and (4) sought to invade the sanctity of the attorney-client privilege for other defendants. Moreover, he knew he was engaging in wrongdoing, as evidenced by his overwhelming consciousness of guilt demonstrated by the furtiveness of his actions. See GX 501T at 6-7 (refusing to discuss Noel over the telephone); Tr. 390:10-16 (insisting to speak with Ahmad outside Ahmad's office because it might contain a recording device); Tr. 413:5-11 (requesting that Ahmad provide Sampson with a different telephone line because Sampson suspected Ahmad's telephone was being recorded); Tr. 472:11-13 (asking Ahmad to remove the battery from his cellular telephone); Tr. 494:18-22 (communicating with Ahmad by writing on a piece of paper instead of speaking).

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Certainly a rational, reasonable juror could weigh this evidence and conclude that Sampson acted with a state of mind that was “wrongful,” “immoral,” or even “depraved.” *Arthur Anderson*, 544 U.S. at 705. The inference urged by Defendant is admittedly possible, but the “government’s evidence need not exclude every other possible hypothesis.” *Eppolito*, 543 F.3d at 45. Considering “all of the evidence, direct and circumstantial,” the Court concludes that a rational trier of fact could have found the intent element of the crime satisfied beyond a reasonable doubt. *Id.*

ii. Sampson Intended to Influence a Judicial Proceeding, the Mortgage Fraud Case

*16 In *United States v. Aguilar*, 515 U.S. 593 (1995), the Supreme Court imposed a “nexus” requirement on the intent element of § 1503. *Id.* at 599. To satisfy the nexus requirement, the government must demonstrate that the defendant acted “with an intent to influence judicial or grand jury proceedings; it is not enough that there be an intent to influence some ancillary proceeding, such as an investigation independent of the court’s or grand jury’s authority.” *Id.* (citing *Brown v. United States*, 688 F.2d 596, 598 (9th Cir. 1982)); see also *United States v. Schwartz*, 283 F.3d 76, 109 (2d Cir. 2002) (“The thrust of the Court’s opinion in *Aguilar* is that § 1503 requires a specific intent to obstruct a federal judicial or grand jury proceeding.”). Stated another way, “the [defendant’s] endeavor must have the ‘natural and probable effect’ of interfering with the due administration of justice.” *Aguilar*, 515 U.S. at 599 (quoting *United States v. Wood*, 6 F.3d 692, 696 (10th Cir. 1993)). The nexus requirement limits the scope of § 1503’s omnibus clause, but is not itself a separate element of § 1503 the government must prove. See *Quattrone*, 441 F.3d at 170 (“The nexus limitation is best understood as an articulation of the proof of wrongful intent that will satisfy the *mens rea* requirement of ‘corruptly’ obstructing or endeavoring to obstruct.”).

In support of his nexus argument, Sampson recycles the same rationale he employed in support of his argument that he did not act with a corrupt intent. Def. Mot. at 22. He claims that he was simply attempting to confirm the identities of the government’s witnesses to “gather impeachment material, a perfectly permissible endeavor.” *Id.* Accordingly, Defendant argues that no rational jury could have found that the “natural and probable effect”

of pursuing this legitimate goal was to “interfer[e] with the due administration of justice.” *Id.*

Defendant’s argument misses the entire point behind *Aguilar*’s nexus requirement, which is to ensure that the defendant’s intent is directed at “judicial or grand jury proceedings.” *Aguilar*, 515 U.S. at 599. The “natural and probable effect” standard was intended to clarify this essential holding, not serve as a substitute for it. *Id.* (“The action taken by the accused must be with an intent to influence judicial or grand jury proceedings.... In other words, the endeavor must have the natural and probable effect of interfering with the due administration of justice.”) (emphasis added) (citations and internal quotation marks omitted). In *Aguilar*, the defendant lied to FBI agents conducting an investigation that had not been authorized or directed by the grand jury. *Id.* at 597. The Supreme Court reversed the § 1503 conviction because, even though the defendant lied to the FBI, there was no evidence the defendant intended that his false statement be provided to the grand jury. *Id.* at 601. See also *Schwartz*, 283 F.3d at 109 (reversing § 1503 conviction, based on *Aguilar*, because “there was no showing that [the defendant] ... knew that the allegedly false statements he made to the federal investigators ... would be conveyed to the federal grand jury.”).

Here, the nexus requirement does not come into play, because there is no doubt that Defendant intended to influence the Mortgage Fraud Case. Defendant sought certain confidential information about the Mortgage Fraud Case, so he could pass that information to Ahmad, the defendant in the Mortgage Fraud Case. Sampson also wanted to know if he too was a target, and asked Noel if he was mentioned by any cooperator. As discussed above, the evidence would have allowed a rational, reasonable jury to infer that, had he succeeded, Sampson would have given Ahmad an unfair advantage in the Mortgage Fraud Case, prevented Ahmad from pleading guilty in the Mortgage Fraud Case, or even influenced the testimony of witnesses in the Mortgage Fraud Case. To conclude from this that Sampson’s actions were not intended to influence the Mortgage Fraud Case would be absurd.

The Second Circuit’s construction of *Aguilar* in *Giovanelli* further confirms this conclusion. The defendant in *Giovanelli* obtained confidential information from grand jury proceedings and passed that information to the targets of the grand jury’s investigation. *Giovanelli*, 464

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F.3d at 350. Upholding the § 1503 conviction, the court held that the defendant's "attempt to analogize his case to those of *Aguilar* and *Schwartz* – cases in which a defendant lied to a government investigator with no obvious connection to a particular grand jury proceeding – is unconvincing." *Id.* at 351. The only difference between the present case and *Giovanelli* is that Sampson failed where the *Giovanelli* defendant succeeded, but this distinction is irrelevant to the analysis. *See Aguilar*, 515 U.S. at 601 ("Our reading of the [§ 1503] gives the term 'endeavor' a useful function to fulfill: It makes conduct punishable where the defendant acted with an intent to obstruct justice, and in a manner that is likely to obstruct justice, but is foiled in some way."). Accordingly, like *Giovanelli*, *Aguilar* is inapposite to the facts of this case, and the conviction on Count Two must stand.

III. Count Seven – False Statement, 18 U.S.C. § 1001

*17 Count Seven charged that Sampson "falsely stated and represented to Federal Bureau of Investigation Special Agents that he did not recall seeing the Check Register Page previously, when in fact, as he then and there well knew and believed, the defendant did recall seeing the Check Register Page previously." S-6 Indictment at ¶ 55. Sampson asks the Court to overturn Count Seven because his statement to Special Agent Hosey was "literally true" pursuant to *Bronston v. United States*, 409 U.S. 352, 362 (1973). Def. Mem. at 25-26. Alternatively, Defendant claims that his statement does not meet the materiality element of 18 U.S.C. § 1001. *Id.* at 26-28.

A. An Objective and Reasonable Interpretation of Special Agent Hosey's Question Renders Sampson's Response Not "Literally True"

In *Bronston*, the Supreme Court overturned a perjury conviction where the defendant's answer to a question under oath was "literally true but unresponsive." *Id.* Later, in *United States v. Mandanici*, 729 F.2d 914, 921 (2d Cir. 1984), the Second Circuit held that defendants charged under § 1001 also could assert the *Bronston* literal truth defense. *Id.* ("[A] defendant may not be convicted under § 1001 on the basis of a statement that is, although misleading, literally true."). Sampson claims his statement to Special Agent Hosey, that he did not recall seeing the Check Register Page before, was literally true, because the document Special Agent Hosey showed Defendant was the Photocopy Register Page. Def. Mem. at 25. Because

he had never seen the Photocopy Register Page, Sampson claims that his statement that he did not recall seeing that document was literally true. *Id.* at 25-26.

Although literal truth may be a defense to § 1001 prosecutions, the Second Circuit has cautioned that, "when testimony is knowingly false, perjury has been committed," regardless of whether a *Bronston* defense applies. *United States v. Lighte*, 782 F.2d 367, 374 (2d Cir. 1986). A defendant's "statements must be judged according to common sense standards and given their natural meaning in relation to their context." *United States v. Schaftrick*, 871 F.2d 300, 303-04 (2d Cir. 1989). The "literal truth or falsity of a defendant's words" cannot be determined if those words are divorced from their proper context. *Id.* at 304 (citing *United States v. Ford*, 603 F.2d 1043, 1049 (2d Cir.1979)). "[E]ven if [a defendant's] statements could be literally true in isolation," a perjury conviction will be sustained if the defendant's statements, taken in context, were "materially untrue." *Id.* (citing *United States v. Bonacorsa*, 528 F.2d 1218, 1221 (2d Cir. 1976), *cert. denied*, 426 U.S. 935 (1976)).

For Sampson's answer to be "literally true," the Court would have to conclude, based on the entire context of the July 27, 2012 interview, that Special Agent Hosey was asking whether Sampson had ever seen the Photocopy Register Page. *See Schaftrick*, 871 F.2d at 304 (holding that literal truth may only be determined in context). Why Special Agent Hosey would have asked such a perfectly useless question is beyond the Court, and Sampson does not even attempt to explain why he believed that was the question posed by Special Agent Hosey. *Of course* Special Agent Hosey was not asking if Defendant literally had ever seen the actual photocopy then being displayed; Special Agent Hosey was asking if Sampson had ever seen the image depicted therein. *Id.* ("[S]tatements must be judged according to common sense standards and given their natural meaning in relation to their context."). The only way Defendant's statement may be deemed "literally true" is if the Court viewed the statement in isolation, which is precisely what the precedent of this Circuit prohibits. *Id.*

*18 Despite the obvious import of Special Agent Hosey's statement, Sampson nevertheless maintains that, "the burden was on the FBI" to ask whether Sampson "had seen [] a document similar to that which he was shown." Def. Mem. at 26 (quoting *Bronston*, 409 U.S. at 360 ("The

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burden is on the questioner to pin the witness down to the specific object of the questioner's inquiry.”)). In other words, according to Defendant, Special Agent Hosey should have spelled out what was already perfectly clear from the context. The error with this argument is that the obligation to “pin the witness down” does not apply unless the declarant first provides an unresponsive answer. *Id.* (“If an answer is responsive to the question, then there is no notice to the examiner and no basis for applying *Bronston*.”). Defendant's answer that he did not recall seeing the Check Register Page was directly responsive to Special Agent Hosey's question, so the *Bronston* defense is not available to Sampson here.

B. Sampson's False Statement Did Influence, and Was Capable of Influencing, the FBI's Investigation of the Loan

Sampson claims that, even if his statement was false, it was not material within the meaning of 18 U.S.C. § 1001, because the FBI asked Sampson about the Photocopy Register Page. Def. Mem. at 27. He asserts that the truth or falsity of his answer would not have provided the FBI with any useful information about the loan itself. *Id.* Thus, he maintains that the FBI's investigation of the loan did not depend on whether or not Sampson had previously seen this document.¹⁵ *Id.* He also claims that his false answer was immaterial because the FBI already knew that Sampson had seen the Duplicate Register Page. *Id.* at 28.

18 U.S.C. § 1001 provides that “whoever ... knowingly and willfully ... makes a materially false, fictitious, or fraudulent statement or representation” shall be guilty of a crime. A statement is material within the meaning of § 1001 if it has “a natural tendency to influence, or [is] capable of influencing, the decision of the decision making body to which it was addressed.” *United States v. Adekanbi*, 675 F.3d 178, 182 (2d Cir. 2012) (internal citations and quotation marks omitted). “It has never been the test of materiality that the misrepresentation or concealment would more likely than not have produced an erroneous decision.” *Kungys v. United States*, 485 U.S. 759, 771 (1988); see also *United States v. Santiago*, 2014 WL 4827883, at *5 (S.D.N.Y. Sept. 26, 2014) (“[T]he test of materiality is objective, not subjective; that is, a statement is material if it is capable of influencing a decision by a decision-making body even if the body did not in fact rely on the statement.” (citing *Kungys*, 485

U.S. at 771)). A court may find materiality “even if [t]he particular decisionmaker ... thought that the statement was false at the time it was made.” *Santiago*, 2014 WL 4827883, at *5 (citing *Brogan v. United States*, 522 U.S. 398, 402 (1998)).

Here, Sampson's false statement had both a “natural tendency to influence” and was “capable of influencing” a “decision” of the FBI, the “decision” in this case being the further investigation of the loan and any possible illegal conduct by Defendant. See *Id.* (“Here, the decision making body is NCIS ... and the decision that the decision maker had to make was: who shot Carpeso?”). The question of whether Defendant had previously seen the Check Register Page goes to his overall knowledge of the Check Register Page and the loan it memorialized. True, the FBI already knew that Sampson was aware of the Check Register Page because of the recorded February 22, 2012 restaurant meeting with Ahmad. However, Sampson's awareness of the Check Register Page was only a small portion of Defendant's overall knowledge of the loan, including what he did with the proceeds, and why he was so determined to conceal the loan's existence. Sampson's initial false statement demonstrated that he had no intention of revealing this critical information during the July 27, 2012 interview. As such, his falsehood “tend[ed] to influence,” and indeed actually did influence, the FBI's investigation of these matters.

*19 Furthermore, Sampson's false statement was material because, even if it did not actually influence the FBI's investigation of the loan, it was “capable” of influencing the investigation. The fact that Special Agent Hosey knew Sampson was lying, while perhaps being evidence of guilt, is irrelevant. See *Id.* (“[A] statement is material if it is capable of influencing a decision by a decision-making body even if the body did not in fact rely on the statement.”). As noted above, the Check Register Page evidenced a loan that affected a number of critical issues in this case. Accordingly, Sampson's statement, that he had not previously seen this important document, was capable of influencing the FBI's investigation of the loan, and was therefore material. Defendant's motion to vacate the guilty verdict as to Count Seven is denied.

CONCLUSION

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For the foregoing reasons, Defendant's Rule 29 motion is denied in its entirety.

SO ORDERED.

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Footnotes

- 1 Familiarity with the facts and procedural history of this case is presumed. The following facts are derived from the indictments, the parties' motion papers, and the trial transcript. They are provided for background purposes only.
- 2 On August 12, 2015, the Court dismissed the embezzlement counts in the original indictment as time barred.
- 3 The names of these four individuals are Leesa Shapiro ("Shapiro"), Glenn Hirsch ("Hirsch"), Premrah Hansraj ("Hansraj"), and Roger Khan ("Khan").
- 4 Generally, Ahmad and Noel testified consistently concerning the details of this conversation. However, on the issue of whether Ahmad thanked Noel for his efforts, Ahmad stated that he did not recall thanking Noel, while Noel claimed he did.
- 5 "3500 material," or "Jencks Act" material, refers to information that the government is required to produce to the defense pursuant to 18 U.S.C. § 3500. Such information normally includes the statements of cooperating witnesses.
- 6 Sampson never performed any legal work for Ahmad, although when state banking officials attempted to seize Ahmad's real estate transaction records, Defendant interceded on Ahmad's behalf and, *inter alia*, created a phony affidavit shifting blame for any documentary irregularities to Hansraj.
- 7 Each indictment before the S-6 Indictment, *i.e.*, the original indictment and the other five superseding indictments, contains all of the same language quoted in this paragraph from the S-6 Indictment.
- 8 For clarity, the Court does not intend to convey that this version of Rule 12(b) was in effect in 2014 only. The Court takes judicial notice of the fact that this version of Rule 12(b) was in effect between December 1, 2002 and November 31, 2014. The Court uses the term "2014 Rule 12(b)" for convenience only.
- 9 The government does not explain why it used 2014 Rule 12(b).
- 10 Because Defendant made his arguments under 2014 Rule 12(b), he did not claim specifically that the basis for his motion was not "then reasonably available." Instead, he argued, pursuant to *Sturdivant's* construction of 2014 Rule 12(b), that the "defect in the indictment was not apparent on its face." Whether a defect in an indictment was not "reasonably available" before trial, or was "not apparent" before trial, raises the same question. Accordingly, the Court will construe Defendant's argument as alleging that the "basis for the motion was not then reasonably available," pursuant to 2015 Rule 12(b).
- 11 *Hernandez* and *Masterpol* represent the minority position among the other federal appellate courts to have considered the issue. See *United States v. Fortunato*, 2003 WL 21056974, at *2 (E.D.N.Y. Mar. 10, 2014) (citing cases). Nevertheless, the holdings from these cases remain the law of this circuit. See *United States v. Kumar*, 617 F.3d 612, 622, n.9 (2d Cir. 2010) (reaffirming the holding of *Masterpol* that "witness tampering is prohibited only by § 1512, and is not covered by § 1503's omnibus clause"); *United States v. Russo*, 302 F.3d 37, 42-43 (2d Cir. 2002) (same); *United States v. Gabriel*, 125 F.3d 89, 105 n.12 (2d Cir. 1997) (same).
- 12 *Masterpol* also quotes *Hernandez's* statement that "congress affirmatively intended to remove witness entirely from the scope of § 1503." *Id.* at 763 (quoting *Hernandez*, 730 F.2d at 898) (quotation marks omitted). However, just as in *Hernandez*, this quote appears in *Masterpol* as part of a broader discussion of Congressional intent, specifically Congress's 1988 amendments to § 1512. See *id.*
- 13 The government must also prove that "(1) there is a pending judicial or grand jury proceeding constituting the administration of justice; and (2) that the defendant knew or had notice of the proceeding." *Quattrone*, 441 F.3d 153, 170 (2d Cir. 2006). Sampson does not dispute that the government established these two elements.
- 14 Additionally, as discussed above, the argument that Sampson demonstrated an intent to tamper with witnesses is different than the argument that he tampered with witnesses or attempted to do so.
- 15 Sampson is correct that his answer to whether he had ever seen the Photocopy Register Page would have served no purpose. Ironically, this underscores the Court's point from the previous section that Special Agent Hosey clearly was not asking such a pointless question.

United States v. Sampson, Not Reported in F.Supp.3d (2016)

2016 WL 756565

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GOVERNMENT
EXHIBIT
10
13-CR-269 (DLI)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

INDICTMENT

BROOKLYN OFFICE

- against -

EDUL AHMAD,

Defendant.

Cr. No. _____
(T. 18, U.S.C., §§
981(a)(1)(C), 982(a)(2)(A),
1344, 1349, 2 and 3551 et
seq.; T. 21, U.S.C.,
§ 853(p); T. 28, U.S.C.,
§ 2461(c))

-----X

THE GRAND JURY CHARGES:

IRIZARRY, J.

INTRODUCTION

AZRACK, M.J.

At all times relevant to this Indictment:

1. The defendant EDUL AHMAD, together with others, defrauded various lending institutions (the "Lenders") by obtaining mortgages on properties (the "Properties") located in the Eastern District of New York and elsewhere through fraudulent means, including by falsifying mortgage loan applications and other documents. That false information made the borrowers appear to be more creditworthy, and falsely enhanced the purported value of the Properties. As a result, the Lenders were fraudulently induced to issue mortgage loans secured by the Properties. AHMAD also fraudulently obtained fees and commissions in excess of those permitted by the Lenders. The amount of the mortgage loans obtained by AHMAD and others exceeded \$50 million.

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I. The Defendant

2. The defendant, EDUL AHMAD was a real estate agent licensed in the State of New York. AHMAD acted as the real estate agent and often as the loan officer for the closings on the Properties.

II. The Lenders

3. The Bank of New York was a bank, the deposits of which were insured by the Federal Deposit Insurance Corporation ("FDIC").

4. Chase Home Finance was a wholly-owned subsidiary of JP Morgan Chase ("JP Morgan"), a bank, the deposits of which were insured by the FDIC.

5. Citi Residential Lending was a wholly-owned subsidiary of Citibank, N.A. ("Citibank"), a bank, the deposits of which were insured by the FDIC.

6. Countrywide Home Loans was a wholly-owned subsidiary of Countrywide Financial ("Countrywide"), a bank, the deposits of which were insured by the FDIC.

7. Flushing Savings Bank was a bank, the deposits of which were insured by the FDIC.

8. Fremont Investment and Loan ("Fremont") was a bank, the deposits of which were insured by the FDIC.

9. HSBC Mortgage Services and Decision One Mortgage were wholly-owned subsidiaries of HSBC Bank USA, N.A. ("HSBC"), a bank, the deposits of which were insured by the FDIC.

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10. IndyMac Mortgage Services was a wholly-owned subsidiary of IndyMac Bank ("IndyMac"), a bank, the deposits of which were insured by the FDIC.

11. One West Bank was a bank, the deposits of which were insured by the FDIC.

12. U.S. Bank was a bank, the deposits of which were insured by the FDIC.

13. Wells Fargo Home Mortgage was a wholly-owned subsidiary of Wells Fargo & Company ("Wells Fargo"), a bank, the deposits of which were insured by the FDIC.

14. New Century Mortgage Corporation ("New Century") was a wholesale mortgage lender doing business throughout the United States, including in New York.

15. Ocwen Financial Corporation ("Ocwen") was a wholesale mortgage lender doing business throughout the United States, including in New York.

III. The Borrowers

16. The defendant EDUL AHMAD and others recruited purchasers (the "Purchasers") who desired to purchase the Properties for their own use. The Purchasers generally were individuals with good credit scores, but with income and assets that were insufficient to secure a mortgage loan. AHMAD and others often promised the Purchasers either that no down payment would be necessary to purchase the Properties, or that any down payment would be refunded to them at the closings.

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17. The defendant EDUL AHMAD and others also recruited other individuals (the "Straw Buyers") to pose as the purchasers of some of the Properties. Like the Purchasers, the Straw Buyers generally were individuals with good credit scores, but with income and assets that were insufficient to secure a mortgage loan. Unlike the Purchasers, however, the Straw Buyers did not intend to inhabit or control the Properties. Instead, AHMAD and others were the true owners of the Properties purportedly purchased by the Straw Buyers. In exchange for the use of their names and good credit, the Straw Buyers often received a fee.

IV. The Fraudulent Scheme

18. Once Purchasers or Straw Buyers were recruited, the defendant EDUL AHMAD prepared and caused to be prepared mortgage applications for the Properties. These mortgage applications contained numerous misrepresentations and material falsehoods designed to make the Purchasers or Straw Buyers appear more creditworthy. Among other things, the mortgage applications falsely inflated the bank account balances and income for the Purchasers or Straw Buyers. Additionally, the mortgage applications for the Straw Buyers falsely stated that the Straw Buyers would live at the Properties. AHMAD and others caused these applications and supporting documents to be sent to the Lenders by facsimile or via electronic transmissions.

19. As a condition for issuing the mortgage loans, the Lenders required the Purchasers and Straw Buyers to make down