

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

\* \* \* \* \* C.R. NO. 06-02T  
\*  
UNITED STATES OF AMERICA \*  
\*  
VS. \* OCTOBER 2, 2006  
\* 9:30 A.M.  
\*  
ROBERT A. URCIUOLI, et al \*  
\*  
\* \* \* \* \* PROVIDENCE, RI

BEFORE THE HONORABLE ERNEST C. TORRES,

CHIEF JUDGE

(Jury Trial)

APPEARANCES:

FOR THE GOVERNMENT: LUIS M. MATOS, AUSA  
DULCE DONOVAN, AUSA  
U.S. Attorney's Office  
50 Kennedy Plaza  
Providence, RI 02903

FOR THE DEFENDANT,  
URCIUOLI: MICHAEL J. CONNOLLY, ESQ.  
Hinckley, Allen & Snyder, LLP  
28 State Street  
2nd Floor  
Boston, MA 02109

RICHARD M. EGBERT, ESQ.  
99 Summer Street  
Suite 1800  
Boston, MA 02110

1 FOR THE DEFENDANT,  
DRISCOLL:

KEVIN J. BRISTOW, ESQ.  
505 Turks Head Building  
Providence, RI 02903

3

4 FOR THE DEFENDANT,  
SANGERMANO:

A. JOHN PAPPALARDO, ESQ.  
EVAN GEORGOPOULOS, ESQ.  
Greenberg Traurig, LLP  
One International Place  
Boston, MA 02110

7

8 Court Reporter:

Karen M. Wischnowsky, RPR-RMR-CRR  
One Exchange Terrace  
Providence, RI 02903

9

10

11

12

Proceeding reported and produced by computer-aided  
stenography

13

14

15

16

17

18

19

20

21

22

23

24

25

1           THE COURT: Ladies and gentlemen, you've had a  
2 long day listening to a lot of people talk to you, and  
3 now I have to talk to you.

4           It's my job at this time to explain to you the  
5 law that applies in this case, and it's your job to  
6 apply the law as I explain it to you to the facts as  
7 you determine the facts to be.

8           You decide what the facts are, I explain to you  
9 what the law is, and you apply the law to the facts as  
10 you decide them.

11           And it's important to keep in mind that in  
12 considering what I'm about to tell you, you consider my  
13 explanation of the law to you in its entirety. In  
14 other words, don't pick out one or two points and focus  
15 on them out of context. You've got to -- in order to  
16 apply the law fairly, you must consider my explanation  
17 to you as a whole.

18           Now, as you -- as I think you know, the  
19 Indictment in this case contains a total of 38 counts  
20 or charges, and I explained that to you at the very  
21 beginning of the case.

22           And the reason there are so many counts, as I  
23 previously said, is that the charges here involve mail  
24 fraud. And in the case of mail fraud, each mailing or  
25 use of the mail is a separate offense. And the

1 Indictment alleges that there were 37 occasions on  
2 which the mails were used, and that's why there are so  
3 many counts.

4 Count I charges that the Defendants, Robert  
5 Urciuoli, Frances Driscoll and Peter Sangermano,  
6 conspired to commit mail fraud by using the mails in  
7 furtherance of a scheme to defraud the citizens of  
8 Rhode Island of the honest services of Senator John  
9 Celona, and that would be a violation of Section 371 of  
10 Title 18 of the United States Code.

11 The essence of the scheme charged is that it  
12 involved hiring and paying Mr. Celona to be what the  
13 Defendants described as a consultant to the Village at  
14 Elmhurst when -- whose job it was to promote the  
15 Village's services to senior citizens when, in fact,  
16 according to the Indictment, Mr. Celona really was  
17 being paid to influence legislation and to otherwise  
18 use his official position in order to benefit or  
19 advance the interests of Roger Williams Medical Center  
20 and its affiliated companies or Village Retirement  
21 Communities and its affiliated companies.

22 Counts II through XXXVIII charge that the  
23 Defendants actually devised or participated in the  
24 scheme, the alleged scheme to defraud, and that they  
25 caused the mails to be used or they aided or abetted

1 others in causing the mails to be used in furtherance  
2 of that scheme in violation of two other sections of  
3 Title 18 of the United States Code, Sections 1341 and  
4 1346, as well as Section 2, three sections, I guess  
5 you'd say.

6 Count II charges that Mrs. Driscoll devised or  
7 participated in the alleged scheme to defraud and that  
8 on the date specified in that count, in Count II, she  
9 used, caused the mails to be used or aided and abetted  
10 others in causing the mails to be used to send a check  
11 to John Celona in furtherance of the alleged scheme to  
12 defraud.

13 Counts III through XXXVIII charge that  
14 Mr. Urciuoli and Mr. Sangermano devised or participated  
15 in the alleged scheme to defraud and that on the dates  
16 specified in each of those counts, they caused the  
17 mails to be used or aided and abetted others in causing  
18 the mails to be used to send checks to John Celona,  
19 also in furtherance of the alleged scheme.

20 Now, as I mentioned at the beginning of this  
21 case, each of the Defendants is entitled to an  
22 individualized determination from you with respect to  
23 the charge or charges against that Defendant.

24 In other words, simply because you find one  
25 Defendant guilty or not guilty, you shouldn't

Karen M. Wischnowsky, RPR-RMR-CRR

1 automatically assume that the -- another Defendant is  
2 guilty or not guilty.

3 You must look at the evidence against each  
4 Defendant and whether or not the, in your judgment, the  
5 evidence proves that Defendant guilty of one or more of  
6 the charges against that Defendant.

7 And by the same token, there are multiple  
8 charges or counts against each Defendant, and the same  
9 principle applies. You need to look at each count  
10 against the Defendant and determine whether or not the  
11 evidence proves that Defendant guilty of each of the  
12 counts against them.

13 And you need to do that also independently.  
14 Simply because you find a Defendant guilty or not  
15 guilty of one of the counts doesn't automatically mean  
16 that the Defendant is guilty or not guilty of the other  
17 counts. You need to look at each count and the  
18 evidence that pertains to it.

19 I'm going to begin by explaining the law that  
20 applies to the mail fraud charges and the charges of  
21 aiding and abetting mail fraud which are set forth in  
22 Counts II through XXXVIII, and then I'll come back to  
23 the conspiracy count.

24 In other words, even though the conspiracy count  
25 is Count I, I think it will be easier to understand if

1 I start with the mail fraud itself, the mail fraud  
2 charges themselves, and go back to the conspiracy to  
3 commit mail fraud because I think you need to  
4 understand what mail fraud is before you can really  
5 decide whether there was a conspiracy to commit mail  
6 fraud.

7 As I mentioned, the mail fraud charges in  
8 Counts II through XXXVIII are based on alleged  
9 violations of Sections 1341 and 1346 of the United  
10 States Code, and I'll read to you the pertinent  
11 portions of those statutes.

12 Section 1341 says, Whoever, having devised or  
13 intending to devise any scheme or artifice to defraud  
14 for the purpose of executing such scheme or artifice or  
15 attempting to do so places in any Post Office or  
16 authorized depository for mail matter, any matter or  
17 thing whatever to be sent or delivered by the Postal  
18 Service or knowingly causes to be delivered by the mail  
19 any such matter or thing shall be guilty of an offense  
20 against the United States.

21 And Section 1346 defines a scheme or artifice to  
22 defraud to include a scheme or artifice to deprive  
23 another of the intangible right of honest services.

24 So simply stated, mail fraud refers to the use  
25 of the mails to execute a scheme to defraud.

1           Now, in this case, in order to establish that a  
2 Defendant is guilty of mail fraud, the Government has  
3 to prove three things or what the law refers to as  
4 elements, three elements.

5           The first thing the Government has to prove is  
6 that the Defendant devised or participated in a scheme  
7 to defraud the public of the honest services of John  
8 Celona -- Senator John Celona substantially as charged  
9 in the Indictment.

10           The second thing that the Government must prove  
11 is that the Defendant participated in that scheme  
12 knowingly and willfully and with the specific intent to  
13 defraud.

14           The third thing the Government has to prove is  
15 that the Defendant used the United States mails or  
16 caused the mails to be used in furtherance of that  
17 scheme.

18           I'm going to explain some of those elements to  
19 you and some of the terms that I've used which you  
20 probably have a pretty good idea of, but I don't want  
21 you to go on the basis of what you think they mean. I  
22 want to try to explain what the law says they are.

23           First of all, fraud. Fraud is a general term  
24 that embraces a variety of methods to cheat or deceive  
25 others in order to obtain something of value from them



1 or to deprive them of something of value.

2 A scheme to defraud is any plan, pattern or  
3 course of action that is calculated to deprive others  
4 of something of value. The something of value doesn't  
5 have to be money or property. A scheme to defraud may  
6 consist of a scheme to defraud or deprive citizens of  
7 their intangible right of the honest services of their  
8 governmental officials.

9 Now, it's difficult to provide you with a  
10 comprehensive definition of what is meant by the honest  
11 services of public officials. Generally speaking,  
12 honest services refers to a public official's  
13 obligation to be honest while acting in his or her  
14 official capacity and to perform his or her duties in a  
15 manner that he or she believes is in the best interest  
16 of the public that the official serves rather than in a  
17 way that benefits the official personally.

18 The public may be deprived of the honest  
19 services of an elected official in either of two ways.  
20 One way is when the official acts in his official  
21 capacity in a way that furthers his personal interests  
22 or the -- or interests other than the interests of the  
23 public that that official serves.

24 One example, of course, would be where the  
25 official is bribed to act in a particular way in

1 performing his official duties or acting in his  
2 official capacity.

3           The second way in which the public can be  
4 deprived of the honest services of an elected official  
5 is when the official fails to disclose that he has a  
6 personal interest in a matter over which he has some  
7 decisionmaking power, thereby concealing from the  
8 public a possibly selfish motivation for engaging in an  
9 official act, the theory being that the public's  
10 entitled to know what the interests of the official are  
11 and the basis of the official's actions.

12           In either event, the public is deprived of the  
13 official's honest services even though there's no  
14 monetary or tangible loss to the public. The  
15 Government doesn't have to show that the public lost  
16 money or was deprived of some money.

17           What the Government has to show is that the  
18 public was deprived of the honest services of the  
19 official in question.

20           The deprivation involved in the bribery of a  
21 public official is that the public official is not  
22 exercising his independent judgment with respect to  
23 official matters. He's not acting independently and in  
24 the best interest of the public that he serves. He's  
25 acting for some ulterior motive.

1           When a public official is bribed to act on  
2           official matters in a particular way rather than  
3           exercising his independent judgment, that official  
4           breaches his duty of honest, faithful and disinterested  
5           service and the public is deprived of the honest  
6           services to which it is entitled.

7           The honest services that an elected official  
8           owes to citizens is not limited to the official's  
9           formal votes on legislation. It includes the  
10          official's behind-the-scenes activities and influence  
11          in the legislation, and it also includes other actions  
12          that the official takes in an official capacity, not  
13          what he does as a private individual but what he does  
14          under the cloak of his office.

15          The determination as to whether the public was  
16          deprived of a public official's honest services does  
17          not depend on whether the conduct violated state ethics  
18          laws. The public may be deprived of an elected  
19          official's honest services even if the official's  
20          conduct does not violate some state law.

21          Mail fraud is a federal crime, and the  
22          Government isn't required to show that whatever the  
23          objective of the scheme was or whatever the alleged  
24          participants did violated some state law.

25          However, a Defendant's knowledge or belief as

1 to, in this case, whether Senator Celona was being  
2 induced to engage in conduct that violated the ethics  
3 laws may be considered by you in determining whether  
4 the Defendants intended to deprive the public of  
5 Senator Celona's honest services.

6 So whether an ethics law was violated or not  
7 doesn't establish or is not relevant to determining  
8 whether there was a mail fraud violation except to the  
9 extent that you think that that may cast some light on  
10 what a Defendant intended.

11 Now, it's not improper or unlawful for a person  
12 to attempt to persuade a public official to act in a  
13 way that benefits that person. In fact, every citizen  
14 has a right to try and convince an elected official to  
15 support or oppose legislation that -- in which that  
16 person may have an interest. There's nothing wrong  
17 with that.

18 What is wrong and what is unlawful is for a  
19 person to make payments to a public official with the  
20 intent to cause that official to act in his official  
21 capacity in a way that benefits the person making the  
22 payments rather than in a way that serves the interests  
23 of the public to whom the public official is  
24 responsible and owes his duty of honest services.

25 In order to establish that a Defendant engaged

1 in the alleged scheme to defraud, the Government has to  
2 prove a couple of things. First of all, it has to  
3 prove that the purpose of the alleged scheme was to  
4 deprive the public of Senator Celona's honest services;  
5 and secondly, it has to prove that the Defendant  
6 intended to accomplish that purpose.

7 More specifically, the Government is required to  
8 prove that the Defendant intended to influence or  
9 intended that Senator Celona be influenced to act in a  
10 particular way in his official capacity and that that  
11 intention to influence was improper, that the influence  
12 alleged was improper.

13 To put it another way, the Government must prove  
14 that a Defendant intended to cause Senator Celona to  
15 deviate from the honest performance of his duties.  
16 It's not necessary that the Government prove all of the  
17 details of the alleged scheme. It need only prove that  
18 the scheme was substantially as alleged in the  
19 Indictment.

20 Nor does it make any difference whether the  
21 alleged scheme was successful or not or whether the  
22 Defendants would have profited personally from the  
23 alleged scheme. The scheme to defraud can exist even  
24 though the purpose of the scheme was not accomplished  
25 and even though the participants in the scheme did not

1 personally receive any benefit.

2           The essence of a scheme to defraud the public of  
3 the honest services of a public official is a plan to  
4 improperly influence a public official to act in his  
5 official capacity based upon interests other than the  
6 interests of the citizens that that official serves or  
7 to plan to conceal a conflict of interest on the part  
8 of the public official.

9           In this case, the Indictment charges that the  
10 object of the alleged scheme to defraud was to pay  
11 money to Senator Celona in order to improperly  
12 influence him to use his influence, power and authority  
13 as a state senator to benefit Roger Williams Medical  
14 Center and its affiliates and/or the Village Retirement  
15 Communities and its affiliates.

16           And also the Indictment charges that a further  
17 object of the alleged scheme was to deceive the  
18 citizens of Rhode Island concerning Senator Celona's  
19 relationship with Roger Williams Medical Center in  
20 order for Senator Celona to continue to promote the  
21 political interests of Roger Williams Medical Center  
22 and its affiliates and the Village Retirement  
23 Communities and its affiliates.

24           And as I've indicated to you, either of those  
25 objectives would be sufficient to establish a

1 fraudulent purpose.

2           However, you cannot return a guilty verdict  
3 unless all of you agree that the Government has proved  
4 that the alleged scheme had one or both of those  
5 objectives. Those are the objectives charged in the  
6 Indictment.

7           If you find that the Government has proven only  
8 one of those objectives, you cannot return a guilty  
9 verdict unless all of you agree which objective has  
10 been proven.

11           In other words, you can't return a guilty  
12 verdict if some, but not all, of you conclude that the  
13 only objective of the alleged scheme was to pay  
14 Senator Celona to use his office in ways that would  
15 benefit Roger Williams Medical Center and some, but not  
16 all, of you conclude that the only objective of the  
17 scheme was to deceive the public concerning Senator  
18 Celona's true relationship with Roger Williams Medical  
19 Center.

20           In order to find a Defendant guilty, you must  
21 all agree as to what the scheme was, whether it  
22 included both of the purposes alleged in the Indictment  
23 or, if only one of them, which one. You've all got to  
24 agree as to at least one of them.

25           Now, in addition to -- as I've said, in addition

1 to proving that a Defendant devised or participated in  
2 a scheme to defraud the public of Senator Celona's  
3 honest services, the Government also has to prove that  
4 the Defendant acted knowingly, willfully and with the  
5 specific intent to defraud.

6 An act is considered to have been done knowingly  
7 if it was engaged in with an awareness of its nature.  
8 An act is done willfully if it's done knowingly,  
9 voluntarily and with an intent to commit the act.

10 The purpose of requiring that an act be done  
11 knowingly and willfully is to prevent a person from  
12 being convicted for engaging in an act that the person  
13 did not understand or did not intend to commit.

14 To act with specific intent to defraud means to  
15 act with an intent to cheat or deceive for the purpose  
16 of either depriving others of something of value,  
17 something to which they were entitled, or obtaining  
18 something of value for one's self.

19 Specific intent means more than the general  
20 intent to commit a particular act. To establish  
21 specific intent, the Government must prove that the  
22 Defendant knowingly did something that the law forbids  
23 and acted with the intent to violate the law.

24 A person cannot be found to have acted with  
25 specific intent if the person truly believed that what



1 he or she did was lawful.

2 In this case, the third thing the Government has  
3 to prove in order to convict the Defendant of mail  
4 fraud is that the Defendant not only participated in  
5 the scheme to defraud the public of Senator Celona's  
6 honest services -- well, that's one of the things they  
7 have to prove, and the Government has to prove in that  
8 connection that a Defendant acted with two types of  
9 intent.

10 In order to convict the Defendant of mail fraud,  
11 it has to show two types of intent on the part of the  
12 Defendant.

13 First, the Government has to prove that the  
14 Defendant intended to deprive the public of Senator  
15 Celona's honest services; and second, the Government  
16 must prove that the Defendant intended to deceive the  
17 public with respect to the Defendant's efforts to  
18 improperly influence Senator Celona.

19 In order to establish intent to deceive, the  
20 Government must prove that the Defendant intended to  
21 deceive the public as to what Senator Celona was being  
22 paid to do.

23 I told you that the Government has to prove that  
24 a Defendant acted knowingly, willfully and with a  
25 specific intent to defraud. And whether it has proven

1 those things may be inferred from what the Defendant  
2 said, what the Defendant did and what the Defendant was  
3 told, as well as from any other facts that the evidence  
4 has established as to -- that would tell you what a  
5 Defendant may have known or intended.

6 But keep in mind that knowledge, willfulness and  
7 intent, like any of the other elements of an offense,  
8 have to be proven beyond a reasonable doubt. So you  
9 may -- it may be proven by circumstantial evidence,  
10 that you may infer from the facts what a Defendant knew  
11 or intended, but you've got to make sure -- you've got  
12 to find that beyond a reasonable doubt.

13 The third thing I told you the Government has to  
14 prove in order to convict the Defendant of mail fraud  
15 is that the mails were used in furtherance of the  
16 scheme to defraud; that not only was the Defendant a  
17 participant in the scheme and a willful participant, a  
18 knowing, willful participant, but also that the mails  
19 were used in furtherance of the scheme.

20 And use of the mails, as you probably already  
21 know, occurs when something is sent, delivered or  
22 received through the United States Postal Service.

23 The Government is not required to prove that the  
24 Defendant personally sent or received anything through  
25 the mail. It's sufficient to show that the Defendant

1 caused something to be sent through the mail or  
2 received by the mail in furtherance of the scheme to  
3 defraud.

4 And a Defendant causes something to be or causes  
5 the mails to be used when a Defendant commits an act  
6 with knowledge that use of the mails will follow in the  
7 ordinary course of business or under circumstances  
8 where use of the mails is reasonably foreseeable.

9 The Government does not have to prove that a  
10 Defendant intended the mails to be used. It need only  
11 prove that the Defendant knew that such use was likely  
12 or the use of the mails was reasonably foreseeable.

13 The mail is used in furtherance of a scheme to  
14 defraud when it's used as part of the purpose of  
15 carrying out or attempting to carry out the -- some  
16 essential step in the scheme.

17 Mailings that take place before a scheme has  
18 begun or after the purpose of the scheme has been  
19 accomplished are not sufficient to support a mail fraud  
20 conviction.

21 The material transmitted by the mail need not,  
22 by itself, be false or fraudulent in order to establish  
23 that the mail was used in furtherance of a scheme to  
24 defraud. And also, as I've already indicated, each  
25 separate use of the mails in furtherance of a scheme to

1 defraud constitutes a separate offense.

2 I also have told you that in addition to the  
3 charges of mail fraud contained in Counts II through  
4 XXXVIII, those counts also charge aiding and abetting  
5 mail fraud in violation of Section 2 of Title 18 of the  
6 United States Code.

7 Count II charges Mrs. Driscoll and Counts III  
8 through XXXVIII charge Mr. Urciuoli and Mr. Sangermano  
9 not only with mail fraud but, in the alternative, with  
10 aiding and abetting mail fraud.

11 The aiding and abetting statute provides as  
12 follows. I'll read it to you, which is a little bit  
13 murky in places, but I'll explain it to you after I  
14 read it. That statute says, Whoever commits an offense  
15 against the United States, or aids, abets, counsels,  
16 commands, induces or procures its commission, is  
17 punishable as a principal. Whoever willfully causes an  
18 act to be done, which if directly performed by him or  
19 another would be an offense against the United States,  
20 is punishable as a principal.

21 In plain English what that means is that while a  
22 person who does not personally -- a person who does not  
23 personally commit a crime but who aids or abets someone  
24 else in committing the crime or who willfully causes  
25 someone else to commit the crime may be guilty of that

1 crime to the same extent as the person who actually  
2 commits it.

3 And in order to establish that a Defendant is  
4 guilty of aiding and abetting, the Government has to  
5 prove three things. First, it has to prove that the  
6 crime in question was committed. You can't be guilty  
7 of aiding and abetting in the commission of a crime  
8 that was never committed.

9 Second, it has to prove that the Defendant  
10 assisted in the commission of the crime or caused it to  
11 be committed; and third, the Government has to prove  
12 that the Defendant intended to assist in the commission  
13 of the crime or to cause it to be committed.

14 As I said, unless a crime was committed by  
15 someone, the person can't be guilty of aiding and  
16 abetting; but if the crime was committed, the  
17 Government doesn't have to prove that the Defendant  
18 personally committed the crime.

19 What it must prove under the aiding and abetting  
20 theory is that someone committed the crime and that the  
21 Defendant willfully did something to help in or to  
22 cause its commission.

23 In order to be guilty of aiding and abetting, a  
24 Defendant must do something to facilitate the crime.  
25 In other words, the Defendant must be a participant in

1 the crime and not a mere spectator.

2 All right. I've explained to you now what the  
3 law is with respect to the offense of mail fraud, and  
4 I've explained to you what aiding and abetting in the  
5 commission of mail fraud is. That's Counts II through  
6 XXXVIII. I'm now going to turn to Count I, which is  
7 the conspiracy count.

8 Count I, as I indicated earlier, charges that  
9 Mr. Urciuoli, Mr. Sangermano and Mrs. Driscoll violated  
10 Section 171 of Title 18 of the United States Code by  
11 conspiring to commit mail fraud by using the mails or  
12 conspiring to use the mails in furtherance of the  
13 alleged scheme to defraud the public of its right to  
14 the honest services of Senator Celona.

15 And again I'll read to you relevant portion of  
16 the conspiracy statute, Section 371. That statute  
17 says, If two or more persons conspire to commit any  
18 offense against the United States and one or more of  
19 such persons do any act to effect the object of the  
20 conspiracy, each person conspiring shall be guilty of  
21 the crime of conspiracy.

22 A conspiracy is a mutual agreement or  
23 understanding to commit a crime. That's the gist of  
24 what a conspiracy is. In order to -- I guess another  
25 way to put it is that the conspiracy is sometimes

1 referred to as kind of a partnership for criminal  
2 purposes in which each member becomes the agent or  
3 partner of every other member of the conspiracy.

4 In order to establish that a Defendant is guilty  
5 of conspiracy to commit mail fraud, which is the charge  
6 in Count I, the Government has to prove four things, or  
7 elements, beyond a reasonable doubt.

8 First, it has to prove that there was a  
9 conspiracy to commit mail fraud as described in the  
10 Indictment; second, it has to prove that the Defendant  
11 was a member of that conspiracy; third, it has to prove  
12 that the Defendant joined the conspiracy knowingly and  
13 willfully; and fourth, the Government has to prove that  
14 at some time during the existence of the conspiracy,  
15 one or more of the members of the conspiracy knowingly  
16 performed at least one of the overt acts described in  
17 the Indictment in order to further or advance the  
18 purposes of the conspiracy.

19 Now, before I go further in explaining to you  
20 what a conspiracy is, I want to tell you it's important  
21 to remember that a conspiracy to commit a crime and  
22 actual commission of the crime are two separate and  
23 distinct offenses.

24 The gist of the offense of conspiracy is the  
25 agreement to violate the law or commit a crime. So one

1 may be guilty of conspiracy even though the crime that  
2 was the object of the conspiracy was never committed.  
3 In this respect, it differs from aiding and abetting,  
4 which I'll explain a little further later.

5 The essence of the offense of conspiracy is  
6 participating in a plan or scheme to do something  
7 unlawful. And, therefore, one who participates in a  
8 conspiracy may be guilty even though the goal of the  
9 conspiracy was never accomplished.

10 In order to establish that a conspiracy existed,  
11 there must be proof that the alleged members of the  
12 conspiracy reached a mutual agreement or understanding  
13 to try and accomplish some unlawful purpose, but proof  
14 of a conspiracy does not require evidence that the  
15 members specifically stated the terms of their  
16 agreement either verbally or in writing.

17 The Government doesn't have to produce a  
18 document that's signed by every member of the alleged  
19 conspiracy, nor does it have to prove that they all got  
20 together and in specific words agreed to conspire to  
21 commit mail fraud.

22 But what the Government does have to prove is  
23 that in some way and in some form the Defendants  
24 mutually agreed or reached an understanding that they  
25 would commit the illegal act charged in the Indictment.



1           The fact that various persons may have  
2 associated with each other or had discussions with one  
3 another are not, by themselves, sufficient to produce  
4 or to prove the existence of a conspiracy. There must  
5 be evidence that those persons were parties to an  
6 agreement to commit an unlawful act, in this case mail  
7 fraud.

8           Proof of a conspiracy does not require evidence  
9 that everyone involved agreed on all of the details  
10 regarding the methods to be used or even that they all  
11 had direct discussions with one another.

12           It does require proof beyond a reasonable doubt  
13 that the members of the alleged conspiracy somehow  
14 reached a mutual agreement or understanding that they  
15 would attempt to accomplish the unlawful purpose of the  
16 conspiracy.

17           Whether one is a member of a conspiracy or not  
18 does not depend on the relative importance of his or  
19 her role in the conspiracy.

20           Each member of the conspiracy -- of a conspiracy  
21 may perform separate and distinct acts and may perform  
22 them at different times. Some conspirators may play  
23 major roles, and others may play minor parts in the  
24 scheme.

25           If a Defendant understands the unlawful nature

1 of a plan or scheme and knowingly participates or  
2 becomes a member of the conspiracy and willfully  
3 assists in the attempt to accomplish the purpose, that  
4 Defendant may be a member of a conspiracy even though  
5 he or she played a relatively minor role.

6 In order to establish that a Defendant is guilty  
7 of conspiracy, again, there are two types of intent  
8 that the Government must prove. It's a little  
9 different from the intent that they must prove to show  
10 a scheme to defraud, but nevertheless there are two  
11 types of intent that the Government must show.

12 First, it must prove that the Defendant had an  
13 intent to agree in some way; and second, it must prove  
14 that the Defendant intended that the crime that was the  
15 object of the alleged conspiracy, in this case mail  
16 fraud, would be committed.

17 Now, I told you that the Government has to show  
18 that the Defendant joined the conspiracy knowingly, and  
19 I've already explained to you what that term means. In  
20 this context, it means that the Defendant must have  
21 joined with an awareness of the purpose of the  
22 conspiracy.

23 In order to establish that a Defendant joined  
24 the conspiracy willfully, it must be shown that the  
25 Defendant joined or participated with the intent to

1 advance or further the unlawful objectives of the  
2 conspiracy.

3 So the Government must prove that the Defendant  
4 knew that the conspiracy exists and knew of its  
5 unlawful purpose and willfully joined the conspiracy  
6 knowing those things. Again, the Government doesn't  
7 have to prove that the Defendant knew all of the  
8 details of the conspiracy.

9 Someone can be a member of a conspiracy even  
10 though he or she does not know all of the steps that  
11 are planned to be taken in order to accomplish the  
12 purpose of the conspiracy.

13 Mere knowledge that a conspiracy exists is not  
14 by itself sufficient to establish guilt. There must be  
15 proof that the Defendant was a member of the  
16 conspiracy. In other words, again, the Defendant must  
17 be a participant and not simply a spectator with  
18 respect to the conspiracy.

19 And, as I said before, whether a Defendant acts  
20 with knowledge or intent may be inferred from the  
21 evidence that's been presented in the case; but, again,  
22 it has to be proven beyond a reasonable doubt.

23 I mentioned that one of the things that must be  
24 shown is that an overt act was committed in furtherance  
25 of the conspiracy by one of the members. An overt act

1 is some form of conduct engaged in while a conspiracy  
2 was in existence that evidences the unlawful agreement.

3 The Government is not required to prove, as I  
4 said, that all of the overt acts alleged in the  
5 Indictment were committed; but it is required to prove  
6 that at least one overt act alleged in the Indictment  
7 was committed in furtherance of the conspiracy.

8 If a conspiracy existed, it doesn't matter which  
9 conspirator or conspirators committed the overt act or  
10 acts because the act of one conspirator is considered  
11 to be the acts of all members of the conspiracy, at  
12 least to the extent that it's engaged in in furtherance  
13 of the conspiracy.

14 Another point you should keep in mind is that  
15 the overt act itself doesn't have to be illegal. A  
16 legal act that is performed in furtherance of the  
17 conspiracy is an overt act that is committed in  
18 furtherance of the conspiracy. The overt act does not  
19 have to be itself illegal.

20 Now, you'll remember I told you earlier about  
21 aiding and abetting, and you probably have recognized  
22 already that there's a difference between aiding and  
23 abetting on the one hand and conspiracy on the other  
24 hand, and you shouldn't confuse the two.

25 They're similar in some respects, but they are

1 distinct in one principal respect; and that is that, as  
2 I told you earlier, proof of aiding and abetting, proof  
3 that a Defendant is guilty of aiding and abetting  
4 requires proof that the crime in question was committed  
5 because you cannot be guilty of aiding and abetting in  
6 the commission of a crime unless the crime was  
7 committed.

8 On the other hand, conspiracy, proof that the  
9 Defendant is guilty of conspiracy, does not require  
10 proof that the unlawful act that was the object of the  
11 conspiracy was committed because it's the agreement,  
12 the agreement to commit an unlawful act, that is the  
13 essence of the offense. So one can be guilty of  
14 conspiracy even though the unlawful act was never  
15 committed.

16 All right. I've now explained to you, I hope,  
17 the law that applies to the offenses charged, the  
18 offense of mail fraud, the offense of aiding and  
19 abetting in the commission of mail fraud and the  
20 offense of conspiracy to commit mail fraud. And, of  
21 course, in this case the scheme to defraud that is part  
22 of the mail fraud charge is a scheme to deprive the  
23 citizens of Senator Celona's honest services.

24 So I've explained to you the law that applies to  
25 those three types of offenses, and in order for the

1 Government to prove a Defendant -- and I've also  
2 explained to you the elements that have to be proven in  
3 order to convict a Defendant of each or any of those  
4 offenses.

5 And in order to convict a Defendant of those  
6 offenses, the Government has to prove each and every  
7 one of the elements applicable to that offense beyond a  
8 reasonable doubt.

9 If the Government fails to prove any one of the  
10 elements applicable to a particular offense beyond a  
11 reasonable doubt, then you should find -- you must find  
12 the Defendant not guilty of that offense.

13 On the other hand, if you are satisfied that the  
14 Government has proven each and every element of a  
15 particular offense beyond a reasonable doubt, then you  
16 should find the Defendant guilty of that offense.

17 Now, what does it mean to prove something beyond  
18 a reasonable doubt. I've told you that that's the  
19 Government's obligation. It must prove a Defendant  
20 guilty of an offense beyond a reasonable doubt.

21 Well, that doesn't mean that the Government has  
22 to prove a Defendant guilty beyond any conceivable  
23 shadow of a doubt. What it means is that the  
24 Government must prove a Defendant guilty beyond a  
25 reasonable doubt.

1           I cannot give you a very concise or compelling  
2 definition of what is a reasonable doubt or what  
3 constitutes proving something beyond a reasonable  
4 doubt.

5           About all I can tell you is that a reasonable  
6 doubt is a doubt based on reason and common sense, and  
7 it may arise from the evidence that has been presented  
8 or from a lack of evidence.

9           I can't define it any better than that. It's up  
10 to you to decide whether the Government has proven the  
11 things that it's required to prove beyond a reasonable  
12 doubt.

13           You'll have the Indictment with you in the jury  
14 room to help you remember the precise nature of the  
15 charges against the Defendants and what the alleged  
16 overt acts are. And the Indictment in this case is  
17 very lengthy, and it contains numerous allegations.

18           And I remind you, once again, that the  
19 Indictment is not evidence of any kind. The Indictment  
20 doesn't prove or tend to prove anything. What the  
21 Indictment tells you is what the charges are and what  
22 the Government is alleging, and it's up to you to  
23 decide based on the evidence whether those -- whether  
24 any one or more of the Defendants is guilty of any one  
25 or more of the charges beyond a reasonable doubt.

Karen M. Wischnowsky, RPR-RMR-CRR

1           I've also previously told you that when the  
2 trial begins, a Defendant is presumed to be not guilty  
3 and that presumption remains with the Defendant unless  
4 and until the Government presents evidence that  
5 satisfies you beyond a reasonable doubt that the  
6 Defendant is guilty.

7           And if the Government fails to present such  
8 evidence, then the presumption of innocence is  
9 sufficient to require that the Defendant be acquitted  
10 of the charge.

11           But, as I have also indicated earlier, if the  
12 Government does present evidence that satisfies you  
13 beyond a reasonable doubt that the Defendant is guilty,  
14 the presumption of innocence vanishes and has no  
15 further effect.

16           I also remind you that a Defendant has no  
17 obligation to take the witness stand and testify or to  
18 present any evidence. It's up to the Government to  
19 prove the Defendant is guilty, not up to the Defendant  
20 to prove that he or she is not guilty.

21           And in this case, as you know, the Defendants  
22 chose not to testify, not to take the stand and  
23 testify. And you should not, as I previously said,  
24 infer anything from that or penalize them for it. You  
25 shouldn't draw any inferences against the Defendant



1 because the Defendant chose not to testify.

2 What you must do is to look at the evidence that  
3 was presented and to determine whether that evidence  
4 satisfies you that the Defendant has been proven guilty  
5 beyond a reasonable doubt.

6 Now you know what it is the Government has to  
7 prove with respect to the various charges, and you know  
8 generally what the burden of proof is. It's the burden  
9 of proving it beyond a reasonable doubt.

10 The next question is, how do you go about  
11 deciding whether the Government has proven these things  
12 beyond a reasonable doubt. Well, obviously you have to  
13 make your decision based on the evidence that has been  
14 presented during the trial and not on anything else,  
15 not on the lawyers' statements, not on anything other  
16 than the evidence that's been presented during the  
17 course of the trial.

18 And the evidence came from two principal  
19 sources, the witnesses who took the stand and answered  
20 questions under oath, the exhibits, the various  
21 documents that have been admitted into evidence, and  
22 there was one video, what do you call those, DVDs, one  
23 video that was introduced. Those will be with you.  
24 You can examine those, also, as part of the evidence.

25 Now, as to the testimony of the witnesses, your

1 principal job is to determine the credibility of each  
2 one, how much weight that witness's testimony deserves.  
3 And in making that determination, there are a number of  
4 factors that you ought to consider.

5 One is the opportunity or lack of opportunity  
6 the witness may have had to have observed the things  
7 that the witness told you about. In other words, was  
8 the witness in a good position to have seen or heard  
9 the things that the witness told you.

10 The second factor is the reliability or  
11 unreliability of the witness's memory. Even if the  
12 witness was in a good position to have seen or heard  
13 the things that the witness testified about, did it  
14 seem to you that the witness had a clear and reliable  
15 recollection of what it is the witness claims to have  
16 seen or heard or did it seem to you that the witness's  
17 memory was a little faulty.

18 The third factor is the witness's appearance on  
19 the stand. One reason that we generally require that  
20 witnesses come in personally to tell you what it is  
21 they claim to have seen or heard rather than having  
22 somebody else tell you what a person that you've never  
23 seen and the lawyers have not had a chance to question  
24 told them is that we want you to have the chance to  
25 size up the person who's the source of the information.

1           And you can make some determinations based on  
2 your observation of the person when they testify how  
3 much weight that person's testimony deserves. Does it  
4 appear to you that that person is someone that should  
5 be believed or not.

6           Another factor is the probability or  
7 improbability of the witness's testimony. Just because  
8 a witness takes the stand and says something and no one  
9 directly contradicts the witness doesn't mean that you  
10 have to accept that witness's testimony at face value.

11           If what the witness says seems to you to be  
12 improbable or impossible or that the witness was  
13 mistaken, you don't have to accept the witness's  
14 testimony. You can reject the witness's testimony if  
15 it's just totally unbelievable, even though no one  
16 directly contradicts it.

17           And another factor that you can consider is  
18 whether the witness had anything to gain or lose from  
19 his or her testimony or from the outcome of the case.

20           Now, of course that doesn't mean that just  
21 because someone may have something to gain or lose that  
22 you should automatically disregard or discount the  
23 witness's testimony, but it's something you can take  
24 into account in determining how much weight to give to  
25 a witness's testimony.

1           A witness can be discredited or impeached by  
2           showing that on some previous occasion the witness said  
3           something that was significantly different from what  
4           the witness testified to, and you'll recall there were  
5           times during the trial when the lawyers tried to show  
6           that a particular witness did or didn't say something  
7           previous that was significantly different from what the  
8           witness said on the stand.

9           It's up to you to decide, first of all, whether  
10          you think that a witness said something on a previous  
11          occasion that was materially or significantly different  
12          from the witness's testimony and, if so, to what  
13          extent, if any, the witness's testimony should be  
14          discounted because of that. That's entirely up to you.

15          You've heard testimony from John Celona, a  
16          witness who pled guilty to charges against him arising  
17          out of various incidents that are referred to or that  
18          are related to this case.

19          You may not consider that guilty plea as  
20          evidence of any kind against these Defendants. The  
21          guilt or innocence of a Defendant who is on trial must  
22          be determined from the evidence or lack of evidence  
23          against that Defendant and not on whether someone else  
24          has admitted that he or she was guilty of the same or  
25          similar crimes, but you may consider the guilty plea of

1 Mr. Celona in deciding how much weight to give to his  
2 testimony.

3 The fact that a witness has pled guilty to a  
4 crime, as I said before, doesn't necessarily mean that  
5 you must disbelieve the witness or discount the  
6 witness's testimony; but it's a factor that you're  
7 entitled to consider in assessing the witness's  
8 credibility.

9 Also, because Mr. Celona has not yet been  
10 sentenced, you should scrutinize his testimony  
11 carefully. More specifically, you should decide  
12 whether his testimony was influenced by some desire to  
13 further his own interests by falsely blaming these  
14 Defendants.

15 For example, you may ask yourselves whether  
16 Mr. Celona testified untruthfully in the hope of  
17 obtaining more favorable treatment by the Government or  
18 more lenient treatment with respect to his sentence,  
19 whether that's so or not. Again, that's entirely up to  
20 you to decide.

21 In this connection, I remind you that I am the  
22 one who will determine Mr. Celona's sentence for the  
23 offense to which he has pled guilty. There are  
24 guidelines established by the law which establish a  
25 range within the sentence that -- for a sentence that

1 ordinarily should be imposed for the commission of any  
2 particular offense, and the law recognizes a number of  
3 reasons why a lesser sentence might be appropriate or  
4 imposed in a particular case.

5 One such reason, as you've heard, is when a  
6 Defendant cooperates or assists the Government by  
7 providing evidence that may be used in the prosecution  
8 of other individuals.

9 Only the Government can recommend a lesser  
10 sentence for that reason, but it's up to the Court  
11 alone to determine Mr. Celona's sentence. And the  
12 Court is free to accept or reject any recommendation  
13 that the Government may make, and the Court is also  
14 free to impose a sentence that is above or below the  
15 guideline range if the Court finds that there are  
16 sufficient reasons for imposing a sentence outside of  
17 that range.

18 In evaluating the testimonial evidence, the  
19 testimony of witnesses, keep in mind that it's not the  
20 number of witnesses who testify on any side of a  
21 particular issue that should govern your determination;  
22 but, rather, it's the quality of the testimony or the  
23 weight of the testimony.

24 So just because one witness may testify that a  
25 particular thing is so or not so and three or four

1 witnesses may testify to the contrary doesn't  
2 necessarily mean that you should accept the version of  
3 the three or four witnesses. If you find that the one  
4 witness is a very credible witness and the three or  
5 four witnesses are not so credible, you may accept the  
6 version of the facts given by the single witness.

7           The exhibits, I've told you, you will have with  
8 you in the jury room to examine to whatever extent you  
9 wish; but bear in mind that simply because something  
10 has been admitted into evidence as an exhibit doesn't  
11 mean that you have to accept everything in it at face  
12 value any more than you have to accept the testimony of  
13 any witness at face value.

14           The exhibits, like the testimony of the  
15 witnesses, are tools to be used by you in finding the  
16 facts, and they ought to be considered in the context  
17 of all of the evidence that's been presented.

18           You may recall that there were a few instances  
19 during the trial where evidence was admitted, I allowed  
20 the testimony of a witness, but I told you that you  
21 should -- you could only consider it for a limited  
22 purpose. Usually it was testimony that I said you  
23 could consider for purposes of determining whether the  
24 individual in question said those things but not for  
25 the purpose of determining whether the things that that

1 individual said were true.

2           And the reason for that is that the individual  
3 making the statement was not here subject to  
4 cross-examination, and you couldn't size them up. So  
5 that's why I told you that you could only consider that  
6 evidence for the limited purpose. So keep that in mind  
7 also when you deliberate.

8           Now, I've told you that you can only consider  
9 the -- in making your decision, you can only consider  
10 the evidence that is properly before you, but that does  
11 not mean that you're limited to the statements of the  
12 witnesses or the contents of the exhibits in making  
13 your decision, or I should say you're not strictly  
14 limited to these things in finding the facts.

15           In reaching your conclusions, you are permitted  
16 to draw from the facts that have been proven reasonable  
17 inferences as to additional -- as to the existence or  
18 nonexistence of any additional facts.

19           And the process of proving something by  
20 establishing facts from which one may infer the  
21 existence or nonexistence of another fact is called  
22 proving something by circumstantial evidence. I'm sure  
23 you've heard that term before, circumstantial evidence.

24           To put it another way, any fact that has to be  
25 proven in a case can be proven either by direct



1 evidence, that is to say the testimony of a person who  
2 claims to have observed that particular fact, or an  
3 exhibit that may show the thing itself, or it may be  
4 proven by circumstantial evidence, which means proving  
5 two or more facts from which the existence of a third  
6 fact may be reasonably inferred.

7 Now, it's pretty hard to explain that in words,  
8 so I'm going to give you an example of what I mean by  
9 proof by circumstantial evidence. If on some winter  
10 night before you go to bed you look out the window and  
11 the ground is bare, the next morning you wake up and  
12 there's a foot of snow on the ground, if someone asks  
13 you whether it snowed last night, your answer would  
14 surely be yes.

15 If you had to come into court and prove it  
16 snowed last night, how would you go about doing that?  
17 Well, if you could find someone that was awake and  
18 looking out the window when the snowflakes were  
19 falling, you could call that person as a witness and  
20 they could testify that they actually saw the  
21 snowflakes falling from the sky. That would be proof  
22 that it snowed by direct evidence, the direct  
23 observation of someone who witnessed the snowflakes  
24 falling.

25 If you couldn't find someone who was awake then,

1 you could testify from your own observation as to two  
2 facts. Before you went to bed, the ground was bare,  
3 and when you woke up in the morning, there was a foot  
4 of snow on the ground. You could prove those two  
5 things by direct evidence, your direct observation.  
6 And from those two facts, it would be perfectly  
7 reasonable to infer that it snowed last night.

8 That would be an example of proving that it  
9 snowed by circumstantial evidence, the proof of two  
10 facts from which the existence of a third fact may be  
11 inferred.

12 Now, I need to caution you that there's a  
13 difference between proving something by circumstantial  
14 evidence and guessing or speculating. In order to  
15 prove something by circumstantial evidence, there are  
16 two requirements. Number one, the facts, the  
17 underlying facts on which the inference is drawn must  
18 have been proven by direct evidence. There must be  
19 evidence of the underlying facts. And the second thing  
20 is, the inference that is drawn must be a reasonable  
21 inference.

22 So in my example, if someone asked you whether  
23 it was going to snow next Monday night, it would not be  
24 reasonable to infer from those two facts that it was  
25 going to snow next Monday night.

1           And the law recognizes proof either by direct  
2 evidence or by circumstantial evidence; but keep in  
3 mind that in order to prove any fact necessary to  
4 convict a Defendant of a crime, the proof must be  
5 beyond a reasonable doubt. Whether it's by direct  
6 evidence or by circumstantial evidence, it must be  
7 proof beyond a reasonable doubt.

8           Now, during this trial, there have been times  
9 when the attorneys have objected to questions asked by  
10 the other attorney or evidence offered by the other  
11 attorney, and I think I said earlier that the fact that  
12 an attorney objects should not influence the weight you  
13 give to evidence if I admitted it.

14           If I admitted the evidence, it doesn't matter  
15 whether the attorney objected or not. You should  
16 consider that evidence for whatever value you think it  
17 has. And the other point I should make is that you  
18 shouldn't penalize the attorneys or the attorney's  
19 client because an attorney may have objected to  
20 evidence.

21           The attorney has a right, an obligation to  
22 object to evidence that the attorney believes does not  
23 meet the requirements of the rules of evidence, and you  
24 shouldn't hold it against the attorney or the  
25 attorney's client if the attorney objected.

1           As you know, this case is brought in the name of  
2           the United States of America, but that doesn't mean  
3           that the prosecution is entitled to any greater  
4           consideration from you than the Defendants.

5           Every party who comes into this court comes in  
6           here as an equal and is entitled to the same  
7           consideration from you no matter who they are.

8           I hope that it goes without saying that neither  
9           bias in favor of any person or group or cause or  
10          prejudice against any person or group or cause or  
11          sympathy of any kind should play any role whatsoever in  
12          your deliberations.

13          Your job is to look at the evidence objectively,  
14          to determine from the evidence what the facts are and  
15          to apply those facts to the law as I have explained it  
16          to you or apply the law as I've explained it to you to  
17          those facts, and that's all that either side in this  
18          case is entitled to or has a right to expect.

19          I'm going to ask the lawyers to come over here  
20          to the sidebar and tell me whether they think I have  
21          forgotten to tell you something I should have told you  
22          or misstated anything that I did tell you. Please bear  
23          with us.

24                   (Bench conference held on the record)

25           THE COURT: Does the Government have any

Karen M. Wischnowsky, RPR-RMR-CRR

1 objections to the charge?

2 MR. MATOS: No, your Honor.

3 THE COURT: Does Mr. Urciuoli have any  
4 objections?

5 MR. CONNOLLY: Yes, your Honor. I'll try to go  
6 through these quickly. I apologize. First we object  
7 to the fact that the Court declined to give the  
8 requested good faith instruction.

9 Secondly, we object to the fact that the Court  
10 declined to give the instruction that we submitted that  
11 defined a legislative action, in other words, that  
12 defined a scheme to defraud to only be one that could  
13 support a conviction if it related to the legislative  
14 action engaged in by the senator.

15 And there are follow-up objections that I want  
16 to make in relation to how that issue was dealt with by  
17 the Court.

18 Before I get to that, let me just articulate the  
19 fact that the Court also declined to give our  
20 instruction relating to Section 7(b) of the Rhode  
21 Island ethics code which defined that under Rhode  
22 Island law, the law acknowledges permissible conflicts  
23 of interest.

24 And in our judgment, it was important for the  
25 jury to hear that because the -- Senator Celona could

1 confer with the Defendants in this case about issues  
2 where he had a conflict which the law allowed.

3 The Court stated that a scheme to defraud would  
4 include a deprivation of the citizens' right to honest  
5 services because he was not acting in an independent  
6 fashion. A different way of saying that is that the  
7 senator was acting with bias or favoritism.

8 We object to that instruction because, under the  
9 Sawyer case, the First Circuit expressly acknowledged  
10 that bias or favoritism is not a basis for an honest  
11 services mail fraud conviction.

12 The Court also stated that an honest services  
13 mail fraud conviction is not limited to simply voting  
14 on legislation but also may be based on  
15 behind-the-scenes conduct where the -- and where the  
16 senator acts under the cloak of his office.

17 We assert the same objection there, and we cite  
18 to the Rabbitt and the Bloom cases which are cited in  
19 our motion to dismiss as cases where legislators or  
20 officials have acted under the cloak of their office  
21 but have not corrupted or impacted the legislative  
22 process.

23 And because the Court -- in our opinion, the  
24 Court's instruction would allow for a conviction for  
25 such conduct, that the instructions were erroneous.

1           We also believe the Court erred in charging that  
2           there can be a violation of the honest services mail  
3           fraud doctrine even if there was no violation of the  
4           state ethics code.

5           In this case, if Senator Celona and the  
6           Defendants' conduct complied with the ethics code, we  
7           believe that the citizens of Rhode Island were not  
8           deprived of anything to which they were entitled to  
9           under the law.

10           The Court also instructed the jury that what was  
11           wrong here was to make payment to act in an official  
12           capacity in a way that benefits the payer as opposed to  
13           the public.

14           We recognize that the honest services mail fraud  
15           doctrine can be violated where there is a quid pro quo,  
16           but we don't believe that the Court sufficiently  
17           spelled out the quid pro quo requirement here because  
18           in this case it's undisputed that the senator was being  
19           paid and the senator may have chosen to act in a way  
20           that favored the Defendant, but that may have been done  
21           within the parameters of Rhode Island law and,  
22           therefore, would not constitute a violation of the  
23           honest services mail fraud doctrine.

24           The Court referenced the scheme to defraud to  
25           involve his -- Senator Celona's relationship to Village

1 Retirement Communities. I don't believe that's alleged  
2 in the Indictment, and I don't believe that that's part  
3 of the Government's theory.

4 The Court, in addressing the issue of specific  
5 intent to defraud, the Court said that the jury should  
6 not convict if it found that the Defendant truly  
7 believed he was complying with the law.

8 We believe that that changes the burden of proof  
9 and makes it a taller burden than is required under the  
10 intent instruction which we submitted to the Court.

11 Those are our objections, your Honor.

12 THE COURT: Okay. Ms. Driscoll?

13 MR. BRISTOW: Judge, I have, as you know, joined  
14 Mr. Urciuoli as it relates to his proposed instructions  
15 and his request for charge. I'm going to join in the  
16 exceptions he's raised, and I will not reiterate them.  
17 With your permission, I'd like to do that.

18 THE COURT: Mr. Pappalardo.

19 MR. PAPPALARDO: Your Honor, I also will join in  
20 those raised by Mr. Urciuoli; but let me amplify, if I  
21 may, in your instruction to the jury, most  
22 respectfully, your Honor, particularly with respect to  
23 point two of the mail fraud, you said that the scheme  
24 to influence involves the Village Retirement  
25 Communities and its affiliates.



1           Your Honor, that's simply not the case. The  
2           Indictment mentions Village Retirement Communities only  
3           on the first page. Everything else -- and that is a  
4           reference to describing the relationship of  
5           Mr. Sangermano.

6           The rest of the Indictment, your Honor, is  
7           governed by paragraph 5, which says the Village at  
8           Elmhurst or the Village, and Village Retirement  
9           Communities does not appear in this Indictment in any  
10          other place.

11          And furthermore, your Honor, it's the Village.  
12          There are no affiliates. It's just the Village. So  
13          that when you say to this jury that the scheme to  
14          influence must impact the Village Retirement  
15          Communities and its affiliates, I believe, your Honor,  
16          it's also -- first of all, it's factually incorrect;  
17          but second of all, it's misleading because we have  
18          argued, and I believe very properly so, that this  
19          Indictment cannot extend to the Village at Elmhurst,  
20          which is part of the Village Retirement Communities.  
21          And your Honor has heard us on that point before.

22                 THE COURT: Let me just hear what -- are you  
23                 finished with that point?

24                 MR. PAPPALARDO: I am, your Honor.

25                 THE COURT: I want to hear what Mr. Matos has to

1 say in response to that.

2 MR. MATOS: I believe, your Honor, that the  
3 Indictment alleged both Roger Williams Medical Center  
4 and its affiliates, your Honor.

5 THE COURT: Your point is the Village Retirement  
6 Communities?

7 MR. PAPPALARDO: The Village Retirement  
8 Communities, your Honor, is not an affiliate of Roger  
9 Williams Medical Center. It's only the Village at  
10 Elmhurst.

11 THE COURT: What are you asking me to tell the  
12 jury to correct this?

13 MR. PAPPALARDO: I'm asking you, your Honor, in  
14 your instruction on mail fraud, you indicated that they  
15 could be found guilty of mail fraud if they find that  
16 there was a scheme to influence the Village Retirement  
17 Communities and its affiliates, also in the conspiracy  
18 count.

19 What I believe your Honor should have said was  
20 the Village at Elmhurst, period.

21 THE COURT: What is it you'd like me to say to  
22 the jury to correct that?

23 MR. PAPPALARDO: I'd like you to take back what  
24 you said and then say that it only applies to the  
25 Village at Elmhurst, period, in your description of the

1 elements of both mail fraud and conspiracy, because,  
2 your Honor, it's not in the Indictment.

3 THE COURT: What do you mean -- be a little more  
4 specific so that I can know what it is you'd like me to  
5 say to correct this.

6 MR. GEORGOPOULOS: May I speak to you briefly,  
7 your Honor? When your Honor instructed the jury as to  
8 the objects of I believe either conspiracy -- principal  
9 objects of the conspiracy, the reference to RWMC and  
10 its affiliates was supplemented with a reference to  
11 Village Retirement Communities and its affiliates. And  
12 that took place again, I believe, in the context of the  
13 scheme on the substantive counts.

14 Your Honor, I think we respectfully request a  
15 clarifying statement to the jury that the Court had  
16 misspoken and that the objects of both the conspiracy  
17 and the underlying scheme related to the Roger Williams  
18 Medical Center and its affiliates, not Village  
19 Retirement Communities, and its inclusion should be --  
20 inclusion of it in prior instructions should be  
21 disregarded.

22 MR. MATOS: That's fine.

23 THE COURT: All right.

24 MR. GEORGOPOULOS: Thank you, your Honor.

25 (End of bench conference)

1           THE COURT: All right, ladies and gentlemen.  
2           The only thing that was called to my attention was that  
3           in describing to you the objectives of the scheme to  
4           defraud and the conspiracy, I said that one of the  
5           objectives was to benefit Roger Williams Medical Center  
6           and its affiliates and the Village Retirement  
7           Communities and its affiliates.

8           I should not have referred to the Village  
9           Retirement Communities and its affiliates. The mail  
10          fraud, the alleged mail fraud scheme and the conspiracy  
11          to commit mail fraud were -- the objectives of each, I  
12          should have said, were only to benefit Roger Williams  
13          Medical Center and its affiliates. So I stand  
14          corrected on that.

15          Now, we've had six very faithful and attentive  
16          alternates in this case, and your job was to be  
17          prepared to fill in if one of the regular jurors could  
18          not continue; and fortunately, all regular jurors are  
19          able to continue. I want to thank you very much for  
20          your service.

21          You never know, when you're an alternate, when  
22          you may be called upon. It's very difficult for an  
23          alternate, I guess, to pay attention because you think,  
24          well, maybe I won't be deliberating in this case. But  
25          just like a back-up quarterback, you never know when

1 you're going to be pressed into service, and I want to  
2 thank you for your attention.

3 So at this point you are excused, but I want to  
4 caution you that you still shouldn't obtain any  
5 information about this case or communicate with any of  
6 the other jurors until the case is over because there's  
7 a very remote possibility that you may -- one of you  
8 may be pressed back into service, if necessary.

9 So maintain your pristine minds until you hear  
10 that the case is over and the jurors have reached a  
11 verdict, but thank you very much. You're excused at  
12 this time. Thank you.

13 (Alternate jurors excused)

14 THE COURT: As to you remaining ladies and  
15 gentlemen, in order for you to reach a verdict in this  
16 case, all 12 of you must agree as to what that verdict  
17 should be. You cannot return a verdict of guilty or  
18 not guilty on any of the counts with respect to any of  
19 the Defendants unless you are unanimous as to what the  
20 verdict should be.

21 Now, when you go into the jury room, there are  
22 two things that you should keep in mind. The first is  
23 that you should approach the deliberations with an open  
24 mind, and you should be -- list en to what the other  
25 jurors have to say if they disagree with you, and you

1 should be humble enough to change your mind if, after  
2 listening, you become convinced that you were wrong and  
3 they were correct.

4 On the other hand, you should also bear in mind  
5 that each of you has an independent responsibility to  
6 vote for the verdict that you believe is the correct  
7 verdict based upon the evidence as you see it and the  
8 law as I've explained it to you. And you should have  
9 the courage to stick to your convictions even if other  
10 jurors disagree with you, even if all the other jurors  
11 should disagree with you, if after listening with an  
12 open mind you remain convinced that you were correct  
13 and they are incorrect.

14 Now, I know those two things seem to be in  
15 conflict, and I suppose that they are; but my  
16 experience over the years is that jurors are generally  
17 able to reach unanimous verdicts without doing violence  
18 to either of those principles, and I'm confident you  
19 will, too. But if you can't, we'll cross that bridge  
20 when we get to it.

21 When you go into the jury room, the first thing  
22 you should do is select a foreman or forelady. And  
23 that person's responsibility will be to moderate your  
24 deliberations, make sure they're conducted in an  
25 orderly fashion and everybody has a chance to speak, a

1 fair chance to speak.

2 The foreman or forelady also will have the  
3 responsibility of completing the verdict form, which  
4 will go into the jury room with you. So it's simply a  
5 matter of checking the appropriate box and signing the  
6 form and bringing the form back into the courtroom when  
7 the jury has reached a verdict.

8 The third thing that the foreman or forelady may  
9 be called upon to do, or may not be, is, if it's  
10 necessary for you to communicate with me for any  
11 reason, if there's anything I can do to help you, the  
12 communication should be in the form of a brief note.  
13 Just tell me what it is your question or problem is.

14 Don't tell us what the status of the  
15 deliberations are, whether you're 8 to 4 one way or  
16 another way. Just tell me what the issue or problem  
17 is, give it to the security officer who will be outside  
18 of your door, he'll give it to me, I'll discuss it with  
19 the lawyers, and I will try to respond as promptly and  
20 helpfully as I properly can.

21 And I emphasize the word "properly" because  
22 there are some things that I cannot properly do to  
23 assist you. I told you that you are the sole judges of  
24 the facts. I can't help you in deciding what the facts  
25 are. That's something that you have to do for

Karen M. Wischnowsky, RPR-RMR-CRR

1 yourselves.

2 I'm not suggesting that I expect that you'll  
3 have any questions or problems; but I'm just telling  
4 you that if you do, I will try to help you as much as I  
5 can.

6 In the jury room, you'll have a tape recording  
7 of my charge. I know that there was a lot there, that  
8 some of it may be difficult to remember. You can play  
9 the charge back if you need to; but remember what I  
10 said earlier, that you need to consider the charge as a  
11 whole. Don't pick out particular pieces of it and  
12 forget about the rest of it. You will also have the  
13 exhibits with you.

14 As far as your schedule is concerned, it can  
15 be -- your schedule is pretty much whatever you want it  
16 to be. We're almost at the end of our usual day now;  
17 but I think I may have mentioned to you, maybe I  
18 didn't, that one of you, unfortunately, has had a death  
19 in the family, and we're going to take tomorrow off to  
20 allow that person to attend the funeral.

21 So you may want to stay a little later today if  
22 you think you could reach a verdict today. That's up  
23 to you, but your hours are whatever you want them to  
24 be. The only caveat is, if you want to stay later, you  
25 need to tell me a little bit in advance so that I can



1 make arrangements to see that the building is staffed  
2 during that time.

3 So first thing, pick out a foreman or forelady.  
4 Second thing, I guess, is decide whether you want to  
5 stay late or whether you want to go home and come back  
6 on Wednesday.

7 Is there anything further before the jury is  
8 sent out?

9 MR. MATOS: No, your Honor.

10 MR. BRISTOW: Nothing, your Honor.

11 THE COURT: I'll ask the security officer to  
12 come forward, and the clerk will administer the oath.

13 (Court security officer sworn)

14 THE COURT: Ladies and gentlemen, this case is  
15 now in your hands. You may return to the jury room and  
16 begin your deliberations.

17

18

19

20

21

22

23

24

25