

1 25 MAY 2007 -- JOHN RICCIO JURY CHARGE

2 All right. It's my responsibility to explain to
3 you what law applies in this case. And it's your duty to
4 apply the law, as I explain it to you, to the facts, as you
5 determine the facts to be. You're the judges of the facts.
6 I'm the judge of the law. And if we both do our jobs, you
7 will come up with a verdict that is fair and just and based
8 on the evidence and the law.

9 Now, the starting point is the indictment, and I'll
10 briefly summarize what the indictment says. The indictment
11 in this case charges the Defendant, John Riccio, with
12 knowingly and willfully making a materially false statement
13 on a document that he submitted to the Transportation Safety
14 Administration, in violation of a Federal Statute, which is
15 Section 1001 of Title 18 of the United States Code. I think
16 you heard one or two of the witnesses refer to 1001. That's
17 what they were talking about, the Statute under which Mr.
18 Riccio has been charged.

19 And I'll read to you the relevant portion of that
20 Statute. It says, "Whoever, in any matter within the
21 jurisdiction of the Executive Branch of the Government or
22 the United States, knowingly and willfully makes any
23 materially false, fictitious or fraudulent statement or
24 representation shall be guilty of an offense against the
25 United States."

1 Now, in order to establish that Mr. Riccio is
2 guilty of the offense charged in this indictment, the
3 Government has to prove four things, or what the law
4 sometimes refers to as elements, beyond a reasonable doubt:

5 First, the Government has to prove that Mr. Riccio
6 made the statement in question on a document submitted to
7 the Transportation Safety Administration.

8 Second, he has to show-- the Government has to show
9 that the statement was materially false.

10 Third, the Government has to prove that Mr. Riccio
11 knew that the statement was false at the time that he made
12 it.

13 And, fourth, the Government has to show that
14 Mr. Riccio made the statement voluntarily and intentionally.

15 Now, in this case, as you know, the document on
16 which Mr. Riccio is charged with making a false statement or
17 representation is an SF-86 questionnaire for national
18 security positions that was submitted to the Transportation
19 Safety Administration, which is part of the Executive Branch
20 of the United States Government.

21 The indictment alleges that the false statement
22 that-- or representation that Mr. Riccio made on this
23 document was that he had not been employed outside of his
24 home during the period between July of 2002 and July of
25 2004.

1 Now, let me try to define some of these terms for
2 you. Most of them, I'm sure you have a pretty good idea of
3 what they mean, but let me-- I don't want to leave this to
4 chance.

5 I told you that the Government has to prove that
6 Mr. Riccio made a false statement. A statement is false if
7 it was untrue at the time that it was made. I told you the
8 statement had to be materially false. A statement is
9 material if it has a natural tendency to influence or to be
10 capable of influencing the decision or the action of a
11 Government agency to which it is addressed.

12 The Government is not required to prove that the
13 agency actually was deceived by the statement or that the
14 statement actually caused the Government to make a decision
15 or to take action that otherwise it would not have.
16 However, the Government does have to prove that the
17 statement was one that naturally could have influenced the
18 agency's decision.

19 The Government has to prove that Mr. Riccio knew
20 that the statement in question was false at the time that he
21 made it. And the Government has to prove that, as I said,
22 the statement was made voluntarily and that he intended to
23 make the statement, in other words, that he didn't make the
24 statement by accident or mistake, that he intended to make
25 that statement and he knew the statement was false. A

1 person-- well, I guess that's pretty much it, as far as the
2 elements, the four things the Government has to prove.

3 And the Government has to prove each and every one
4 of those elements beyond a reasonable doubt. If the
5 Government, in your view, has failed to prove any one or
6 more of those elements beyond a reasonable doubt, then you
7 should return a verdict of not guilty.

8 On the other hand, if you're satisfied that the
9 Government has proven each one of those elements beyond a
10 reasonable doubt, then you should find the Defendant guilty.

11 Now, what do I mean by reasonable doubt? Well,
12 it's a pretty difficult term to define. I don't know as I
13 can be of much help to you. I can only tell you that the
14 Government's obligation to prove Mr. Riccio guilty beyond a
15 reasonable doubt doesn't mean that it has to prove him
16 guilty beyond any conceivable doubt or any shadow of a
17 doubt.

18 What it means is what it says, it has to prove him
19 guilty beyond a reasonable doubt. And you know what the
20 word reasonable means, and you know what a doubt is. And I
21 have to leave it to your good judgment to decide whether you
22 believe the Government has proven him guilty beyond a
23 reasonable doubt.

24 A reasonable doubt can arise from the evidence
25 that's been presented that may create a reasonable doubt, or

1 it can arise from a lack of evidence that may give rise to a
2 reasonable doubt. But that's something that you have to
3 decide for yourselves.

4 I've told you that Mr. Riccio is here because he
5 was indicted by a Federal grand jury. You'll have the
6 indictment with you in the jury room, but I remind you that
7 the indictment is not evidence of any kind in the case. The
8 only reason that it's being provided to you is that it can
9 help you remember exactly what it is Mr. Riccio is charged
10 with so that you can decide whether you believe the
11 Government has proven him guilty of that charge beyond a
12 reasonable doubt. But the indictment is not evidence. It
13 doesn't prove or disprove anything.

14 I've also told you that a defendant has a
15 presumption of innocence, which means that you should assume
16 that he's not guilty, unless and until the Government
17 presents evidence that satisfies you beyond a reasonable
18 doubt that he is guilty but that, once the Government does
19 present such evidence, the presumption of innocence
20 disappears.

21 I also told you that Mr. Riccio doesn't have any
22 obligation to prove that he's not guilty and, therefore, has
23 no obligation to testify. And, in this case, as you know,
24 he chose not to testify, which is his right. You shouldn't
25 consider that fact in any way in making your decision. Now,

1 whether he testified or didn't testify is totally irrelevant
2 to what you have to decide. You have to decide whether the
3 evidence that was presented shows him guilty beyond a
4 reasonable doubt. So you should attach no significance to
5 the fact that he exercised his right not to testify.

6 All right. I've told you what it is the Government
7 has to prove and the burden of proof beyond a reasonable
8 doubt standard.

9 Now, the next question is: How do you go about
10 determining whether the Government has proven these things
11 beyond a reasonable doubt? Well, you've got to base that
12 determination on the evidence that's been presented during
13 the course of the trial and on the exhibits that have been
14 admitted in to evidence and will go with you into the jury
15 room.

16 And you can't base your decision on anything that
17 is not evidence properly before you. During this trial,
18 you've heard a lot of comments from different people that--
19 statements by Mr. Chafee or statements by Mr. Riccio. I
20 told you before, those are not evidence. The evidence comes
21 from the witnesses and the exhibits.

22 So you need to disregard anything that either
23 Mr. Chafee or Mr. Riccio has said about facts. You should
24 listen to their arguments about what they think the
25 important evidence is or why you should return a verdict of

1 guilty or not guilty, but you shouldn't consider anything
2 that they've said as establishing or disproving any fact
3 relevant to your decision.

4 Now, as to the testimony of the witnesses, your
5 principal task is to determine the credibility of the
6 witnesses who testified and, therefore, how much weight you
7 should give to their testimony in deciding what the facts
8 are.

9 And, in assessing the credibility of a witness,
10 there are a number of factors that you can and should
11 consider. One of them is the opportunity that the witness
12 had to have accurately seen, heard, or otherwise known the
13 facts about which the witness testified. In other words,
14 was the witness in a good position to have seen, heard or
15 learned the facts that the witness related to you, or did it
16 appear to you that the witness really didn't-- wasn't in a
17 very good position to know these things?

18 A second factor is the reliability of the witness'
19 memory. Some of these events occurred some time ago, and a
20 witness may have been in a good position to have known these
21 things, but you have to also take into account whether you
22 think the witness had a clear memory of what it is the
23 witness may have seen or heard or whether you think the
24 witness' memory was deficient in some way.

25 A third factor is the witness' appearance on the

1 stand, and that's an important factor. One reason that we
2 require, generally, at least, witnesses to come in and
3 testify personally before you is that it gives you a chance
4 to size the witness up, and you can make some judgments
5 based on your observations as to how much weight you think
6 that witness' testimony deserves. Does this appear to be a
7 person who's candidly telling the truth, the whole truth and
8 nothing but the truth, or does it appear to you that this is
9 somebody who's shading things or maybe, for some reason,
10 doesn't seem to be a reliable witness?

11 Another factor is the probability or the
12 improbability of the witness' testimony. Just because a
13 witness takes the stand and testifies to a particular point
14 doesn't mean that you have to accept the witness' testimony,
15 even if nobody contradicts it.

16 You can assess the testimony and ask yourself, is
17 what the witness told you, does that sound like it's
18 probable or plausible or even possible? And if you find
19 that what the witness says just doesn't seem to be
20 plausible, you don't have to accept that testimony just
21 because nobody directly contradicted it.

22 Another factor you can take into account is whether
23 the witness seems to have any motive for fabricating or
24 maybe is influenced by some consideration, some interest in
25 the outcome of the case.

1 Now, several of the witnesses who testified were
2 Government agents or law enforcement officers, and that
3 shouldn't make any difference in your deliberations. You
4 shouldn't give their testimony any greater weight or any
5 lesser weight simply because they may be Government agents
6 or law enforcement officers. You should look at their
7 testimony in the same way as you would the testimony of any
8 other witness.

9 Keep in mind, too, that it isn't the number of
10 witnesses who testify on any particular side of an issue
11 that should govern but, rather, it's the quality or the
12 weight that you give to their testimony. So we may have two
13 or three witnesses who testify on one side of an issue, one
14 witness on the other side. You don't have to automatically
15 accept the version of the two to three witnesses. If you
16 think the one witness is a more credible witness, you can
17 accept that witness' version of the facts.

18 Now, you've heard evidence in this case about
19 statements that Mr. Riccio is said to have made to
20 Agent Davis about the SF-86 form when Agent Davis
21 interviewed him. It's up to you to decide whether-- whether
22 such a statement was made by Mr. Riccio and, if so, how much
23 weight you should give to it. And the amount of the
24 weight that you give to any statement that Mr. Riccio
25 may have made himself depends on your judgment as to whether

1 the statement was voluntary.

2 And, in determining whether Mr. Riccio made any
3 such statement voluntarily, you should look at the
4 circumstances under which the statement was made. You can
5 consider Mr. Riccio's age, his apparent-- his education, his
6 intelligence, whether he was subjected to any threats or
7 coercion and, from that, determine whether the statement--
8 any statement that you find he made was made voluntarily.

9 Now, in that connection, you've heard some
10 testimony about whether Mr. Riccio was given a Miranda
11 warning by Agent Davis before this statement was allegedly
12 made, and that really isn't much of a consideration for you,
13 and I'll explain why.

14 A Miranda warning, as you may know, is given by law
15 enforcement officials to an individual who is in custody,
16 and it tells that individual, first of all, that he's not
17 required to make a statement in response to any questions
18 that he may be asked, any statement that he makes could
19 later be used against him in court, that he has a right to
20 be represented by an attorney during the time he's
21 questioned, and if he can't afford an attorney, that an
22 attorney would be appointed for him without charge to him.

23 And the purpose of the Miranda warning is to help
24 ensure that any statement that an individual in custody
25 makes is voluntary. That's the whole idea behind it. It's

1 to prevent witnesses from being coerced into making
2 statements against their will by telling them that they
3 don't have to make a statement and that they can have an
4 attorney if they wish.

5 Now, you've also heard testimony that Agent Davis
6 gave Mr. Riccio what's called a Garity warning, which is in
7 evidence. I don't recall what exhibit number it is, but
8 you'll see it in evidence, and the Garity warning includes
9 what is normally referred to as a Miranda warning.

10 So you don't have to concern yourself with whether
11 a Miranda warning was given or whether a Garity warning is
12 equivalent to a Miranda warning. The issue for you to
13 decide is simply, at least with respect to the statement
14 that Agent Davis said was made to him by Mr. Riccio, the
15 issue for you to decide in connection with that statement is
16 simply whether that statement was voluntary or not, whether
17 Mr. Riccio made the statement voluntarily or whether he was
18 coerced or forced to make the statement.

19 You've also heard some testimony that Agent Davis
20 interviewed Mr. Riccio under the guise of investigating his
21 Worker's Compensation claim against TSA. And you should be
22 aware that effective law enforcement investigation sometimes
23 requires that investigators not reveal the subject matter of
24 the investigation to the person that they're investigating
25 and that, also, there may be occasions when the law

1 enforcement officers may have to conceal the real reasons
2 for the investigation and not tell the suspect what the
3 purpose is for which they're questioning them.

4 And there's nothing impermissible about that, as
5 long as whatever they say or tell the individual does not
6 amount to coercion, it doesn't amount to anything that
7 forces the individual to say something that the individual
8 doesn't want to say or is not true.

9 The second source of evidence is the exhibits. I
10 don't have much to say about the exhibits, other than that,
11 like the testimony of witnesses, they are simply tools to be
12 used by you in determining the facts in the case. They're
13 evidence, just like the statements of the witnesses, and you
14 ought to look at them in the same light as you do the
15 testimony of the witnesses. You should-- you can read them,
16 review them to your heart's content, and you ought to assess
17 their weight in light of all the evidence that's been
18 presented during the trial, just as you would the testimony
19 of any witness.

20 Now, I've told you that you can only consider
21 evidence that is properly before you in making your
22 decision. But that doesn't mean that you are strictly
23 limited to the testimony of the witnesses and the contents
24 of the exhibits.

25 In reaching your decision, you are permitted to

1 draw conclusions or inferences from the evidence that has
2 been presented, as long as they're reasonable. You're not
3 required to check your common sense at the door when you
4 serve on a jury. You can look at the evidence that's been
5 presented and use your common sense in drawing conclusions
6 from that evidence.

7 And inferences or conclusions that are reasonably
8 drawn from the evidence are sometimes referred to as part of
9 the process of proving something by circumstantial evidence.

10 Let me give you an example that I think can
11 illustrate a lot more clearly what I'm trying to tell you.
12 Suppose that on some winter night, before you go to bed, you
13 look out your window and the ground is bare. The next
14 morning, you wake up and there's a foot of snow on the
15 ground. If someone asked you whether it snowed last night,
16 you didn't actually see the snowflakes falling, but you
17 would probably answer, yes, it did.

18 If you had to come into court and prove that it
19 snowed last night, how would you go about doing it? Well,
20 there would be two ways you could do it. One way would be,
21 since you didn't actually see the snowflakes falling, you
22 might find someone who did, and that person could come in
23 and testify that he or she witnessed the snowflakes falling
24 from the sky. That would be an example of proving that it
25 snowed by direct evidence, the testimony of someone who

1 claims to have directly seen the snowflakes falling.

2 If you couldn't find somebody who was awake when
3 the snowflakes were falling, you could testify from your own
4 direct knowledge as to two facts: Fact one, that before you
5 went to bed, the ground was bare; fact two, that when you
6 woke up, there was a foot of snow on the ground. And from
7 those two facts, it would be perfectly reasonable to
8 conclude, or infer, that it snowed last night. That would
9 be an example of proving that it snowed by circumstantial
10 evidence; that is to say, proof by direct evidence of two
11 facts from which it is reasonable to conclude the existence
12 of the third fact.

13 Now, a word of caution. There's a big difference
14 between proof by circumstantial evidence and guessing or
15 speculating, and the difference primarily is that proof by
16 circumstantial evidence requires that the inference to be
17 drawn be based on facts that are established by the direct
18 evidence and, secondly, that the inference that is drawn
19 must be reasonable.

20 So, in my example, if someone asked you if it's
21 going to snow next Friday, it would not be reasonable to
22 infer whether it was or was not going to snow next Friday
23 from the fact that it snowed last night. So keep in mind
24 the difference between proof by circumstantial evidence and
25 guessing or speculating.

1 And I should also mention that the law doesn't make
2 any distinction between proving something by direct evidence
3 or proving something by circumstantial evidence. Either is
4 a permissible way of proving any fact. But the law does
5 require that, in a criminal case, any fact that must be
6 proven, whether it's proven by direct evidence or
7 circumstantial evidence, must be proven beyond a reasonable
8 doubt.

9 All right. I've told you it's up to you to decide
10 the facts in the case, you're the judges of the facts. I
11 don't decide the facts. And if, during the course of this
12 trial, I have said or done anything that has caused you to
13 conclude what you think my opinion may be on the facts, I'll
14 tell you right now that I have not intended to communicate
15 any such impression to you, and you shouldn't be concerned
16 with what you think I might think about the facts because
17 it's your job and your job alone to decide what the facts
18 are.

19 There have been quite a few objections during of
20 the course of the trial, and there are during many trials.
21 That shouldn't play a role in your decision either. Each
22 side has a right to object to any evidence that the other
23 side offers that they think is improper, and you shouldn't
24 penalize them for having objected.

25 And I'll remind you again that, if I overruled the

1 objection and the evidence was admitted, you shouldn't give
2 it any less weight simply because there was an objection.
3 If I admitted it into evidence, you can consider it for
4 whatever value you think it has, regardless of whether
5 somebody objected to it or not.

6 The-- as you know and will see from the indictment,
7 this case, like all criminal cases, is brought in the name
8 of the United States of America. But, again, that shouldn't
9 make any difference to you because both parties in this
10 case, any party that comes into this Court comes in on an
11 equal footing with every other party. It doesn't matter who
12 they are, and you shouldn't attach any significance to the
13 fact that this case has been brought by the United States.

14 I hope that it goes without saying that neither
15 bias in favor of any person or group or cause, or prejudice
16 against any person or group or cause, or sympathy of any
17 kind should play any role whatsoever in your deliberations.
18 Your job is very simply to look at the evidence objectively,
19 to determine from that evidence what the facts are, and to
20 apply to those facts the law, as I have attempted to explain
21 it to you. And that's all that either side in this case
22 expects or is entitled to.

23 All right. I'm going to ask the parties to
24 approach the sidebar for a moment to give them a chance to
25 tell me if they think I have forgotten to tell you something

1 I should have told you or misstated anything that I did tell
2 you.

3 (Discussion at sidebar)

4 MR. CHAFEE: No objection.

5 MR. RICCIO: No objection, Your Honor.
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