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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) Judge Wells
) Cleveland, Ohio
vs.)
) Criminal Action
JAMES A. TRAFICANT, JR.,) Number 4:01CR207
)
Defendant.)

- - - - -
TRANSCRIPT OF PROCEEDINGS HAD BEFORE
THE HONORABLE LESLEY WELLS
JUDGE OF SAID COURT,
ON TUESDAY, MARCH 26, 2002
Jury Trial
Volume 26
- - - - -

APPEARANCES:
For the Government: CRAIG S. MORFORD,
BERNARD SMITH,
MATTHEW KALL,
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U.S. District Court - Room 539
201 Superior Avenue
Cleveland, Ohio 44114-1201
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Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

1 Tuesday Session, March 26, 2002, at 9:00 A.M.

2 (Proceedings in the absence of the jury:)

3 THE COURT: Would you bring us up to date on
4 the welder, please?

5 MR. TRAFICANT: The welder is in transit as
6 far as I know and will be here today before closing hours.

7 THE COURT: Okay. Let me just --

8 MR. TRAFICANT: It may be here this morning,
9 this A.M.

10 THE COURT: Okay. It's -- it wasn't here as
11 far as I could tell when I came in at 8:00. Does anyone
12 know if it's arrived? No, okay.

13 Let me just go over something regarding this welder
14 view. When it gets here and it's down in the basement,
15 what I'll do is give an instruction to the jury, but I also
16 need to talk to you about it a little bit.

17 Assuming that the inspection that's done through the
18 Marshals allows it to come into the building and whoever
19 the Government has looks at it and so forth, then we'll
20 take the jury down to see it. It is necessary for me to
21 come up with a procedure for them to do that since it's not
22 here in the courtroom.

23 That will allow us to be in an appropriate part of
24 the courthouse. So when we go down to the basement to view
25 it, we'll take the Court Reporter. We'll take the parties,

1 we'll take anyone in the public and press who wants to go.
2 We're going to be in a very different setting. It's a
3 narrow long part of the courthouse basement. Remember it's
4 a 1910 building. So all kinds of things are surrounding us
5 down there. But it'll be down there, but while it's down
6 there, we'll follow the kind of procedure we follow when we
7 do a view of a scene or something else outside the
8 courthouse.

9 That is to say they can look at it. You can submit
10 to us, if there's anything you want to have pointed out
11 about the object, like a serial number or something else,
12 and we'll have the clerk designate that. But we don't
13 talk. We don't have discussions down there. It isn't
14 argued down there.

15 So nobody says anything to the jurors. If there's
16 something about the welder that either side wants pointed
17 out, we'll have a clerk present to do that. Now, what we
18 tell the jury also is an instruction that allows them to go
19 down but to understand that they are viewing something that
20 is not in the courtroom because of its physical weight in
21 this case. But that is like anything else they view, and
22 they're also under certain restrictions, and I'll read them
23 special instructions at that time.

24 MR. TRAFICANT: I move that the Court order
25 that the serial numbers and the documentation numbers of

1 the machinery be photographed and --

2 THE COURT: We don't do photography here. We
3 do a lot of things in court but --

4 MR. TRAFICANT: At least be recorded, and as
5 well as the visual inspection and that the -- and the item
6 is looked at, as far as its not being used. If the
7 Government wants to view it first, they can take that, but
8 I want to be with the Government when they do look at it
9 first.

10 THE COURT: Well, you and the Government can
11 figure out about that part of it. I am only dealing with
12 giving you some advance notice, that when you take a jury
13 somewhere else in order to view something, you still are
14 operating under rules that are meant to protect the process
15 up here.

16 So it's not a free for all where you go down and say
17 whatever you want. We have to have some rules, and it
18 means we have to spend some time. We're not there yet with
19 this. It isn't even at the courthouse. I don't know when
20 it's going to come. When it comes, several things have to
21 happen.

22 MR. TRAFICANT: Yes.

23 THE COURT: But we are going to do what we
24 can to accommodate you, that it be viewed, and so that's
25 what we're going over now. Okay?

1 MR. TRAFICANT: That's fine.

2 THE COURT: Great. In terms of the serial
3 numbers, there's one on it, and everybody agrees to what it
4 is. You can make the agreement, and that takes care of one
5 issue, but we don't photograph.

6 MR. MORFORD: We've just never seen it. We
7 have no problem if that's what it says.

8 THE COURT: Yeah. That's the kind of thing
9 you guys can work out.

10 MR. TRAFICANT: That is a mutual agreement?

11 THE COURT: Well, wait and work it out.

12 MR. MORFORD: We'll have to see it first.

13 THE COURT: They have to see it.

14 MR. TRAFICANT: I have to see it myself.

15 THE COURT: Okay. When it gets here, we'll
16 deal with it.

17 Anything else before we start?

18 MR. MORFORD: Yes, your Honor.

19 The attorney for Champ Saadey approached us this
20 morning and says he has a matter to raise with the Court
21 regarding Champ Saadey's Fifth Amendment privilege, and I
22 don't know if that's Congressman Traficant's first witness
23 or not, but if it is, it's something that needs to be
24 addressed before he calls Champ Saadey.

25 MR. TRAFICANT: Russell Saadey, Junior will

1 be my first witness.

2 THE COURT: If his lawyer is present, we do
3 need to talk to his lawyer.

4 MR. KOPP: Hello, your Honor.

5 THE COURT: Glad you're here.

6 MR. KOPP: If you prefer I step through --

7 THE COURT: Yeah, why don't you come through,
8 put your name on the record for us, and let's have a
9 discussion here before the jury comes out.

10 MR. KOPP: Your Honor, my name is Brian Kopp.

11 THE COURT: Um-hum.

12 MR. KOPP: K-O-P-P for the record.

13 THE COURT: Right.

14 MR. KOPP: I am one of the lawyers for
15 Russell Saadey and one of the trial lawyers involved in the
16 case of USA versus Russell Saadey, Case 4:00CR488.

17 Mr. Saadey did go to trial in late October of last
18 year. He has been found guilty in Judge O'Malley's
19 courtroom of multiple counts in the indictment.

20 There are a number of sentencing issues still pending
21 as well as several motions, and he has not been sentenced
22 yet.

23 THE COURT: Okay.

24 MR. KOPP: That being said, I believe some
25 research I did very quickly last night shows, both United

1 States Supreme Court and the Sixth Circuit, say that when a
2 defendant has been convicted but yet not yet sentenced,
3 incrimination is not complete, and he still has a Fifth
4 Amendment rights.

5 THE COURT: Um-hum.

6 MR. KOPP: My concern is not only that but a
7 gag order for lack of a better way of putting it of some
8 issues that came up in that trial, pre-trial motions, we
9 are still subject to that order.

10 THE COURT: Um-hum. That's an order from
11 Judge O'Malley?

12 MR. KOPP: That's correct.

13 THE COURT: Okay.

14 MR. KOPP: And that was in regards to some
15 FBI investigation issues.

16 THE COURT: Okay.

17 MR. KOPP: The other issue I have is I'm not
18 quite sure -- I did have a chance and the Congressman had
19 enough courtesy to tell me I think the gist of what he
20 wants to ask, but there may be areas where he could
21 incriminate himself and others in which he may not. So
22 it's kind of a question -- question by question scenario as
23 to whether or not the Congressman can ask a question and
24 expect an answer.

25 THE COURT: Okay.

1 MR. TRAFICANT: I'd like to respond.

2 THE COURT: Okay.

3 MR. TRAFICANT: Are you referring to the gag
4 order on FBI Agent Speranza?

5 MR. KOPP: I'm referring to -- yes, the
6 motion that was filed under seal in regards to some
7 investigative techniques which involved Agent Speranza.

8 THE COURT: Okay. You're standing, so I
9 assume there's something you want to say, too, and I want
10 to listen to everybody here, and we'll figure out how to go
11 forward.

12 MR. KOPP: I'm satisfied, your Honor.

13 MR. SMITH: Your Honor, the Government, as is
14 Mr. Kopp, is also subject to Judge O'Malley's ruling in
15 that case. So I'm not at liberty to go into detail with
16 the Court. The Government, of this witness, does intend,
17 under two rules, to cross-examine Mr. Saadey extensively;
18 specifically everything he was convicted of, Number 1, are
19 crimes of dishonesty. He was convicted of RICO bribery,
20 involving multiple predicate acts of bribing the then
21 Mahoning County Prosecutor, James Philomena and others on
22 Mr. Philomena's staff to fix criminal cases and drunken
23 driving cases in the Mahoning County court system.

24 Mr. Saadey was also convicted of three counts of
25 filing false tax returns, which means he was guilty of

1 making false statements. That's a crime of dishonesty.

2 He was also convicted of five counts of making false
3 statements on credit card applications with banks, all of
4 which are false statements. So there's two rules under
5 which impeachment on all of that is permissible. Number 1,
6 under 608(b), it's permissible regardless of whether or not
7 he's been sentenced yet, based upon the fact that you're
8 allowed to ask somebody about instances of misconduct that
9 go to truthfulness.

10 And secondly, given that there is a jury verdict of
11 conviction, albeit not a sentencing yet in that case, the
12 Government was of the view that it also comes in under Rule
13 609 to impeach the witness. So it is the Government's
14 intention to cross-examine this witness extensively about
15 what he did with respect to Mr. Philomena in the county
16 Prosecutor's Office.

17 MR. TRAFICANT: I'd like to respond under
18 804(a)(3). This is clearly a witness who is in jeopardy
19 and making a statement against interest if I am citing the
20 right law. And I understand the gag order dealing with
21 Speranza and Speranza's issue, but this individual being
22 subject to sentencing, who now places himself before the
23 Court without immunity, subject to such strict
24 cross-examination as mentioned now by Mr. Bernard Smith,
25 allows me the opportunity to seek this witness's testimony

1 truthfully on all that he knows since he is a witness in
2 jeopardy, and the hearsay exception would apply.

3 THE COURT: Okay. I am -- I am not agreeing
4 with anything that's been said here. I'm just listening at
5 this point. This is all news to me.

6 MR. SMITH: If it is the Congressman's
7 intention to get into the matter that was before Judge
8 O'Malley, we object strongly to that on relevancy grounds.

9 THE COURT: Well, we've already addressed, I
10 think, that issue.

11 MR. SMITH: Yeah.

12 MR. TRAFICANT: I will not get into that
13 issue.

14 MR. SMITH: I didn't know if I was implying
15 he was going to.

16 THE COURT: No. I think he said two rulings
17 on that.

18 MR. TRAFICANT: But I'd like to respond
19 again. Clearly, Mr. Smith's statements by the very nature
20 of the rules he cited, stating that he is allowed to
21 extensive cross-examination and stating this man has been
22 convicted of serious crimes and is here without immunity,
23 is in jeopardy. And that jeopardy applies to his testimony
24 relative to the hearsay exception and the rules governing
25 same, which I believe are 804(a)(3). I could be wrong.

1 I'll look through my notes.

2 THE COURT: Okay. It'll be good to look at
3 your notes on that. Let me go back to his lawyer. That's
4 really why we're here so we can let his lawyer speak for a
5 minute and decide how we're going to proceed.

6 MR. KOPP: Your Honor, therein lies my
7 problem. I believe that the Congressman may ask some
8 questions in which Mr. Saadey does not face criminal
9 jeopardy. I believe that there may be grounds -- or
10 questions asked by the Congressman in which I would have to
11 advise him that he should exercise his Fifth Amendment
12 rights. I can tell you that when the cross-examination
13 starts, he will have no choice because I don't believe that
14 his indictment will be the subject of anything on direct,
15 and furthermore, he has been found guilty.

16 My understanding is that the verdict has been filed,
17 but I do not believe there's a judgment of conviction on
18 him yet because he hasn't been sentenced.

19 That being --

20 THE COURT: Okay. We all are going to have
21 to figure out the state of that docket if everybody's going
22 to proceed. But let me just ask you this question.

23 MR. KOPP: Sure.

24 THE COURT: One of the ways we can proceed in
25 this case is out of the hearing of the jury to have him

1 take the stand, and we -- most people don't take the Fifth
2 when they say their name and address, and there may be a
3 few other things they don't take it on, and we'll just ask
4 him some questions to try and figure out whether or not
5 he's going to step into that area. You're his lawyer. You
6 may want to do some inquiry of it.

7 MR. KOPP: That's my concern, and I was --

8 THE COURT: We can do that out of the hearing
9 of the jury. It's the process we've followed in this case
10 so far with some other people. And --

11 MR. KOPP: I would greatly appreciate that.

12 THE COURT: -- and the Circuit requires that
13 we actually ask questions, put someone on the stand. They
14 can't simply assert it through their lawyers. So we follow
15 that with the witnesses.

16 What I propose we do is do that at noon or sometime
17 when it's possible for you to have the time first to
18 ascertain the state of the docket that you just raised and
19 whatever else you want to do to prepare yourself for that.

20 MR. KOPP: I'm comfortable with the statement
21 I made in regards to the docket, your Honor.

22 MR. TRAFICANT: Your Honor, I object to
23 waiting until noon. I want to call this witness as my
24 first witness today. I have scheduled witnesses here. You
25 have clearly identified the Speranza issue. I understand

1 the Speranza issue, and there are no other issues.

2 The Prosecution has an opportunity to object for
3 whatever reason they may have, and the counsel for this
4 witness is allowing his witness to testify, even though his
5 witness does not have immunity.

6 THE COURT: The lawyer can speak for himself.
7 That's why he's here.

8 MR. KOPP: Your Honor, my understanding of
9 how we're going to proceed is quite simply this: Like you
10 said, the Circuit requires he be asked a question.

11 THE COURT: Right.

12 MR. KOPP: And the Court make a determination
13 as to whether or not he has the legitimate Fifth Amendment
14 right. I have spoken to the Congressman. I have spoken to
15 the United States. I understand the gist of what the
16 questioning is going to be. I've had an opportunity to
17 counsel my client and will advise him at certain points in
18 this question, whether it be on direct or on cross, that he
19 is going to exercise his Fifth Amendment right.

20 Now, at that point in time, I believe it's your call
21 as to whether or not he's going to be forced to answer a
22 question that the Congressman may ask, that the United
23 States may ask, but I -- I'm telling the Court that there
24 are going to be circumstances in which I advise my client
25 to exercise his Fifth Amendment rights.

1 THE COURT: Fine. Mr. Smith?

2 MR. SMITH: Your Honor, if the Congressman
3 intends to invoke Rule 804 for some reason -- and I don't
4 see the basis of that right now -- he has to, at least, do
5 what the Government did in its direct case, which is to
6 identify what statements he says are admissible under Rule
7 804.

8 THE COURT: Right. That's why we're going to
9 do this at noon, not before because it takes time to get
10 ourselves to a position where all of us are on board with
11 what this is about. I didn't know he was being called this
12 morning so -- it's one of the problems when you don't let
13 us know in advance, but we'll just do it over lunch so we
14 don't --

15 MR. TRAFICANT: This subpoena was finally
16 serviced yesterday. The witness agreed to testify without
17 immunity. I've called --

18 THE COURT: Okay.

19 MR. TRAFICANT: He is subject to jeopardy,
20 and under the hearsay exceptions of which you have granted
21 opportunities relative to hearsay to be brought in relative
22 to Mr. O'Nesti, I cite the same law -- rules. I've had
23 conference with counsel. I'm not speaking for him, but I'm
24 only speaking to matters that deal with my case. The only
25 thing I would do for the record would establish the fact

1 that he has had a jury conviction and what those
2 convictions were for.

3 His questioning would only be in regards to his
4 knowledge of my case, period. The Speranza matter, I have
5 no intention of moving towards Speranza matter.

6 THE COURT: Thank you, Congressman.

7 MR. MORFORD: Your Honor, I want to address
8 and follow-up on something the Court just said, which was
9 the point I was going to raise even before the Court said
10 it. I have some concerns that we have a continuing pattern
11 here, where the Congressman does not notify the Court of
12 potential legal problems that are going to arise such as
13 hearsay and the need for voir dire. We have witnesses who
14 show up, and the jury sits back in the back room sometimes
15 for an hour, sometimes more.

16 The Court tried to accommodate by having a hearing on
17 Friday. The witnesses weren't here. It is beginning to
18 create a problem for the jury, for the Court, and the
19 Congressman is going to have to address that by letting the
20 Court and the parties know these -- that these witnesses
21 are coming in advance, and let the Court know the subject
22 matter of the witnesses, just as the Government did with
23 Jackie Bobby and Grace Yavorsky or Kavulic so we would not
24 have this downtime with the jury. That's what parties do.

25 When these kind of issues are going to rise, the

1 Court needs to know and we still have issues hanging out
2 there with a number of witnesses on the hearsay situation
3 that the Congressman hasn't addressed. He hasn't told the
4 Court or the parties what it is that he's trying to get in
5 so the parties know how to address it, and it's beginning
6 to create a problem in the length of this trial.

7 MR. TRAFICANT: Let me respond. They did not
8 have to tell us what the testimony of their witnesses was
9 relative to the hearsay exception.

10 What I am saying is this: A subpoena was served
11 yesterday. This is a willing witness to come up here this
12 morning.

13 THE COURT: Good. He'll be heard at noon.
14 We're going do this at noon. Okay? Call your next.

15 MR. TRAFICANT: I do object to having --

16 THE COURT: I understand that you object, but
17 we just got out, started with the proceedings when this
18 issue came up. So we'll do it first -- some of it out of
19 the hearing of the jury, at least to explore his Fifth
20 Amendment issues. Okay.

21 Congressman, are you ready with your next witness?

22 MR. TRAFICANT: Ernestine, you want to bring
23 in John.

24 THE COURT: All right. We'll bring in the
25 jury.

Innella - Direct

1 MR. MORFORD: Your Honor, before we do that,
2 it's my understanding that John Innella is going to testify
3 to hearsay about Henry Nemenz which is neither relevant or
4 admissible under --

5 MR. TRAFICANT: He doesn't know what he's
6 testifying to. He's not testifying to Nemenz.

7 THE COURT: I don't know either. We'll see.
8 You can go ahead.

9 (Proceedings resumed in the presence of the jury:)

10 THE COURT: Good morning.

11 THE JURY: Good morning.

12 THE COURT: Congressman.

13 JOHN INNELLA,
14 of lawful age, a witness called by the Defendant,
15 being first duly sworn, was examined and testified as
16 follows:

17 DIRECT EXAMINATION OF JOHN INNELLA

18 BY MR. TRAFICANT:

19 Q. Good morning, John.

20 A. Good morning, Jim.

21 Q. Would you speak up, and give us your full name and
22 spell your last name for the Court record.

23 A. John, last name I-N-N-E-L-L-A.

24 Q. Where do you currently reside?

25 A. At a farm, Greenford.

Innella - Direct

- 1 Q. What farm in Greenford?
- 2 A. Traficant's farm.
- 3 Q. How long have you lived there?
- 4 A. About a year and a half.
- 5 Q. Do you have a health problem?
- 6 A. Yes, I do.
- 7 Q. What is that problem?
- 8 A. I get coughing attacks like crazy, and I have burns.
- 9 Q. And what kind of a burn was it?
- 10 A. A butane explosion, third degree burns, second
- 11 degree.
- 12 Q. What, if anything, has happened to your -- your
- 13 system, your lungs, your throat, et cetera?
- 14 A. My throat has been burned.
- 15 Q. Would you please -- there's water there available for
- 16 you.
- 17 A. Yeah, if I get to coughing.
- 18 Q. Yes. Are you allowed to do certain duties?
- 19 A. I got to stay busy all the time. My muscles get
- 20 flabby. I've been losing weight.
- 21 Q. Did you have occasion to inspect the addition that
- 22 was added to the back of the farmhouse in Greenford?
- 23 A. Yes.
- 24 Q. Did you ever work in the construction industry?
- 25 A. Yes.

Innella - Direct

1 Q. Whom did you work for?

2 A. John Innella company.

3 Q. And who was John Innella?

4 A. My grandfather.

5 Q. How many years did you work for your grandfather?

6 A. Since I was 16 part-time, and I left in '76.

7 Q. Approximately how many years did you work in the
8 construction industry?

9 A. I grew up in it. I was going out on the jobs at four
10 years old.

11 Q. Have you ever done jobs on your own?

12 A. Yes.

13 Q. Were you asked to look at that addition?

14 A. Yes.

15 Q. Did you do so?

16 A. Yes, I did.

17 Q. In looking at that, did you arrive at a conclusion?

18 MR. MORFORD: Objection as to whether or not
19 there's been a foundation to establish his expertise to
20 give that opinion.

21 THE COURT: We need a time, too, when he
22 looked at it and --

23 BY MR. TRAFICANT:

24 Q. How long ago did you look at this?

25 A. When -- two weeks.

Innella - Direct

1 Q. And did you study carefully over those two-week
2 period?

3 A. Yes.

4 Q. Did you study it inside and out?

5 A. Yes.

6 Q. Are you very familiar with it?

7 A. Yes.

8 Q. Could you answer questions from your own personal
9 knowledge?

10 A. Yes.

11 THE COURT: Has he done foundation about when
12 he's done inspections or valid work or something?

13 BY MR. TRAFICANT:

14 Q. Did you ever estimate and bid jobs in the past for
15 construction?

16 A. Yes.

17 Q. Did you assist with your family's construction
18 company to do so?

19 A. Yes, I was with my dad.

20 Q. Are you familiar with construction costs?

21 A. Yes.

22 Q. Are you familiar with quality of construction work?

23 A. Yes, I am.

24 Q. Are you familiar with the requirements that are
25 necessary relative to constructing certain additions of

Innella - Direct

1 square feet?

2 A. Yes.

3 Q. Have you done this before?

4 A. Yes, I did.

5 Q. Who, in fact, requested you to do this?

6 A. Jim did on this one.

7 Q. Meaning me?

8 A. Yes.

9 Q. Do you have immunity, John?

10 A. No, I don't.

11 Q. You know what immunity means?

12 A. Yeah.

13 Q. What does immunity mean?

14 A. Where something goes wrong, can't be charged for it.

15 Q. If you have immunity?

16 A. Yes, I don't have it.

17 MR. MORFORD: Your Honor, then I object to

18 his opinion on immunity because that's not legally what

19 immunity is.

20 THE COURT: The legal definition of immunity

21 is something we'll have to deal with I think in this case

22 because it's been raised so many times. So we'll give it

23 to you in the instructions at some point. Okay. Thank

24 you.

25 BY MR. TRAFICANT:

Innella - Direct

1 Q. For the record, you do not have immunity; is that
2 correct?

3 A. I do not have it.

4 Q. Okay.

5 Describe the floor of that addition on the first
6 floor deck.

7 A. That's what I call plywood floor, CDX plywood, and
8 the floor is not leveled.

9 Q. How do you know the floor is not leveled?

10 A. Because there's a china cabinet in there with an inch
11 board under it.

12 Q. And did you, in fact, inspect how this plywood was
13 applied?

14 A. It was nailed down right to the porch deck.

15 Q. Does the deck take water from the outside inside of
16 the deck?

17 A. Yes, it does.

18 Q. Do you have knowledge that there are pictures to
19 support that?

20 A. Yes, there is pictures.

21 Q. Now, on the construction of the portico, was the
22 gutter removed and the siding placed up flush and even?

23 A. The gutter was removed. The four by four was notched
24 around the gutter.

25 Q. Was there an opening above there that allowed animals

Innella - Direct

1 to get into under the porch roof?

2 A. Yes, there is.

3 Q. In your estimation, was the construction quality --
4 how would you describe the construction quality?

5 MR. MORFORD: Objection as to his expertise,
6 your Honor.

7 THE COURT: You can answer.

8 THE WITNESS: I call that a butcher job.

9 Q. John, are you aware that it took six months to build
10 that?

11 A. I was told by Jim that it took six months.

12 Q. In your construction, John, how long would it have
13 taken you to complete that job?

14 A. With a helper, two to four weeks.

15 Q. How many helpers?

16 A. One.

17 Q. Plus you?

18 A. Plus myself.

19 Q. Were you familiar with the cost of materials in 1992?

20 A. I generally had the owner buy the materials.

21 Q. Have you purchased a glass sliding insulated door in
22 the last five years?

23 A. Yes, I did.

24 Q. How long ago?

25 A. About three years ago.

Innella - Direct

1 Q. How much did it cost?

2 A. Around \$300.

3 MR. MORFORD: Objection, your Honor. There's
4 all kinds of prices for this.

5 THE COURT: Sustained, sustained.

6 Q. Now --

7 MR. TRAFICANT: Would you turn on that
8 machine for me, gentlemen?

9 Q. How would you describe the condition of the home,
10 John, itself?

11 A. The home repair site --

12 MR. TRAFICANT: Government's Exhibit 7 --
13 it's a joint Exhibit Number 7-33(2).

14 THE COURT: That's, fine, Congressman.

15 MR. TRAFICANT: Can I put this on the screen,
16 your Honor?

17 THE COURT: Yeah, it's been admitted.

18 Q. What kind of a view is this of the farm, John?

19 A. Looks like it was taken on an airplane or a
20 helicopter. I don't know what.

21 Q. Are there many missing buildings in that picture?

22 A. Yes.

23 Q. Where are they located on the screen?

24 A. Take that metal roof all the way back, that long
25 section.

Innella - Direct

- 1 Q. Over here?
- 2 A. Down farther, about right where your hand is out
3 there. There's a stepdown.
- 4 Q. Is there any other outbuildings that can't be seen?
- 5 A. Where your hand is, up in that area.
- 6 Q. So this shows from above a nice rendering of the
7 farm?
- 8 A. It looks pretty good from here.
- 9 Q. Are the eaves of the house completely rotted away?
- 10 A. Later on back.
- 11 Q. Are the window seals rotted away on the house?
- 12 A. Got to be replaced.
- 13 Q. Are the porch posts bottom rotted away?
- 14 A. Got to be replaced.
- 15 Q. Is the beam above the porch post rotted away?
- 16 A. To be replaced.
- 17 Q. Is there a hole big enough to put a basketball
18 through?
- 19 A. Yes, there is in one spot.
- 20 Q. Is it the Taj Mahal that's presented on this screen?
- 21 A. No, it is not.
- 22 Q. Were there any gutters put on the addition?
- 23 A. No.
- 24 Q. Was there any insulation under the addition?
- 25 A. Jim told me he put insulation on --

Innella - Direct

1 MR. MORFORD: Objection to what Jim told him,
2 your Honor.

3 THE COURT: Sustained to that.

4 Q. Do you know if the insulation material and vinyl
5 under this deck was the same as the vinyl used on the
6 house?

7 MR. MORFORD: Objection, unless he knows,
8 other than the Congressman Traficant making statements to
9 him.

10 THE COURT: Yeah, you can -- if you know
11 because you -- that's --

12 THE WITNESS: The ripple of the jamming is
13 different from the siding on the addition.

14 THE COURT: Okay.

15 Q. To the best of your knowledge, do you know if this
16 addition was insulated?

17 A. It's not insulated.

18 Q. Now, when you said CDX, is that an expensive piece of
19 plywood?

20 A. No, it isn't. It's just sheet.

21 Q. By sheeting, does it have one good side?

22 A. None good sides.

23 Q. Do you know who built the original deck?

24 A. I found out Jim built --

25 MR. MORFORD: Objection to what Congressman

Innella - Direct

1 Traficant told him, your Honor.

2 THE COURT: Right. When you testify, we need
3 to know what you know yourself, what you saw, not what he
4 told you.

5 THE WITNESS: I seen it built.

6 THE COURT: Okay. All right.

7 Q. Now, considering, did you do a rough estimate
8 considering time, square feet, and material used as to what
9 the cost of that addition would be?

10 A. I did square footage on labor-wise.

11 Q. You said on labor?

12 A. Labor only.

13 Q. John, can you see this?

14 A. Yes.

15 Q. You need glasses to see this?

16 A. If its long, I can see it.

17 Q. Pardon?

18 A. If you write big enough, I can see it.

19 Q. You said you would be the main worker?

20 A. Yes.

21 Q. And you would hire how many?

22 A. One helper.

23 Q. In 1992, what was the economic condition of the
24 Mahoning Valley?

25 A. It wasn't that -- a lot of people were out of work

Innella - Direct

1 yet.

2 Q. What could you hire a reasonably skilled helper for?

3 A. Around \$6 an hour, with labor.

4 Q. What would you have charged as the main, and what
5 would you have charged if you would have done that job at
6 that time with your skills?

7 MR. MORFORD: Objection.

8 THE COURT: Do you remember what you would
9 were charging per hour and labor then?

10 THE WITNESS: I would -- our bid jobs out by
11 square footage.

12 THE COURT: And how much --

13 THE WITNESS: That was around \$2.50 a square
14 foot.

15 THE COURT: Okay. So square footage is what
16 you used to figure this out?

17 THE WITNESS: Yes.

18 THE COURT: And that was for your own wage,
19 what you would --

20 THE WITNESS: My wages and helper wages would
21 come out of that.

22 THE COURT: Out of yours?

23 THE WITNESS: Yes.

24 MR. TRAFICANT: Just for labor.

25 Q. Would that include electric, too?

Innella - Direct

- 1 A. That's start to finish.
- 2 Q. Start to finish?
- 3 A. Yeah.
- 4 Q. That would have been the portico with the privacy
5 fence?
- 6 A. Yes.
- 7 Q. The addition on the back?
- 8 A. Yes.
- 9 Q. The drywall and flooring on the deck?
- 10 A. Yes.
- 11 Q. The trim?
- 12 A. Yes.
- 13 Q. The vinyl siding?
- 14 A. Yes.
- 15 Q. And what was your estimated labor cost to do this
16 job?
- 17 A. About \$4,200.
- 18 Q. In your opinion, was this job that you inspected done
19 by a professional?
- 20 A. No, it wasn't. I called him a butcher.
- 21 Q. Do you know if there will be photographs that will be
22 presented before this Court to document what you're saying?
- 23 A. Yes.
- 24 Q. Now, do you do any barn work?
- 25 A. Yes, I do.

Innella - Direct

1 Q. Wherever the horses are stabled, what kind of floors
2 are there?

3 A. Concrete and walkway where you bring the horses out
4 with rubber mats.

5 Q. What are the conditions of those walkways?

6 A. Clean.

7 Q. And why are they kept clean, John?

8 A. You have horse manure there. There's a lot of flies
9 that come in, and you don't want a lot of flies around.
10 They lay eggs and hurt the horses.

11 Q. Would they do anything to your shoes, John?

12 A. No. You step on it, like walking out in the yard
13 where the dog is out there or a cat and you step on, it
14 sticks to you.

15 Q. Do you have knowledge of wood stored in the big barn?

16 A. Yes.

17 Q. Was there enough wood stored in the big barn to
18 complete any work needed on any addition?

19 THE COURT: What time period are we talking
20 about? When?

21 MR. TRAFICANT: Strike that.

22 THE COURT: Thank you.

23 Q. Do you feed the horses?

24 A. My family and I feed the horses twice a day.

25 Q. Do you clean the aisleway?

Innella - Cross/Morford

1 A. Yes, I do.

2 Q. Do you clean the stalls?

3 A. Yes, I clean them.

4 Q. Have I ever helped you clean those stalls?

5 A. Yes, you did.

6 THE COURT: Are we talking about right now or
7 ten years ago or 15 years ago --

8 MR. TRAFICANT: He's only lived there for 18
9 months. He's testified about that, your Honor.

10 THE COURT: So you're talking about in the
11 last 18 months?

12 MR. TRAFICANT: We're now talking about his
13 presence there, yes, 18 months he testified.

14 THE COURT: Okay. I'm just trying to figure
15 out how this is relevant to this case. I suppose it shows
16 something about him, but let's stick with things that have
17 something to do with this lawsuit.

18 MR. TRAFICANT: No further questions at this
19 time.

20 THE COURT: Thank you.

21 CROSS-EXAMINATION OF JOHN INNELLA

22 BY MR. MORFORD:

23 Q. You need water, sir? Go ahead.

24 Sir, as I understand your testimony, for the last 18
25 years, you've worked as a farmhand at Congressman's farm;

Innella - Cross/Morford

1 is that correct?

2 A. 18 months.

3 Q. I'm sorry if I said years.

4 And during that time, you have not engaged in the
5 carpentry business; is that correct?

6 A. No, I haven't.

7 Q. In fact, how many years has it been since you last
8 engaged professionally as a carpenter?

9 A. Around '76.

10 Q. I'm sorry?

11 A. 1976.

12 Q. So you have not been engaged in the profession of
13 carpentry since 1976?

14 A. Right.

15 Q. Sir, how is it that you're able to testify when
16 Congressman Traficant asks you as to what you would have
17 charged in 1993 when you have been out of the business for
18 some -- over ten years?

19 A. Because I went to a man about it and talked to him.

20 Q. All your testimony today is based on hearsay of what
21 other people have told you in preparing for you to come in
22 and testify, correct?

23 A. To start the business up, and I did put bids out, and
24 I did not get the jobs, so I just closed the doors.

25 Q. When was that, sir?

Innella - Cross/Morford

- 1 A. Around that time period.
- 2 Q. Around what time period?
- 3 A. '93, '92.
- 4 Q. What did you do from 1976 until 1993 and '92?
- 5 A. No, a little tinkering
- 6 Q. A little tinkering for --
- 7 A. My son-in-law.
- 8 Q. Seventeen years? So you were out of the carpentry
- 9 business entirely for 17 years doing a little bit of
- 10 tinkering before you came in today to testify as an expert
- 11 about the cost of what a construction project would be. Is
- 12 that your testimony?
- 13 A. I used to be a truck driver, and when I was 12 I
- 14 worked for my dad, when it was rough.
- 15 Q. And, sir, it's your testimony you can come and put an
- 16 addition on a house, including electric, windows, doors,
- 17 siding, and everything else, for about \$4,000?
- 18 A. Just in labor.
- 19 Q. I'm sorry?
- 20 A. Labor only.
- 21 Q. What about the windows and the doors and all that
- 22 stuff?
- 23 A. There are too many people being hung for jobs for the
- 24 material and contractor got to pay for the material. If
- 25 I'm going to get hung, I better get hung on my labor.

Innella - Cross/Morford

1 Q. Now, sir, you're really not an expert in carpentry at
2 all, are you?

3 A. I got two years in a Vo-Tech came out with a 90
4 degree average. I grew up in the business.

5 Q. And you haven't done the business in almost 30 years,
6 correct?

7 A. I --

8 Q. In a professional manner?

9 A. I do help my ex-neighbor.

10 Q. But apart from tinkering -- sir, apart from
11 tinkering, you have not been in business for almost 30
12 years, correct?

13 A. I try to get it started up and just don't get jobs.

14 Q. And now your working as a farmhand on Congressman
15 Traficant's farm, correct?

16 A. I help him out.

17 Q. And you help him out, and what does he give you in
18 return?

19 A. Between him and his daughter, I got a verbal
20 agreement, a gentleman's agreement.

21 Q. And what is the terms of that gentleman's agreement?
22 You clean out the horse stalls, and what do you get in
23 return?

24 A. A place to stay, all utilities paid.

25 Q. And so as you sit here today, you're dependent on

Innella - Redirect

1 Congressman Traficant to put a roof over your head, right?

2 A. I have no place I can go.

3 MR. MORFORD: May I have a moment, your
4 Honor?

5 MR. TRAFICANT: I didn't hear that last
6 answer.

7 THE COURT: He said I have no place --
8 (Thereupon, the record was read back by the Court
9 Reporter.)

10 MR. MORFORD: I have nothing further.

11 THE COURT: Thank you.

12 REDIRECT EXAMINATION OF JOHN INNELLA

13 BY MR. TRAFICANT:

14 Q. John, did you help me construct a deck in Poland this
15 summer?

16 A. Yes, I did help you.

17 Q. Did you see me purchase the material?

18 MR. MORFORD: Objection. Has no relevance
19 and not in response to the cross-examination.

20 THE COURT: Sustained.

21 BY MR. TRAFICANT:

22 Q. Now, the Government said you have no ability, and you
23 weren't able to bid on a job. Is that what they said?

24 MR. MORFORD: Objection.

25 THE COURT: No.

Innella - Redirect

1 MR. TRAFICANT: Okay.

2 Q. They said you'd been out of it basically for 30
3 years?

4 A. Yes.

5 Q. Isn't it a fact you tried to reenter the field and
6 was not successful with your bids?

7 MR. MORFORD: Objection to the leading
8 questions. It's his witness, your Honor.

9 THE COURT: It is your witness.

10 Q. Were you a truck driver for many years?

11 A. Yes.

12 Q. Did you work carpentry on the side?

13 MR. MORFORD: Objection. He's testifying.
14 He needs to ask the witness.

15 THE COURT: Well, the witness has already
16 said all these things. So --

17 Q. When the Prosecutor asked you about your ability, you
18 talked about a 90 percent average. Will you explain what
19 you were talking about?

20 A. What was that?

21 Q. When the Prosecutor asked you a question and you
22 responded about a 90 degree or 90 percent average, what
23 were you testifying about?

24 A. I don't understand that.

25 Q. You said that you had two years of training.

Innella - Redirect

1 A. Oh, now, I went to like a Vo-Tech school back in New
2 York State, Orange County, New York. They got a Vo-Tech
3 school called Bostins. I came out the second year with a
4 90 degree average for construction.

5 Q. Can you build a house?

6 A. Yes, I could.

7 Q. Could you build a foundation?

8 A. Right, the ground out.

9 Q. Could you put all the wiring in?

10 A. Yes, I can.

11 Q. Could you put all the plumbing in?

12 A. Yes, I can.

13 Q. Could you build a chimney?

14 A. Yes.

15 Q. Can you install any appliance that is made?

16 MR. MORFORD: Objection as to the relevance
17 of any of that, your Honor.

18 THE COURT: Sustained.

19 Q. Now, did you come to me, or did I come to you when we
20 first met?

21 MR. MORFORD: Objection.

22 THE COURT: Sustained.

23 Q. How did we meet?

24 MR. MORFORD: Objection.

25 THE COURT: You can answer how you met.

Innella - Redirect

1 THE WITNESS: Through school, a speaking
2 thing Jim went to speak to, and that's how we met.

3 Q. And what, if anything, after we met did you request
4 of me?

5 A. Nothing.

6 Q. Did there come a point when you lost your home?

7 A. Yes.

8 Q. And what was the cause of the loss of that home?

9 A. It went down to foreclosure.

10 Q. Now, when the Government asked you the question and
11 you said I had no place to go, what, if anything, did you
12 do as a result of that?

13 A. Jim needed help at the farm. We talked, and I talked
14 to his daughter, and that's why we are there. I do have
15 another place where I can go.

16 Q. How big is your family?

17 MR. MORFORD: Objection.

18 THE COURT: Sustained.

19 MR. TRAFICANT: No further questions.

20 THE COURT: Thank you.

21 MR. MORFORD: Nothing further, your Honor.

22 THE COURT: Thank you. Sir, thank you very
23 much. Step down. Be careful when you go down those
24 stairs. All right? Thank you, sir. Step right down.

25 MR. TRAFICANT: Your Honor, shall we proceed

Marchese - Direct

1 until 10:30 and go forward now?

2 THE COURT: You have a witness?

3 MR. TRAFICANT: Yes, I do.

4 THE COURT: Thank you.

5 DOMINIC MARCHESE,

6 of lawful age, a witness called by the Defendant,

7 being first duly sworn, was examined

8 and testified as follows:

9 DIRECT EXAMINATION OF DOMINIC MARCHESE

10 BY MR. TRAFICANT:

11 Q. Good morning, Dominic.

12 A. Good morning.

13 Q. Would you please give us your full name, and spell
14 your last name for the jury.

15 A. Dominic Marchese, M-A-R-C-H-E-S-E.

16 Q. Give us your home address.

17 A. 6666 Stoddard Hayes Road, Farmdale, Ohio 44417.

18 Q. Would you repeat that again, slowly for the
19 Reporters.

20 A. 6666 Stoddard Hayes Road, Farmdale, Ohio 44417.

21 Q. There's water there, Dominic.

22 A. Thank you.

23 Q. Dominic, you know if you have immunity in this case?

24 A. I have no immunity, no.

25 Q. Where are you currently employed?

Marchese - Direct

1 A. I'm currently employed as a staff representative for
2 Congressman James A. Traficant.

3 Q. How long have you been in my employ?

4 A. Since May 1, 2000, just two years -- I'm sorry, April
5 1, 2000, very close to two years.

6 Q. Are you married?

7 A. Yes, I'm married.

8 Q. How many children do you have?

9 A. I have four adult children and eight beautiful
10 grandchildren.

11 Q. Is your wife employed?

12 A. My wife is a Trumbull County Recorder, Diana
13 Marchese.

14 Q. You hold an elected position?

15 A. Yes, I do.

16 Q. And what is that position?

17 A. Township trustee in Johnson Township, Trumbull
18 County.

19 Q. Have you ever worked in the construction industry?

20 A. Yes, from my young years growing up with a father
21 that had a construction company in Warren, Ohio, Anthony
22 Marchese Construction Company, as well as his brothers
23 having a concrete company that did masonry work. He did
24 build very close to in his career 200 homes in the City of
25 Warren. I would have to work along with carpenters and

Marchese - Direct

1 bricklayers as I was growing up.

2 Subsequently, following Naval service, I became a
3 journeyman bricklayer. I still have a card today.

4 Q. When was the last time you worked as a bricklayer?

5 A. It would have been February and March of 2000, just
6 prior to coming on your staff as a part-time employee.

7 Q. Are you now full-time?

8 A. I'm full-time, yes.

9 Q. What are the areas of your responsibilities?

10 A. I do constituent work on a daily basis. Whatever
11 calls need to be addressed there, their concerns, their
12 needs. Mostly I believe I would be doing Veterans Service
13 work and Social Security issues as well as farm -- the farm
14 community. I would do community outreach, attend meetings,
15 weekly and evening meetings, in Trumbull County.

16 Q. Were you ever appointed to a national committee on
17 agriculture?

18 A. No. I was on a short list. I believe it was 1996, a
19 short list for the national organic standards board in
20 Washington, D.C.

21 Q. Do you currently own a farm?

22 A. Yes.

23 Q. What kind of farm is it?

24 A. Presently raising beef cattle, and it's -- it's been
25 an organic dairy farm from 1976 through 1993, at which time

Marchese - Direct

1 we had to sell the milk cows because of the cost of
2 production was less than we were making.

3 I've raised beef cows ever since.

4 Q. Did you ever build a home?

5 A. Yes. I've built one home for my father in his
6 business that I supervised and built. And then I built my
7 own home, and I built commercial buildings and many garages
8 and a small building in Warren, Ohio, called Mr. R's on
9 Route 422.

10 Q. Is that a commercial building?

11 A. Yes, it is.

12 Q. Now, the home you built, is that the home on Stoddard
13 Hayes Road in that you still reside in?

14 A. Yes, it is.

15 Q. Did you have occasion to inspect and review the
16 addition on the back of the Traficant farm?

17 A. Yes, I did.

18 Q. And could you describe from your experience in
19 construction the quality of work of that project?

20 A. I didn't see any quality of work. It was very poor
21 work. I would not have wanted to pay for that myself.

22 MR. MORFORD: Your Honor, we're not getting a
23 date of when this inspection took place.

24 THE COURT: We need to know when you looked
25 at it.

Marchese - Direct

1 BY MR. TRAFICANT:

2 Q. When did you inspect this property, this farm, this
3 house?

4 A. I inspected that addition to the back of that
5 farmhouse, if I'm not mistaken, today is -- I believe.

6 Q. Approximately how long ago?

7 A. A week ago.

8 Q. And you did take an extensive look at that house?

9 A. Yes, I did.

10 Q. Did you take an extensive look at the house in
11 addition to that addition we're talking about?

12 A. I looked all around the farmhouse, a lot of the
13 rotted soffits, overhangs.

14 Q. I'm going to place -- your Honor, the same exhibit
15 that I placed before on the screen.

16 THE COURT: Fine.

17 BY MR. TRAFICANT:

18 Q. Are you familiar with what this is, Dominic?

19 A. Yes. That's an aerial photo of a farm building,
20 farmhouse.

21 Q. Do you know what farm that is?

22 A. That is the Traficant family farm.

23 Q. Now, do you have an aerial view of your farm?

24 A. Yes, I do.

25 Q. Does your aerial view make it look real pretty?

Marchese - Direct

1 A. Yes, it does, that's their business. Those are very
2 expensive to have done.

3 Q. Does that look beautiful?

4 A. It really does.

5 MR. MORFORD: Objection. It is the jury that
6 can decide these things, your Honor.

7 THE COURT: Exactly.

8 Q. Are there any buildings missing from this photograph?

9 MR. MORFORD: Objection as to the relevance
10 of that. It's a joint exhibit that Congressman Traficant
11 offered himself.

12 MR. TRAFICANT: I'm asking if there's any
13 missing buildings.

14 THE COURT: You can answer whether there's
15 missing buildings there.

16 THE WITNESS: Missing buildings? I believe
17 there's a roof on the silo at this time.

18 Q. Are there any other buildings on the property that
19 are not shown on there?

20 A. Not to my knowledge.

21 Q. Do you know if there is a machine shed north of the
22 big barn?

23 A. Yes, there is, but it's not in the photo.

24 Q. Do you know if there's a stepdown shed north of the
25 big barn?

Marchese - Direct

1 A. Yes, there is.

2 Q. What are the conditions of those two buildings?

3 A. Pretty poor.

4 Q. Now, when you reviewed the porch of the house, what
5 were the conditions of the posts?

6 THE COURT: This is a week ago we're talking
7 about?

8 MR. TRAFICANT: Yes.

9 THE WITNESS: The posts were four by six
10 posts. That's really all I can recall. I thought they
11 should have been six by six, but --

12 Q. On the addition, did you see the floor of the
13 addition on the first floor?

14 A. Yes, I did.

15 Q. What was it?

16 A. It was water damage in three different areas. It was
17 plywood, subflooring materials, left as a finished floor
18 from what I observed, and it had a lot of -- three
19 different areas that were water damaged and water coming in
20 on the floor itself, under the doors.

21 Q. Did you notice the construction of the privacy fence
22 with the so-called open roof over it?

23 A. Yes, I did.

24 Q. Do you recall the wall where the gutter ran through?

25 A. Yes. It had a post notched out for the gutter to go

Marchese - Direct

1 through.

2 Q. Was there anything unusual above the gutter?

3 A. There was a -- probably a four-inch area of above the
4 gutter and the roof sheeting that was open, not a painted
5 fill strip. It was open. There were signs of squirrels
6 going in there between the roof and the porch ceiling,
7 through that opening.

8 Q. Did you inspect the basement door?

9 A. Yes, I did.

10 Q. Where was the basement door located?

11 A. About in the middle of the back of that house,
12 underneath the porch. You could walk into a basement door.

13 Q. Of that one here?

14 A. Somewhere right about there.

15 Q. How do you -- how would you estimate the age of that
16 door?

17 A. The door would have had to have been built with the
18 home, at least 100 years old, original home. The door was
19 made of poplar, one-by-six, one-by-four, and one-by-six
20 boards randomly placed on some bracing, three horizontal
21 braces on the back of the door. Total thickness of the
22 door would have been -- if it was one inch, poplar. I
23 scraped some of the paint off, and I can tell it was poplar
24 wood.

25 Q. Were there gutters on the addition?

Marchese - Direct

1 A. No. There's -- there's no gutters on the addition of
2 that two-story roofed area there. There's no gutters.
3 Water just falls off of that on to your deck at the base of
4 the first floor where the side sliding doors are laid right
5 onto the deck. That's why the water is coming in
6 underneath. It's -- I would have built that with a raised
7 floor, at least six-inch step. Water would not have come
8 in on your finished floor there.

9 Q. Did you estimate the size of that job?

10 A. Somewhere around 12 by 14 foot.

11 Q. The floor?

12 A. Right.

13 Q. But did you estimate the total amount of work that
14 was needed to build the addition and put the siding on to
15 the back?

16 A. Yes, I did.

17 Q. Have you ever bid on projects?

18 A. I've bid on numerous projects for my father. I had
19 architectural vocational drafting and for three years --

20 MR. MORFORD: Objection unless we know what
21 types of projects these were he's trying to qualify for,
22 your Honor.

23 BY MR. TRAFICANT:

24 Q. What projects did you bid on?

25 A. I bid on the -- Mr. R's Restaurant on 422.

Marchese - Direct

1 Q. Did you get the bid?

2 A. As far as materials -- no. It was a building that we
3 built. I did materials I know we had in it. I bid on two
4 different homes. One that we did get, and that was for a
5 Peter J. Camretta on Patching Avenue in Warren, bid on the
6 home and subsequently built the home for Mr. Camretta.

7 Q. You built the home?

8 A. Yes.

9 THE COURT: When was that? Congressman, you
10 need to get these things tied down.

11 THE WITNESS: That was in 1972 -- '71 and '72
12 Mr. Camretta's home was built.

13 THE COURT: Okay. So you were bidding in the
14 early -- 1970?

15 THE WITNESS: I would say it was '71 when we
16 were bidding on it. I believe the work was done on the
17 house in '72. Can't be far off with that.

18 THE COURT: Thank you.

19 BY MR. TRAFICANT:

20 Q. Have you since built an addition to your house on
21 Stoddard Hayes Road?

22 A. Yes. I'm still working on an addition to my house at
23 this time.

24 Q. Now, on or about 1993, did you -- what was your
25 understanding of the economy in Mahoning Valley?

Marchese - Direct

1 A. Early '93 I was dairy farming at that time, and
2 the -- the agriculture, of course, wasn't part of the
3 economic boom that the country was having in the '90s, but
4 I -- I believe that construction at that time should have
5 been -- should have not been a problem to get a job in
6 construction at that time.

7 MR. MORFORD: Objection, unless he has some
8 expertise to say that. He's just sitting here giving his
9 opinion on things.

10 THE COURT: Right.

11 THE WITNESS: I was asked.

12 THE COURT: No. It's not about you
13 answering; it's about whether or not we should permit an
14 answer to be made. Given what we have here, we can't go
15 forward on this with this witness.

16 Q. Did you give a rough estimate after having looked at
17 that addition and considering what you would bid on that
18 job?

19 MR. MORFORD: Objection.

20 THE COURT: Don't answer, please.

21 BY MR. TRAFICANT:

22 Q. Now, when you said very poor work, what led you to
23 believe that it was very poor work?

24 A. There are some rafters in that open gazebo area that
25 the bird mounts are as much as three inches away from the

Marchese - Direct

1 top plate as far as fitting to notch around another post
2 for the gutter on the existing house when it could have
3 been placed away from it to begin with. The railings on
4 the deck, I notice where they're nailed too close to the
5 top of the board and split, the edge away and then pulled a
6 nail out. It would be a hole there and in the split.

7 Inside, there's some trim work that is noticeable
8 splits on the trim from nailing either too close or just
9 leaving a trim board like that with a split in it.

10 The construction of the doors, I would never have put
11 doors right down on to a deck where water can roll
12 underneath the door and wet the floor underneath the
13 plywood. That was -- that was the first thing that caught
14 my attention. I just wouldn't -- it's not done that way.

15 People that are in construction wouldn't build like
16 that. It looked more like a do-it-yourself project.

17 Q. When you said it looked like a do-it-yourself
18 project, is it your testimony that you do not believe it
19 was performed by --

20 THE COURT: Whoa, whoa. You don't ask him
21 that way. This is on -- you ask him questions. Let him
22 answer it. Don't say what you think his testimony is.

23 Q. Does the quality of that job appear to you to have
24 been done by professionals?

25 A. No, it doesn't.

Marchese - Direct

1 Q. How long would it have taken you to build that
2 addition?

3 MR. MORFORD: Objection, total speculation.

4 THE COURT: Yes. We can't accept an answer
5 to that.

6 MR. TRAFICANT: Pardon?

7 THE COURT: The objection's well taken.

8 BY MR. TRAFICANT:

9 Q. Did you take pictures of this -- of this addition and
10 home?

11 A. Yes, I did.

12 Q. Are those pictures ready?

13 A. I was just finishing some labelling of them when I
14 got called into the courtroom. I did not have them all
15 labeled.

16 MR. MORFORD: Your Honor, can we find out
17 when he took and made these pictures because we've never
18 seen them before this moment.

19 THE COURT: Right.

20 BY MR. TRAFICANT:

21 Q. When did you take the pictures, Mr. Marchese?

22 A. I took the pictures of the -- this addition we're
23 speaking of behind the -- from the deck, the deck -- the
24 deck addition on Saturday of this past week, Saturday.

25 Q. And you did not complete identifying them for what

Marchese - Direct

1 reason?

2 A. I had many pictures, and I wasn't done labelling. I
3 got called to come in here.

4 Q. You didn't expect to be called this early?

5 A. No. I thought I'd have the day or something.

6 Q. Do those pictures depict damage to the house?

7 A. Yes, they do. That's the ones I took. Anywhere
8 there was a problem that I felt needed a picture.

9 Q. Was there rot on the house?

10 A. Yes.

11 Q. Extensive rot?

12 A. Yes.

13 THE COURT: Well, Congressman, why don't we
14 take the break right now, and maybe he can finish getting
15 together whatever pictures you believe might be relevant.

16 MR. TRAFICANT: I didn't realize the time,
17 your Honor, and I agree with you full-heartedly. How long
18 of a break will it be?

19 THE COURT: It'll be a 20-minute break.

20 Thank you.

21 (Proceedings in the absence of the jury:)

22 THE COURT: When you find out what you're
23 going to use before we bring the jury back, they have to
24 see them.

25 MR. TRAFICANT: I will do that.

Marchese - Direct

1 THE COURT: Also, if you have any issue
2 between the two of you, I need to come out here before
3 11:00. So you guys get about a ten-minute break. Okay?

4 (Thereupon, a recess was taken.)

5 MR. TRAFICANT: Your Honor, I would like to
6 make a request of the court that pursuant to counsel for
7 Mr. Saadey, who has an important meeting at 3:00 and
8 thought he would be out in the morning, he be voir dired
9 tomorrow morning at 8:00 or 8:15 before the jury, and he
10 has to get back.

11 I'm not speaking for his counsel, but he thought he
12 was going to be on at 9:00 this morning.

13 THE COURT: Okay. Do you have other
14 witnesses to fill up the jury's time?

15 MR. TRAFICANT: Yes. I believe I do.

16 THE COURT: All right.

17 MR. TRAFICANT: I -- I'm hoping I do. I
18 thought he would be an extensive cross, but he would --

19 THE COURT: You want me to release him. I
20 have to ask this question because we have a jury here
21 today, and we have to accommodate them, and I said I'd be
22 willing to --

23 MR. TRAFICANT: Yes. I believe I have enough
24 witnesses here, and --

25 THE COURT: To take us to 4:30?

Marchese - Direct

1 MR. TRAFICANT: I don't know how long cross
2 they're going to take but --

3 THE COURT: You never can exactly predict. I
4 just want to make sure that if I let you reschedule him --
5 and I'm not sure it can be in the morning -- we normally
6 start the trial at 9:00, but if I can reschedule him to
7 some other period of time tomorrow, then I want to make
8 sure that you have enough people here today.

9 MR. TRAFICANT: I would request that, and I'd
10 also note that I was told that the welder is on its way,
11 and I expect it here hopefully before 4:30.

12 THE COURT: Okay.

13 MR. MORFORD: Your Honor, I was going to say
14 if Congressman Traficant tells us and the Court who he
15 plans to call today, we'll tell you how long on cross. We
16 have an idea of that. If he runs short, he can call people
17 at lunch.

18 THE COURT: That's a good idea. Why don't
19 you take a few minutes to do that? Meanwhile, is there any
20 issue about the pictures here?

21 MR. MORFORD: Yes, your Honor. And the issue
22 is this: At five minutes to 11:00, Congressman Traficant
23 finally showed us these photos. And it is clear from a
24 number of these photos that they do not relate to the
25 addition at all, that they relate to the condition of the

Marchese - Direct

1 farmhouse itself, parts that had nothing to do with the
2 work that Manevich was doing.

3 And this witness has testified about squirrel holes
4 and things that are on the old house. He wants to show a
5 number of pictures and photos that really aren't relevant,
6 and I -- I guess my request is, if he's going to be showing
7 these pictures of parts of the house that didn't relate to
8 the work, that needs to be made clear because so far he's
9 made it sound like all this relates to the work that was
10 done by him.

11 MR. TRAFICANT: Your Honor --

12 THE COURT: Um-hum.

13 MR. TRAFICANT: -- the bulk of these
14 photographs are exactly related. There are five that are
15 unrelated, though, that speak to the general condition, and
16 one of them also speaks to a photograph that was shown to
17 Mr. Angelo, if you'll recall, and that was already brought
18 into evidence by the Prosecution, and that's the swayback
19 building, in fact, that it still does exist and exists on
20 that property.

21 MR. MORFORD: I'd like to note for the record
22 the photos in the Congressman's hands I haven't seen yet.
23 I want to read on the record what he's shown.

24 THE COURT: Okay, okay. All right.

25 MR. TRAFICANT: You can read on the record I

Marchese - Direct

1 have exactly what I've shown you.

2 MR. MORFORD: You told me these were the ones
3 you are going to use. I don't know --

4 THE COURT: Guys, this is the kind of stuff
5 you're supposed to sit down together and -- please do it,
6 and then we'll go on the record.

7 MR. TRAFICANT: I would like to stipulate.

8 THE COURT: No. Wait. You're off the record
9 I just took you off the record.

10 (Discussion held off the record.)

11 THE COURT: I was just talking to this
12 gentleman about what time we're scheduling his client
13 tomorrow morning, and I'm willing to do it at 8:30 but not
14 at 8:00. 8:30 which is half an hour. That should be
15 plenty of time to allow questions to be put to your client.
16 Okay?

17 MR. KOPP: Thank you.

18 THE COURT: Thank you very much. So you're
19 excused.

20 MR. TRAFICANT: That will be fine with me.

21 MR. KOPP: Thank you.

22 THE COURT: Very well.

23 MR. TRAFICANT: I would like to ask for the
24 record --

25 THE COURT: Okay.

Marchese - Direct

1 MR. TRAFICANT: If his client is going to
2 testify or take the Fifth Amendment.

3 THE COURT: Well, that --

4 MR. KOPP: For the record, I can't answer
5 that until I know the questions.

6 THE COURT: That's right.

7 MR. TRAFICANT: Fine.

8 THE COURT: That's why we do the questioning.
9 Okay.

10 MR. TRAFICANT: Thank you, your Honor.

11 MR. KOPP: Thank you.

12 THE COURT: I understand that you've reached
13 some kind of agreement about these pictures. Am I correct?

14 MR. MORFORD: Yes, your Honor. I've now seen
15 the pictures, and as long as he makes it clear with the
16 witness where these pictures are in the house and what
17 parts relate to the addition and not the addition, then
18 that's fine.

19 THE COURT: Okay. Very well.

20 MR. TRAFICANT: And I've agreed to do that.

21 THE COURT: Excellent.

22 MR. TRAFICANT: Thank you. Your Honor, I
23 have a piece of evidence I'd like to have admitted. Shall
24 we do that later in the day?

25 THE COURT: Usually, we do that at a break,

Marchese - Direct

1 and we really should bring the jury in.

2 MR. TRAFICANT: Bring the jury in, that's
3 fine.

4 THE COURT: We'll bring the jury in.

5 (Proceedings resumed in the presence of the jury:)

6 BY MR. TRAFICANT:

7 Q. I'm going to ask if you can identify this photograph
8 that is placed here and if you took that photograph.

9 A. Yes, I took that photograph. I notice the bird mount
10 on the rafter, hanging out on the right-hand side at the
11 top. See the -- the space that you can see above the wall
12 where the -- that's the plate that the rafter sits on --
13 right -- no, right there. That opening right there, that's
14 called a bird's mount on a rafter, and it should be up
15 against that and totally off from the back and then from
16 the top down on to the plate. But, see, it's separated,
17 and it appears that it was -- that's the way they put it
18 together. They didn't have much craftsmanship on that.

19 THE COURT: Congressman, before you replace
20 that, we need the number put on the record.

21 MR. TRAFICANT: That is HA-35, your Honor.

22 THE COURT: Thank you.

23 BY MR. TRAFICANT:

24 Q. Did you take this photograph, Dominic?

25 A. Yes. That is the finish floor that they left. It's

Marchese - Direct

1 the bottom of the doors, the door track that you walk out
2 on to the porch. You have two sliding doors that come
3 together with a post in the middle. And that's the water
4 damage at the base of the post and the floor underneath the
5 aluminum track that's sitting on that.

6 THE COURT: Would you give the number,
7 exhibit number, Congressman, it's better if you do it when
8 you put it up.

9 MR. TRAFICANT: I'm sorry, that's HA-37.

10 THE COURT: Thanks.

11 Q. This is HA-39, and did you take this photograph,
12 Dominic?

13 A. Yes. Although the photo doesn't -- photo doesn't do
14 it justice, it's trying to show that the plywood they used
15 was probably seconds because it is -- there's a big gap
16 there of like one layer missing in the middle. It should
17 be finished on one side for either tile or for carpeting,
18 and basically, it appeared to be regular subflooring, CDX
19 type material.

20 Q. Does that mean there was no one finished side?

21 A. No.

22 Q. Next photograph has already been introduced by the
23 Prosecution, and did you take this photograph HA-400? It
24 has a joint exhibit number for the purposes of today's
25 identification.

Marchese - Direct

1 MR. MORFORD: Your Honor, that picture was
2 not introduced by us and doesn't have a joint exhib number.

3 MR. TRAFICANT: Okay. Then I --

4 Q. Did you take this photograph, Dominic?

5 A. Yes, I did.

6 Q. Did you go in that building?

7 A. No, I didn't. I --

8 Q. When did you take the picture of that building?

9 A. That particular picture was taken at least four weeks
10 ago. That was not taken on the day that I took the
11 pictures of the addition on the deck.

12 Q. When you took the picture addition of the deck, was
13 this building still standing?

14 A. Yes.

15 Q. This is HA-38. Can you explain the significance of
16 this photograph?

17 A. I had to get down very low to take this picture.
18 There is a hutch you have on the floor that's got china in
19 it. There's glass doors above that hutch, but you have a
20 board on the floor at the other end of the hutch, and it's
21 at least a one-inch thick -- not three quarters. That's a
22 one-inch rough sod piece of poplar or spruce appears to be.

23 Q. And what if -- how wide was the cabinet?

24 A. I don't believe it's more than six-foot of china
25 cupboard. I notice that, and then I looked at the china

Marchese - Direct

1 cupboard, and you had dishes and things in there, and I
2 figured, well, that must be because they were leaving that
3 at an angle. See, from one end of that hutch to the other,
4 that is making it level on the floor.

5 Q. Making it one-inch and six feet?

6 A. That's about right, yeah. So you needed to put that
7 underneath to make that level for your china pieces, not to
8 roll off the shelf.

9 Q. This is HA-1, did you take this photograph?

10 A. Yes. This one shows siding that they did coming
11 around the wall on that side, above the -- there's a gutter
12 on top of the siding that they -- that probably was on the
13 existing house before the siding.

14 So the gutters there, there's a post coming up that's
15 notched out. See where all that dark green mold is?

16 Q. Is this where it was notched and cut?

17 A. That's right. It's notched out there -- well,
18 quality construction, you don't do work like that. That
19 was my point in this.

20 Q. Did you take this picture, this is HA-60?

21 A. Yes. That's the same wall, going around the corner
22 of an L-shape deck into the gazebo area. That's the
23 corner. There's an existing gutter with a downspout coming
24 off of it --

25 Q. Is this the gutter?

Marchese - Direct

- 1 A. That's the gutter.
- 2 Q. Does the siding go up?
- 3 A. To the bottom of your gutter.
- 4 Q. And stops?
- 5 A. That's the work they did, yes.
- 6 Q. They didn't go up under?
- 7 A. No.
- 8 Q. Is this an opening up here?
- 9 A. That's where the rodents are going in between your
10 roof and into the attic, and I would just -- didn't know
11 why they wouldn't have plugged that up and put siding in --
12 you know, into that opening to seal it.
- 13 Q. Does this further show from another angle the notch
14 that was made?
- 15 A. Yes. That's the other side of that four by four that
16 you've seen on the previous picture.
- 17 Q. Next one is HA-50. Did you take this photograph,
18 Dominic?
- 19 A. Yes. That's the west wall underneath a sliding glass
20 door, where they stopped short of the subfloor, and the
21 finished floor, left an opening. Evidently, they didn't
22 square their room when they put the room on your deck,
23 square up. One corner was hanging out further. There's an
24 opening there, and there's water damage. You can't tell
25 it, but to the right where the post comes down, that is --

Marchese - Direct

1 Q. Water damage down in here?

2 A. That is all water damage on the plywood and the
3 bottom of the post.

4 Q. Now, when we looked at the photograph with the piece
5 of furniture that was set on an angle, would this be the
6 down side or the top side of that?

7 A. That's the low side, in fact, that china cupboard is
8 on that wall to the left of the picture.

9 Q. This is known as HA-80. Could you identify this
10 photograph, Dominic?

11 A. That is your treated deck that they built a room on
12 top of, setting the doors and the floor right on top of
13 your deck. And water on your deck goes underneath that
14 threshold of that door. Like I said, it should have been
15 raised up six inches as a step-in, and you would have had a
16 floor that would not be getting water under the doors.

17 Q. Could you identify this photograph?

18 A. This was directly underneath your deck where that
19 addition is built, about the center of the back of the
20 house.

21 Q. HA-90?

22 A. Yes.

23 Q. HA-90?

24 A. And that's what I -- what I deemed to be the original
25 door that went with the basement, with the house.

Marchese - Direct

1 Q. Why did you believe this was the original door that
2 came with that house?

3 A. Well, the hinges that they put it on were hinges cut
4 sideways so that it could be used on a one-inch thick door.
5 So they -- those are very old hinges, and they even had to
6 cut them to make them fit.

7 I don't know if we have a picture of them there, but
8 the braces at the bottom and the top of the door that the
9 boards were nailed to, that's the way they con -- they
10 constructed the doors years ago.

11 Q. Can you see the difference in the width and one inch
12 versus another?

13 MR. MORFORD: Objection to this on relevance
14 because Mr. Manevich never testified he replaced that door.
15 It's totally irrelevant.

16 MR. TRAFICANT: I believe Mr. Manevich
17 testified he did the basement door.

18 THE COURT: No.

19 MR. MORFORD: He said he fixed it. He didn't
20 replace it. This is irrelevant.

21 Q. Was that door fixed, Dominic?

22 MR. MORFORD: Objection to what he could know
23 was replaced in '93.

24 Q. This is HA-70, Dominic. What does this depict?

25 A. They have the siding going up on the addition and the

Marchese - Direct

1 soffit material, closed in, and a facial on the edge of the
2 roof, but there's no gutter. So that water just comes off,
3 hits the deck down below, goes under your floor inside.

4 Q. And that was HA-70?

5 A. Yes.

6 Q. This is HA-100, did you take this photograph,
7 Dominic?

8 A. I took that photograph the same day that I took the
9 photographs of the addition on the deck. That would have
10 been Saturday.

11 Q. What, if anything, was the status of the eaves?

12 A. The -- return wraparound eave is all rotted and open.
13 That's all open where squirrels can go right into your
14 attic, go right into the attic.

15 Q. That was not a part of the addition, was it?

16 A. No. This had nothing to do with that. I just wanted
17 to know what the condition of this farmhouse was --

18 THE COURT: Okay. Well, we're getting into
19 areas that really aren't relevant to anything --

20 MR. TRAFICANT: We've agreed to four other
21 photographs, your Honor.

22 THE COURT: Well, whatever. Let's only deal
23 with things that relate to testimony that has somehow come
24 forward in this case.

25 MR. TRAFICANT: I believe it speaks to the

Marchese - Cross/Morford

1 Defense as to the aerial photos being shown.

2 MR. MORFORD: Object to the speech, your
3 Honor. Nobody's -- this is irrelevant.

4 MR. TRAFICANT: These were agreed to before
5 we started.

6 THE COURT: Okay. We aren't going to have
7 that discussion in front of the jury. You didn't tell me
8 what you agreed to, so we'll take this up later. Just move
9 along with things that he can testify to.

10 Q. Who suggested that these pictures be taken?

11 A. I suggested to you that I'd like to take some
12 pictures of the farm and the buildings from my recollection
13 of what was being portrayed to be J R's --

14 MR. MORFORD: Objection on relevance to this
15 line of questioning.

16 THE COURT: Sustained.

17 MR. TRAFICANT: No further questions at this
18 point.

19 THE COURT: Thank you.

20 CROSS-EXAMINATION OF DOMINIC MARCHESE

21 BY MR. MORFORD:

22 Q. Mr. Marchese, we never met before today, right?

23 A. I met you this morning.

24 Q. Out in the hallway I said hello. Before that we
25 never talked, correct?

Marchese - Cross/Morford

- 1 A. That's correct.
- 2 Q. And it would be fair to say you don't come before
3 this jury as an entirely unbiased witness, correct?
- 4 A. I would say so.
- 5 Q. You're not a professional construction inspector who
6 inspects construction for pay with no relationship to
7 Congressman Traficant, correct?
- 8 A. That's true.
- 9 Q. In fact, you're a very close personal friend of his,
10 correct?
- 11 A. Very close.
- 12 Q. As you testified on direct, you worked directly for
13 the Congressman, correct?
- 14 A. Yes, I do.
- 15 Q. And you have done so for the past 18 months, correct?
- 16 A. Should be two years at the end of this month.
- 17 Q. And how much do you make per year for this job, sir?
- 18 A. My present salary is \$30,900.
- 19 Q. Okay. And do you get health insurance paid by the
20 Government?
- 21 A. No.
- 22 Q. Do you get a portion of your health insurance paid by
23 the Government?
- 24 A. No, I do not.
- 25 Q. You don't get any insurance whatsoever?

Marchese - Cross/Morford

- 1 A. Not based with the federal government. I have -- I
2 have insurance through my wife's insurance. I'm covered
3 with her.
- 4 Q. Now, do you get vacations, vacation days?
- 5 A. Yes.
- 6 Q. And how does that work?
- 7 A. Well, there is a schedule of so many years service,
8 so many days vacation.
- 9 Q. Does anybody really keep track of them, sir?
- 10 A. To my knowledge, they do.
- 11 Q. Who?
- 12 A. Well, where I work in Trumbull County, it would be
13 kept by the supervisor.
- 14 Q. But who was that, Betty Manente?
- 15 A. Yes.
- 16 Q. Sir, you don't have to actually fill out a leave slip
17 like normal Government workers when you want to take a day
18 of leave, do you?
- 19 A. No, you don't.
- 20 Q. You just take a day of leave, correct?
- 21 A. You notify the supervisor that you need -- a half a
22 did or a day, yes.
- 23 Q. Isn't it true that under the workings of a
24 congressional office, in particular your congressional
25 office, that if Congressman Traficant wants to give you ten

Marchese - Cross/Morford

1 additional days of leave, he can do so, correct? He has
2 that power?

3 A. I'm not aware of that. I will -- I'm really not.
4 I -- I read a note -- a memo that came from D.C. about
5 vacation days, and that's all I know about it.

6 Q. And that's recently then, correct?

7 A. When I started.

8 Q. Which was what, 18 --

9 A. That was the April -- I think 1st of April of 2000.

10 Q. So --

11 A. That very week, I seen what days were allowed based
12 on years, and I believe one year is 11 days, if I'm not
13 mistaken.

14 Q. And that was after the newspapers began reporting
15 about staff members going out and working at the farm that
16 that memo would have come out, correct?

17 A. I'm not sure. I don't know what -- I don't know what
18 date you're relating to in relation to when I started.

19 Q. Okay. Well, sir, did you start before or after the
20 March 2000 primary election?

21 A. I started after the March 2000 primary.

22 Q. Isn't it true prior to that election there were wide
23 spread press reports of congressional staffers doing work
24 at Congressman Traficant's farm during congressional hours?

25 A. I'm not sure if that was reported that way. I've

Marchese - Cross/Morford

1 since read about that, heard about that.

2 Q. How many hours do you generally work per week to earn
3 your \$30,000 a year salary?

4 A. I would -- I would have to say that I average between
5 37 and 44 hours a week, and I do have with me today time
6 sheets that we fill out everyday.

7 Q. Who is it that actually sets your hours and duties?
8 That would be Congressman Traficant, correct?

9 A. I believe it is up to the member, yes.

10 Q. In fact, if Congressman Traficant tells you I don't
11 want you to work in the office today and do whatever you're
12 doing, I want you to come with me here or there to a
13 meeting, you'd go with him, correct?

14 A. If it's pertaining to congressional constituent work,
15 meetings, he could do that, yes, I could go with him.

16 Q. Have there ever been times Congressman Traficant
17 asked you to go somewhere that really didn't relate to
18 constituent service work?

19 A. No, there has not. There's not been one -- one time
20 when he's called me during a workday to go anywhere with
21 him that wasn't relating to that type of work.

22 Q. Have you yourself ever done any work out at the farm?

23 A. Not since I've been employed by the Congressman.

24 Q. So since the time you started with Congressman
25 Traficant, it's your testimony you have done no work out at

Marchese - Cross/Morford

- 1 the farm?
- 2 A. No work out at the farm since the day I started.
- 3 Q. Have you ever sent someone else out to do work at the
4 farm?
- 5 A. No, I have not.
- 6 Q. Now, it was Congressman Traficant that hired you,
7 correct?
- 8 A. Yes, it was.
- 9 Q. And you understand that as a congressman he can fire
10 you without cause for any reason whatsoever, correct?
- 11 A. I believe that's the way federal positions work, yes.
- 12 Q. Well, congressional positions I'm asking about.
13 There's no Civil Service --
- 14 A. No, there's no -- no protections in congressional
15 staffing.
- 16 Q. Just prior to the time that you started with
17 Congressman Traficant, there was a man by the name of
18 George Buccella who was looking to get a job in Trumbull
19 County, is that correct?
- 20 A. George was always looking for, you know, to move up
21 to another position, yes.
- 22 Q. Where does George now work?
- 23 A. George works for the Trumbull County Board of Health.
- 24 Q. Okay. And what does your wife do again?
- 25 A. She's the Trumbull County Recorder.

Marchese - Cross/Morford

1 Q. And were you at one time opposing George Buccella
2 from getting that job in Trumbull County?

3 A. Opposing George from getting the job?

4 Q. Yes.

5 A. No. I totally stood away from it or out of it.

6 Q. Did you ever tell people you didn't think he should
7 get that job?

8 A. I do not recall ever saying that -- to anyone that I
9 don't think he should get the job. I recall -- if I said
10 anything that George was a worker. George would work. He
11 would do a job.

12 Q. Now, did you replace George Buccella on Congressman
13 Traficant's staff basically?

14 A. I replaced George as full-time position. I was
15 part-time at the time.

16 Q. Now, you, in addition to working for Congressman
17 Traficant, are close personal friends of Congressman
18 Traficant, correct?

19 A. Yes, I have been, probably since '94, very close.

20 Q. And you and your wife have had him out to your farm
21 on many occasion, correct?

22 A. Yes. The first -- the first time that he was at our
23 farm was in 1984 when he was shown --

24 Q. My question was, that's not an infrequent occurrence,
25 for you to have the Congressman out to your farm?

Marchese - Cross/Morford

- 1 A. He's there a lot.
- 2 Q. Are there ever times he spent -- stayed overnight at
3 your farm?
- 4 A. Yes. There's many times he stayed overnight.
- 5 Q. How many times would you say in the last three months
6 he stayed at your farm?
- 7 A. Not at all in the last three months.
- 8 Q. How about in the last couple years?
- 9 A. In the last couple years, this past hunting season,
10 he was not out at all. Normally, he's -- he's there every
11 weekend during hunting season. The duck season especially
12 in November.
- 13 Q. Did you drive up here today?
- 14 A. I drove up here last night.
- 15 Q. Who else did you drive up with?
- 16 A. With Mr. John Innella, he needed a ride so I was
17 going to drive up this morning, but he needed a ride there,
18 and I figured if the weather's bad coming up, I don't want
19 to get stuck in the morning and cause a problem not being
20 here. So I left last night about 10:30, picked him up and
21 came up to Cleveland.
- 22 Q. Now, did you -- did you stay with anybody else?
- 23 A. I stayed with the -- with the Congressman.
- 24 Q. You stayed with the Congressman last night?
- 25 A. Yes, in the room next to the Congressman.

Marchese - Cross/Morford

1 Q. Now, isn't it true, sir, that based on your
2 friendship and employment with Congressman that you don't
3 want to see the Congressman convicted in this case?

4 A. I would say that that's true. I would also say that
5 I would not lie for him either.

6 Q. I understand that, but you've given some testimony
7 today here about your expertise --

8 A. That's right.

9 Q. -- in the area of construction. I want to ask you
10 questions about that.

11 A. Yes.

12 Q. First, you indicated you haven't done any work on the
13 farm since the time you have been employed by Congressman
14 Traficant, but the truth is, you have done work out at the
15 farm on prior occasions, prior to the time you worked for
16 him, correct?

17 A. That would be correct.

18 Q. And very close to the time that he hired you to work
19 for him, correct?

20 A. No. I would not say very close. The last time we
21 ever exchanged any labor where I would be helping him do
22 something at his farm would have been in the early fall of
23 '97; would have been the last time I've worked assisting
24 him. Exchanging any work would have been the fall of '97.

25 Q. Okay. Well, you did some extensive kitchen repairs

Marchese - Cross/Morford

1 at the farmhouse, correct?

2 A. I helped him remodeling --

3 Q. Why don't you go ahead and describe to the jury the
4 extent of remodeling, personal work that you did yourself?

5 A. Well, anything I did there, I was with the
6 Congressman helping him do.

7 Q. Well, thank you, sir. But my question is, describe
8 to the jury what you personally did yourself.

9 A. I recall a premolded counter top that he wanted to
10 have help put down. You have to glue those tops down and
11 screw up from underneath.

12 Q. Isn't it true you also did some dry walling?

13 A. There was a piece of drywall in the hallway off of
14 that kitchen that I helped him with, the base of which
15 would have been half drywall going up, and the base would
16 have been older, rough sod boards as a chair rail type,
17 probably 48 inches high from the floor.

18 Q. Barn wood, right?

19 A. Yes.

20 Q. Barn board they call it, correct, barn board, is that
21 what they call it?

22 A. I would say those were used board, yeah, barn -- barn
23 siding.

24 Q. But that's what it's called when you have a look in
25 your kitchen, a barn board look; is that correct?

Marchese - Cross/Morford

- 1 A. I helped him do that.
- 2 Q. What else did you do in the kitchen?
- 3 A. I worked on an electrical outlet in that kitchen.
- 4 Can't recall any other -- any other work.
- 5 Q. Do you remember any other workers being there and
- 6 helping you?
- 7 A. Any other workers?
- 8 Q. How about your brother, sir, wasn't he there helping
- 9 you?
- 10 A. My brother-in-law, Ronnie, would have been out there
- 11 one day with me, and, in fact, we ate there.
- 12 Q. How about a guy name John Fortunato, times he was
- 13 working out there in the kitchen?
- 14 A. I never saw John working in the kitchen. I recall
- 15 John stopping there the day I was out there, but I don't
- 16 recall him working in the kitchen.
- 17 Q. What were you paid for the work you did in the
- 18 kitchen?
- 19 A. I didn't want to be paid. We were exchanging labor.
- 20 Q. What was he doing for you labor-wise?
- 21 A. Well, in 1996, the winter of '96 --
- 22 Q. Just an exchange for the work you did in the kitchen.
- 23 Tell me what it was. Was this a barter work situation?
- 24 You did something in the kitchen, and he did something for
- 25 you. Is that what you're saying?

Marchese - Cross/Morford

1 A. Basically, that's right. He painted every room in my
2 house along with me in 1999.

3 Q. The Congressman did?

4 A. Right. He's a very good painter, and he enjoys it.

5 Q. How would you characterize his carpentry skills?

6 A. Pretty good.

7 Q. Pretty good?

8 A. He does very nice finish work. He also enjoys
9 working with wood, making little cupboards.

10 Q. In addition to the work you did in the kitchen, did
11 you also build some steps at the farmhouse?

12 A. We did -- we did do a set of steps that were very
13 bad, an old farmhouse. We put a new set of steps in.

14 Q. So it's your testimony since the time you started
15 working for Congressman Traficant you no longer traded work
16 for work with him, correct?

17 A. That's not since I worked for him, that's right.

18 Q. Let me ask you this: I want to ask you questions
19 about your experience in construction industry, and I'm not
20 sure I fully understood what you said on direct.

21 Run me back through your full and complete experience
22 in terms of -- before we do that, let me ask you this:
23 Weren't you a fireman at one time?

24 A. I was a City of Warren firefighter from 1966 until
25 1991 when I retired.

Marchese - Cross/Morford

1 Q. So until you retired in 1991. You were a full-time
2 firefighter, correct?

3 A. Which is working one day on and two days off, yes.

4 Q. And then were you involved in the construction
5 business during the time you were a firefighter?

6 A. That's what I continued to do from getting out of the
7 Navy in 1964.

8 Q. Were you full-time or part-time as far as what you
9 were doing construction-wise?

10 A. I would have been from '66 on -- I would have been
11 part-time with my father's construction company.

12 Q. And that was a business that did what kind of
13 construction?

14 A. Small homes and building.

15 Q. Building new structures, correct?

16 A. New and additions.

17 Q. How many additions did you personally work on,
18 approximately?

19 A. I wouldn't be able to count them all, many.

20 Q. There were many. Isn't it true that based on your
21 experience that it's sometimes much harder to do
22 construction on existing structures than it is just to
23 build an entirely new structure?

24 A. It's easier to build new.

25 Q. And isn't it particularly difficult when you're

Marchese - Cross/Morford

1 building an addition on a structure that itself is not in
2 very good shape?

3 A. Remodeling that, you mean?

4 Q. Yes.

5 A. Yes, it would be.

6 Q. And isn't it difficult if you're dealing with an
7 owner that doesn't want a lot of changes to what already
8 exists, if what already exists is not in good shape?

9 A. Well, example of that, you -- you're building an
10 addition on a deck that was pre-existing, and the deck, for
11 whatever reasons, could have been severed. You wouldn't
12 just start to build a room for this individual or anyone
13 off of that deck without trying to level that with a floor
14 as a step-up, where you could shim the floor joist to make
15 that room both ways level, set your door threshold on that
16 new frame and go from there.

17 So you're saying is that difficult? It's not
18 difficult if you're in the trades and are doing work and
19 you got power saws and you can shim floor joists. I don't
20 see where that's difficult.

21 Q. Let me ask you, sir, did you actually take and
22 measure the balance of that floor?

23 A. I only observed that one cupboard with a -- within
24 six feet that had the one-inch difference to be leveled.

25 Q. How hard would it have been to take a level and stick

Marchese - Cross/Morford

1 it on the floor?

2 A. Why would I have to do that when you can see six feet
3 it's on the floor on one end, and the other end is up an
4 inch? Why would I have to do that?

5 Q. Isn't it true with old antique cupboards sometimes
6 they --

7 A. That is not an antique cupboard. That is not an old
8 antique cupboard. It's probably made in the 60's, French
9 Provincial, I believe it is.

10 Q. Sir, let me ask you this: You're not a certified
11 home inspector, correct?

12 A. No, I'm not.

13 Q. You've never done this type of work for pay in your
14 life, correct?

15 A. Yes. I've done this kind of work for pay in my life.

16 Q. No. Inspection work for pay?

17 A. Well, no, but --

18 Q. You're not somebody that when somebody's buying a
19 house, they don't go out and hire you to come in and look
20 over the house and tell them where the problems are,
21 correct? That's not what you do for a living.

22 A. That's right, but I can do that.

23 Q. But there are people out there that do that for a
24 living, correct?

25 A. That's right.

Marchese - Cross/Morford

1 Q. Now, is it fair to say as a contractor, a
2 contractor's nightmare when you're working on additions to
3 an existing structure, if the person that owns the
4 additional structure keeps adding on little jobs every time
5 you get one done they want you to do another?

6 A. You -- I'm sure that happens. It happened when we
7 were building homes. They want changes on changes all the
8 time. It's very frustrating.

9 Q. Isn't it true there comes a time you want to be done
10 with a job and get out or there because suddenly you're
11 becoming their handyman. Have you had that experience?

12 A. I can understand that.

13 Q. Now --

14 MR. TRAFICANT: I didn't hear that answer.

15 THE WITNESS: I can understand that
16 happening.

17 Q. As you sit here today, you really can't testify about
18 anything that went on in 1993 because you weren't there,
19 correct?

20 A. When they constructed that addition?

21 Q. Yes.

22 A. No. But I can see what they did today.

23 Q. Well, how can you -- how can you see what they did
24 when you don't know who did what, sir? You weren't there,
25 were you?

Marchese - Cross/Morford

1 A. I can see a floor with threshold doors sitting on a
2 deck with only plywood underneath it for water to come in.
3 None of -- you would not have accepted that work done for
4 you.

5 Q. Well, sir, what I'm saying is, you have no idea in
6 1993 whether that door was put in by Congressman Traficant
7 when he built the deck or whether it was something that was
8 done by the workers when they came in to fix the deck, do
9 you, based on your own firsthand knowledge?

10 A. My assumption is that addition, the way it's left
11 right now, was the way it was built by whoever did it.

12 Q. That's an assumption because you have no idea really
13 what was done or not done by Mr. Manevich, correct? All
14 you can do is assume.

15 A. All I can do is appraise what's before me.

16 Q. Now, sir, you talk about the fact there wasn't a
17 gutter on that roof. Do you have any knowledge of whether
18 that roof existed before these carpenters even came out?

19 A. I understand the roof was --

20 Q. Your own personal knowledge, do you know?

21 A. I was told by the Congressman that that roof was --

22 Q. I don't want to ask what you were told by the
23 Congressman. I want to ask about your own personal
24 knowledge. Do you have personal knowledge whether that
25 roof existed prior to Mr. Manevich and his crew coming out

Marchese - Cross/Morford

1 to do work, your own personal knowledge?

2 A. No.

3 Q. And you don't have any personal knowledge, you
4 yourself, as to whether Congressman Traficant wanted or
5 didn't want a gutter there, correct, your own personal
6 knowledge. You weren't there, were you?

7 A. At the time that that was done, no, I was not there.

8 Q. You testified on direct about this squirrel hole, and
9 there was a squirrel hole, and it was a problem. Isn't it
10 true that squirrel hole was on a part of Congressman
11 Traficant's house that had nothing to do with this addition
12 whatsoever?

13 A. That's right. And that's probably one of seven
14 different squirrel holes in the -- around that house.

15 Q. Now, having been around construction, isn't it true
16 it's not unusual when people put on a deck that at times
17 they'll put on the deck and leave the doors like that.
18 Sometimes people don't do it right, especially if it's home
19 remodeling, they're doing it themselves?

20 A. This looks like a do-it-yourself job that I
21 understand somebody charged money to build.

22 Q. And you only understand that because that's what
23 Congressman Traficant's telling you, right?

24 A. That's right.

25 Q. The truth is, sir, you've even seen other sliding

Marchese - Cross/Morford

1 glass doors where some wood on the inside is rotting,
2 correct. That's not a -- that's not a totally unusual
3 thing to see in houses where sliding glass doors were put
4 on next to a deck, correct?

5 A. I've personally not seen that before, no, I haven't.

6 Q. You've never seen that before?

7 A. No.

8 Q. Well, sir, let me ask you this: Isn't it true that a
9 lack of maintenance can also cause water problems?

10 A. I don't know how much maintenance you can put into
11 something. That's always going to naturally take water
12 underneath.

13 Q. Let me give you an example. What happens if you
14 don't clean your gutters? That can cause water to come in
15 at certain places, correct?

16 A. Yeah, but in this case, there is no gutter above that
17 that's forcing more water to come down.

18 Q. Wouldn't it be -- sir, wouldn't it be fair to say
19 that in viewing this house, you can see there's a total
20 lack of maintenance whatsoever?

21 A. It's an old farm.

22 Q. But it's not very well maintained in your
23 professional opinion as a contractor?

24 A. No, it's not, contrary to what people are hearing.

25 Q. Sir, how do you know what people are hearing. Have

Marchese - Cross/Morford

1 you been in this courtroom?

2 THE COURT: You know what? We have a jury
3 here, sir, who have been here from the beginning, and
4 they've heard all the testimony in this case, and I don't
5 know where you're getting your information, but they need
6 to get it firsthand from the witnesses who can put on
7 evidence that they're allowed, under the law, to consider.

8 Q. Let me ask you one last series of questions.

9 As I understand your testimony, you're testifying as
10 a contractor, that if a contractor came in to do this room
11 addition, certain ways they should have done it, then you
12 don't see they did it correct; is that right?

13 A. That's right.

14 Q. Let me ask you this: Wouldn't you agree that if a
15 person hires a carpenter at \$15 an hour to come out and
16 repair a portion to a deck, that it's his responsibility to
17 pay that person for the number of hours it took him to fix
18 the deck, correct?

19 A. If you were given a price ahead of time?

20 Q. Yes.

21 A. And you agreed to that price?

22 Q. Yes.

23 A. Then that -- you should have paid for that.

24 Q. And then, if, when they finish the repair on the
25 deck, which is a small job, if that same person starts

Marchese - Cross/Morford

1 asking them to perform additional work, then once the deck
2 is finished, then you'd agree that they're responsible to
3 pay for that extra work, correct?

4 A. I'm sure that those type of arrangements are dealt
5 with before any work would be done.

6 Q. But as someone who's been called in here as an expert
7 contractor in the industry, isn't that a fair statement:
8 If you keep asking the carpenter who's out to do a minor
9 repair, to do more and more work and it's hourly work, then
10 the number of hours he spends is what you should pay him,
11 correct?

12 A. Yes, exactly right.

13 Q. And if one of the things you asked him to do after
14 he's come out to do a one-or two day deck job is to enclose
15 the porch and build walls around it and then put in windows
16 and all these other things, you should pay for what you've
17 asked him to do, correct?

18 A. I'm not sure if in this case --

19 Q. I am not asking you about this case, sir. I am
20 asking you just in general.

21 A. You should pay anyone that you make a prior
22 arrangement with.

23 Q. And as far as your knowledge of this case, you've
24 already said you weren't around in 1993, and you have no
25 idea, other than hearsay, as to what the arrangements were,

Marchese - Cross/Morford

1 correct?

2 A. That would be correct.

3 Q. Let me ask you the same questions with electrical
4 work.

5 If during the time that the person is having this
6 porch enclosed they call out an electrician to put in a
7 switch, they should pay the hourly rate for that
8 electrician, correct?

9 A. Yes.

10 Q. And then if once they get them out there and start
11 asking them to do all kinds of other stuff, if the person
12 ends up out there for hours and hours, they're responsible
13 to pay them that rate, correct?

14 A. If they're asking before it, yes.

15 Q. And because you weren't in this courtroom, you have
16 no idea whether it was Congressman Traficant asking these
17 people to do more and more extra work, do you, sir?

18 A. No, I don't. I only looked at this building,
19 appraised how it was built, what I felt I would have
20 charged for that --

21 Q. As a whole job, correct?

22 A. Yes.

23 Q. But if you had gone out there at an hourly rate of
24 \$15 an hour, with a partner at an hourly rate of \$15 an
25 hour and the customer kept asking you to spend more and

Marchese - Cross/Morford

1 more and more hours doing work, you would expect them to
2 pay you what they bargained for, correct?

3 A. I would, yes.

4 Q. And you're in no position as you sit here today to
5 testify about how many hours Mr. Manevich and his helpers
6 put in because you weren't there, correct?

7 A. That's right. I only know how many hours I would
8 have figured that job.

9 Q. But you don't know everything they did, do you?

10 A. What's visible.

11 Q. Sir, how would you have any idea what they did if you
12 weren't there?

13 A. Looking at the work that's done.

14 Q. But you're just looking at -- you don't know what all
15 they did, do you?

16 A. If you're talking about extra work outside of that,
17 no, I wouldn't know.

18 Q. Exactly. You really don't know what they did, do
19 you?

20 A. I know what they did on that deck.

21 Q. Only because of what Congressman Traficant has told
22 you, correct?

23 A. What I visibly seen.

24 Q. But you don't know who did that work, do you?

25 A. I could figure that job.

Marchese - Redirect

1 Q. And, sir, my question is: You don't know who did
2 that work, do you?

3 A. No, I don't.

4 Q. You're just assuming it was done by them?

5 A. It was done by a company as far as I know.

6 Q. That's assumption, correct?

7 A. As far as who did the work, yes, but someone did it.

8 MR. MORFORD: Just a moment, your Honor.

9 THE WITNESS: Someone charged it.

10 MR. MORFORD: I have nothing further.

11 THE COURT: Okay, Congressman.

12 MR. TRAFICANT: Your Honor, it's about five
13 minutes to. You want me to continue? I have a little bit
14 of time left?

15 THE COURT: Sure, you have some time.

16 REDIRECT EXAMINATION OF DOMINIC MARCHESE

17 BY MR. TRAFICANT:

18 Q. Dominic, you just went through a number of questions
19 from the Prosecutor about what you knew or didn't know; is
20 that correct?

21 A. Yes.

22 Q. What did you see?

23 A. I seen it basically a do-it-yourself project on a
24 deck addition.

25 Q. Now, he asked you about remodeling old homes, did he

Marchese - Redirect

1 not? Did he not ask you about remodeling old homes?

2 A. Yes.

3 Q. And did you not testify it's much tougher?

4 A. Very much tougher to work on something old --
5 especially 100 year old.

6 Q. Would somebody leave a gutter on and build around it?

7 A. A do-it-yourselfer might. I could never bid to do
8 that kind of work for anyone. I wouldn't figure in a bid
9 that I would notch out a post for a gazebo around a gutter.
10 I wouldn't do that.

11 Q. Exhibit for -- joint exhibit -- but for the purposes
12 of today, 7-33(2). Can you identify on there -- do you see
13 the addition?

14 A. Yes.

15 Q. Did you see the work that was done in conjunction
16 with that condition?

17 A. Yes.

18 Q. Was the siding the same?

19 A. They extended the siding across the face of the back
20 wall on the deck that went around the new addition to have
21 the same siding.

22 Q. Did they take it all the way up and close the roof
23 line up?

24 A. I believe they did, yes.

25 Q. I'm talking about the east side of the house where

Marchese - Redirect

1 the portico fence is. Did they take the gutter off and
2 take it up and close off the hole between the roof?

3 MR. MORFORD: Objection. There's no
4 testimony that they did that work, your Honor, on that
5 side.

6 Q. Whomever did that work, was that the same siding as
7 the rest of the house?

8 A. I believe it was.

9 Q. The addition?

10 A. I believe it was, yes.

11 Q. Was it inside the portico with the roof built over
12 it?

13 A. Under the gazebo.

14 Q. Now, if you bid that job today, after having measured
15 it, what would you --

16 MR. MORFORD: Objection.

17 Q. -- estimate?

18 THE COURT: We have -- we have to know that
19 he knows what that job is.

20 Q. Are you familiar with what was done at that -- of
21 that job down there?

22 MR. MORFORD: Objection. He's already
23 established he doesn't.

24 THE COURT: He's testified he doesn't. He
25 wasn't there. He doesn't know; only what he heard from

Marchese - Redirect

1 you.

2 Q. Did you see the addition that was added?

3 A. That's what I observed, yes. I did not observe it in
4 '93 when it was being done.

5 Q. But after you observed it, did you observe the
6 addition that was put on?

7 A. Yes.

8 Q. And how could you identify the addition that was put
9 on?

10 A. I took pictures of it.

11 Q. And what, if anything, showed you what differences
12 were there between the addition and the rest of the house?

13 A. The different siding for one thing and --

14 Q. Well, would the addition have different siding than
15 the rest of the house?

16 A. Yes, it does.

17 Q. What was the rest of the house siding?

18 A. It was the older aluminum like eight-inch siding,
19 aluminum siding. It's the very earliest aluminum siding.

20 Q. So from the siding, that depicts the new addition
21 with your experience in bidding at today's costs?

22 MR. MORFORD: Objection.

23 THE COURT: That won't help our jury.

24 Q. After having seen that project, if that were on your
25 house, how much would you have paid for it?

Marchese - Redirect

1 MR. MORFORD: Objection.

2 THE COURT: Sustained.

3 Q. In today's dollars, is that addition worth more than
4 \$12,000?

5 MR. MORFORD: Objection.

6 THE COURT: Sustained.

7 Q. Now, the Prosecutor asked an awful lot --

8 MR. TRAFICANT: Your Honor, it's 12:00, and I
9 have some more questions for this --

10 THE COURT: Just go ahead. We'll see.

11 BY MR. TRAFICANT:

12 Q. He talked about exchange of work. Did you ever do
13 any farm work with me at my farm?

14 A. Yes, I have.

15 Q. Can you recall any unusual incident?

16 A. I recall the evening we mowed hay all night long so
17 you would have a chance over a weekend to get it baled. We
18 mowed on Thursday night; got done about 5:00 in the
19 morning.

20 Q. Do you know what, if anything, happened that night?

21 A. First time I seen a coyote.

22 Q. What else?

23 A. One mower broke down that night. We were running two
24 mowers.

25 Q. Why were we doing that?

Marchese - Redirect

1 A. Because the weather that particular week was very
2 humid. It was -- we were able to mow during the evening
3 without plugging off and being wet. Normally, after 9:00,
4 the grass is real wet, and, you know, it's pretty hard to
5 mow, but it was dry, it was very dry out. And you could
6 mow, get the hole filled down.

7 Q. Does it give you an extra day of sun light, Dominic?

8 A. Gives you -- if you mow at night you have another day
9 of drying, yes.

10 Q. Did I ever mow hay at your farm?

11 A. I think one time.

12 Q. Now, when you said we made exchange of labor and you
13 said I painted -- how much painting did I do?

14 A. I know we did ten straight evenings, and it was
15 during the winter. I think the house was recessed. We
16 painted every evening. Some of the evenings I went with
17 you to a couple meetings. We'd come back and change and
18 started painting at 11:00 at night, and about 7:00 in the
19 morning, we quit, sleep until noon or so, and then you'd go
20 to the office, and I had farm work to do.

21 Q. How much of the house was painted?

22 A. 1996?

23 Q. How much of the house was -- the interior house was
24 painted?

25 A. The whole house. We painted the whole house. And

Marchese - Redirect

- 1 then --
- 2 Q. Was there any woodwork done in the house?
- 3 A. We ran it around the whole downstairs in all the
- 4 rooms.
- 5 Q. Did I assist you to do that?
- 6 A. Yes, you did.
- 7 Q. Do you have any bent nails in your house?
- 8 A. Just one.
- 9 Q. And who put that bent nail there?
- 10 A. You did.
- 11 Q. Did you leave it or take it out?
- 12 A. I left it there.
- 13 Q. Does it bother you to this day?
- 14 A. No. It's the only one I have, so --
- 15 Q. Now, you were asked about George Buccella?
- 16 A. Yes.
- 17 Q. Did you deliver to my house a sealed envelope
- 18 relative to Mr. George Buccella, approximately six to eight
- 19 weeks ago?
- 20 A. I delivered a sealed envelope from a Mr. John Wilbow.
- 21 Q. Did you open it?
- 22 A. No, I did not.
- 23 Q. Did you see me open it?
- 24 A. Yes, I did.
- 25 Q. Did you get a chance to read it?

Marchese - Redirect

1 A. No, I did not.

2 Q. Do you have any personal knowledge that Mr. Buccella
3 had been investigated by the FBI?

4 A. No, I don't.

5 Q. Now, they said that you were not a certified
6 inspector; is that correct?

7 MR. MORFORD: We didn't say anything. I
8 asked him, your Honor, it was his testimony.

9 Q. They asked you if you were a certified inspector?

10 A. I am not a certified inspector, but I can bid
11 construction work, know what's good and what's not. That's
12 what I've done most of my life.

13 Q. If someone came to you and asked you for advice on
14 bidding a new home, could you assist them?

15 A. Yes, I could assist them.

16 Q. You believe you could assist them as well as anybody?

17 A. Yes.

18 Q. When I did the work over your house, did you pay me?

19 A. No, I did not.

20 Q. Did I ever ask to you do anything for me, at any time
21 since we've been friends?

22 A. Not that I can recall, other than if you needed help
23 with something and I was able to help you, I would. Same
24 way --

25 Q. Did you campaign for me?

Marchese - Redirect

- 1 A. Did I campaign for you?
- 2 Q. Yes.
- 3 A. Yes, I've campaigned for you.
- 4 Q. Did I campaign for your wife?
- 5 A. Yes, you did -- yes, you have, over the years.
- 6 Q. Did I campaign for you?
- 7 A. No. I didn't ask you to.
- 8 Q. Now, when they were talking about used barn boards,
- 9 they asked you a question about used barn boards. You
- 10 remember that?
- 11 A. Yes.
- 12 Q. Were those the old rustic skinny boards, or were they
- 13 old used boards?
- 14 A. They were just the way they were, and they were
- 15 not -- they were not like one by ten's that was ten inches
- 16 wide the whole way. They'd go from ten inches down to
- 17 three inches.
- 18 Q. How thick were they?
- 19 A. At least one inch, inch and an eighth, some thinner.
- 20 Q. Did some have nails sticking in them?
- 21 A. Yes. You left nails in them I recall that.
- 22 Q. Is that how you determined they were used boards?
- 23 A. You could tell they were used. They had bent nails
- 24 in it. I would not have done it like that.
- 25 Q. Are you a meticulous builder, Dominic/?

Marchese - Redirect

1 A. That's the way I was raised, probably too meticulous.

2 THE COURT: We can't have you just keep
3 talking, sir. When you have a question, answer it.
4 Congressman, how many more questions do you have.

5 MR. TRAFICANT: I still have a -- about ten
6 questions of this witness, your Honor.

7 THE COURT: Okay. Then we're going to recess
8 for lunch and bring you back after lunch. 1:30 for the
9 jury.

10 (Thereupon, a luncheon recess was had.)

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Marchese - Redirect

1 Tuesday Session, March 26, 2002, at 1:30 P.M.

2 THE COURT: Sir, you're still under oath.

3 BY MR. TRAFICANT:

4 Q. Dominic, did you take all those pictures out at the
5 farm?

6 A. Yes, I did.

7 Q. Were you asked to take other photographs?

8 A. Yes, I was.

9 Q. What did you do as a result of that?

10 A. I took photographs of two homes and one business.

11 Q. Of whom's?

12 A. Mr. --

13 MR. MORFORD: Objection as to relevance, your
14 Honor.

15 THE COURT: I don't know what they are yet.
16 You may answer.

17 Q. Whose home and businesses did you take pictures of?

18 A. Mr. Sinclair.

19 MR. MORFORD: Your Honor, we've never seen
20 these before, and I would object on relevance anyway.

21 THE COURT: Well, Congressman, as you know,
22 these are the kinds of things --

23 MR. TRAFICANT: Your Honor --

24 THE COURT: As you know, these are the kinds
25 of things we handle out of the presence of the jury, and so

Marchese - Redirect

1 at the next break, you can submit these as we asked you to
2 do this morning with the other photographs. The jury is in
3 the box. We need now to take testimony for this jury.

4 MR. TRAFICANT: I ask for a side bar now.

5 THE COURT: No. We just came back from an
6 hour and a half during which we could have had a side bar.

7 MR. TRAFICANT: I just received these
8 documents now.

9 THE COURT: We'll do it at the next break.
10 This is your witness, sir.

11 MR. TRAFICANT: He's on the stand.

12 THE COURT: Go ahead and ask questions.

13 MR. TRAFICANT: I'll have to recall this
14 witness today.

15 THE COURT: You have no more questions of
16 this witness?

17 MR. TRAFICANT: I have some other questions
18 of this witness as well.

19 THE COURT: Well, then, go forward with your
20 other questions.

21 BY MR. TRAFICANT:

22 Q. Dominic, did you and I ever have any other business
23 dealings?

24 A. Yes, we did.

25 Q. Did we have any business dealings before you were on

Marchese - Redirect

1 my staff?

2 A. Yes.

3 Q. We have any business dealings after you were on my
4 staff?

5 A. No.

6 Q. Who did the purchasing?

7 A. You purchased hay, round bales of hay.

8 Q. And how did I pay for that hay?

9 A. By check.

10 Q. And did you maintain records of those?

11 A. Yes, I did. It was the winter of '94 and '95.

12 MR. TRAFICANT: No further questions at this
13 time.

14 THE COURT: Thank you. You can inquire.

15 MR. MORFORD: I have nothing further.

16 THE COURT: All right. You can step down,
17 sir.

18 THE COURT: Congressman, who's your next
19 witness.

20 MR. TRAFICANT: Michael Terlecky.

21 THE COURT: Come right up, sir. Would you
22 raise your right hand?

23 MICHAEL TERLECKY

24 called as a witness on behalf of the Defendant
25 and testified as follows:

Terlecky - Direct

1 DIRECT EXAMINATION OF MICHAEL TERLECKY

2 BY MR. TRAFICANT:

3 Q. Would you -- would you state your full name, and
4 spell your last name for the jury?

5 A. Michael S. Terlecky. Spelling of the last name is
6 T-E-R-L-E-C-K-Y.

7 Q. What is your current address?

8 A. 49 -- yeah, 4904 Leffingwell Road,
9 L-E-F-F-I-N-G-W-E-L-L Road, Canfield, Ohio.

10 Q. How long have you lived at this address?

11 A. Seven or eight years.

12 Q. You have immunity, Mr. Terlecky?

13 A. No, sir.

14 Q. Do you know what immunity means?

15 MR. MORFORD: Objection. It's not relevant
16 if he doesn't have it.

17 THE WITNESS: I didn't hear the question.

18 THE COURT: Well, I think I explained this
19 morning --

20 MR. TRAFICANT: Okay.

21 THE COURT: -- that we'll give an instruction
22 on what it is under the law.

23 MR. TRAFICANT: Okay.

24 THE COURT: All right.

25 BY MR. TRAFICANT:

Terlecky - Direct

1 Q. Mr. Terlecky, what was your former employer? Who was
2 your former employer?

3 A. The Mahoning County Sheriff's Department.

4 Q. How many years did you work for the Mahoning County
5 Sheriff's Department?

6 A. Approximately 13 years.

7 Q. You remember the dates when you started?

8 A. I believe I started in 1977, and I think the -- I
9 know the last day I worked was 3-21-88 when I had -- when I
10 got in a wreck with the cruiser.

11 THE COURT: If you will speak up a little.

12 Your voice drops.

13 THE WITNESS: I'm sorry. 3-21-88 was the
14 last day I worked, close to midnight that night -- the last
15 day I worked.

16 Q. Did you serve as a deputy sheriff under my tenure as
17 sheriff?

18 A. Yes, sir.

19 Q. Were you a supporter of mine?

20 A. Pardon me?

21 Q. Were you a supporter of mine?

22 A. No way. No, sir.

23 Q. Did there come a time you were arrested for a felony
24 violation?

25 A. Yes, sir.

Terlecky - Direct

1 Q. What were you arrested for?

2 A. In the summer -- it was several things, that the
3 indictment was kind of broad: RICO violation. To sum it
4 up, to sum the thing up, I would have to say probably
5 taking bribes to protect gambling in Mahoning County, but
6 it was all kinds of different wording of it.

7 I never read the indictment to be honest with you,
8 and I don't know exactly.

9 Q. When did that go to trial? Were you indicted?

10 A. Yes. I was indicted on -- a month after -- let me
11 see. 4-21-88 I was indicted and arrested at my house in
12 Boardman at that time.

13 Q. Who arrested you?

14 A. There were several agents from Cleveland. I didn't
15 know. I would have to say --

16 MR. MORFORD: Objection as to relevance, your
17 Honor.

18 THE WITNESS: I know the name.

19 THE COURT: You're going to find a way that
20 this becomes relevant, Congressman?

21 MR. TRAFICANT: I'd like to proceed with my
22 witness, your Honor. I think it's in line of what I'm
23 attempting to do.

24 THE COURT: Okay. You need it to be relevant
25 to this case.

Terlecky - Direct

1 BY MR. TRAFICANT:

2 Q. Who arrested you?

3 A. I know he's the head agent now in Las Vegas.

4 Q. Was he local police?

5 A. He was the local Youngstown FBI, the actual guy that
6 handcuffed me, but there were probably -- at my house that
7 day, there had to be nine or ten agents with shotguns, the
8 whole deal. I was sleeping on the couch; just got out of
9 the hospital. They woke me up.

10 Q. You said you had an accident on 3-21-88?

11 A. Yes, sir. I was attempting to stop a van, and I was
12 shot at. My window was shot at in the van. My cruiser was
13 kind of wedged in between the car and the rock.

14 Q. Were you hospitalized?

15 A. Yes, sir.

16 Q. How long were you in the hospital?

17 MR. MORFORD: Objection, again, your Honor,
18 as to relevants to this case as to what happened to him
19 in --

20 THE COURT: I understand, but you can go
21 ahead and give us an introduction of things. How long were
22 you hospitalized, sir?

23 THE WITNESS: Approximately a week. I don't
24 remember really. I'd say approximately a week, somewhere
25 in that neighborhood.

Terlecky - Direct

1 Q. After you got arrested, did you retain counsel?

2 A. Yes, sir, I did.

3 Q. And who was your attorney?

4 A. Stuart Mandel, Cleveland.

5 Q. Did the case go to trial?

6 A. Just the first day. I -- I took a plea bargain first
7 day of the trial was the beginning.

8 Q. Was it your decision to take the plea bargain or the
9 advice of your attorney?

10 A. I'd have to say probably the advice of my attorney.
11 It was some other factors, but that was probably weighing
12 the heaviest.

13 MR. MORFORD: Sorry. I couldn't hear the --

14 THE WITNESS: I said, it was probably
15 weighing in the heaviest as far as my attorney goes. I
16 didn't feel my attorney was prepared and thought I wasn't
17 going to trial. That was probably weighing the heaviest
18 aside from other issues. There were several other issues,
19 but that was probably the -- probably the most.

20 Q. Were you sentenced?

21 A. Yes, I was. This is later on. We're talking two
22 years later that I was even convicted. I mean, I worked --
23 no, I'm sorry. I didn't work after that, but I'm thinking
24 when they picked me up on a search warrant a couple years
25 before that, but, yeah, I was sentenced, I was sentenced in

Terlecky - Direct

1 1990.

2 Q. 19 --

3 A. 90.

4 Q. You know approximately what month?

5 A. Yes. I received a year and a day on a RICO
6 conviction, and I served eight months and 23 days, and then
7 I was released with no probation. That would be on August
8 23rd of 1990. I went in November 30th of '90 in
9 Morgantown, West Virginia, and I was released the 23rd of
10 August, 1991, and like I said, no probation. I didn't go
11 to the halfway house.

12 Q. Did you come to learn at some point that your
13 attorney was a former United States Attorney?

14 A. Yes. He was in partners with the Prosecutor.

15 MR. MORFORD: I'm sorry.

16 THE WITNESS: He was a partner with -- he
17 was -- he worked with the Prosecutor that prosecuted me,
18 Mr. Cain.

19 MR. MORFORD: Your Honor, I object.

20 THE COURT: Yeah. I don't know where this --
21 what this has to do with this lawsuit, and so we're going
22 to have to excuse the jury and excuse the witness so we can
23 find out how this is going, connected to this lawsuit. So
24 far there hasn't been any indication that it is. So --

25 MR. TRAFICANT: I'm trying to establish a

1 foundation, and I think I am --

2 THE COURT: We'll take a break, and you can
3 explain that out of the hearing of the jury.

4 (Proceedings in absence of the jury:)

5 THE COURT: Congressman, so far this witness
6 has not demonstrated anything that connects to this case.
7 And I understand that you feel you're laying a foundation
8 to do that. But we need to know before we continue on with
9 all of this how it's going to be relevant in this case.

10 MR. TRAFICANT: I'm willing to do that, but
11 first, I object on the record that you want to know my
12 witness' testimony before they testify.

13 THE COURT: Well, in some circumstances,
14 that's the only way we can do it without having the jury
15 subjected to testimony that isn't related to the case to
16 then just have to disregard --

17 MR. TRAFICANT: They don't have to disregard
18 it.

19 THE COURT: Congressman --

20 MR. TRAFICANT: What I was getting to, he was
21 represented --

22 THE COURT: Do you want an opportunity to
23 explain where this is going?

24 MR. TRAFICANT: Yes.

25 THE COURT: Thank you.

1 MR. TRAFICANT: I want an opportunity to
2 defend myself in this court, and I'm not getting it, and
3 I'd like to explain it.

4 THE COURT: Talk about this witness who's on
5 the stand, Congressman, so that we can decide how we go
6 forward with this witness.

7 MR. TRAFICANT: This witness is to testify
8 that he was represented by a former U.S. Attorney, then
9 went into business with a mob boss by the name of Lenny
10 Strollo.

11 THE COURT: What does that have to do with
12 this lawsuit?

13 MR. TRAFICANT: And it brings down to his
14 relationship and his arrest and his process through Lenny
15 Strollo and his association with people relative to my
16 case. And I was setting the foundation of that.

17 THE COURT: This is not the Strollo case.

18 MR. TRAFICANT: No. But it does have bearing
19 on some of his testimony relative to the culmination of his
20 involvement in my case, and I don't understand why I can't
21 ask a man who has a criminal record who his attorney was
22 and if he was in business with the mob boss.

23 THE COURT: Well, because we have to see how,
24 whatever this witness has to say, is going to advance this
25 case for the jury on the issues that the jury has to decide

1 as opposed to whatever happened in the Strollo trial or
2 wherever else this man --

3 MR. TRAFICANT: Your Honor, I am not going
4 into the Strollo trial. I was just establishing who his
5 attorney was and what his status was and what he had come
6 to learn after that period of time and how he got involved
7 in this particular case.

8 THE COURT: In this particular case?

9 MR. TRAFICANT: In this case.

10 THE COURT: Okay. And it's that involvement
11 in this case that is not at all apparent.

12 MR. TRAFICANT: I am moving towards that.
13 I'm establishing a foundation.

14 THE COURT: I understand.

15 MR. TRAFICANT: And I know what you're
16 concerned about.

17 THE COURT: I am concerned about -- that my
18 jury is going to sit here this afternoon and listen to a
19 witness who's giving evidence that has nothing to do with
20 what they have to decide.

21 MR. TRAFICANT: I disagree with that, and I
22 object to that.

23 THE COURT: If there is something that they
24 need to know from this witness that relates to what's in
25 front of them in this case, then explain what it is, and

1 we'll go on with it, but right now, we haven't come
2 anywhere near it. We're somewhere else.

3 MR. TRAFICANT: Does this man have a felony
4 conviction?

5 THE COURT: I don't know. I don't know
6 anything.

7 MR. TRAFICANT: Didn't you hear his
8 testimony?

9 THE COURT: Well, yes.

10 MR. TRAFICANT: Well, then, you do know, and
11 I'm establishing a foundation, and I'm moving through that
12 foundation towards my case. Now, I want to know why my
13 witnesses have to be subjected twice without the jury here
14 in front of the press and then brought in and see whether
15 or not they would be allowed to even speak. I object to
16 this.

17 THE COURT: Thank you, Congressman.

18 MR. TRAFICANT: I'm not holding this jury up.
19 You're holding the jury up.

20 THE COURT: Thank you. Just have a seat.
21 We'll listen to the Government.

22 MR. MORFORD: Your Honor, before Congressman
23 -- if Congressman Traficant can put any of this in front of
24 the jury, he has to be able to show there's something
25 relevant here. What we do know is Congressman Traficant,

1 while he was hosting a radio show in Cleveland, had
2 Mr. Terlecky on the radio to talk about his claims of FBI
3 misconduct in his case. That has nothing to do with this
4 case at all.

5 THE COURT: I don't know anything about that,
6 and what he does on the radio has nothing to do with
7 this --

8 MR. MORFORD: What it does is, it gives us a
9 future showing of what he may be trying to do here. He
10 needs to show this Court that there's some relevant basis
11 to bring out the stuff he's talking about.

12 THE COURT: Right.

13 MR. MORFORD: I would also note that the
14 question about Mr. Mandel is entirely misleading. Mr.
15 Mandel was an AUSA back in the early 1960's and has not
16 been, from my understanding, for many years prior to the
17 time of that case, which has nothing to do with this case.

18 THE COURT: Mr. Mandel is not involved in
19 this lawsuit in any way.

20 MR. TRAFICANT: No. I'm building a
21 foundation.

22 THE COURT: It --

23 MR. TRAFICANT: That will be after the trial.

24 THE COURT: Congressman, it's not a proper
25 foundation, and it doesn't lead to anything, which you

1 identified, that could possibly come before this jury in
2 this lawsuit. You can talk about it on the radio show if
3 you want to, but we're in a --

4 MR. TRAFICANT: I am not moving towards
5 prosecutorial misconduct.

6 THE COURT: What are you moving towards?

7 MR. TRAFICANT: Towards my case and my
8 defense.

9 THE COURT: Well, if you are going to keep it
10 that vague and if you're going to continue to elicit
11 testimony like this, which is very confusing to this jury
12 and could easily be misinterpreted by a jury, then you'll
13 have to do it after you've been able to identify what it
14 is, that the connection is between what he can testify to
15 and the issues in this lawsuit. These people have to
16 decide this case.

17 MR. TRAFICANT: They're not deciding it.
18 You're deciding what they will decide.

19 THE COURT: Well, I'm deciding what they will
20 hear.

21 MR. TRAFICANT: And what they will hear.

22 THE COURT: That's for sure.

23 MR. TRAFICANT: Exactly right.

24 THE COURT: That's my job.

25 MR. TRAFICANT: I object to that for the

1 record because the jury is not getting a full
2 opportunity --

3 THE COURT: Anything else you have to talk to
4 this witness about that is connected with this case?

5 MR. TRAFICANT: I want to talk.

6 THE COURT: Talk to me about what it's going
7 to be.

8 MR. TRAFICANT: It's going to move forwards,
9 his understanding and knowledge of Mr. Strollo, the
10 activities of Mr. Strollo and Mr. O'Nesti, a key figure in
11 this case, and those particular issues of understanding
12 that he has relative to my particular case.

13 THE COURT: I will not permit this witness to
14 testify further in this trial if that's all you have to
15 demonstrate how it's connected because it doesn't show any
16 connection to this case.

17 MR. TRAFICANT: I will attempt to show how it
18 does.

19 THE COURT: Well, if you put on some other
20 testimony somewhere that is linked with some other witness
21 that links this up or in some other way, make it so that
22 Mr. Terlecky has something to say to this jury about this
23 case, fine.

24 MR. TRAFICANT: Look, Mr. Terlecky is a valid
25 witness. He's a convicted felon. I brought out his

1 record, brought out his history, and I was moving toward
2 direct examination of a witness that you immediately
3 stopped. Now I'm saying this for the record. Is this why
4 the FBI interviewed Judge Ann Aldrich, and you took my
5 records from Cleveland to understand my style? Really?

6 THE COURT: I have no idea what you're
7 talking about.

8 MR. TRAFICANT: Then why -- why did they say
9 it was unusual that you had my 1983 transcript from the
10 archives in Chicago, your Honor?

11 THE COURT: I don't know how many times we've
12 gone over this, sir.

13 MR. TRAFICANT: Well, you're denying me the
14 right to defend myself.

15 THE COURT: That's your position.

16 MR. TRAFICANT: You're requesting my --

17 THE COURT: Do you have any more witnesses?

18 MR. TRAFICANT: I only have one back there.
19 I am going bring Terlecky back here.

20 THE COURT: That's your only witness today?

21 MR. TRAFICANT: If Mr. Kidwell doesn't get
22 here on time with that machine, that's all I would have,
23 yes, and I want to bring him out and continue with my
24 examination. I have a right to do that.

25 MR. MORFORD: Mr. Traficant just told me a

1 moment ago he had someone named Dominic.

2 MR. TRAFICANT: He is still here. What
3 about --

4 THE COURT: Let's go with Dominic Paolone.
5 Is he somebody who knows something about the issues in this
6 case?

7 MR. TRAFICANT: This man knows issues about
8 this case.

9 THE COURT: Well, you're not going to bring
10 him on until you can establish by -- maybe Dominic Paolone
11 or whoever the next witness is will allow you to
12 establish --

13 MR. TRAFICANT: Why do I have to have someone
14 come in and establish Mr. Dominic Paolone then, your Honor?
15 Did they have to establish any of their witnesses they
16 called?

17 MR. MORFORD: Yes.

18 THE COURT: Do you want to call another
19 witness?

20 MR. TRAFICANT: I want to call Michael
21 Terlecky, and I believe I have a right, and you're limiting
22 my defense.

23 THE COURT: I am not letting you him call him
24 as things are now. If it turns out there's something else
25 that shows in this trial that makes what it is you say

1 he'll testify to relevant, fine.

2 MR. TRAFICANT: I believe it is time that we
3 go over to the hearsay problem we have in this case.
4 Mr. Terlecky will testify that Mr. O'Nesti said he did not
5 make kickbacks to the Congressman at a time when he was not
6 under duress by the Government. And under 804(b)(5), the
7 last paragraph says that when an individual, with
8 circumstances, certain circumstances, can be considered to
9 be truthful, that those statements are admissible.

10 THE COURT: Sir, are you saying that Mr.
11 Terlecky --

12 MR. TRAFICANT: Mr. Terlecky had a
13 conversation with him where he, in fact, told Mr. Terlecky
14 he did not make any kickbacks to Jim Traficant.

15 THE COURT: To whom? He had the conversation
16 with O'Nesti?

17 MR. TRAFICANT: O'Nesti came out and made the
18 statement. He didn't even ask for it.

19 THE COURT: Okay. Well, then, he may be
20 connected in some way.

21 MR. TRAFICANT: He may be connected.

22 THE COURT: Yeah.

23 MR. MORFORD: Well, your Honor --

24 MR. TRAFICANT: Either I cite -- here's what
25 I'm citing, and I think it's time to get it on. You are

1 denying me a defense --

2 THE COURT: I know you say this every day.
3 Let's talk about it.

4 MR. TRAFICANT: Don't take offense, but
5 that's for the record, and it's on there everyday.

6 THE COURT: He has --

7 MR. TRAFICANT: Okay. 804(b)(5) -- let's get
8 to business. They said that Mr. O'Nesti's hearsay should
9 be allowed in because he made a statement against
10 interests. Now, Mr. O'Nesti was near death when they went
11 in and threatened him with their own 302, that if he didn't
12 cooperate, they were going to take him to some Army
13 facility with the guys --

14 THE COURT: That is not evidence in this
15 lawsuit.

16 MR. TRAFICANT: No. But this is the --
17 this -- you have this 302. Now, you should allow me to
18 cross.

19 THE COURT: You got all the 302s.

20 MR. TRAFICANT: Allow me to examine Perkins
21 and Pikunas.

22 THE COURT: The evidence you're talking about
23 was never put forward in this case, the evidence that
24 you're talking about.

25 MR. TRAFICANT: They submitted me a 302 on

1 discovery.

2 THE COURT: That's right.

3 MR. TRAFICANT: They submitted the 302
4 themselves. They used the hearsay exception to get people
5 to come in and make statements.

6 THE COURT: Congressman, we have a whole fist
7 full of hearsay issues we need to decide.

8 MR. TRAFICANT: Yes. I'm saying that
9 804(b) (5) corroborates the truthfulness of O'Nesti's
10 testimony, not the threatened Army hospital situation that
11 the Government put him under two weeks before he died.

12 THE COURT: There is no evidence in this case
13 about that.

14 MR. TRAFICANT: 302 given to me on discovery.
15 Will you allow me to call Pikunas? Hassman took the stand.
16 Will you allow me to call Agent Pikunas?

17 THE COURT: Hold on, hold on.

18 MR. TRAFICANT: I will call Pikunas right
19 now.

20 THE COURT: I'm really not sure what you're
21 talking about. You have a witness you can call right now,
22 but just hold on a minute.

23 MR. MORFORD: Several things, your Honor:
24 First of all, he keeps mixing up different statements. The
25 Government has never offered any of Mr. O'Nesti's

1 statements that were made after the time of his arrest and
2 conviction. The statements that were made -- and we've
3 briefed this -- took place in the period from 1985
4 throughout the time before he left Congressman Traficant's
5 employment.

6 Those other statements we didn't offer because they
7 are hearsay, and all the things he's talking about are
8 totally irrelevant to the facts in this case, Number 1.

9 Number 2, if his purpose of putting Mr. Terlecky on
10 the stand dealt with hearsay, this Court has made it clear
11 he had to raise that prior to putting the witness on the
12 stand. He understands that, and he was going to put this
13 witness on the stand and ask him the question the Court
14 said he cannot do.

15 THE COURT: I understand that.

16 MR. TRAFICANT: I was going to get the Judge
17 or you to object by the nature of my questions.

18 THE COURT: But the problem --

19 MR. TRAFICANT: And I have a right to
20 question my witnesses.

21 THE COURT: Congressman --

22 MR. TRAFICANT: -- and to frame my words.

23 THE COURT: Congressman, the issue that I
24 have around this doesn't have anything to do with the
25 hearsay; has to do with how is this possibly relevant, the

1 testimony that you're eliciting from this particular
2 person. And I --

3 MR. TRAFICANT: I have had it.

4 THE COURT: -- would ask you to link it up,
5 and you're unable to do it, so you can't bring him in.

6 MR. TRAFICANT: No, that's not true. You've
7 had two witnesses of hearsay exception that you granted to
8 them because of Mr. O'Nesti's unavailability.

9 THE COURT: This is a very hard part of
10 representing yourself.

11 MR. TRAFICANT: No, it's not hard at all.

12 THE COURT: You are completely confused.

13 MR. TRAFICANT: I would cite the law. I am
14 not confused one bit, and I want to cite 804, hearsay
15 exceptions, declarant unavailable. Section B, hearsay
16 exception, Number 3, a statement tending to expose the
17 declarant to criminal liability and offer to exculpate the
18 accused is not admissible unless corroborating
19 circumstances clearly indicate the trustworthiness of the
20 statement.

21 Mr. O'Nesti was not under pressure by the Government
22 at the time when he made this statement to Mr. Terlecky.
23 And thus, under that, it should be allowed in.

24 MR. SMITH: And, your Honor, we briefed this
25 in the brief we gave you Monday. The circumstantial

1 guarantees of trustworthiness in this situation, would you
2 expect it would be natural for someone in Mr. O'Nesti's
3 position to say I didn't bribe my boss, or I didn't give
4 kickbacks to my boss? Circumstantial guarantees of
5 trustworthiness exist when the person says something that
6 you wouldn't expect him to say. That's what makes it ring
7 true.

8 It's -- and so when Mr. O'Nesti tells an ally of the
9 Congressman, well, I never kicked back to the Congressman,
10 that's exactly what you'd expect him to say. It's
11 self-serving. It doesn't self-inculcate Mr. O'Nesti in any
12 way, and it is the type of statement, an exculpatory
13 statement, you would expect to be made. If it's only -- it
14 only has circumstantial guarantees of trustworthiness, the
15 situation we had, where Mr. O'Nesti is telling co-workers
16 that he did something wrong with the Congressman.

17 In other words, you wouldn't expect him to say
18 something like that unless it were true. The situation is
19 completely reversed.

20 THE COURT: We've been through this so many
21 times.

22 MR. TRAFICANT: They cited 804(a)(3) as a
23 matter of hearsay exception.

24 THE COURT: Right.

25 MR. TRAFICANT: You allowed their hearsay in.

1 I am saying that --

2 THE COURT: Because they met the conditions
3 of the rule.

4 MR. TRAFICANT: Mr. O'Nesti was under
5 complete duress, and you don't know if those statements are
6 true or not. He didn't even get along with those two women
7 for crying out loud, and you know it, and you're keeping my
8 defense out, and I'm objecting to it.

9 THE COURT: Okay. Well, you call your other
10 witness, please.

11 MR. TRAFICANT: No. I want a hearing on
12 hearsay. I'll call my other --

13 THE COURT: No, you will not. We have a jury
14 here.

15 MR. TRAFICANT: I will, but I want a hearing
16 on hearsay relative to --

17 THE COURT: We don't need any more hearings.
18 I'll give you more rulings. We've been over this. We did
19 hearsay issues before this trial. We did it all through
20 this trial, and I will give you a final ruling on it. That
21 will probably settle the dust for you.

22 But any way, what I want you to do now, because we
23 have a jury here, is call your next witness.

24 MR. MORFORD: Your Honor, before he does
25 that, there are some issues. If this is the same Dominic

1 Paolone that I believe it is, and I'm not positive, but I
2 want to bring this to the court's attention before I would
3 ask any of these questions, to make sure it's proper.

4 There is a --

5 MR. TRAFICANT: I object to this. Now you're
6 talking about my witnesses I'm calling before they're on
7 the stand. You have a right to cross-examine.

8 THE COURT: You know what? This is what
9 lawyers do everyday, day in and day out across courtrooms
10 in America. They talk to one another and try to work out
11 problems in advance so that they can have a jury sitting in
12 the box.

13 MR. TRAFICANT: He never talked to me about
14 it.

15 THE COURT: No. You just told him who you're
16 calling.

17 MR. TRAFICANT: I told him that some ten
18 minutes ago.

19 THE COURT: Well, whatever, ten minutes ago.

20 MR. TRAFICANT: I said he would be the next
21 witness after Mr. Terlecky.

22 THE COURT: Okay. Now it's time for that
23 next witness, and so he can say what he needs to say, and
24 you can respond, and we'll hear from the witness.

25 MR. MORFORD: What I need to say is, there is

1 a Dominic Paolone who, as I understand it, has ten arrests,
2 numerous convictions. One of them is a possession with
3 intent to distribute cocaine, for which he was -- has
4 served a sentence, and his sentence ended April 16, 1993.

5 That's a felony conviction that would be admissible
6 under Rule 609. In addition to that, there was an arrest
7 for conspiracy to distribute cocaine prior to that in 1990,
8 in which he was sentenced to three years in prison, five
9 years supervised release, and prior to that, there was an
10 arrest in 1978 on homicide and attempted murder for which
11 he received a sentence of 15 years.

12 If this is that same person, then these are matters
13 that I want to ask him about, and although two of those
14 convictions are beyond the ten years, I would ask that I be
15 allowed to ask him about those because they followed one
16 after the other after the other, which shows a pattern of
17 criminal conduct, which goes to his credibility, if this is
18 the same person.

19 MR. TRAFICANT: Your Honor, you're making
20 these guys -- letting them make press statements. I plan
21 to ask him those questions myself, and I object to what
22 you're attempting to do, and you're not dealing with a wimp
23 attorney who's afraid of you, and I object to what you're
24 doing, and you're limiting my defense.

25 MR. MORFORD: Your Honor, I would ask you --

1 ask Mr. Traficant to address the Court and quit bending
2 over, coming over to me saying this stuff to me.

3 THE COURT: Congressman, when --

4 MR. TRAFICANT: I'm going to go get my
5 witness.

6 THE COURT: When you bring these things up or
7 he brings them up, we now are all aware that this could
8 come up in this trial.

9 MR. TRAFICANT: No. You are aware -- you are
10 aware because he told you what my testimony was to be.
11 This guy, he has intimidated every attorney in this case,
12 I'm not an attorney, and I've had it.

13 THE COURT: Are you --

14 MR. TRAFICANT: I have had it.

15 MR. MORFORD: I ask that he quit yelling at
16 me and pointing at me.

17 MR. TRAFICANT: I would ask you to ask them
18 to constrain themselves.

19 THE COURT: Would you call your witness,
20 please?

21 MR. TRAFICANT: Absolutely.

22 THE COURT: Thank you.

23 MR. TRAFICANT: No need to get upset about
24 this.

25 MR. MORFORD: Your Honor, before we go to the

1 next witness, I would ask that the Court strike any
2 testimony of Mr. Terlecky and instruct the jury to
3 disregard it being --

4 MR. TRAFICANT: I object.

5 THE COURT: Oops, wait a minute. I couldn't
6 hear the end of it. Congressman, don't talk over other
7 people.

8 MR. MORFORD: And ask the jury to disregard
9 it being there's nothing relevant that he said.

10 MR. TRAFICANT: I object.

11 THE COURT: Sir, come on up. All the way
12 around behind here and up here. Would you raise your right
13 hand?

14 DOMINIC PAOLONE

15 of lawful age, a witness called by the Defendant,
16 being first duly sworn, was examined
17 and testified as follows:

18 DIRECT EXAMINATION OF DOMINIC PAOLONE

19 THE COURT: Rest there for a minute. Don't
20 bring in the jury yet because I have another request. I
21 think the best time to deal with that is after we get
22 through getting the witness rather than on the heels of
23 evidence. Okay?

24 MR. TRAFICANT: I didn't hear the Judge.

25 THE COURT: There's a request to strike

Paolone - Direct

1 testimony of the preceding witness. I'm not going to deal
2 with it now. I want you to go forward with this witness so
3 we'll get some testimony before the jury, and then I'll let
4 you respond to their motion to strike. The reason is
5 because we have people sitting back there who can hear a
6 witness who's on the stand, and we'll let you address that
7 issue after the witness is off the stand.

8 MR. TRAFICANT: You haven't allowed me to
9 address any issue. I'm ready for the jury.

10 THE COURT: We can bring out the jury.

11 This witness has been sworn, ladies and
12 gentlemen.

13 (Proceedings resumed in the presence of the jury:)

14 MR. TRAFICANT: Has the witness been sworn
15 in, your Honor?

16 THE COURT: Yes.

17 BY MR. TRAFICANT:

18 Q. Good afternoon, Dominic.

19 Would you please state your name, and spell your last
20 name for the jury?

21 A. Dominic Paolone, Junior, last name P-A-O-L-O-N-E.

22 Q. Where do you live?

23 A. 173 East Loughton Boulevard, Youngstown, Ohio.

24 Q. What is your employment?

25 A. Self-employed jeweller.

Paolone - Direct

- 1 THE COURT: You have to speak up a little.
2 People couldn't hear you. You're a self-employed jeweller.
3 Q. And what -- is where is your business located?
4 A. In downtown Youngstown.
5 Q. Do you have immunity?
6 A. No.
7 Q. Do you remember the first time you were arrested?
8 A. Yes.
9 Q. What was it for?
10 A. Attempted murder.
11 Q. When was that?
12 A. October 1978.
13 Q. Were you convicted?
14 A. Yes, I was.
15 Q. By a jury trial?
16 A. By a jury trial.
17 Q. Did you have any further arrests and indictments?
18 A. After that?
19 Q. Yes.
20 A. 1989.
21 Q. And what was that for?
22 A. Conspiracy to possess with intent to distribute
23 cocaine.
24 Q. Did you have a jury trial?
25 A. No, I didn't.

Paolone - Direct

- 1 Q. Did you plea bargain?
- 2 A. Yes, I did.
- 3 Q. What was the extent of that plea bargain?
- 4 A. 36 month sentence.
- 5 Q. What did you plead to?
- 6 A. Conspiracy to possess with intent to distribute
- 7 cocaine. I don't remember the amount.
- 8 Q. Now, did you have an arrest before 1978, to the best
- 9 of your knowledge?
- 10 A. May have been misdemeanors. I really can't remember.
- 11 It may have been a few incidents, nothing that I can recall
- 12 that was --
- 13 Q. In your first trial, did you mount a defense?
- 14 A. Yes, I did.
- 15 Q. And what was that defense?
- 16 A. Self-defense.
- 17 Q. Was the original charge a murder charge?
- 18 A. Yes, it was.
- 19 Q. And what was your conviction for it?
- 20 A. Attempted murder in the second degree.
- 21 Q. Have you served years in prison?
- 22 A. Yes, I have.
- 23 Q. How many years in prison have you served?
- 24 A. On the 1978 sentence, I served six years.
- 25 Q. Where did you serve those?

Paolone - Direct

- 1 A. Florida State Prison.
- 2 Q. After your last arrest in 1989, how many years did
3 you serve?
- 4 A. 31 months.
- 5 Q. Were you released early? Yes or no.
- 6 A. No, not really.
- 7 Q. Did there come a time you contacted my office?
- 8 A. Yes, I did.
- 9 Q. What, if anything, happened?
- 10 A. Nothing.
- 11 Q. Did you have a conversation with anybody about that?
- 12 A. My father.
- 13 Q. What, if anything, did your father do?
- 14 A. My father called you.
- 15 Q. As a result of your father calling me, what happened?
- 16 A. I got moved to a halfway house.
- 17 Q. What halfway house was it?
- 18 A. CCA in Youngstown, Ohio.
- 19 Q. Where is that located?
- 20 A. I believe it's Marcus Street in Delason.
- 21 Q. Delason?
- 22 A. Market and Delason.
- 23 Q. D-E-L-A-S-O-N?
- 24 A. I believe so.
- 25 Q. There's some water there if you want some.

Paolone - Direct

1 A. Okay.

2 Q. While you were at CCA, did you meet a man by the name
3 of Anthony Bucci?

4 A. Yes, I did.

5 Q. Did you get to know Anthony Bucci?

6 A. Yes, I did.

7 Q. How did you get to know Anthony Bucci?

8 A. He bunked with me.

9 Q. By bunking with you, how many are in a room?

10 A. At that time, we -- we bunked upstairs. There was
11 only a couple in the room. He bunked right next to me.

12 Q. Did you have conversations with Mr. Bucci?

13 A. Yes, I did.

14 Q. Was he doing anything or behaving in any form,
15 unordinary?

16 A. Seemed very upset.

17 Q. Do you have personal knowledge what he was upset
18 about?

19 A. Yes, I do.

20 Q. What was he upset about?

21 A. He couldn't get no privileges.

22 Q. Was he upset about anything else?

23 A. Yes, he --

24 MR. MORFORD: Your Honor, I object if this is
25 in any way based on what he was told, based upon things

Paolone - Direct

1 that he knows through firsthand knowledge.

2 Q. Do you have firsthand knowledge that his behavior
3 dealt with anything else other than just getting
4 privileges?

5 A. Yeah.

6 Q. What was it?

7 A. He was mad because your office would not do anything
8 for him.

9 MR. MORFORD: Objection as to how he knows
10 that unless it was something he was told.

11 THE COURT: What they're trying to do is to
12 limit your answers to things that you know yourself, rather
13 than what somebody told you. So if you know that only
14 because he told you or someone else told you, then you
15 can't testify.

16 Q. Dominic, did you hear Mr. Bucci make telephone calls
17 personally with your own ears?

18 A. Yes, I did.

19 Q. Whom did he call?

20 MR. MORFORD: Objection. That's still
21 hearsay.

22 THE COURT: Yeah, it's still hearsay.

23 BY MR. TRAFICANT:

24 Q. Did Mr. Bucci ask you for any advice?

25 A. Yes, he did.

Paolone - Direct

1 Q. What, if any, advice did you give him?

2 A. I told him to have a family member contact your
3 office to try and help him.

4 Q. Why did you tell him to have a family member call my
5 office?

6 A. Because that's what I had to do.

7 Q. Now, before you got into the halfway house, did you
8 attempt to get in on your own?

9 A. Yes, I did.

10 Q. Did you get in?

11 A. No, I didn't.

12 Q. After your father called, did you get in?

13 A. Yes, I did.

14 Q. Do you personally know if Mr. Bucci called someone in
15 his family?

16 MR. MORFORD: Objection. How would he know
17 that other than hearsay, your Honor?

18 THE COURT: If he personally knows other than
19 from listening to him.

20 Q. Do you have personal knowledge?

21 A. I -- I heard the call.

22 Q. Did you hear him call somebody on the phone?

23 A. Yes.

24 Q. Were you standing next to him?

25 MR. MORFORD: Objection. This is all

Paolone - Direct

1 hearsay.

2 THE COURT: It is hearsay, Congressman, but
3 you -- if you rephrase these questions, you could probably
4 get around the hearsay.

5 Q. You were standing next to Mr. Bucci?

6 A. Yes, I was.

7 Q. And what, if anything, did he do?

8 A. He made a phone call.

9 Q. To whom did he make a phone call?

10 A. His brother, Dan.

11 MR. MORFORD: Objection. This is hearsay
12 again.

13 MR. TRAFICANT: Your Honor, he said he heard
14 him make the call.

15 THE COURT: Yeah, I know. Congressman, you
16 have to -- hearsay is not --

17 MR. TRAFICANT: How is hearsay someone's
18 personal knowledge, your Honor?

19 THE COURT: Well, there's no problem with the
20 questions up to that one.

21 MR. TRAFICANT: Okay.

22 Q. Mr. Paolone, how close were you to Mr. Bucci?

23 A. We bunked together; we overslept.

24 Q. When he made that call, how close were you standing
25 to him?

Paolone - Direct

1 A. 15 inches, two feet away maybe, if that.

2 Q. Did he ask for anybody on the telephone?

3 MR. MORFORD: Objection, again. That's
4 hearsay, your Honor.

5 THE COURT: Okay. Let me see if I can
6 simplify this by reading this again.

7 Let's see if this will help. A hearsay statement is
8 a statement made outside the courtroom, in other words, a
9 statement made by a person who is not under oath and who is
10 not subject to cross-examination. Does that help?

11 MR. TRAFICANT: Doesn't satisfy me.

12 THE COURT: Well, it may not, but --

13 MR. TRAFICANT: If he had personally heard
14 with his own ears Mr. Bucci asked for his brother, that's
15 not hearsay, your Honor. And I object.

16 THE COURT: Mr. Bucci could testify, but he
17 can't testify to that. Mr. Bucci could.

18 BY MR. TRAFICANT:

19 Q. Did you see -- did you see Mr. Bucci make a phone
20 call?

21 A. Yes, I did.

22 Q. Was he able to get his privileges before he made that
23 phone call?

24 A. No.

25 Q. After he made that phone call, were his privileges

Paolone - Direct

- 1 restored?
- 2 A. Yes.
- 3 Q. Was he treated any differently than you were treated?
- 4 A. No.
- 5 Q. Did you associate with Mr. Bucci after you left?
- 6 A. No, I didn't.
- 7 Q. Did you trust Mr. Bucci?
- 8 A. No, I didn't.
- 9 Q. After his first call, he had no help; is that
- 10 correct?
- 11 A. Right.
- 12 Q. And after his second call, his privileges were
- 13 restored?
- 14 A. Yes.
- 15 Q. Is that your testimony?
- 16 A. Yes, it is.
- 17 Q. Did you advise him of how to go about effecting a
- 18 contact with my office?
- 19 A. Yes, I did.
- 20 Q. And what, if anything, did you tell him?
- 21 A. I told him to have a family member contact your
- 22 office.
- 23 Q. Now, before you gave him that advice, did he get his
- 24 privileges restored?
- 25 A. Before I gave him that --

Paolone - Direct

1 Q. Yeah?

2 A. No.

3 Q. After you gave him that advice, did his privileges
4 get restored?

5 A. Yes.

6 Q. Are you worried about being up here in front of all
7 these people?

8 A. No.

9 Q. Was 1989 your last arrest?

10 A. Yes, it was.

11 Q. Do you have any liens or legal problems or litigation
12 facing you?

13 A. Not that I really know of. I have -- I have property
14 that I have a problem with.

15 Q. Do you have any criminal problems, or have you had
16 any criminal problems since 1989?

17 A. No, I haven't.

18 Q. Do you still report to a parole officer?

19 A. No.

20 Q. For how many years after you were released from the
21 halfway house did you have to report to an officer?

22 MR. MORFORD: Objection as to relevance.

23 THE COURT: You can answer. You can answer.

24 THE WITNESS: I had five years supervised
25 release.

Paolone - Direct

1 Q. How did we come to get together relative to your
2 testimony through this trial?

3 A. I called you.

4 Q. And where did we meet?

5 A. At your office in Canfield, Ohio.

6 Q. And what was the purpose of that meeting?

7 A. I read the article in the paper about what Mr. Bucci
8 said, and I knew that wasn't true, and I came forward.

9 Q. Did Mr. Bucci have a reputation as being a liar?

10 A. Yeah.

11 Q. Did you ever work at my farm?

12 A. No, I didn't.

13 Q. Do people fear me back home?

14 A. No.

15 Q. Have you seen me embrace people?

16 A. As a gesture. I do it with my culture. It's a
17 gesture, the only time.

18 Q. Whom, if ever, have you ever seen me hug, for
19 example?

20 A. Friends.

21 Q. Have you ever observed me in an audience with a
22 number of people?

23 A. Yeah.

24 Q. What, if anything, do I do with the people.

25 A. (Nodding negatively.) Everybody's hands, socializing,

Paolone - Cross/Morford

1 hugging some people.

2 Q. Do people come up to me to be hugged?

3 A. Yeah, I've seen it.

4 Q. You own your own home now?

5 A. No, I don't.

6 Q. Married?

7 A. No, divorced.

8 Q. You're starting to put your life back together,
9 Dominic?

10 A. Yes, I am, trying.

11 MR. TRAFICANT: No more questions at this
12 time.

13 THE COURT: Thank you.

14 CROSS-EXAMINATION OF DOMINIC PAOLONE

15 BY MR. MORFORD:

16 Q. Sir, you testified that you contacted Congressman
17 Traficant after you read some things in the paper that Tony
18 Bucci said that were not truthful being correct?

19 A. That's correct.

20 Q. You weren't here in the courtroom, were you?

21 A. No. First time I been here.

22 Q. You didn't hear Tony Bucci's full testimony, did you,
23 sir?

24 A. No. First time I've been in the courtroom.

25 Q. And so if there were things he said in this courtroom

Paolone - Cross/Morford

1 that didn't make the paper, you wouldn't know anything
2 about that, would you?

3 A. No, probably not.

4 Q. When you brought this to Congressman Traficant's
5 attention, did he tell you that Tony Bucci had testified
6 here in this courtroom that he had his brother contact
7 Congressman Traficant's office when he had the problem at
8 the halfway house?

9 A. I didn't quite understand that question.

10 Q. When you brought this to the attention of the
11 Congressman Traficant, did he say, well, in this very
12 courtroom, Tony Bucci testified that he had his brother
13 contact my office when he got in with a problem with the
14 halfway house, did he tell you that?

15 A. I don't remember.

16 Q. Well, if, in fact, that happened, that wouldn't be
17 inconsistent then, would it, sir?

18 A. I'm not sure.

19 Q. Let me show you an exhibit, if I could. This is
20 Government's Exhibit 2-30, which is a joint exhibit.

21 MR. TRAFICANT: May I --

22 MR. MORFORD: You have it, Congressman.

23 Q. It's a facsimile dated March 22, 1993, facsimile on
24 the letterhead of Congress of the United States,
25 Congressman James A. Traficant, Junior, to Robert Bucci,

Paolone - Cross/Morford

1 for Anthony from Jackie Bobby. Take a look at this if you
2 would. You see that?

3 A. Um-hum.

4 Q. On the other side of it is a letter, and it's a
5 letter from Congressman Traficant to Rick Billak. Do you
6 know who Rick Billak is?

7 A. Yes, I do.

8 Q. He's the head of the CCA, correct?

9 A. That's correct.

10 Q. And it says from Congressman Traficant, Dear Rick,
11 pursuant to our conversation today, thank you for the
12 information and your willingness to mitigate the problem.
13 This is the very problem that you were testifying about
14 that Tony Bucci had in the halfway house, correct?

15 A. Yeah. He was trying to get -- he was trying to call
16 himself, and they directed him to his family member had to
17 call.

18 Q. Right. And so when you told Congressman Traficant
19 this, and he had you come up here and testify that Tony
20 Bucci lied, did he bother to show you this exhibit, sir?

21 A. No.

22 Q. To show it was admitted into court that Robert Bucci
23 was the one that contacted him on behalf of Anthony?

24 A. No.

25 MR. MORFORD: I have no further questions.

Paolone - Redirect

1 REDIRECT EXAMINATION OF DOMINIC PAOLONE

2 BY MR. TRAFICANT:

3 Q. Anthony -- I mean, Dominic, am I in town during the
4 week?

5 A. During the week?

6 Q. When the House isn't scheduled?

7 A. At this time, with this going on or prior to this?

8 Q. When I was in Congress during the week and the House
9 was wasn't scheduled, was I back in the district?

10 A. On the weekends, I thought you were in Washington a
11 lot.

12 Q. When Mr. Bucci first made the call, did he get any
13 help?

14 A. When he made the call?

15 Q. Yes.

16 MR. MORFORD: Objection. This is beyond the
17 scope of cross and repetition of direct.

18 THE COURT: We've already been through this,
19 Congressman.

20 Q. Now, when he showed you this document, isn't it a
21 fact that there were several communications involved in the
22 process?

23 A. Yes.

24 Q. And you are were -- and you did advise him what to
25 do, did you not?

Paolone - Redirect

1 THE COURT: Don't tell him what to say; ask
2 him questions. You'll have -- the testimony comes from
3 this gentleman.

4 Q. After you talked with him with --

5 A. I told him what I experienced and what I was told and
6 how to go about getting things done.

7 Q. And after you did that?

8 A. I took it that he took my advice and did it because
9 after that, he got his privileges.

10 Q. Now, you talked about your own case. How many times
11 did you try and make contact on yourself?

12 MR. MORFORD: Objection. This is again
13 beyond the scope of cross-examination.

14 THE COURT: It's not relevant. His case is
15 not relevant to this trial.

16 MR. TRAFICANT: No further questions.

17 THE COURT: Thank you.

18 MR. MORFORD: No further questions.

19 THE COURT: Sir, thank you very much.

20 MR. TRAFICANT: Your Honor, I have another
21 witness. You excused two of my witnesses, and --

22 THE COURT: Well --

23 MR. TRAFICANT: I have no witnesses.

24 THE COURT: What about -- what about the
25 welder, do you know what the status is --

1 MR. TRAFICANT: I have to find out the status
2 of that. It's on the way up. That's all I heard.

3 THE COURT: That was yesterday as well, and
4 it started up again today.

5 MR. TRAFICANT: Yes. And we have not had
6 contact. I don't know what has happened.

7 THE COURT: Okay.

8 MR. TRAFICANT: But that welder will be here,
9 and it may well be here. And I would like to check.

10 THE COURT: Okay. Why don't we take a break,
11 and you check? This will be a break long enough for you to
12 check. This is not like an afternoon break.

13 MR. TRAFICANT: How many minutes?

14 THE COURT: Ten.

15 (Thereupon a recess was taken.)

16 (Proceedings out of the presence of the jury:)

17 MR. TRAFICANT: It is Good Friday on Friday,
18 your Honor. I would make a brief motion that Friday is
19 known as Good Friday to Christians, and that we do not have
20 Court on this Friday.

21 THE COURT: Please respond. Do you want to
22 make any response to that?

23 MR. MORFORD: We wouldn't have objection, and
24 to meet only for three hours and some of these jurors are
25 driving a long way, I think it is a holiday for more than

1 just Christians.

2 MR. TRAFICANT: For many.

3 THE COURT: Friday is a religious holiday.
4 So that's a good suggestion. If you both agree to that,
5 then that's for us to arrange.

6 Let me go onto a few other matters here.

7 I haven't heard your response to the issue of the
8 truck and the --

9 MR. TRAFICANT: I have no knowledge of where
10 it is or what has happened, but there is a welder coming,
11 and you are going to get it.

12 THE COURT: There is a welder coming, but we
13 don't know when.

14 MR. TRAFICANT: No.

15 THE COURT: Then this would be a good time
16 for us to bring in Mr. Terlecky and go through your
17 questions of the him, that you would ask him but which you
18 feel the hearsay -- your hearsay exceptions are for or --

19 MR. TRAFICANT: If he hasn't left I'd be
20 willing to get him.

21 THE COURT: Let's see if you can find him,
22 bring him down, and we will do that voir dire.

23 MR. TRAFICANT: I want to bring back Mr.
24 Marchese on the matter of photographs.

25 We can go through the photograph issue, but

1 first let's see if Mr. Terlecky is available, if Mr.
2 Terlecky is available to come in now so we can test.

3 (At this time, Mr. Terlecky resumes the witness
4 stand, and the following proceedings were held:)

5 THE COURT: I would just like to go over a
6 couple of things. Mr. Terlecky, just come up and have a
7 seat. I've heard you mention, Congressman, some of the
8 rules regarding exceptions to hearsay, and I just want to
9 review some things about this so that we are all working on
10 the same base so to speak.

11 MR. TRAFICANT: Can I first stand and make an
12 objection to the voir dire process that we are now
13 undertaking relative to this witness?

14 THE COURT: Yes, yes.

15 MR. TRAFICANT: Fine.

16 THE COURT: You have to begin with a basic
17 notion of what a hearsay statement is, and I just went over
18 that a few moments ago, but in the shortest way of talking
19 about it, it is a statement that's made outside the
20 courtroom, which means that it is a statement by a person
21 who is not subject to cross-examination but also has not
22 been given an oath or affirmation. So it is not subject to
23 the usual penalties.

24 Under the law, limiting testimony to statements made
25 under oath and subject to cross-examination is a very

1 important and honored way of ensuring that the jury can
2 determine if the statement is reliable or trustworthy, and
3 that's where all of this comes from.

4 When a witness testifies to what someone said outside
5 the courtroom, the person who made the out-of-court
6 statement is not under oath. The jury can't observe them.
7 They can't observe their demeanor as they make the
8 statement or are being cross-examined to test what it is
9 that they said.

10 And this affects reliability and trustworthiness, but
11 there are exceptions, and I think that's what-- that's the
12 area that you are asking the Court to focus on in regard to
13 something which you want to admit here.

14 These exceptions are recognized in the law in which
15 an out-of-court statement of a person may be admitted into
16 evidence because the law recognizes that the circumstances
17 surrounding the making of a particular statement
18 demonstrate that it is more likely to be reliable.

19 But still before a hearsay statement could be
20 admitted into evidence under this kind of exception, the
21 person who is asking that be admitted, whether it is a
22 lawyer or the Defendant, has to demonstrate to the Court
23 that the circumstances under which the statement was made
24 meet the requirements of the exception.

25 And this is exactly the kind of legal question that

1 we do not burden a jury with because it is my province to
2 do that, not the jury's province to do that, and so we
3 always do this at jury breaks or lunch or after they leave
4 for the day.

5 Now, as I repeatedly explained, unavailability is not
6 itself an exception to the hearsay rule, and I think you
7 now understand that and are proceeding under another part
8 of the rule, although I'm not sure which one but where
9 unavailability is a prerequisite to certain exceptions of
10 the hearsay rule.

11 So I don't know if you are offering these statements
12 by this witness under Rule 803 or Rule 804 or which
13 provision of it, but I need to know that before you start
14 asking questions.

15 MR. TRAFICANT: I have to set the foundation,
16 since you have the witness here --

17 And he is under oath.

18 MR. TRAFICANT: -- I would like to state for
19 the record I received on discovery a 302 signed by Mr.
20 Pikunas. Now, yesterday, I had a witness who had
21 personally seen this document, received it from Mr.
22 O'Nesti, and you did not allow this witness to confirm it.

23 Ms. Sandy Ferrante, you have a motion before you
24 where Mr. Morford, United States Attorney, does not contend
25 or alleged in any filing to the Court that Mr. O'Nesti is a

1 member of the Pittsburgh LCN or any other crime family.

2 THE COURT: This had to do with another
3 witness.

4 MR. TRAFICANT: That was Ms. Ferrante who put
5 on her glasses and had a copy given to her and failed to
6 let me have her identify it.

7 THE COURT: I think she was allowed to say--

8 MR. TRAFICANT: No, she wasn't.

9 THE COURT: You can read the transcript. She
10 was not allowed to read from it.

11 MR. TRAFICANT: You said to handle it later.

12 THE COURT: She is not here today,
13 Congressman. Let's move on.

14 MR. TRAFICANT: You didn't allow me to go
15 forward with photographs that were taken--

16 THE COURT: Not by this witness. This is
17 your chance to give us the hearsay exception.

18 MR. TRAFICANT: And I am going to do that,
19 and here is my argument. You either allow me to examine
20 under cross Mr. Pikunas, or you allow my witnesses to
21 testify under the following.

22 THE COURT: I don't know what kind of a
23 bargain -- excuse me -- I don't know what kind of bargain
24 you are setting up here, but the reason we are here is
25 because you brought a witness on the stand today. You want

1 to introduce something -- I don't know what -- and we would
2 like you to lay the foundation for it being an exception to
3 the hearsay rules and go ahead and have him testify.

4 MR. TRAFICANT: I am setting the foundation.
5 I am going to cite the law if you'd allow me.

6 THE COURT: Yeah.

7 MR. TRAFICANT: The bottom line is that Mr.
8 O'Nesti, you've allowed in hearsay on Mr. O'Nesti because
9 you said he made a statement against interest. Mr. O'Nesti
10 clearly eleven days before he died, Mr. Pikunas in his --
11 in a 302 states loudly in a room so Chuck could hear him,
12 didn't want the U. S. Attorneys to hear him because they
13 might send him to a military facility, they try to get him
14 to sign an affidavit. He wouldn't sign the affidavit.
15 You've allowed them to testify.

16 THE COURT: None of that has been allowed in
17 this case, Congressman.

18 MR. TRAFICANT: No. You've allowed hearsay
19 exceptions for the Government on O'Nesti.

20 THE COURT: Right. But not the ones you are
21 talking about, and by the way, you said it so many times
22 out there in the press but never said in front of this jury
23 because it has not been offered in front of this jury,
24 because it is hearsay, and there is no exception for it,
25 sir.

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1 MR. TRAFICANT: Let me offer my evidence in
2 hearsay. I cite the fact that Mr. O'Nesti was not-- he was
3 under pressure. He wasn't under any statement against
4 interest. Mr. O'Nesti didn't want to be separated from his
5 family the last two weeks of his life.

6 THE COURT: You are talking about a different
7 statement.

8 MR. TRAFICANT: This witness.

9 THE COURT: Okay.

10 MR. TRAFICANT: I am citing 804(b)(5) where
11 it says unless corroborating circumstances clearly indicate
12 the trustworthiness of the statement. Mr. O'Nesti was under
13 no pressure at the time. Mr. O'Nesti--

14 THE COURT: What time?

15 MR. TRAFICANT: At the time he was with my
16 witness.

17 THE COURT: Which was what time?

18 MR. TRAFICANT: I was going to ask the
19 witness.

20 THE COURT: Good.

21 MR. TRAFICANT: When was it?

22 THE WITNESS: It would have been late summer.
23 I think he passed away in Ohio it was summer time.

24 MR. TRAFICANT: And where was it.

25 THE COURT: Which year?

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1 THE WITNESS: 2000, last year.

2 MR. TRAFICANT: Was it the year before he
3 died the best you remember?

4 THE WITNESS: Same year. The November of the
5 year he died.

6 MR. TRAFICANT: That's beside the point. The
7 point is was he sick when you saw him?

8 THE WITNESS: He appeared real sick.

9 MR. TRAFICANT: Did you have to get close to
10 hear him?

11 THE WITNESS: At first I did, yeah.

12 MR. TRAFICANT: Yeah. And --

13 THE COURT: Sir, this was in August?

14 THE WITNESS: I'd say August, your Honor, but
15 I couldn't swear to it.

16 THE COURT: Can you tell me what year?

17 THE WITNESS: What I heard?

18 THE COURT: No, which year.

19 THE WITNESS: August--

20 THE COURT: August --

21 THE WITNESS: Oh, oh, I'm sorry.

22 2000, 2001.

23 MR. TRAFICANT: Was it the year-- shortly
24 before he died?

25 THE WITNESS: Yes, the summer of 2000. I'm

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1 confused. I am thinking this is 2000.

2 MR. MORFORD: He died February 29th of 2000.

3 MR. TRAFICANT: And you saw him the summer
4 before he died?

5 THE WITNESS: Yes. It was the summer time.
6 I know that. It was the end of the summer, I know that.

7 THE COURT: Of the summer of -- you state the
8 year, not the Congressman.

9 THE WITNESS: That was the year.

10 THE COURT: Which was the year.

11 THE WITNESS: It was 2000. It would have to
12 be 2000, right?

13 MR. MORFORD: He died February 29th.

14 MR. TRAFICANT: Would you let me voir dire my
15 witness?

16 THE COURT: Uh-huh.

17 MR. TRAFICANT: Did you see him in a sickly
18 condition within months, five, six months of his death?

19 THE WITNESS: Yes. Yes, I did.

20 MR. TRAFICANT: Do you know what year it was?

21 THE WITNESS: No.

22 MR. TRAFICANT: Where did you see him?

23 THE WITNESS: Beaver Township, North Lima at
24 a Speedway gas station in a pickup truck.

25 MR. TRAFICANT: And did you say hello?

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1 THE WITNESS: I didn't even recognize him
2 until he yelled my name. Then I walked over to the truck.

3 MR. TRAFICANT: Did he stay in the truck or
4 get out of the truck?

5 THE WITNESS: He got out of the truck.

6 MR. TRAFICANT: What, if anything, did the
7 two of you do?

8 THE WITNESS: Well, he had a picture-- I
9 pulled up to the curb. He pulled up next to me in a curb.
10 I was coming out of the Speedway gas station. He was
11 sitting in the passenger side.

12 He said, hey, Beef. Like I said, I looked, and he
13 was so skin skinny and didn't know who he was until I
14 walked up to the truck. He got out to say hi and started
15 talking about himself. I felt bad for him. There was a
16 newspaper box or picture like you can see in front of the
17 vehicles. He walked towards the paper-- do you want me to
18 tell you exactly what happened?

19 THE COURT: Yeah.

20 THE WITNESS: He looked at me. We made a few
21 remarks, and there was a picture of you in the front page.
22 He made a statement, who they intimating now, and went up
23 and bought a newspaper; took out a paper and walked back.
24 He started to explain to me -- exact words I don't remember
25 -- I just remember him saying he did not kickback nothing

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1 to Jim Traficant.

2 He went on to say you borrowed money off him, but he
3 did say you paid him back and made a statement you were
4 kind of slow on doing it, but you did pay him back. I
5 tried to change the subject to be honest with you because
6 it caught me off guard, and there were tears in his eyes.

7 You have to realize our relationship. He always
8 tried to explain things. Why, I don't know. Probably
9 because of my father. He was a fire chief in Youngstown,
10 and my dad was a Youngstown policeman. Even when the
11 Congressman was running for congressman , I didn't support
12 him and supported the opposition. All my friends did, too.

13 Naturally, Mr. O'Nesti was with him. And that was
14 probably-- I was probably one of the few people he'd talk
15 to me and tried to explain things to me, like he owed it to
16 me.

17 MR. TRAFICANT: Were you close with Chuck
18 O'Nesti?

19 THE WITNESS: You know, I don't -- at the
20 time, people -- yes, I was.

21 Q. Did you?

22 MR. TRAFICANT: Did you ask him for
23 information or did he offer it.

24 THE WITNESS: No. I tried to change the
25 subject. He told me to look at him -- every time he

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1 started talking, I asked him how are you feeling? I tried
2 to change the subject every single time. He insisted to
3 explain to me that you did nothing wrong. He insisted. I
4 kept trying-- I could care less.

5 MR. TRAFICANT: Beef, did you come to me, or
6 did I call you about this?

7 THE WITNESS: You never asked me-- you never
8 asked me. I told you. We were having a conversation about
9 something else when I brought it up.

10 MR. TRAFICANT: Yes. Did you tell me that
11 you feared some agency?

12 THE WITNESS: Yes.

13 MR. TRAFICANT: What agency do you fear?

14 THE WITNESS: Not that I am guilty of
15 nothing, but I feared the Internal Revenue because of what
16 they did to me.

17 MR. TRAFICANT: Do you fear being up here and
18 testifying?

19 THE WITNESS: I -- yes, yes. I feel -- if
20 there isn't, there will be a target on my back, I'm sure.

21 MR. TRAFICANT: Did you know Lenny Strollo?

22 THE WITNESS: Yes.

23 MR. TRAFICANT: Have you contacted me
24 regarding your case?

25 THE WITNESS: Yes.

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1 MR. TRAFICANT: What, if anything, have you
2 asked me to do?

3 THE WITNESS: I asked your help in a
4 presidential pardon.

5 MR. TRAFICANT: How long ago was that?

6 THE WITNESS: I think this June would be
7 three years, and that was under President Clinton and still
8 pending. In other words, I talked to the pardon attorney,
9 and he was kind of confused himself. He said it was not
10 turned down. It was not granted but not turned down.

11 MR. TRAFICANT: Now, let me ask you this:
12 Isn't it a fact that Mr. Strollo said on the stand he did
13 not give you the \$5,000 after you had plea bargained?

14 THE COURT: This is a totally different case.

15 THE WITNESS: It probably is relevant, your
16 Honor -- well, I don't know.

17 MR. TRAFICANT: Did you ever see Mr. Strollo
18 and Mr. O'Nesti together?

19 THE WITNESS: Yes.

20 MR. TRAFICANT: What, if anything, did you
21 learn from Mr. O'Nesti meeting with Mr. Strollo?

22 THE WITNESS: He didn't want you to know
23 about it.

24 MR. TRAFICANT: He didn't want who to know
25 about it?

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1 THE WITNESS: You, Congressman. He didn't
2 want you to know that he was at the Stardust Motel every
3 time I was there, and he was about leaving -- I won't swear
4 every time, probably every time I was there -- he was
5 leaving or in the vicinity and made me promise not to say
6 that he was there, and there was something else.

7 MR. TRAFICANT: Did he have a reputation for
8 being a mobster?

9 THE COURT: Who are we talking about?

10 MR. TRAFICANT: Mr. O'Nesti.

11 THE WITNESS: There were accusations later.

12 MR. TRAFICANT: Was he your friend?

13 THE WITNESS: We didn't go out eating and
14 drinking together, but, yes, he was my friend. But he
15 wasn't -- he wasn't a relative or anything like that. I
16 mean, it was kind of like out of respect, I guess, for
17 somebody older than me and somebody that always held a high
18 office in Youngstown. We had our differences, I mean.

19 MR. TRAFICANT: Was his statement to you
20 about the kickbacks unsolicited?

21 THE WITNESS: Yes, absolutely, absolutely. I
22 didn't even -- at the beginning, I didn't even know what he
23 was talking about until he tried to explain it to me. I
24 tried to change the subject; talking about his health, how
25 are you doing. I felt bad for the guy. I started crying

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1 when he was talking about you. I have no reason to lie.

2 Well --

3 MR. TRAFICANT: Do you have immunity?

4 THE WITNESS: No, absolutely not.

5 MR. TRAFICANT: Your Honor under 804(b) (5)
6 and the circumstances under which the Government pressured
7 a dying man with a fruit basket ploy as evidenced by Mr.
8 Pikunas, if you do not allow me to ask witnesses that have
9 had conversations unsolicited with Mr. O'Nesti now that he
10 is unavailable, then you must allow me to call Government
11 witnesses, and the prosecution can have time could coach
12 him.

13 THE COURT: You are proceeding under a
14 section of the rule that no longer is there.

15 MR. TRAFICANT: I am citing 804(b) (5), and I
16 am citing the very last two lines.

17 THE COURT: 804(b) (5) has been turned into
18 807.

19 MR. SMITH: Yes, your Honor, 807.

20 MR. TRAFICANT: It is possible 807. They are
21 certainly better at paper than I am, but whatever it is,
22 the bottom line is the trustworthiness of this unsolicited
23 statement, is much more worthy than the pressured comments
24 of a man on his death bed --

25 THE COURT: These comments you refer to

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1 inside and outside about this death bed scene with the
2 basket and all that are not part of the evidence in this
3 case.

4 MR. TRAFICANT: Well, let me call Pikunas.
5 Why can't I call Mr. Pikunas? They put Hassman on the
6 stand. They put an FBI agent on the stand.

7 THE COURT: What does this have to do with
8 this gentleman on the stand?

9 MR. TRAFICANT: Pikunas can speak to, in
10 fact, what happened that night. This man was given a
11 statement unsolicited that was trustworthy.

12 THE COURT: We now have his statement, and
13 that's a good thing.

14 MR. TRAFICANT: For what? The jury is not
15 here.

16 THE COURT: That's right. We may be able to
17 get the thing resolved. They haven't had an opportunity to
18 respond to it, and I think you are dealing with -- do you
19 want to read me the text of what you are dealing with since
20 it doesn't appear in the rule book any more?

21 I think it has been moved over to 807. Do you have
22 the text of what you are referring to?

23 MR. TRAFICANT: I must have maybe an older
24 copy, but I'm not necessarily an attorney, even if I was F.
25 Lee Bailey and supposed to know the law. You know the law

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1 and know how it should be applied, and you should be
2 applying it fairly. And I am under no requirement to even
3 cite the law. I stated the facts and circumstances upon
4 discovery of the fruit basket given to me by Mr. Morford,
5 Mr. Smith and Mr. Kall of a dying men who was threatened to
6 go to a medical facility if he didn't sign an affidavit.
7 They used that as a hearsay exception --

8 THE COURT: They did not use that. That's
9 where you completely misrepresent everything that has
10 happened in this case. They didn't use that. You are the
11 only person who ever talks about that.

12 MR. TRAFICANT: Well, then, what law did they
13 cite to bring in Mr. O'Nesti's testimony? Tell me the law
14 they cited.

15 THE COURT: 804, statement against interest.
16 You were right.

17 MR. TRAFICANT: How could that be against
18 interest? That was a statement for his interest. They let
19 --

20 THE COURT: This is a statement for his
21 interest.

22 MR. TRAFICANT: No, no. I say that theirs
23 was a statement for interest because he wanted to die at
24 home.

25 THE COURT: Let's let the Government respond

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1 to the voir dire that just occurred here.

2 MR. TRAFICANT: Give me the rule numbers you
3 cited, your Honor. And which --

4 THE COURT: They went forward under a section
5 of the rule which is under 804.

6 MR. TRAFICANT: Yes, tell me.

7 THE COURT: (B) (4).

8 MR. TRAFICANT: (B) (4).

9 MR. MORFORD: (B) (3).

10 THE COURT: Excuse me, (b) (3), statement
11 against interest. First, they established unavailability
12 which nobody had trouble doing.

13 MR. TRAFICANT: We have a death certificate.

14 THE COURT: Right. But that doesn't have
15 anything to do with whether or not hearsay can come in.
16 You then go to another section of this rule.

17 MR. TRAFICANT: What's the other section of
18 the rule, your Honor?

19 THE COURT: What they went to is statement
20 against interest.

21 MR. TRAFICANT: Okay. Let's talk about that.

22 THE COURT: We have already decided that.
23 That has already been decided.

24 MR. TRAFICANT: I know, but I want it on the
25 record now since you voir dired one of my witnesses and

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1 listened to the testimony he would give without the jury
2 present. Mr. O'Nesti did not make a statement against
3 interest. Mr. O'Nesti made a statement so he could die at
4 home with his family. He made a statement in favor of his
5 own interest.

6 MR. SMITH: Correct. That's why it was not
7 admissible. The Government never offered it because we
8 acknowledged --

9 THE COURT: We never received it in.

10 MR. TRAFICANT: Grace Kavulic and Jackie
11 Bobby, you let them perjure themselves.

12 THE COURT: They were saying --

13 MR. TRAFICANT: They were saying he made a
14 statement against interest.

15 THE COURT: He did to each of them.

16 MR. TRAFICANT: Yeah, because he was going to
17 go to a medical facility. The man did not want to die in a
18 medical facility.

19 MR. MORFORD: Wasn't even sick at that time.

20 THE COURT: It was not that statement.

21 MR. TRAFICANT: You mean to tell me that you
22 weren't there with an affidavit to get him to sign before
23 he died? Is that your testimony to me?

24 MR. MORFORD: Your Honor, I'm not testifying
25 and has nothing to do with what he is talking about.

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1 THE COURT: Congressman, you are making
2 assertions that the record would never support in this case
3 because the two statements that were admitted through two
4 witnesses that relate to Mr. O'Nesti were admitted under
5 this section, which has to do with statements against
6 interest, and those statements had nothing to do with the
7 statement you keep putting out there.

8 MR. TRAFICANT: Then what was the statement
9 against interest Mr. O'Nesti made, and when did he make it?

10 MR. MORFORD: We briefed this extensively.
11 Congressman Traficant can read it extensively.

12 THE COURT: Let's talk about these
13 statements.

14 MR. MORFORD: Rule 807 and its predecessor
15 804(b) (5) and can you stand over there?

16 MR. TRAFICANT: I want to see what's
17 happening.

18 THE COURT: Just go over, sir, and let him
19 speak.

20 MR. TRAFICANT: Are you nervous with me
21 around?

22 THE COURT: Congressman.

23 MR. MORFORD: Anyway, your Honor, under that
24 rule, the Congressman has to show.

25 THE COURT: Now --

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1 MR. TRAFICANT: I object right now.

2 THE COURT: Now having objected --

3 MR. TRAFICANT: Object to you even speaking
4 about my witness, and I object to you ordering me to sit
5 down.

6 THE COURT: Go ahead.

7 MR. MORFORD: Under Rule 807 and its
8 predecessor 804(b), the Congressman has to show that the
9 statement itself and the circumstances surrounding the
10 statement carry circumstantial guarantees of
11 trustworthiness, such that the person wouldn't have made
12 that statement to that person at that time unless it were
13 true.

14 The testimony of Mr. Terlecky just doesn't meet that
15 standard. First, it was a self-serving statement by Mr.
16 O'Nesti. He said that Mr. Terlecky said that Mr. O'Nesti
17 made that statement some time in the summer of 1999. Mr.
18 O'Nesti was never even asked whether he had kicked back
19 money to Congressman Traficant until January of 2000, even
20 if that issue was relevant -- which it is not.

21 But, at the time that Mr. Terlecky had this supposed
22 conversation with Mr. O'Nesti --

23 MR. TRAFICANT: I object.

24 MR. MORFORD: -- it was not against Mr.
25 O'Nesti's interest but very much in his interests to tell a

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1 close associate of his --

2 THE WITNESS: Wait a minute. I was not a
3 close associate.

4 THE COURT: You are not part of this
5 conversation.

6 THE WITNESS: Sorry.

7 THE COURT: Thank you.

8 MR. MORFORD: Close associate of Congressman
9 Traficant and Lenny Strollo that he was not kicking back.
10 There is nothing about that statement that in any way was
11 against interest. It was simply a self-serving statement.

12 Second, it was made to a friend.

13 Third, it was made to exculpate his boss, who you've
14 already heard testimony in this case, Mr. O'Nesti was very
15 close to, but the most important thing is all of that has
16 absolutely nothing to do with the statements that have been
17 admitted, which were statements that Mr. O'Nesti made
18 contemporaneously during the time he was working for
19 Congressman Traficant to other employees; and, therefore,
20 it should not be admitted.

21 MR. TRAFICANT: Your Honor, it is other
22 employees he did not get along with.

23 THE COURT: That issue has been decided in
24 this case, and you can take that to the Court of Appeals.
25 That has been decided a long time ago. We are way down the

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1 road.

2 MR. TRAFICANT: You mean to tell me you are
3 not going to allow an unsolicited statement made while not
4 under pressure --

5 THE COURT: I haven't ruled; not yet.

6 MR. TRAFICANT: And the Government asked
7 every witness in 1998, you heard about Jim Traficant's
8 investigations and allegations. Now, they are saying close
9 to Mr. O'Nesti's death, there was no talk about kickbacks.
10 Is that your statement?

11 MR. MORFORD: Not in 1999.

12 MR. TRAFICANT: He made a statement. It is
13 on the record. I say there were allegations of O'Nesti
14 making kickbacks, and they had pressured him on his death
15 bed to get him to sign an affidavit. The Court now should
16 voir dire Mr. Pikunas. If you want to make a right, just
17 decision --

18 THE COURT: Do you have any further questions
19 of this witness?

20 MR. TRAFICANT: Was he trustworthy when he
21 told you something, Beef?

22 THE WITNESS: Yes, sir.

23 MR. TRAFICANT: Did you ask him anything
24 about this?

25 THE WITNESS: No, sir.

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1 MR. TRAFICANT: Was he looking at a newspaper
2 when he told you this?

3 THE WITNESS: He had it in his hand. If he
4 was actually looking at it when he said it, I don't
5 remember, but he was holding it when he was talking to me.
6 I don't remember if he was actually looking at it, but he
7 was holding it.

8 MR. TRAFICANT: I am going to say this to the
9 Court right now: I will release every one of my tapes
10 regarding the matter of kickbacks, and I will do that under
11 my First Amendment rights, and I may do it tonight. Make
12 your decision.

13 THE COURT: Thank you.

14 If you are coming in under a statement against
15 interest, then the statement, the specific statement that
16 you want to get in has to be the statement against
17 interest, and the statement that this witness has talked
18 about is not against the interest of the person who made
19 the statement. If you want to bring this in under another
20 section, which we now call the residual sections of the
21 hearsay rules, then you have not met those, and we will not
22 permit this testimony to go before this jury.

23 MR. TRAFICANT: Until I meet the requirements
24 of the residual law.

25 THE COURT: That's the law that you cited to

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1 me that you were relying on.

2 MR. TRAFICANT: Well, the residual, under 807

3 --

4 THE COURT: Yeah --

5 MR. TRAFICANT: -- does speak to those
6 elements. And the bottom line is the Judge, having known
7 full well of that fruit basket ploy before he died, does
8 change the scope and dynamics of the hearsay law and can't
9 be in order. And to ignore it is to deny me the right to
10 examine witnesses who know truthful information.

11 THE COURT: We have a few more things to go
12 over here. We can let this witness step down. Thank you
13 very much.

14 MR. TRAFICANT: Are you going to allow him to
15 testify on that issue?

16 THE COURT: No. You didn't show any -- a
17 section that would permit that.

18 MR. TRAFICANT: I ask leave of the Court to
19 allow me to revisit this by Monday.

20 THE COURT: We have a lot of other things that
21 we have to get -- we still have a jury back there. While
22 we are here, there was a motion filed by the Government for
23 sanctions. I haven't gotten a response from you, and I
24 will need that.

25 MR. TRAFICANT: I think you got it today, and

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1 I told them to shove the sanctions up their subpoena.
2 There is no justification for it, and I believe that they
3 have played their press more than I have, and now I'm going
4 to play the same game, folks. And I am going to release
5 tapes. If you are not going to allow the witnesses to
6 testify --

7 THE COURT: I haven't ruled on the tapes,
8 although you do have a motion in front of me, and it is
9 ready for ruling on, and you've submitted three tapes to
10 me. And I will be able to get that ruling out. You have
11 not ever submitted transcripts of any other tapes. Which
12 ones -- you said --

13 MR. TRAFICANT: I don't know which ones I'm
14 going to submit. I want to see what you will do with these
15 three.

16 THE COURT: We will deal with these three.

17 MR. TRAFICANT: It is my defense.

18 THE COURT: All right. I think there is --

19 MR. TRAFICANT: No now, I want to bring up
20 two issues for the Court for the record. Mrs. Ferrante--

21 THE COURT: Oh, yeah, the photographs.

22 MR. TRAFICANT: Before that, Ms. Ferrante
23 identified this document, and you did not allow me to let
24 her identify it. And so it can be identified as an
25 exhibit.

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1 THE COURT: There may be someone who can do
2 something with it.

3 MR. TRAFICANT: She was able to.

4 THE COURT: She did not write the letter, and
5 you can't just put a witness, any witness on the stand,
6 hand them any piece of paper and make it evidence. There
7 is someone who wrote that letter. Call them in here. They
8 can put the letter on. They wrote it. You saw how that
9 worked.

10 MR. TRAFICANT: This woman was given a copy
11 of the letter by Mr. O'Nesti, who gave it to everybody, who
12 bragged he was not an LCN member and --

13 THE COURT: Bring in the person that wrote the
14 letter.

15 MR. TRAFICANT: You are forcing me to jump
16 through hoops where you don't need to do that. This woman
17 had knowledge of this letter. That should have been enough
18 to suffice.

19 THE COURT: That's not enough. Okay. Let's
20 talk about the photographs.

21 MR. MORFORD: I will hand them to you, your
22 Honor, because I don't believe you've seen this.

23 MR. TRAFICANT: I want to explain the
24 photographs.

25 MR. MORFORD: It is my motion, Congressman.

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1 So why don't you just wait.

2 MR. TRAFICANT: I will take my instructions
3 from the bench, Mr. Morford.

4 THE COURT: I don't have to give them every
5 time. If you will sit down, you know it will allow him to
6 talk the way he should. And if you have an objection, just
7 stand.

8 MR. TRAFICANT: Well, just keep helping him.

9 None of the pictures that I have in my hands here
10 have anything to do with the testimony that this gentleman
11 gave me. These are all --

12 MR. TRAFICANT: These are Mr. Marchese, and I
13 am not going to voir dire any more. You are not pulling in
14 another witness and listening to testimony from them.

15 THE COURT: Are you trying to offer --

16 MR. TRAFICANT: Mr. Marchese took these
17 photographs. The photographs speak to the testimony of
18 Mr. Sinclair, who stated he purchased the house after he
19 left my employ. These are photographs of the house he used
20 to own, photographs of the house he now owns, photograph of
21 his building that he made major improvements on, and shows
22 two neighborhood homes that show the quality and high
23 caliber, expensive neighborhood in which he now lives.

24 THE COURT: So he can come in and testify if
25 he took these pictures. The question is how will the

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1 pictures be used. I don't know when he took them, if he
2 took them.

3 MR. TRAFICANT: That's why I want to bring
4 him in.

5 THE COURT: Okay.

6 MR. MORFORD: My objection, your Honor, if
7 they are not admissible in the first place, they shouldn't
8 be brought in, have this witness talk about them, put up on
9 the overhead. I have no problem with picture 602 of
10 Overhill. We would stipulate to that. As to the other
11 pictures, 500 is Allen Sinclair's prior house. 601 and 600
12 are pictures of his new house. 604 and 603 are pictures of
13 houses in the neighborhood, and it should be inadmissible,
14 extrinsic evidence. Allen Sinclair is not on trial, and he
15 was asked on cross-examination if he used to have a house
16 in Youngstown, if he sold that house, and if he bought a
17 new house, and he testified about the amount he paid for
18 the house. But, anything beyond that would be
19 inadmissible, extrinsic, irrelevant under both rules --

20 MR. TRAFICANT: And having said that --

21 MR. MORFORD: -- Rules 403(a) and (b), and we
22 feel that's not admissible.

23 MR. TRAFICANT: I would like to respond.

24 THE COURT: I don't think you will need to.

25 Four of these pictures are certainly pictures he can

Terlecky - Direct Continued

1 identify that he took and that could be useful to the jury
2 because of the prior testimony they had. So I don't have
3 any problem with those --

4 MR. TRAFICANT: I have no problem with the
5 other two. If you want to throw them out, you can throw
6 them out.

7 THE COURT: -- and are inadmissible, and
8 these might be useful to the jury. Is he here? He can
9 testify to them.

10 MR. TRAFICANT: I will call him now.

11 MR. MORFORD: Your Honor, rather than call
12 the witness back and waste time with that, we will
13 stipulate they are pictures of Allen Sinclair's current
14 home, past home, and --

15 THE COURT: You will have to meet with your
16 colleague and tell him that.

17 We will bring in the jury.

18 (Proceedings held in the presence of the jury:)

19 BY MR. TRAFICANT:

20 Q. Dominic, do you recall my questions when I asked --
21 you were asked did you take any other photographs?

22 A. Yes.

23 Q. And did you take other photographs?

24 A. Yes, I did.

25 Q. What photographs, in fact, did you take?

Terlecky - Direct Continued

1 A. I took a photograph of the 11 Overhill Drive, the
2 former office. I took a photograph --

3 MR. MORFORD: Your Honor, I'm going to object
4 to anything, except the documents that have actually been
5 ruled on.

6 THE COURT: Okay. Okay.

7 MR. MORFORD: More specific photos.

8 THE COURT: Maybe if you'd hand him the
9 photographs.

10 Q. I am going to ask you, four photographs, and I will
11 ask you if you, in fact, made these photographs and took
12 them?

13 A. Yes, I took each of these.

14 MR. TRAFICANT: Can I put them on the screen,
15 your Honor?

16 THE COURT: Yes. Say the numbers as you put
17 them up.

18 BY MR. TRAFICANT:

19 Q. Do you remember the office at Overhill before 1998?

20 A. Yes, I do.

21 Q. Did you take this picture?

22 A. Yes, I did.

23 Q. Have there been improvements made to that building?

24 A. Appeared to be all landscaping. That whole front is
25 now shrubbery and different mulches, and used to be able to

Terlecky - Direct Continued

- 1 drive right off the road in there.
- 2 Q. That is AS-602.
- 3 I'm now going to put on the board a picture of
- 4 AS-500. Did you take that picture?
- 5 A. Yes, I did.
- 6 Q. And what is that a picture of?
- 7 A. My understanding, a former home of Mr. Sinclair.
- 8 Q. Can you identify this picture, AS-600?
- 9 A. That would be the side and rear view of the new home.
- 10 Q. And do you know where that's located?
- 11 A. Newport Drive, I believe.
- 12 Q. Is that an exclusive neighborhood?
- 13 A. Very nice homes, yes.
- 14 Q. And would you identify AS-601?
- 15 A. That would be the front of the home on Newport Drive.
- 16 Q. Dominic, do you recall what day you had taken these
- 17 photographs?
- 18 A. Yes. It was February 26th.
- 19 Q. Did you keep diaries of your activities while you
- 20 were a member of my staff, Dominic?
- 21 A. I just kept desk notes of times and dates.
- 22 Q. I would just like for you to look at that. Does that
- 23 have an identification number on it?
- 24 A. Exhibit DOM-700.
- 25 Q. Is this, in fact -- did you bring with you all of

Terlecky - Direct Continued

1 your diaries that you've had, and is this the way you
2 memorialized your work as my staff representative?

3 A. Those are my desk notes that I log, every telephone,
4 what time, who comes in, what it is about. If I didn't, I
5 wouldn't be able to keep up with what I'm doing for
6 individuals.

7 Q. I want you now to address yourself to the date 6-26
8 -- I mean 2-26, February 26th on there. What does it say?

9 A. 2-26, 8:30 A.M., called in for a half day vacation.

10 Q. What is your next -- when is your next report? When
11 do you report in?

12 A. 1:00, and it is noted that I'm in.

13 Q. You are in where?

14 A. I'm in the office at 1:00.

15 Q. Okay. Follow 6-26 all the way down through your last
16 entry?

17 A. 1:15, returned call from Richard Houk.

18 Q. Not every one. Go to the last date and notation you
19 have on February 26th?

20 A. 6:05, I have received a call from a certain number,
21 and no one answered. So I checked it on Star 69. The next
22 page on this copy --

23 Q. Yes?

24 A. -- does show a part of the word that says out, but it
25 doesn't show the time that I was out.

Terlecky - Direct Continued

1 Q. Would it be out after 6:05 at least?

2 A. Oh, yeah. I would say it was around 7:00, but we
3 should have one that was copied that has it in it. This is
4 a copy.

5 Q. All right. Let me ask you, under law, are you
6 familiar with how many hours a federal employee is required
7 to work a week?

8 A. I was told 30 hours when I started.

9 Q. Do you work 30 hours a week?

10 A. I always work more than that.

11 Q. How many hours a week do you average?

12 A. Probably 39.

13 Q. Why would you say 39?

14 A. Because I stay a lot of evenings working on cases,
15 and there are a lot of times I go to meetings at night that
16 I didn't get home until 9:30 or 10:00, agriculture or DAV
17 Services, and I count those. I don't think I have ever
18 just worked 30 hours. In fact, that's the notes of every
19 day since the day I started. Every day is on there and
20 would show hours worked, if you want to go through those.

21 Q. Are these all your notes here?

22 A. Yeah.

23 Q. Do you work evenings for the Congressman?

24 A. Say again.

25 Q. Do you work evenings for the Congressman?

Terlecky - Direct Continued

- 1 A. Yes, if we have to go to things.
- 2 Q. Do you represent me at events and speak for me at
3 events?
- 4 A. Yes, I do.
- 5 Q. Do you log even those on here?
- 6 A. Yes, I do.
- 7 Q. Do you always put down the exact amount of time you
8 spent?
- 9 A. Yes.
- 10 Q. Did anyone ever require you to do this?
- 11 A. No, but when I started, I couldn't keep up with the
12 number of people coming in and calls, and I had -- now,
13 these are just notes. We have cases for each one of these
14 individuals that we work on. They are in the manila
15 folders. They are a case file. I have a few of them with
16 me today, but I don't have them up here.
- 17 Q. Do you have the original? Is this your original two
18 pages? Look at the first and second page. I think I
19 rewrote the original on it.
- 20 A. Okay. 7:02 P.M. on 2-26, I left.
- 21 Q. 7:02 P.M. on the original?
- 22 A. Yes. And I was in at 1:00. I didn't go to lunch
23 either because I already had something; so whatever amount
24 of hours that was that day.
- 25 Q. And these are your personal handwritten notes?

1 A. Yeah.

2 Q. You can hold that.

3 MR. TRAFICANT: No further questions at this
4 time.

5 MR. MORFORD: Nothing, your Honor.

6 THE COURT: Thank you. You can step down.

7 MR. TRAFICANT: Your Honor, having no more
8 witnesses here and waiting on a welder that will be here
9 tomorrow, I want to announce to you that I have no
10 witnesses since two were not able to testify. And, thus, I
11 have no one else now to call, unless you want me to recall
12 Mr. Terlecky, who is still available.

13 THE COURT: No. But, we will begin again
14 tomorrow at 9:00, and I would expect that you ought to be
15 able to give us a report on the truck --

16 MR. TRAFICANT: I will do that.

17 THE COURT: -- and what's happening with the
18 welder. But, please bring enough witnesses tomorrow to the
19 court.

20 MR. TRAFICANT: Your Honor, I did have enough
21 witnesses today. Two of my witnesses would have taken an
22 extensive amount of time if they would have been allowed to
23 testify.

24 THE COURT: I will ask you guys to set that
25 aside. I really have good news for you. These gentlemen

1 have all decided together, and I agree with that, that
2 because this is a week that contains Passover and Good
3 Friday in it, that we should allow this case to be in
4 recess on Friday and not require you to come in, which will
5 give you a good weekend back in your other lives. We do
6 have to come in tomorrow, though, and Thursday. Okay? Be
7 safe going home. We will see you, and remember your
8 admonitions.

9 (Proceedings out of the presence of the jury.)

10 THE COURT: But for the lawyers and anyone
11 else that wants to be here, we will allow Mr. Saadey to
12 make his statements before the jury comes in.

13 MR. MORFORD: Again, I request that
14 Congressman Traficant be specifically instructed not to do
15 again what he just did in front of the jury now about his
16 witnesses that weren't allowed to testify. He knows that's
17 improper. And we have been over this before.

18 Number two, I would like to ask that some time
19 tomorrow, preferably in the morning, that the jury be given
20 some instruction to disregard the little bit of testimony
21 they heard about Mr. Terlecky.

22 THE COURT: I understand that you asked for
23 that, and I have to read the transcript, which I don't
24 have, and I will read the transcript tonight. And I will
25 also make an effort to get some rulings out on the issue of

1 sanctions that you put before the Court, and I understand
2 you filed a response. I was not aware of that.

3 MR. TRAFICANT: I filed it with the clerk and
4 handed your assistant a copy.

5 THE COURT: Good.

6 MR. TRAFICANT: This morning.

7 THE COURT: And I will be able to deal with
8 it. Thank you.

9 MR. TRAFICANT: But I object to Mr. Morford's
10 statement of requiring sanctions.

11 THE COURT: That's a motion, Congressman. I
12 will consider it and rule.

13 MR. MORFORD: One more thing for purposes of
14 the record, your Honor, I don't think the Court noted on
15 the record the two photographs that were excluded by
16 number, just that there be an accurate record of this.

17 THE COURT: I didn't do that, but if you can
18 tell me the numbers and put them on for George.

19 MR. MORFORD: They were Defendant's Exhibit
20 AS-603 and Defendant's Exhibit AS-604.

21 MR. TRAFICANT: Your Honor --

22 THE COURT: Thank you.

23 MR. TRAFICANT: -- your Honor, for the
24 purposes of offering this evidence, I want to offer AS-601,
25 which is the front photograph of the Sinclair home.

1 THE COURT: Right. I think you can do those
2 as a group if you just give us the numbers.

3 MR. TRAFICANT: AS-601, which is the front
4 view of the Sinclair home, AS-600, which is the side view
5 from the rear of his new home; AS-500, picture of his older
6 home on Atlanta Drive, and AS-602 with the improvements
7 made to the office on --

8 THE COURT: Any other exhibits, Congressman?

9 MR. TRAFICANT: Yes, and I know SBF-1, a
10 photograph of the Horse and the -- Ms. Ferrante.

11 THE COURT: Okay. Very well. Any
12 objections?

13 MR. MORFORD: No.

14 THE COURT: They will all be admitted, and
15 now we want to let the jury out. They are all ready to go.

16 (Pause.)

17 MR. TRAFICANT: Your Honor, I would also like
18 to offer in evidence Defendant's Exhibit DOM-700, the diary
19 notes of Dominic Marchese relative to the four pictures.

20 THE COURT: I don't know that those are
21 relative to the four pictures.

22 MR. MORFORD: I object on grounds of
23 relevance.

24 MR. TRAFICANT: That he had to take a
25 vacation day to take those pictures under federal threats

1 he might receive later, and C-8 I would offer, and it says
2 -- it is showing the garage remains of his burned home
3 where he testified had burned down where the generator had
4 been stored.

5 THE COURT: All right.

6 MR. MORFORD: I have no objection to the
7 picture of the burned down garage, but the other exhibit,
8 that that is not charged in this case, and it really
9 doesn't have any bearing on this case and not relevant.

10 THE COURT: It is not relevant and won't be
11 admitted.

12 MR. TRAFICANT: What is not?

13 THE COURT: The diary that you just talked
14 about.

15 MR. TRAFICANT: You will admit the --

16 THE COURT: The photograph will be admitted.

17 MR. TRAFICANT: But the diary is not.

18 THE COURT: Is that it?

19 MR. TRAFICANT: No, it is not.

20 THE COURT: No, it is not?

21 MR. TRAFICANT: I will have other admissions
22 for tomorrow, and I am going to stay here tonight. And if
23 I have any news, I might have to ask of the Court, if
24 necessary --

25 THE COURT: I don't know what you are talking

1 about.

2 MR. TRAFICANT: On this welder. We might
3 have to have the Government make a trip and certify to the
4 Court that it has never, in fact, been used if I can't get
5 it up here. I am trying to get it up here and running a
6 trailer, and I haven't been able to be in contact with him,
7 and I am a little upset myself.

8 THE COURT: This comes up every day, but
9 eventually your case will come to a conclusion, and we have
10 it or we don't. But we wouldn't require the Government to
11 send someone somewhere else to look at it. That's
12 something you could have worked out a long time ago. We
13 are in the middle of your presentation of evidence.

14 So if it comes and it can be shown to the jury, we
15 still have to see whether it will get in the courthouse and
16 so forth, but we will certainly arrange for the jury to see
17 it if it passes all those tests.

18 MR. MORFORD: Your Honor, I also move that
19 Congressman Traficant advise the Court and counsel as to
20 who is coming tomorrow because this is the second day in a
21 row we have wasted juror time because of this kind of
22 thing.

23 THE COURT: Just tell us who is lined up for
24 tomorrow.

25 MR. TRAFICANT: Mr. Saadey will be here

1 first. Mr. Johnson will be here. Mr. Hooker is scheduled
2 to be here, and that -- I don't know right now.

3 MR. MORFORD: What is Mr. Hooker's first
4 name?

5 MR. TRAFICANT: Pardon?

6 MR. MORFORD: What is Mr. Hooker's first
7 name?

8 MR. TRAFICANT: George.

9 MR. MORFORD: Your Honor, as to Mr. Johnson,
10 that will require a voir dire.

11 THE COURT: That's right. The Congressman
12 knows that. Maybe we can fit him in --

13 MR. TRAFICANT: Why would Mr. Hooker require
14 a voir dire?

15 THE COURT: He said Johnson.

16 MR. TRAFICANT: Yes. He has been here five
17 days, and his wife had to go the the doctor. He is
18 remarried and pregnant.

19 THE COURT: We don't need the jury for him.
20 We need Saadey first to see what he is going to do. We
21 don't know if he is going to take the Fifth Amendment or if
22 so on what, and then we need Johnson. Can you have Johnson
23 here at 8:30, too?

24 MR. TRAFICANT: Well, I have had Mr. Johnson
25 here for five days in a row.

1 MR. MORFORD: In fact, he was not here on
2 Friday when you asked him to be here.

3 MR. TRAFICANT: Because I had Terlecky here,
4 and I thought Terlecky and he had basically the same
5 testimony, and you wanted to voir dire someone with that
6 testimony.

7 THE COURT: Well, he came here Thursday --

8 MR. TRAFICANT: I will have Mr. Johnson here
9 tomorrow at 8:30, but I ask that Mr. Saadey go first since
10 he will be making a statement against interest if he
11 testifies.

12 THE COURT: Okay. Following that you have
13 one other witness. If you have more witnesses, you should
14 get them down here for tomorrow.

15 MR. TRAFICANT: I will be on the phone, and
16 hopefully, we would have time, and I am hoping to have that
17 welder here.

18 THE COURT: Right.

19 MR. TRAFICANT: Today yet.

20 THE COURT: Okay. But the welder is just a
21 viewing. So we will need more witnesses to fill up the
22 day.

23 MR. MORFORD: I do have one last continuing
24 request. I have requested on numerous occasions that we be
25 provided with discovery prior to the time the Congressman

1 walks up to a witness. It now turns out that those last
2 four photographs were taken in February of this year, and
3 he never provided them to us.

4 I will again ask if he has physical evidence, just as
5 we gave him all our evidence months before trial, he was
6 supposed to do the same, and we not be constantly handed
7 documents, exhibits, photographs two seconds before he
8 hands them to a witness.

9 MR. TRAFICANT: I would like to reply. With
10 Mr. Marchese, he didn't think he would be on until the
11 afternoon. He didn't get around to identifying the other
12 ones. This is first the time I saw them. They got them as
13 soon as I got them.

14 THE COURT: Let's talk about three witnesses
15 you have named. If you have any documents or papers that
16 relate to them, you have to turn that over to the
17 Government.

18 MR. TRAFICANT: All I have, and these
19 individuals are the 302s.

20 MR. MORFORD: There is no other physical
21 evidence; is that right?

22 MR. TRAFICANT: I have a tape.

23 THE COURT: Okay. Which one? One I've seen?

24 MR. TRAFICANT: No. You have not seen the
25 tape on Saadey.

1 THE COURT: I need the transcript.

2 MR. TRAFICANT: I want to see what he does,
3 and I have a right to do that.

4 MR. MORFORD: He has a responsibility under
5 discovery to give us any physical evidence, which he never
6 has.

7 MR. TRAFICANT: I may not introduce the tape.

8 THE COURT: You are going to have to --

9 MR. TRAFICANT: If I decide to introduce that
10 tape, then they will get it when I decide to introduce it,
11 and I am under no requirement under -- and this is the
12 Jencks Act we are working with here, fellows.

13 THE COURT: No. No, it is not the Jencks Act.

14 MR. TRAFICANT: Yes, it is. I'm not sure I
15 will have this witness, and I don't know if I want that
16 tape admitted to the Court.

17 MR. MORFORD: I would like it on the record
18 when the Congressman received the tape, and based on that,
19 I may move to exclude it as a violation of discovery. He
20 has been given notice time and time again that he cannot do
21 do this.

22 THE COURT: When did you receive the tape,
23 sir?

24 MR. TRAFICANT: I don't know. I would have
25 to look back at the dates. I have to look at the date.

1 THE COURT: Is this one of the nine or ten
2 that you talked about before, or is this a different one?

3 MR. TRAFICANT: Your Honor, I don't know how
4 many tapes I have, but I find it strange that there is not
5 one tape on me without no corroborative testimony, and I
6 taped every one of their witnesses.

7 THE COURT: It has nothing to do with this.

8 MR. TRAFICANT: Well, I will let the Court
9 know. I may not give them to the Court because I don't
10 believe the Court will let them in, frankly, and I want to
11 state that for the record, but if I decide to use them --

12 THE COURT: We don't know what the tape is.

13 MR. TRAFICANT: I will present them if I
14 decide to use them.

15 THE COURT: Who is on the tape, sir?

16 MR. TRAFICANT: I am on the tape.

17 THE COURT: And who else?

18 MR. TRAFICANT: Mr. Saadey relative to his
19 brother-in-law James Sabatine.

20 THE COURT: And when was the tape made?

21 MR. TRAFICANT: I don't know. I would have
22 to look back. I don't have it with me.

23 THE COURT: Was it made within the last
24 month?

25 MR. TRAFICANT: I would have to look.

1 THE COURT: You don't remember? Is it a
2 telephone tape?

3 MR. TRAFICANT: No, it wasn't.

4 THE COURT: Okay. Is it more than a week ago
5 that you made it?

6 MR. TRAFICANT: I have to look back at the
7 date.

8 THE COURT: You can't remember.

9 MR. TRAFICANT: I can't remember at this
10 point the exact date, and I will not be held to an exact
11 date.

12 THE COURT: I was asking you a zone, not an
13 exact date.

14 MR. TRAFICANT: No. And I don't think I am
15 compelled to tell the exact date.

16 THE COURT: He doesn't have to tell me,
17 but --

18 MR. TRAFICANT: If I decide to use it, I want
19 to see what Mr. Saadey's actions are tomorrow. If he takes
20 the stand, I may not, may not use that tape, but if he
21 takes the takes the stand, I want it to be known he has
22 been convicted and the same law you allowed for the
23 prosecution against interest since he is subject to being
24 sentenced in a criminal matter.

25 THE COUR: He is coming in tomorrow because he

1 is subject to being sentenced in a criminal matter, but you
2 do it at your own risk. There is a whole section of the
3 Rules of Criminal Procedure that deal with your
4 responsibility to disclose, and I will refer you to them so
5 you can look at them. It is Rule 16. Read it tonight.

6 MR. TRAFICANT: I will try and read it, but I
7 will say this to you, and I wish you the happiest of
8 holidays this weekend and nothing personal, but I don't
9 believe you will leave in any of my tapes or examine any
10 witnesses, and I am probably going to end up waiting for
11 this trial to be over to play the tapes, and I may not
12 introduce the tape. But I may play the tapes before the
13 trial.

14 THE COURT: But you know --

15 MR. TRAFICANT: I have a First Amendment
16 right. I am not an attorney, and I will not be bound by
17 the oath these three fellows are. I haven't been able to
18 examine witnesses, gotten technicality after technicality.
19 And no matter whom the attorney is, there are many
20 incompetents that can't face a RICO trial. I think one or
21 two beat them and wanted to get the other guy's name.
22 Having defeated the Justice Department in a RICO case and
23 the only pro se Defendant to have done so, I have decided
24 that you are completely with the prosecution because that's
25 the only way you can be removed from office, retirement or

1 death, and I feel bad about that, and I feel you are a nice
2 person, but for the record I will play my tapes for the
3 public.

4 THE COURT: Tonight I will consider their
5 motion and see how we go forward in the morning.

6 MR. TRAFICANT: See you in the morning, your
7 Honor.

8 THE COURT: I will see you tomorrow morning.

9 MR. TRAFICANT: Your Honor, they weren't
10 required to give me Sandy Ferrante's material.

11 MR. MORFORD: That's your witness,
12 Congressman Traficant.

13 THE COURT: They didn't call her.

14 MR. TRAFICANT: They did under the Jencks
15 Act.

16 THE COURT: You should read that act, also.

17 MR. TRAFICANT: I will tell you the truth, I
18 haven't read anything in this case. I will continue as I
19 have been in the case and feel quite comfortable, your
20 Honor. You are denying my rights. And even Bernard Smith
21 knows it. Look at the look on his face.

22 (Proceedings adjourned.)

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1 DIRECT EXAMINATION OF JOHN INNELLA..... 4790
2 CROSS-EXAMINATION OF JOHN INNELLA..... 4804
3 DIRECT EXAMINATION OF DOMINIC MARCHESE..... 4812
4 CROSS-EXAMINATION OF DOMINIC MARCHESE..... 4839
5 REDIRECT EXAMINATION OF DOMINIC MARCHESE..... 4862
6 DIRECT EXAMINATION OF MICHAEL TERLECKY.....4875
7 DIRECT EXAMINATION OF DOMINIC PAOLONE..... 4901
8 CROSS-EXAMINATION OF DOMINIC PAOLONE..... 4913
9 REDIRECT EXAMINATION OF DOMINIC PAOLONE..... 4916
10 VOIR DIRE EXAMINATION OF MICHAEL TERLECKY.....4925
11 DIRECT EXAMINATION CONTINUED OF MICHAEL TERLECKY.....4948

12 C E R T I F I C A T E

13 I certify that the foregoing is a correct
14 transcript from the record of proceedings in the
15 above-entitled matter.

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