No. 16-___

IN THE

Supreme Court of the United States

JOHN G. ROWLAND,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Contractual commitments do not constitute factual statements and incomplete contracts certainly are not lies. Yet the lower courts held that the Sarbanes-Oxley Act's anti-shredding provision (18 U.S.C. § 1519), which prohibits "falsifying" documents to influence any eventual federal proceeding, criminalized two authentic contracts—one of which was a draft and the other of which was executed and performed. Neither contract was forged or contained any misstatements of historical fact; yet the Government argued that the contracts were nonetheless "false" because they did not reflect the complete relationship between the parties. The district court blessed that theory, instructing the jury that contracts are false whenever they "knowingly omit … a material fact." On appeal, the Second Circuit agreed, splitting from the Sixth, Tenth, and Eleventh Circuits to hold that contracts are false whenever they misrepresent—affirmatively or by omission—the "true relationships among the parties." The question presented is therefore:

Whether and under what circumstances contracts can constitute false statements for purposes of federal criminal law.

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

STATUTES

TABLE OF AUTHORITIES
(continued)

Page(s)

OTHER AUTHORITIES

OPINIONS BELOW

The Second Circuit's opinion (Pet.App.1a-29a) is at 826 F.3d 100. The district court's opinion denying Mr. Rowland's motion to dismiss the indictment is at 2014 WL 3341690 (Pet.App.51a-75a), its opinion denying acquittal is at 2014 WL 7399358 (Pet.App.47a-50a), and its opinion denying a new trial is at 2015 WL 1190118 (Pet.App.34a-46a).

JURISDICTION

The district court had jurisdiction under 18 U.S.C. § 3231, and the Second Circuit had jurisdiction under 28 U.S.C. § 1291. The Second Circuit entered judgment on June 17, 2016. Pet.App.76a-77a. 28 U.S.C. § 1254(1) confers jurisdiction on this Court.

On August 9, 2016, Mr. Rowland requested an extension of time to file this petition. Application, *Rowland v. United States* (No. 16A141). Justice Ginsburg granted that extension on August 16, 2016. Order, *Rowland v. United States* (No. 16A141).

PROVISIONS INVOLVED

Relevant statutory provisions are at Pet.App.78a.

STATEMENT

John G. Rowland's political career began at age 23, when he was elected to the Connecticut State House of Representatives. Four years later, he was elected to the U.S. House of Representatives on behalf of Connecticut's 5th district. In 1994, he was elected governor, and he remained in that office for the next ten years—ultimately resigning in the wake of a corruption investigation that led him to plead guilty to one count of conspiracy to commit honest

services and tax fraud. More recently, Mr. Rowland hosted a talk show on local Connecticut radio. Given his extensive political experience in the State of Connecticut—but with his felony conviction precluding him from running for office—Mr. Rowland sought to assist with the political campaigns of others.

The charges below focused on two alleged schemes in which, according to the Government, Mr. Rowland was to work for a private entity and be paid by that entity when really he was being hired to assist with political campaigns. The charges were predicated on two contracts that were allegedly "false" because they omitted reference to Mr. Rowland's assistance on the political campaigns. Specifically, in 2009, Mr. Rowland drafted a contract to provide consulting services to an individual by the name of Mark Greenberg; the contract did not expressly reflect discussions between the two about Mr. Rowland working on Greenberg's nascent political campaign. Then, in 2011, Mr. Rowland signed a contract to provide consulting services to a company known as Apple Rehab, owned by Brian Foley; the contract did not state that Mr. Rowland would also work on Foley's wife's then-existing campaign for a seat in the U.S. House of Representatives. The supposed purpose of these alleged schemes was to conceal Mr. Rowland's involvement in these campaigns.

In 2015, on the basis of these contracts—one a preliminary draft, the other executed—Mr. Rowland was convicted of falsifying documents under 18 U.S.C. § 1519, the Sarbanes-Oxley Act's anti-shredding provision. The district court instructed the jury that contracts are false if they knowingly omit material

facts. The Second Circuit endorsed that instruction, and ruled that the above-described contracts were false because they "misrepresent[ed] the true relationships among the parties." Pet.App.17a.

By holding both that contractual commitments constitute factual representations and that every material omission from an otherwise-true statement is equivalent to a lie, the Second Circuit's decision expands the reach of § 1519 as well as dozens of other federal statutes that criminalize various types of false statements. That expansion conflicts with the rule in the Tenth and Eleventh Circuits that contractual commitments are not factual representations at all, as well as the rule in the Sixth Circuit that material omissions from otherwise-true statements are not lies. The decision below also contravenes three lines of this Court's precedent and the plain text of § 1519—all while threatening to federally criminalize the law of contracts. Review of that decision is warranted.

1. The Government's case against Mr. Rowland centered on a draft contract he provided to Mark Greenberg, and an executed contract for work at Apple Rehab—both of which, the Government contended, were for non-campaign employment as a pretext for campaign work.

a. Mr. Rowland first met Mark Greenberg in the summer of 2009. Pet.App.5a; Pet.App.95a. At the time, Greenberg was considering a run for the U.S. Senate, but Mr. Rowland suggested that Greenberg consider running for the U.S. House of Representatives instead. Pet.App.5a; Pet.App.96a. In conversations over the weeks that followed, Mr.

Rowland proposed that he serve as a consultant to Greenberg's campaign. Pet.App.5a; Pet.App.96a-97a. Mr. Rowland also offered to provide fundraising assistance to the Simon Foundation, Pet.App.99a-101a; Pet.App.107a-08a; Pet.App.111a—an animal rescue organization that Greenberg controlled, Pet.App.92a-94a.

At their next meeting, in October 2009, Mr. Rowland presented Greenberg with a draft contract. Pet.App.96a-100a. The draft contract was based on a model contract Mr. Rowland had used with other clients in the past, Pet.App.102a-03a; Pet.App.110a. As modified to be a starting-point for negotiations with Greenberg, the contract did not explicitly mention campaign work but did provide broadly that Mr. Rowland's company would "perform such consulting services … for Mark Greenberg, as may be reasonably requested by him with respect to the marketing of his Company's sales and service, strategic advice, public relations, business consulting, or such other services as may be required." Pet.App.88a. In addition, Mr. Rowland's company would provide the "same services for 'The Simon Foundation', … also including fundraising." *Id.* Greenberg later testified that the primary nature of Mr. Rowland's offer was to provide consulting services to Greenberg's incipient political campaign, Pet.App.109a; Pet.App.111a-12a, and that Mr. Rowland had verbally suggested he be paid by an entity other than the campaign, Pet.App.110a.

Greenberg rejected Mr. Rowland's offer, ripping up the draft contract the same day he received it. Pet.App.101a-02a; Pet.App.106a-07a; Pet.App.5a. The contract was never executed; Greenberg and

Rowland never entered into any consulting agreement; and Greenberg never otherwise hired Rowland. Pet.App.105a-06a; Pet.App.5a.

b. In the next election cycle, Mr. Rowland began to serve as an unpaid advisor to Lisa Wilson-Foley's congressional campaign. Pet.App.124a-34a. Wilson-Foley's husband, Brian Foley, was the president of Apple Rehab, a nursing home company with sites in both Connecticut and Rhode Island. Pet.App.120a-24a; Pet.App.6a. In September 2011, Mr. Rowland proposed to Wilson-Foley and Foley that he serve as a paid consultant to the campaign. Pet.App.134a-36a; Pet.App.6a. The Foleys believed that Mr. Rowland could provide valuable assistance, but were concerned that his prior conviction could damage Wilson-Foley's campaign overall. Pet.App.138a-39a; Pet.App.6a. Thus, Wilson-Foley decided against hiring Mr. Rowland for the campaign, but Foley decided to offer Mr. Rowland a job at Apple. Pet.App.139a-41a. Foley later explained that he wanted to encourage Mr. Rowland to continue to help Wilson-Foley and not to offer his services to other campaigns, while also believing Mr. Rowland could be of true value to Apple. Pet.App.157a-58a.

Mr. Rowland signed a contract with Christian Shelton, Apple's general counsel, Pet.App.124a; Pet.App.144a, for his work at Apple on November 11, 2011. Pet.App.79a-87a. According to the agreement, he was to provide "consulting services" with respect to "marketing, strategic advice and business consulting." Pet.App.80a. In exchange, Mr. Rowland was to receive a "consulting fee" of $5,000 per month. Pet.App.81a. Foley instructed his COO not to authorize payment to Mr. Rowland unless the COO

was satisfied with Mr. Rowland's work. Pet.App.142a; Pet.App.199a.

Pursuant to the contract, Mr. Rowland met with Apple staff on numerous occasions. Pet.App.187a-95a. He also identified and worked with a lobbyist on Apple's behalf, Pet.App.159a-61a, drafted an analysis of a report regarding nursing home demand in Connecticut, Pet.App.200a-10a, and provided advice on various union issues, Pet.App.193a-95a; Pet.App.197a-98a; Pet.App.6a. Foley paid Mr. Rowland $35,000 for his work. Pet.App.28-29a. This money came from Foley rather than Wilson-Foley's campaign and thus was not reported on the campaign's disclosure forms.

At the same time Mr. Rowland was working for Apple, he assisted with Wilson-Foley's campaign. He attended staff meetings, provided strategic advice, assisted with fundraising, and made several public appearances. Pet.App.6a; Pet.App.164a-67a; Pet.App.174a-76a; Pet.App.179a. As illustrated by the many congressional staffers who volunteer for their bosses' reelection campaigns every two years, it is entirely legal to volunteer for a political campaign while working for, and being paid by, a different organization. Appellant's Op. Br. 47; Appellant's Reply Br. 16.

c. In April 2012, the media learned of Mr. Rowland's involvement with the Wilson-Foley campaign, as well as his work for Apple. Pet.App.6a; Pet.App.181a-85a. Shortly thereafter, the Government began to investigate. Pet.App.7a. At the beginning, Foley maintained that Mr. Rowland's relationship with Apple was legitimate, *see*

Pet.App.143a; Gov't Mem. at 6, *United States v. Foley*, No. 3:14cr65 (D. Conn. Dec. 29, 2014), ECF No. 62-1, but after it became apparent that Foley and those close to him were facing many years in prison for a multitude of unrelated crimes—arising from illegal campaign contributions he had made using family members as straw donors, Pet.App.144a-51a; Pet.App.156a; Pet.App.167a-70a—Foley began to allege that the Apple relationship was a cover for Mr. Rowland's work on the campaign. In exchange for a misdemeanor plea and a free-pass for his straw-donor family members, Pet.App.171a-74a, Foley became the Government's star witness, Pet.App.170a-71a; Gov't Mem. at 16-17. In that role, he testified that the primary purpose of his agreement with Rowland was for Rowland to work on the campaign. *See, e.g.*, Pet.App.157a-59a. Foley maintained, however, that Rowland had performed real work for Apple, Pet.App.160a; Pet.App.162a-63a, that there was no express agreement between the two that Rowland's work for Apple was a mere cover, and that he, Foley, never said "anywhere anyplace … to anybody" that the contractual arrangement was a sham, Pet.App.141a.

2. In June 2014, a grand jury returned an indictment charging Mr. Rowland with conspiracy to defraud the Federal Elections Commission ("FEC"), two counts of causing the submission of false statements to the FEC (based on the omission of payments to Mr. Rowland on FEC reports filed by the campaign), and two counts of causing illegal campaign contributions (based on Foley's payments to Rowland). Superseding Indictment, *United States v. Rowland*, No. 3:14cr79 (D. Conn. June 12, 2014),

ECF No. 38 ("Indictment"). As relevant here, the indictment also charged Mr. Rowland with falsification of documents in violation of 18 U.S.C. § 1519, based on the Greenberg and Apple contracts. Indictment at 19.

Mr. Rowland has consistently argued that these contracts were not falsified documents. He moved to dismiss the indictment on this basis, arguing that the contracts contained no false statements and therefore were not false. Mem. in Supp. of Dismissal at 9-11, *United States v. Rowland*, No. 3:14cr79 (D. Conn. May 20, 2014), ECF No. 36-1; Reply Mem. in Further Supp. of Dismissal at 4-7, *United States v. Rowland*, No. 3:14cr79 (D. Conn. June 30, 2014), ECF No. 51. And Mr. Rowland proposed jury instructions that defined falsification of a document to be the "knowing[] inclu[sion] within the document [of] any material fact that [the defendant] knows is false." Proposed Final Jury Instructions at 6-7, *United States v. Rowland*, No. 3:14cr79 (D. Conn. July 28, 2014), ECF No. 76. The Government, for its part, proposed an instruction that the knowing omission of any material fact rendered a document false. Gov't Proposed Jury Instructions at 16, *United States v. Rowland*, No. 3:14cr79 (D. Conn. July 29, 2014), ECF No. 77.

Over objection, *see* Pet.App.212a-14a, the district court adopted the Government's proposal, instructing the jury that "[a] defendant falsifies a document by knowingly including within the document any untrue statement or representation or by knowingly omitting from the document a material fact." Pet.App.216a-18a. The court elaborated that "[a] fact is material if it had a natural tendency to influence and was

capable of influencing the government's, here the FEC or the Department of Justice, decisions or activities." Pet.App.217a-18a. The Government seized upon this omission theory in its closing. Pet.App.218a-20a.

On September 19, 2014, a jury found Mr. Rowland guilty of all counts, including, as relevant here, violating 18 U.S.C. § 1519. Jury Verdict, *United States v. Rowland*, No. 3:14cr79 (D. Conn. Sept. 19, 2014), ECF No. 146.

3. The district court ultimately sentenced Mr. Rowland to 30 months in prison, Judgment, *United States v. Rowland*, No. 3:14cr79 (D. Conn. March 26, 2015), ECF No. 244, but granted him bond pending appeal, Pet.App.30a-33a. In doing so, the court reasoned that some of the issues on appeal were "fairly debatable, and implicate[d] multiple counts or [were] so integral to the entire case that an appellate decision in [Mr. Rowland's] favor [was] likely to require reversal or a new trial of all counts on which [Mr. Rowland] has been sentenced to imprisonment." Pet.App.32a (internal quotation marks, alterations, and citations omitted).

4. The Second Circuit affirmed Mr. Rowland's convictions. As to § 1519, the court described the draft Greenberg contract as a proposal "to provide 'consulting services' for Greenberg's businesses and his nonprofit, the Simon Foundation," whereas in conversations Rowland had "offered to serve as a paid consultant for the campaign." Pet.App.5a. The court summarized the Apple contract as purporting "to establish a relationship between Rowland and Christian Shelton, Apple's attorney, when Rowland

was in fact retained primarily to provide services to Lisa Wilson-Foley's political campaign." Pet.App.16a. But the Second Circuit also acknowledged that Rowland had done work for Apple: "He met with Apple staff on eight to ten occasions, conducted research at Apple's request about the nursing home industry in Connecticut, helped Apple hire a new lobbyist, and advised Apple on union issues, among other tasks." Pet.App.6a.

Taking an "approach" that "diverges from that of the Eleventh Circuit," the panel held that "someone 'falsifies' a document when he creates a document that misrepresents the truth." Pet.App.10a-11a. Applying that definition to § 1519, it held that "a written contract may be 'falsified' for purposes of § 1519 if it misrepresents the true nature of the parties' agreement." Pet.App.14a. Finding that the contracts here "were designed to reflect that [Rowland] would be providing business consulting services to [Greenberg and Foley's] corporate or charitable interests" and "intentionally did *not* reflect the arrangement contemplated by the parties, which involved Rowland providing political consulting to Greenberg's and Wilson-Foley's campaigns," Pet.App.14a-15a, the court held "the jury was entitled to conclude that both the Greenberg and Foley contracts were 'falsified' in the sense that they were created to misrepresent the true relationships among the parties." Pet.App.17a. As for Mr. Rowland's argument that the district court "erred by instructing the jury that a defendant can falsify a document by knowingly omitting a material fact," the court rejected it "for the same reasons." Pet.App.28a.

REASONS FOR GRANTING THE PETITION

This petition presents a question of vital importance deserving of this Court's review. Contractual commitments do not make factual representations that are "true" or "false," and omitting material facts from a statement is different from actually lying. Yet the lower courts held that parties "falsify documents" whenever they propose or execute contracts that fail to reflect the totality of a business relationship. Specifically, the district court instructed the jury that a contract is a "falsified document" under § 1519 if it knowingly omits a material fact. Pet.App.216a-18a. The Second Circuit upheld that instruction, holding that contracts are falsified whenever they "misrepresent the true relationships among the parties." Pet.App.17a. Thus, on the basis of two contracts that did not capture the "true" agreement between the parties, the lower courts upheld two felony convictions worth 20 years in prison apiece.

That sweeping construction of § 1519's prohibition against "falsifying documents" created a split with decisions of the Eleventh and Tenth Circuits, both of which hold that contractual commitments are not statements at all, such that they cannot be "true" or "false." It also creates a split with the Sixth Circuit, which holds that omissions—even material omissions—do not constitute false statements. Both of these divisions are outcome-determinative for Mr. Rowland and will, if left uncorrected, subject the residents of the Second Circuit to federal criminal liability for conduct that would be lawful in the Sixth, Tenth, and Eleventh Circuits.

In addition to creating a split with three other circuits, the Second Circuit's construction conflicts with three lines of this Court's precedent, as well as the plain statutory text. It is contrary to *Williams v. United States*, 458 U.S. 279, 284-85 (1982), which held that written promises (there, checks) are legal commitments to do something (there, pay a certain amount), rather than statements that can be deemed "true" or "false." It is contrary to *Bronston v. United States*, 409 U.S. 352 (1973), which held that omitting a material fact from an answer is different from telling a lie and thus cannot constitute a false statement. It is contrary to *Yates v. United States*, 135 S. Ct. 1074 (2015), which cautioned the Government and the lower courts to construe § 1519 narrowly in accordance with its text, rather than broadly to encompass a wide swath of conduct. And it is contrary to the plain text of § 1519, which is limited to "falsifying documents." To "falsify" a document means to forge or counterfeit one—not to draft or enter an authentic contract that fails to capture the totality of the parties' relationship.

Finally, the Question Presented is not confined to 18 U.S.C. § 1519. Over 100 other federal statutes criminalize false statements in a variety of contexts. The issues of whether contractual commitments constitute statements and whether material omissions are tantamount to lies thus arise in construing dozens of criminal prohibitions. Ensuring that these many statutes are interpreted consistently and correctly is well worth this Court's time and attention. For all of these reasons, this Court's review is warranted.

I. THE OPINION BELOW CONFLICTS WITH THE LEGAL RULE IN THREE OTHER CIRCUITS.

The opinion below creates two separate circuit splits. It creates a split with the Tenth and Eleventh Circuits, both of which hold that contractual commitments are not statements and thus cannot be "false." And it creates a second split with the Sixth Circuit, which holds that making a material omission is not tantamount to making a false representation, with only the latter triggering criminal prohibitions against false statements. As these splits are outcome-determinative in this case and many others, curing these divisions warrants this Court's review.

A. The Tenth and Eleventh Circuits Have Held That Contractual Promises Cannot Be Characterized As "False."

1. Foremost, the Second Circuit's opinion expressly rejected the Eleventh Circuit's rule that contractual commitments cannot be "false." As the panel put it, "our approach diverges from that of the Eleventh Circuit." Pet.App.14a.

In *United States v. Blankenship*, 382 F.3d 1110 (11th Cir. 2004), the Eleventh Circuit held that contractual obligations cannot constitute false statements as a matter of law. The contracts at issue in that case stated Tarand Transport would provide employees and equipment to H.J. Trucking so that H.J. Trucking could provide hauling services in connection with the construction of a highway. *Id.* at 1116-18. (H.J. Trucking was a minority-owned small business and therefore could take advantage of the subcontracts that had been set aside for such firms; Tarand was not. *Id.* at 1116.) In reality, Tarand

Transport kept those employees and equipment under its control and itself provided the hauling services, all with the permission of H.J. Trucking. *Id.* at 1117. The owner of H.J. Trucking was convicted of violating 18 U.S.C. § 1001(a)(3), which prohibits the intentional creation or use of any "false writing and document, knowing the same to contain materially false, fictitious, or fraudulent statements and entries." *See id.* at 1131-32.

The Eleventh Circuit overturned the conviction, with Judge Tjoflat explaining for the court that "there are only two ways in which a contract can possibly be considered 'false.' First, a contract is false if a person forges or alters it." *Id.* at 1132 (citing *United States v. Holley*, 826 F.2d 331 (5th Cir. 1987) and *United States v. Voorhees*, 593 F.2d 346 (8th Cir. 1979)). Second, "a contract can be 'false' … if it contains factual misrepresentations." *Id.* (citing *United States v. Jespersen*, 65 F.3d 993 (2d Cir. 1995)). The court declined to extend the statutory prohibition against creating false documents to contractual promises. *Id.* at 1136.

The Eleventh Circuit reasoned that a contract is "a document that serves only to establish a legal relationship between two parties; it gives each party nothing more than a legal expectancy in having the other party *either* perform *or* (generally) respond in damages." *Id.* at 1133. In response to the Government's argument that the contracts there were "inherently 'false' because neither party actually intended to carry through on their promises," the court explained that a promise contained in a contract "is not a certification that the promisor will actually perform the specified acts, or presently

intends to perform those acts, but is instead a grant of a legal right to the other party to either enjoy performance or receive damages." *Id.* Whether a party chooses to enforce its contractual rights "is a matter beyond the four corners of the document, and has no impact on whether the contract itself is 'false.'" *Id.* at 1134. Thus, even when contracts are entered into "in bad faith, with an intent to mislead" others, if those contracts "actually create[] the legal rights they purport[] to create," then the contracts cannot be described as "false." *Id.*[1]

[1] The Eleventh Circuit found strong support for its conclusion in *Williams*, 458 U.S. 279, explaining:

> Like a check, a contract is not a factual assertion, and therefore cannot be characterized as "true" or "false." Just as a check gives its recipient the legal right to payment either from the bank or the drawer, so too a contract gives the other party the legal right either to performance or compensation. While a check, by its terms, does not "make any representations as to the state of petitioner's bank balance," *id.* at 284-85, a contract does not make any representations as to a party's intention to perform instead of paying damages, or to exercise its rights under the contract. Just as a check is not "false" simply because neither the drawer nor the drawee intends that the drawee cash it, a contract is not false simply because neither party intends to enforce it. Finally, and perhaps most persuasively, just as there is no evidence that Congress intended § 1014 to be a national bad check law, displacing vast amounts of state legislation, there is no evidence that Congress intended § 1001 to be a national "false contract" law, occupying an area that has been a cornerstone of the common law for the better part of a millennium.

Blankenship, 382 F.3d at 1135. There is likewise no evidence that Congress intended § 1519 to occupy this "cornerstone of the common law" and create a national ban on "false contracts."

The Second Circuit's decision expressly rejected *Blankenship*. After summarizing that decision, the court wrote that its "approach diverges from that of the Eleventh Circuit." Pet.App.14a. The court thus expressly refused to limit "false contracts" to those that contain factual misrepresentations or that have been forged or altered, instead holding that "false contracts" include all contracts that "misrepresent[] the true nature of the parties' agreement." *Id.* Mr. Rowland's contracts contained no forgeries, alterations, or misstatements of historical fact. But because they stated that he would provide "business consulting services to … corporate or charitable interests"—when he was also going to provide "political consulting to Greenberg's and Wilson-Foley's campaigns," *id.* at 15a—the Second Circuit deemed those contracts "false."

As a result, contracts that do not reflect the true relationship between the parties *do* amount to "false documents" in the Second Circuit, but *do not* in the Eleventh. That split implicates countless federal criminal statutes and creates diametrically opposed legal rules that would be outcome-determinative not just for Mr. Rowland, but for many other future contracting parties.

2. Further, the Eleventh Circuit is not alone; the Tenth Circuit falls in the same camp. In *United States v. Rothhammer*, 64 F.3d 554 (10th Cir. 1995), the issue was whether "a promise to pay included in a promissory note" qualified as a false statement under 18 U.S.C. § 1014. *Id.* at 557. The Government argued that the promises to pay were false because the defendants had no intent to actually pay. *Id.* at 558. But the Tenth Circuit disagreed. After

summarizing the rationale of *Williams*—"a check is not a factual assertion and cannot be characterized as either true or false"—Judge Kelly explained for the court that "a promise to pay in a promissory note is not a factual assertion" either. *Id.* at 557. Rather, based on "the standard promise contained in a promissory note," "the law imputes [a] legal obligation to pay," and that *legal obligation* "does not amount to" and "cannot be construed as" a "*false statement*." *Id.* at 558 (emphasis added).

In contrast, the Second Circuit held that the legal obligations set forth in Mr. Rowland's contracts rendered those documents false, reasoning that Mr. Rowland's "true" intent was to provide additional services. Pet.App.13a-17a. That holding conflicts directly with the Tenth Circuit's rule, and that conflict is likewise outcome-determinative for Mr. Rowland and countless other, future defendants.

B. The Sixth Circuit Has Held That Omissions Do Not Amount To False Statements.

The Second Circuit diverged from its sister circuits not only over whether documents memorializing legal obligations can be "false," but also on the question whether contracts can be false by omission. In particular, the Sixth Circuit has held that *incomplete* statements—even ones with material omissions—cannot constitute *false* statements.

In *United States v. Kurlemann*, 736 F.3d 439 (6th Cir. 2013), a seller represented that he had received down payments from two buyers; the seller did not specify that one down payment was based on a promissory note, or that the other stemmed from

borrowed money. *See id.* at 443-44, 447-48. The seller was charged with making false statements to a lending institution in violation of 18 U.S.C. § 1014; at trial, the district court instructed the jury that a "statement may be false when it contains a half-truth or when it conceals a material fact." *Id.* at 447.

The Sixth Circuit emphatically rejected that view. *Id.* Writing for the court, Judge Sutton explained that "[w]hether made orally or offered through a written report, a 'false' statement' must be that—a statement, a 'factual assertion' capable of confirmation or contradiction." *Id.* at 445 (citing *Williams*, 458 U.S. at 284)). Accordingly, an "omission, concealment or the silent part of a half-truth, is not an assertion." *Id.* Although omissions have "the potential to mislead and deceive," the statute covered "false statements"—*not* "misleading statements, false pretenses, schemes, trickery, fraud or other types of deception." *Id.* The court further noted that other statutes *do* criminalize the concealment of material facts, which was all the more reason to avoid reading a statute prohibiting false statements that broadly. *Id.* at 446.[2]

The court further explained that "false" and "fraudulent" representations "do not cover the same thing." *Id.* "Fraud has long been understood to

[2] For example, the court highlighted the Securities Act, *see id.*, which prohibits "any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2). In contrast, § 1519 (like § 1014) says no such thing. But the Government's interpretation of § 1519 reads such a requirement into the statute—essentially requiring private contracts to include all material facts so that they do not mislead anyone in any eventual federal proceeding.

include a broader range of deceptive conduct." *Id.* With respect to fraud, the "gist of the action … is fraudulently producing a false impression upon the mind of the other party; and, if this result is accomplished, it is unimportant whether the means of accomplishing it are words or acts of the defendant, or his concealment or suppression of material facts." *Id.* (quoting *Stewart v. Wyo. Cattle Ranche Co.*, 128 U.S. 383, 388 (1888)). That is, of course, entirely different from making literally false statements.

Ultimately, the Sixth Circuit concluded that, until "Congress opts to extend § 1014 to material omissions, implied misrepresentations or fraud—all ways of getting at deceptive 'half truths'—we must take the statute as we find it." *Id.* at 448; *see also United States v. Miller*, 734 F.3d 530, 543 (6th Cir. 2013) (applying *Kurlemann*); *United States v. Waechter*, 771 F.2d 974, 980 (6th Cir. 1985) (finding "evidence that [the defendant] placed bids in bad faith … and that his method of bidding created a false impression" insufficient to sustain a false statement conviction under 18 U.S.C. § 1010).

The Second Circuit created a conflict with *Kurlemann* by upholding Mr. Rowland's convictions on the basis of omissions. The Government repeatedly relied on the theory that the contracts were false because "there's not a single mention" of campaign work. Pet.App.219a; U.S. Br. 25 n.3, 26. Over Mr. Rowland's objection, the district court instructed that omissions were tantamount to falsity, Pet.App.216a-18a, and the Second Circuit agreed that, by omitting reference to campaign work, the contracts "misrepresent[ed] the true relationships among the parties." Pet.App.17a. That conclusion

extends § 1519—which, again, prohibits "falsified documents"—to reach all documents that mislead by omission. That extension cannot be reconciled with *Kurlemann*'s refusal to extend § 1014's prohibition on false statements to include "material omissions" or "implied misrepresentations." 736 F.3d at 448.

On this front, too, residents of the Second Circuit are now subject to a different set of federal criminal laws than those living in the Sixth. Resolving that additional division warrants review.

II. THE OPINION BELOW IS WRONG.

In addition to creating two different, outcome-determinative circuit splits, the Second Circuit's decision is incorrect. It conflicts with (1) this Court's holding in *Williams* that contractual commitments are not factual representations that can be "false," (2) this Court's holding in *Bronston* that omitting a material fact is different from telling a lie, (3) this Court's holding in *Yates* that § 1519 should be interpreted cautiously according to its terms rather than in a sweeping fashion that captures wide-ranging conduct, and (4) the plain statutory text. These serial errors in adopting a sweeping construction of an already-broad criminal statute reinforce the pressing need for review.

A. *Williams* Establishes That Promises To Perform Cannot Be "False" Statements.

The Second Circuit held that Mr. Rowland's contracts were "false" because they did not reflect the "true nature" of the parties' relationships. But this Court has already held that contractual commitments cannot be "true" or "false."

In *Williams*, the petitioner had been convicted of making false statements under 18 U.S.C. § 1014 for writing two checks "not supported by sufficient funds." 458 U.S. at 284. This Court reversed, holding that "a check is not a factual assertion … and therefore cannot be characterized as 'true' or 'false,'" *id.*; rather, a check represents a drawer's contractual commitment to pay the amount of the check to its holder in the event that the drawee bank refuses to do so. *Id.* at 284-85. The Government had argued that, when a person writes a check, he is "generally understood to represent" that he has sufficient funds to pay it; when a drawer lacks such funds, the Government reasoned, the check constitutes a misrepresentation amounting to a false statement. *Id.* at 285-86. This Court rejected that argument, refusing to adopt "an expansive reading" of the phrase "false statement" based on "inferences drawn from subjective and variable 'understandings.'" *Id.* at 286. Instead, the Court held that a legal commitment to pay via writing a check does not "make any representation as to the state of [the drawer's] bank balance." *Id.* at 285. The decision thus recognized the fundamental distinction between factual assertions and contractual commitments, with only the former capable of constituting a potential "false" statement.

The opinion below disregarded that distinction. The contracts here contained no "factual assertion[s]" that could be true or false. *Id.* at 284. Rather, they imposed legal obligations on Rowland to provide certain services, and on his counterparts to pay. Just as the petitioner's obligation to pay in *Williams* was not a representation that his account contained

sufficient funds to do so, Rowland's obligations to perform did not constitute representations that he would provide those services and no others. Thus, just as the *Williams* petitioner's checks were not false, Rowland's contracts were not either. In holding otherwise, the Second Circuit contradicted *Williams*.

B. *Bronston* Establishes That Omissions Are Not False Statements.

Further, even if contractual commitments can sometimes be "false," this Court's decision in *Bronston* makes clear that "falsity" does not include omissions. In affirming Mr. Rowland's convictions, the Second Circuit endorsed the district court's instruction to the jury that a contract is false whenever it knowingly omits a material fact. Under *Bronston,* that instruction was incorrect.

In *Bronston*, the petitioner had been asked under oath whether he had ever had any bank accounts in Switzerland. 409 U.S. at 353-54. He responded that his "company had an account there for about six months" and did not volunteer that he had had a Swiss bank account for several years in the past. *Id.* at 354. On the basis of this omission, Bronston was convicted of making a statement on a "material matter" that he did "not believe to be true." *Id.* at 357 (quoting 18 U.S.C. § 1621). This Court reversed Bronston's conviction, holding that an answer which was "arguably misleading by negative implication" was insufficient to sustain a conviction. *Id.* at 353. The Court explained that it would be "broadly unsettling" for a "misleading or incomplete response"—even one "intended to sidetrack"—to give rise to criminal liability for perjury. *Id.* at 361.

The lower courts in this case embraced the "broadly unsettling" approach *Bronston* rejected. The district court instructed the jury that contracts are false whenever they knowingly omit a material fact, Pet.App.216a-18a, and the Government argued repeatedly that Mr. Rowland's contracts were false because they neglected to mention political consulting, *see, e.g.*, Pet.App.218a-20a; U.S. Br. 25 n.3, 26—arguing to the jury that, "if what he was selling was his political expertise, you can feel confident that this contract is fake because there's not a single mention of it." Pet.App.219a. And the Second Circuit rejected Mr. Rowland's challenge to this omission theory on the ground that the contracts did not reflect the "true nature" of the parties' relationships. Pet.App.4a; Pet.App.14a; Pet.App.17a.

In other words, the lower courts held that, because the contracts here were "incomplete" and "intended to sidetrack," *Bronston*, 409 U.S. at 361, they were "falsified documents" under § 1519. *Bronston* forecloses precisely that reasoning.

C. *Yates* Rejected Sweeping Constructions of § 1519 That Outstrip Its Text.

Expanding § 1519 to criminalize every incomplete contract also flies in the face of this Court's recent decision in *Yates*. Although that decision focused on the meaning of the phrase "tangible object" in § 1519, both the plurality and the concurrence interpreted the words "falsify" and "document" elsewhere in the statute. In so doing, the plurality equated the term "document" with something "used to record or preserve information," *Yates*, 135 S. Ct. at 1085, and explained that the verb

"falsify" typically takes as a grammatical object "records, documents, or things used to record or preserve information, such as logbooks or hard drives," *id.* at 1086. In his concurrence, Justice Alito agreed that, in the context of § 1519, those words pertained to "filekeeping." *Id.* at 1090.

The Second Circuit ignored that guidance, and instead extended § 1519 to omitting information from contracts that memorialize legal commitments. But omitting information from a document does not "falsify" that document, and a contract merely establishes the legal framework for a relationship between two parties. Contracts are neither created to "preserve information" nor used for "filekeeping."

Beyond that basic conflict, the decision below conflicts with nearly every step of the *Yates* plurality's reasoning:

First, the *Yates* plurality repeatedly emphasized that "§ 1519 was passed as part of legislation targeting corporate fraud," *id.* at 1080, and "was intended to prohibit, in particular, corporate document-shredding to hide evidence of financial wrongdoing," *id.* at 1081. That historical context offers no support for an interpretation that criminalizes purportedly incomplete contracts. To borrow from *Yates*, "it would cut § 1519 loose from its financial-fraud mooring to hold that it encompasses" every draft contract that fails to memorialize the totality of the parties' discussions, or every executed contract that captures only some of the parties' commitments.

Second, the plurality highlighted § 1519's caption: "Destruction, alteration, or falsification of *records*."

Id. at 1083 (emphasis added) (citing *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998) ("[T]he title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute."); *see also id.* at 1090 (Alito, J., concurring). The Greenberg and Apple contracts were not "records" that Mr. Rowland falsified; they were legal instruments he either drafted or (in the latter instance) signed to govern a business relationship.

Third, the plurality emphasized that § 1519 broadly encompassed "conduct intended to impede any federal investigation or proceeding, including one not even on the verge of commencement." *Id.* at 1087; *see also id.* at 1083. That extraordinarily expansive statutory reach led the plurality to construe the phrase "tangible object" narrowly, and to reject the Government's "unrestrained reading" of that provision as constituting "a general ban on the spoliation of evidence, covering all physical items that might be relevant to any matter under federal investigation." *Id.* at 1081.

Here, the Government has returned to precisely the same sort of "unrestrained" construction of § 1519 this Court rejected in *Yates*. The Government has construed § 1519's prohibition against "falsifying documents" as a general ban on incomplete agreements, covering all contracts that might be relevant to any matter that is ever under any sort of federal investigation. Just as it is "highly improbable that Congress would have buried a general spoliation statute covering objects of any and every kind in a provision targeting fraud in financial record-keeping," *id.* at 1087, it is highly improbable that Congress

would have buried in such a provision a federal requirement that every private contract—indeed, every *draft* contract—comprehensively memorialize the parties' promises.

Fourth and finally, the plurality invoked the rule of lenity: "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Id.* at 1088 (internal quotation marks omitted). Just as it did in *Yates*, the Government is urging "a reading of § 1519 that exposes individuals to 20-year prison sentences" for failing to include information in private contracts that "*might* have evidentiary value in *any* federal investigation into *any* offense, no matter whether the investigation is pending or merely contemplated, or whether the offense subject to investigation is criminal or civil." *Id.* Mr. Rowland did not have "fair warning," *Liparota v. United States*, 471 U.S. 419, 427 (1985), that, by providing an allegedly incomplete draft contract to Greenberg as a starting point for negotiations, and then by entering a contract to work for Apple while assisting Wilson-Foley with her campaign, he was "falsifying documents" and thereby risking four decades in prison.

D. The Second Circuit's Construction Conflicts With § 1519's Plain Text.

Finally, the plain language of 18 U.S.C. § 1519 forecloses the sweeping construction the Government successfully pressed below. In relevant part, § 1519 reaches anyone who "knowingly … falsifies, or makes a false entry in any … document … with the intent to impede, obstruct, or influence" a federal proceeding. By its terms, that text does not encompass authentic

contracts that "misrepresent the true relationships among the parties." Pet.App.17a.

The word "falsify" means to "make something false; to counterfeit or forge." Black's Law Dictionary 637 (8th ed. 1999). Section 1519's prohibition against "falsifying" documents is thus limited to creating "counterfeit" or "forged" documents like phony accounting records, fake shipping labels, etc. Here, there is no allegation that Mr. Rowland's contracts were forged or counterfeit. The Government's theory was, rather, that those contracts were "falsified" because they "misrepresent[ed] the true relationships among the parties." Pet.App.17a. But *authentic* documents do not become *falsified* documents whenever their content is misleading. Even misleading contracts are genuine contracts, and the prohibition against "falsifying documents" does not criminalize creating genuine, forward-looking agreements that do not reflect the totality of the parties' future performance.

Such agreements also are not captured by § 1519's "false entry" language. In addition to prohibiting the falsification of documents, the statute prohibits "mak[ing] a false entry in any … document." 18 U.S.C. § 1519. This provision criminalizes entering fake information into a genuine document—such as adding fictitious entries to a company's accounting books—in order to throw future readers off the track. It does not criminalize clauses in contracts that may not reflect the primary nature of the parties' agreement, or that may go un-performed. The provision is also carefully limited to the affirmative "entry" of misinformation. *Affirmatively entering false information* into a record is not the same as a

passively omitting a material commitment from a contract; the former requires adding actual information that is false to a business document, while the latter is not informational and misleads without lying. Thus, even if the prohibition against "falsifying documents" had anything to do with the content of authentic documents—which it does not—that provision *still* would not criminalize omitting a commitment from a contract. Construing the falsification provision as the Government does would directly override Congress's explicit limitation of § 1519 to affirmatively "making" "false entries" into business records.

Finally, not only would that broad construction affirmatively override the "false entry" provision, it would conflict with the many statutes that expressly criminalize misleading omissions. As Judge Sutton explained in *Kurlemann*, numerous "criminal statutes distinguish between 'false' pretenses and 'fraudulent' ones." 736 F.3d at 446. Fraud statutes, for example, criminalize "a broader range of deceptive conduct," including actions intended to produce "a false impression upon the mind of the other party" by concealing "material facts." *Id.* (quoting *Stewart*, 128 U.S. at 388). The many fraud statutes Congress has enacted demonstrate that it is perfectly capable of criminalizing misleading omissions. In § 1519, it did not do that. The Government's construction tramples over that intentional limitation.

III. THIS CASE IS AN IDEAL VEHICLE FOR RESOLVING THESE ISSUES.

This case supplies an excellent vehicle to correct the Second Circuit's expansive interpretation of § 1519 and resolve the circuit splits it created.

First, there are no obstacles in the record to answering the Question Presented. Mr. Rowland has preserved his objections through every stage of the proceedings, consistently maintaining that his contracts were not falsified documents. From his motion to dismiss the indictment to his briefs in the court of appeals, Mr. Rowland has argued that his contracts—free of forgeries, alterations, or factual misstatements—could not be false as a matter of law. Mem. in Supp. of Dismissal at 9-11; Reply Mem. in Further Supp. of Dismissal at 4-7; Appellant's Br. at 28-35. Mr. Rowland has also repeatedly challenged the Government's theory that contracts can be false by omission. *See, e.g.*, Pet.App.212a-14a; Appellant's Br. 31-34, 53.

Second, the conflict between the circuits is clear and outcome-determinative for Mr. Rowland, as well as countless other, future defendants. The Second Circuit openly departed from the Eleventh, Pet.App.14a, while its opinion also conflicts with the Tenth (on whether contractual promises can be "false"), and with the Sixth (on whether omissions can be false statements). Mr. Rowland's convictions could not stand in those Circuits; in all three, his contracts would not be "false" even if those contracts did, in fact, "misrepresent[] the true nature of the parties' agreement." *Id*. For both of these reasons,

this case is an ideal vehicle for addressing these critically important issues.

IV. THE QUESTION PRESENTED IS EXCEPTIONALLY IMPORTANT AND FREQUENTLY RECURRING.

Whether and when a contract can be "false" for purposes of federal criminal liability is relevant to every written agreement in the United States. The answer has repercussions far beyond § 1519—over 100 federal statutes criminalize false statements in a variety of different contexts. The Question Presented is thus an exceptionally important and oft-recurring one.

A. The Question Presented Implicates Dozens Of Federal Statutes.

The Second Circuit's rule is much broader than just § 1519. That rule will apply not only to falsifying documents under § 1519, but to many other statutes that criminalize false statements in other contexts. Interpreting those many statutes correctly—and eliminating inter-Circuit divisions over what those statutes mean—is an extraordinarily important task worthy of this Court's attention.

The U.S. Code is replete with provisions that criminalize creating false documents, even when those documents are not intended for submission to a governmental entity. For example, 18 U.S.C. § 1001(a)(3) prohibits the creation or use of a "false writing or document" in "any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States." Some Courts of Appeals have held that this statute extends to documents submitted to private entities, if those entities receive federal funding. *See, e.g.*,

United States v. Ross, 77 F.3d 1525, 1544 (7th Cir. 1996); *see also, e.g.*, 15 U.S.C. § 78jjj(c)(1)(C)(vi) (prohibiting the "falsifi[cation] [of] any document affecting or relating to the property or affairs of a debtor" in connection with any liquidation proceeding); 26 U.S.C. § 7206(5)(B) (prohibiting the "falsifi[cation] [of] any … document … relating to the estate or financial condition of the taxpayer" in connection with any compromise or closing agreement permitted by the Internal Revenue Code). If incomplete contracts constitute "false documents," then these prohibitions will likewise impose felony liability for creating or entering such contracts.

Moreover, there are *over 100* false statement statutes in the U.S. Code. *See United States v. Wells*, 519 U.S. 482, 505 (1997) (Stevens, J., dissenting) ("[A]t least 100 federal false statement statutes may be found in the United States Code."). For example, 18 U.S.C. § 1014 criminalizes "knowingly mak[ing] any false statement … for the purpose of influencing in any way the action of … any institution the accounts of which are insured by the Federal Deposit Insurance Corporation." *See also, e.g.*, 18 U.S.C. § 1011 (prohibiting a mortgagee from "knowingly mak[ing] any false statement … relating to the sale of any mortgage, to any Federal land bank"); 18 U.S.C. § 1020 (prohibiting "knowingly mak[ing] any false statement … with respect to the character, quality, quantity, or cost of any work performed or to be performed … in connection with the construction of any highway or related project approved by the Secretary of Transportation"). If documents memorializing legal obligations—including documents that do so incompletely—can be "false,"

then dozens of criminal prohibitions all across the U.S. Code have been considerably enlarged.

B. The Decision Below Impacts Countless Private Contracts.

The Second Circuit held that a contract constitutes a "falsified document" if it misrepresents the "true nature" of the parties' relationship or otherwise omits a material fact that might be relevant to an eventual federal proceeding. This rule essentially requires contracting parties to convert every contract into a comprehensive record of their relationship if they want to ensure they are never accused of falsifying documents. Considering the large number of contracts that individuals and corporations enter every day, such a rule expands the reach of federal criminal law to innumerable interactions between private citizens that previously were not criminal.

Many people have perfectly understandable reasons for drafting contracts that do not reflect the entirety of their relationships with their counter-parties. They might want the contract to capture their core obligations, while both sides understand various other duties are expected. Or they may want to hide information from business rivals, the press, and even their spouses. The omitted information might be highly sensitive or potentially embarrassing, or it may lead to the discovery of information that is.

For example, a public figure might want to exclude certain terms from an employment contract if those terms relate to an issue that she wants to hide from the press or the world at large. If she has a chronic illness that she has kept secret and she

wants to hire an assistant who will (among other things) help her manage that illness in private, she might draft an employment contract that masks the true nature of the parties' relationship by omitting duties relating to the illness. If that contract later became material to a federal proceeding involving, for example, the employment, immigration, or tax laws, the Second Circuit's rule would turn the public figure's desire for privacy into the basis of a felony conviction for falsifying documents.

Although there may be legitimate reasons to require that all contractual terms be memorialized in writing, that sweeping expansion of criminal law is an issue for Congress to resolve. It is highly unlikely that Congress intended for the tailored criminal prohibition in § 1519—which was aimed at the destruction of business records when investigations are looming—to penalize parties for every instance of tactical incompleteness within every contract.

This broad expansion of federal criminal law is especially serious because these statutes—§ 1519 in particular—are already extraordinarily broad. Incomplete contracts are commonplace, while § 1519 broadly encompasses all "conduct intended to impede any federal investigation or proceeding, including one not even on the verge of commencement." *Yates*, 135 S. Ct. at 1087. The Government's construction would thus expand § 1519 to encompass every incomplete contract that could someday become relevant in any federal investigation or proceeding.

Finally, such an expansion is particularly dangerous for statutes (like § 1519) that criminalize false statements. It is difficult to overstate the

impact on juries of prosecutorial accusations that the defendant unlawfully lied, created "false" documents, and engaged in efforts to illegally obscure other charged crimes. Prosecutors know this, which is why they are eager to use statutes like § 1519 to shoehorn falsification charges into criminal cases. This case demonstrates as much: The expansive rule endorsed by the lower courts allowed the Government to tar Mr. Rowland with an entirely separate scheme of "falsifying" documents, via the draft contract he provided to Greenberg. (Only because § 1519 was read to apply to incomplete contracts was the Greenberg evidence allowed in at trial.) This evidence was later lauded by the prosecution as "one of the most important aspects" of its case *even* "in connection with the Wilson-Foley campaign." Gov't Mem. in Opp. to Def.'s Request for Evidentiary Hr'g at 52, *United States v. Rowland*, No. 3:14cr79 (D. Conn. Jan. 23, 2015), ECF No. 210. [3] The Government's use of § 1519 in this case thus highlights the tremendous importance of construing that powerful statute (and its many false-statement brethren) narrowly and correctly.

C. The Decision Below Will Displace Reasonable Expectations And State Law.

The Second Circuit's rule requiring contractual completeness will also significantly alter and displace the established law of contracts. Rather than leaving questions of contract formation and interpretation to the states, the Second Circuit's rule creates a broad

[3] As this quote illustrates, the § 1519 charges had a tremendous impact on Mr. Rowland's trial—creating significant prejudice that spilled over into the other charges and infected all of his convictions.

federal regulatory regime that runs contrary to state law and common practice.

Under the Second Circuit's rule, in order to avoid criminal liability under § 1519, contracting parties will need to ensure that every written contract—draft or final—contains a complete recounting of "the true relationship between the parties." Pet.App.15a. This is not an exaggeration. Here, the Greenberg contract was merely Mr. Rowland's *opening offer*—not the memorialization of their final agreement. Yet the lower courts sustained Mr. Rowland's felony conviction for creating a "false" contract on the ground that he failed to include in that opening offer every obligation that he might *later undertake*.

This rule would upend contract formation. In the exchange of offers and counteroffers, it is common for terms to be omitted or added before final agreement is reached. Requiring that an initial offer reflect the full scope of the parties' negotiations and anticipated final agreement would wreak havoc on this otherwise-humdrum process.

The Second Circuit's rule will also impose enormous contracting costs. Corporations, in particular, often engage in complex patchworks of formal and informal agreements that are not reproduced in every document they exchange. It would be impracticable for those corporations to ensure that every draft contract fully reproduces the anticipated or final relationship between the parties for fear that prosecutors will otherwise later claim any incomplete draft was false-by-omission.

The Second Circuit's rule also tramples over state laws regarding oral modifications to written contracts.

The states have legal frameworks to interpret and enforce the terms of parties' agreements that have not been reduced to writing. *See, e.g.*, Restatement (Second) of Contracts § 216 (Am. Law Inst. 2016) (recognizing that parties may establish the existence of additional terms that do not contradict the written terms of a contract); U.C.C. § 2-202 (Am. Law Inst. & Unif. Law Comm'n 2015) (allowing written contracts to be supplemented with evidence of consistent additional terms). But the decision below converts all incomplete contracts into potential felonies—regardless of the fact that such contracts are an ordinary part of commercial life.

In short, the Second Circuit's rule overrides the reasonable expectations of regular people along with the law of contracts in virtually every state. That is a serious intrusion that should not be undertaken absent a clear mandate from Congress. And there is no such mandate here.

* * *

The opinion below creates two different circuit splits on two legal questions that implicate dozens of criminal statutes. It contradicts multiple decisions of this Court and the plain text of 18 U.S.C. § 1519. It hands prosecutors an extremely powerful weapon to use against countless future defendants in any case featuring an incomplete contract. And it does all this in the Circuit that oversees the nation's financial capital—a place where the improper criminalization of contracts has the potential to cause especially great harm. For all these reasons, this Court's review is warranted.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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NOVEMBER 14, 2016

APPENDIX

APPENDIX A

15-985-cr

United States v. Rowland

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2015

(Argued: March 18, 2016 Decided: June 17, 2016)

Docket No. 15-985

UNITED STATES OF AMERICA,

Appellee,

-v.-

JOHN G. ROWLAND,

Defendant-Appellant.

B e f o r e :

WINTER, CHIN, and CARNEY, Circuit Judges.

Defendant-Appellant John G. Rowland, the former governor of Connecticut, came under scrutiny in 2012 for his efforts to obtain paid political consulting work on behalf of two Republican Congressional candidates in the 2010 and 2012 election cycles. One of those candidates, Lisa Wilson-Foley, allegedly arranged

with Rowland to pay him through her husband's nursing home company, Apple Rehab, in order to avoid reporting the payments to the Federal Election Commission. After a trial, a jury convicted Rowland on seven counts of violating campaign-finance laws and falsifying records. The United States District Court for the District of Connecticut (Janet Bond Arterton, J.) sentenced Rowland principally to 30 months' imprisonment. Rowland now challenges both his conviction and his sentence.

We conclude that Rowland was properly convicted under 18 U.S.C. § 1519 because he created or participated in the creation of documents that misrepresented—or "falsified"—his relationships with the Congressional candidates, Wilson-Foley and Mark Greenberg, and he did so with the intent to impede a possible future federal investigation. We reject Rowland's assertion that principles of contract law prevent us from concluding that documents styled as contracts are "falsified" within the meaning of the statute. We also determine that the government adequately disclosed Wilson-Foley's statements to Rowland, and that even if it did not, he would not be able to show that he was prejudiced by the deficiency. Finally, we reject his challenges to the District Court's evidentiary rulings, jury instructions, and Sentencing Guidelines calculation.

AFFIRMED.

LIAM B. BRENNAN, Assistant United States Attorney (Marc H. Silverman, Assistant United States Attorney, *on the brief*), for Deirdre M. Daly, United States Attorney for

the District of Connecticut, New Haven, Connecticut, *for Appellee*.

ANDREW L. FISH (R. James DeRose III, *on the brief*), Locke Lord LLP, New York, New York, for *Defendant-Appellant*.

SUSAN L. CARNEY, *Circuit Judge*:

Defendant-Appellant John G. Rowland, the former governor of Connecticut, came under scrutiny in 2012 for his efforts to obtain paid political consulting work on behalf of two Republican Congressional candidates in the 2010 and 2012 election cycles. One of those candidates, Lisa Wilson-Foley, allegedly arranged with Rowland to pay him through her husband's company, Apple Rehab, to avoid reporting the payments to the Federal Election Commission ("FEC"). After a trial, a jury convicted Rowland on seven counts of violating campaign-finance laws and falsifying records. The United States District Court for the District of Connecticut (Janet Bond Arterton, J.) sentenced Rowland principally to 30 months' imprisonment.

Rowland now appeals his conviction and sentence. His primary argument on appeal is that 18 U.S.C. § 1519, which prohibits "knowingly . . . falsif[ying] . . . any record, [or] document," does not apply to his conduct: namely, preparing contracts that purported to establish business consulting relationships with political candidates or their businesses, when in fact the parties were negotiating for him to provide political consulting services to the candidates' campaigns. He also asserts a *Brady* violation based on the government's alleged failure to disclose

statements made by Lisa Wilson-Foley in an interview with investigators. Finally, he challenges the District Court's evidentiary rulings, jury instructions, and application of the Sentencing Guidelines.

For the reasons set forth below, we AFFIRM the judgment of the District Court. We conclude that the broad language of § 1519 encompasses the creation of documents—like the contracts at issue here—that misrepresent the true nature of the parties' negotiations, when the documents are created in order to frustrate a possible future government investigation. We reject Rowland's assertion that principles of contract law prevent us from concluding that documents styled as contracts are "falsified" within the meaning of the statute. We also determine that the government adequately disclosed Wilson-Foley's statements to Rowland, and that even if it did not, he is not able to show that he was prejudiced by the deficiency. Finally, we reject his challenges to the District Court's other rulings at trial and at sentencing.

BACKGROUND[1]

John G. Rowland, the former governor of Connecticut, resigned that post in 2004 amid a corruption scandal, and later pled guilty to a federal charge of conspiracy to commit honest-services and tax fraud. After serving his sentence, Rowland

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[1] The following recitation of facts is taken from the trial record, viewing the evidence, as we must for purposes of this appeal, "in the light most favorable to the government, with all reasonable inferences drawn in its favor." *United States v. Mi Sun Cho*, 713 F.3d 716, 720 (2d Cir. 2013) (per curiam).

sought to use his political experience by doing political consulting work on behalf of Republican candidates seeking federal office in Connecticut. The instant charges stem from his efforts to secure employment on two campaigns: the 2010 campaign of Mark Greenberg and the 2012 campaign of Lisa Wilson-Foley.

Rowland and Greenberg first met in the summer of 2009, when Greenberg told Rowland he was considering a run for the United States Senate. Rowland suggested that Greenberg "think about Congress" and repeatedly offered to serve as a paid consultant for the campaign. Gov't App. at 23 (Tr. 91:24). Rowland told Greenberg he did not want to be paid by the campaign—which would have had to report his employment—but instead wanted to be paid by Greenberg's business or charitable interests. Later that year, Rowland prepared and gave to Greenberg a draft contract, according to which he proposed to provide "consulting services" for Greenberg's businesses and his nonprofit, the Simon Foundation. Under the proposal, Rowland would be paid $35,000 per month for 14 months and $25,000 per month for the year thereafter. Greenberg never hired Rowland to work on his campaign or for any other entity, and "ripped . . . up" the draft contract after his meeting with Rowland. App. at 118 (Tr. 207:16).

Rowland met Wilson-Foley two years later, in September 2011. Rowland contacted Wilson-Foley—who by then had declared her Congressional candidacy—and her husband, Brian Foley, with "an idea to run by [them]": namely, that he would take on a paid role in her campaign. Gov't App. at 716.

Wilson-Foley and her husband believed that Rowland could be helpful to the campaign, but were concerned that (in Foley's words) "having a former governor who was a convicted felon connected to the campaign as an advisor" could potentially jeopardize her candidacy. Gov't App. at 199 (Tr. 796:17-19). Several of Wilson-Foley's staffers and friends urged her to remain at a distance from Rowland.

Foley, who headed Apple Rehab ("Apple"), a nursing home company, made a suggestion: Apple would hire Rowland as a consultant, but in reality Rowland would work primarily for Wilson-Foley's campaign. Because Rowland would be paid by Apple rather than by the campaign, they believed that by this stratagem they could avoid the requirement that his employment be publicly reported to FEC.[2] Foley and Rowland ultimately agreed that Rowland would receive $5,000 per month, to be paid by Apple's attorney, Christian Shelton, in order to avoid direct "connections" between Rowland and the Foleys. Gov't App. at 724. Wilson-Foley explained to her campaign manager that Rowland would be paid by Apple because "that way they wouldn't have to report it to the FEC." Gov't App. at 310 (Tr. 1240:23-24).

After this agreement was finalized, Rowland worked on Wilson-Foley's campaign almost daily, vetted press releases, used a campaign e-mail

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[2] The FEC requires House candidates to disclose and itemize disbursements to an individual from official campaign funds when the individual receives disbursements totaling in excess of $200 per calendar year. *See* 11 C.F.R. § 104.3(b)(3)(i). The FEC also requires candidates to disclose their own in-kind contributions to a campaign. *See* 11 C.F.R. §§ 100.52(d)(1), 110.10.

address, and received access to the campaign calendar. He attended staff meetings and was involved with communications strategy and fund-raising. Rowland also did some work for Apple during this period: He met with Apple staff on eight to ten occasions, conducted research at Apple's request about the nursing home industry in Connecticut, helped Apple hire a new lobbyist, and advised Apple on union issues, among other tasks. The record indicates, however, that Rowland's campaign involvement may have substantially exceeded the amount of work he performed on behalf of Apple. For example, during the relevant period, Rowland participated in 787 e-mail exchanges about the campaign, but only 63 e-mail exchanges regarding Apple, and 23 e-mail exchanges about both Apple and the campaign.

Rowland's relationship with the Wilson-Foley campaign became public in April 2012. Although Wilson-Foley, Foley, and Rowland denied anything improper about the arrangement, Rowland's ties to the campaign and Apple ended shortly thereafter. After the disclosures, the federal government began investigating Rowland's work for the campaign.

In June 2014, a grand jury returned an indictment charging Rowland with (1) falsification of records in a federal investigation in violation of 18 U.S.C. § 1519, based on the Greenberg contract; (2) conspiracy to commit various offenses in violation of 18 U.S.C. § 371, based on an alleged unlawful conspiracy with Wilson-Foley and Foley; (3) falsification of records in a federal investigation in violation of 18 U.S.C. §§ 1519 and 2, based on the Foley contract; (4) two counts of causing the submission of false statements

to the FEC in violation of 18 U.S.C. §§ 1001(a)(2) and 2, based on the omission of Rowland's payments from two FEC reports filed by the Wilson-Foley campaign; and (5) two counts of causing illegal campaign contributions in violation of 2 U.S.C. §§ 441a(a)(1)(A), 441a(f), and 437g(d)(1)(A)(ii) and 18 U.S.C. § 2, based on Foley's payments to Rowland for his campaign work in 2011 and 2012.

Following a jury trial, Rowland was convicted on all counts. The District Court denied Rowland's motion for a new trial on the basis of alleged *Brady* violations: namely, the government's alleged failure to disclose certain statements made by Wilson-Foley at an investigatory interview. Rowland was sentenced to 30 months' imprisonment and three years of supervised release. He now appeals both his conviction and sentence.

DISCUSSION

Rowland's primary argument on appeal is that the evidence did not support his convictions under 18 U.S.C. § 1519 because the contract he offered to Greenberg and the contract he signed with the law office of Apple's lawyer, Christian Shelton, were not "falsified" within the meaning of the statute. He also argues that he is entitled to a new trial because the government improperly withheld *Brady* material from the defense. Finally, he raises a number of other issues relating to the District Court's evidentiary rulings, its jury instructions, and his sentence. We address these arguments in turn.

I. 18 U.S.C. § 1519

We review Rowland's challenge to the sufficiency of the evidence *de novo*, viewing the evidence "in the

light most favorable to the government, with all reasonable inferences drawn in its favor." *United States v. Mi Sun Cho*, 713 F.3d 716, 720 (2d Cir. 2013) (per curiam).

Rowland was convicted of two counts of violating 18 U.S.C. § 1519, an obstruction of justice statute that was passed in 2002 as part of the Sarbanes-Oxley Act. The statute prohibits

> knowingly alter[ing], destroy[ing], mutilat[ing], conceal[ing], cover[ing] up, falsif[ying], or mak[ing] a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States . . . or in relation to or contemplation of any such matter or case.

18 U.S.C. § 1519. The government contended that Rowland "falsif[ied] . . . document[s]" when he (1) prepared the contract proposal that he presented to Greenberg in 2009, and (2) drafted the contract with Brian Foley, Apple, and Apple's lawyer, Christian Shelton, in 2011.

A. Meaning of "Falsify"

Rowland first argues that the documents could not be "falsified" within the meaning of the statute because to "falsify" means only to tamper with a preexisting document, not to create a new document from whole cloth.

"Our starting point in statutory interpretation is the statute's plain meaning, if it has one." *United States v. Dauray*, 215 F.3d 257, 260 (2d Cir. 2000). The plain meaning "does not turn solely on dictionary

definitions of [the statute's] component words," but is also determined by "the specific context in which that language is used, and the broader context of the statute as a whole." *Yates v. United States*, 135 S.Ct. 1074, 1081-82 (2015) (plurality opinion) (internal quotation marks omitted). If the meaning is plain, the inquiry ends there. *Daniel v. Am. Bd. of Emergency Medicine*, 428 F.3d 408, 423 (2d Cir. 2005). If we find the statutory provision ambiguous, however, "we then turn to canons of statutory construction for assistance in interpreting the statute. *Greathouse v. JHS Sec. Inc.*, 784 F.3d 105, 111 (2d Cir. 2015). We resort to legislative history only if, after consulting canons of statutory instruction, the meaning remains ambiguous. *Daniel*, 428 F.3d at 423.

We begin with the text. Where, as here, there is no statutory definition of a term, we consider "the ordinary, common-sense meaning of the words." *Dauray*, 215 F.3d at 260.

Webster's Third New International Dictionary offers two relevant definitions of "falsify." The first is the definition offered by Rowland: "to make false by mutilation or addition: tamper with." *Falsify*, Webster's Third New International Dictionary, Unabridged (2002). But the second supports the government's position here: "to represent falsely: misrepresent, distort." *Id.*; *see also Falsify*, Oxford English Dictionary (2d ed. 1989) (defining "falsify" as "[t]o give a false account of; to misrepresent"). Dictionary definitions thus confirm that, in common usage, it is acceptable to say that someone "falsifies"

a document when he creates a document that misrepresents the truth.[3]

We acknowledge that, as Rowland points out, the Supreme Court has cautioned against overreliance on dictionary definitions in interpreting this particular statute. *See Yates*, 135 S. Ct. at 1081-82. But the same interpretive clues that led the plurality in *Yates* to depart from the ordinary dictionary definition in that case counsel in favor of following the dictionary definition here.

First, § 1519's caption is "Destruction, alteration, or falsification of records in Federal investigations and bankruptcy." In *Yates*, the plurality concluded that this caption pointed away from interpreting the statute's phrase "tangible object" to include a fish because the caption "conveys no suggestion that the section prohibits spoliation of any and all physical evidence, however remote from records." *Id.* at 1083. Rather, § 1519, the plurality observed, was intended to sweep in only "records, documents, or devices closely associated with them." *Id.* Here, unlike in *Yates*, interpreting "falsify"—in accordance with its dictionary definition—to include the creation of a document fits comfortably within the general purview of the statute suggested by the title.

Second, Rowland's preferred definition of "falsify" would overlap with other verbs in the statute. *Cf. id.* at 1085 (rejecting government's interpretation

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[3] "Falsify" can also mean "to prove to be false" or "to prove unsound or untrue by experience," but neither party suggests that those meanings aid in our understanding of the statute. *See Falsify*, Webster's Third New International Dictionary, Unabridged (2002).

because it would "render superfluous" another statutory provision). He argues that "falsify" prohibits only changes to existing documents. But the statute expressly prohibits "alter[ing] . . . any record, document, or tangible object" with the requisite intent. If we limited the reach of "falsify" as Rowland suggests, the word would add nothing to the statute's meaning. "It is well-settled that courts should avoid statutory interpretations that render provisions superfluous: 'It is our duty to give effect, if possible, to every clause and word of a statute.'" *State St. Bank & Tr. Co. v. Salovaara*, 326 F.3d 130, 139 (2d Cir. 2003) (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)).

Rowland argues that the interpretive canon of *noscitur a sociis*—"a word is known by the company it keeps," *Yates*, 135 S. Ct. at 1085—also supports his position here. We rely on that principle "to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress." *Id.* (quoting *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995)) (internal quotation marks omitted). In § 1519, "falsifies" appears in a list of other verbs—"alters, destroys, mutilates, conceals, covers up . . . or makes a false entry in"—that, Rowland argues, imply the preexistence of a document. Rowland plausibly argues that we should therefore interpret "falsify," too, to apply only to preexisting documents. But when the plain meaning of "falsify" and other interpretive guideposts lead to the opposite conclusion, a lone canon of construction cannot cabin the meaning of "falsify" as Rowland urges.

To the extent any ambiguity remains, legislative history also supports the government's contention that creating a new document can violate § 1519: "Section 1519 is meant to apply broadly to any acts to destroy *or fabricate* physical evidence so long as they are done with the intent to obstruct, impede or influence the investigation or proper administration of any matter, and such matter is within the jurisdiction of an agency of the United States, or such acts done either in relation to or in contemplation of such a matter or investigation." S. Rep. No. 107-146, at 14 (2002) (emphasis added).

B. Falsity of Rowland Contracts

Having concluded that a defendant may violate § 1519 by creating a document that is false or that misrepresents the truth—that is, was "falsified"—we turn to the question whether the contracts at issue here were "falsified."

Rowland's primary support for his claim that the contracts at issue were not "falsified" lies in *United States v. Blankenship*, 382 F.3d 1110 (11th Cir. 2004). In that case, the Eleventh Circuit interpreted a different statute that prohibited knowingly and willfully "mak[ing] or us[ing] any false writing or document" in any matter under federal jurisdiction. *See* 18 U.S.C. § 1001(a)(3). The defendant, the owner of a minority-owned business, entered into subcontracts and equipment leases to make it appear that he was providing services to a government contractor. *Blankenship*, 382 F.3d at 1116-17. In fact, the services were provided by a different company, not owned by a minority, that sought to take advantage of the government's preference for contracts with minority-owned businesses. *Id.*

The court vacated the defendant's conviction, reasoning that the contracts between the defendant and the other company were not "false." *Id.* at 1132-36. The court began its analysis with the proposition that

> there are only two ways in which a contract can possibly be considered "false." First, a contract is false if a person forges or alters it. . . . The only other way in which a contract can be "false" is if it contains factual misrepresentations.

Id. at 1132. The court concluded that promises made in a contract are not "false," even if "neither party actually intended to carry through on their promises," because "[a] 'promise' contained in a contract is not a certification that the promisor will actually perform the specified acts, or presently intends to perform those acts." *Id.* at 1133. Instead, the court observed, a contract simply creates a legal relationship requiring *either* performance or payment of damages. *Id.* at 1134.

Although in some circumstances, we might agree with these observations, our approach diverges from that of the Eleventh Circuit. We think that importing principles of contract law into the interpretation of this criminal statute muddies the issues rather than clarifies them. In our view, a written contract may be "falsified" for purposes of § 1519 if it misrepresents the true nature of the parties' agreement. Here, Rowland purported to memorialize the terms of his arrangements with Greenberg and the Foleys in written documents. In fact, according to the government's evidence at trial, those documents intentionally did *not* reflect the arrangement contemplated by the parties, which

involved Rowland providing political consulting to Greenberg's and Wilson-Foley's campaigns. Instead, the documents reflected and were designed to reflect that he would be providing business consulting services to their corporate or charitable interests. If Rowland had written a memo to his file purporting to summarize the negotiations in this misleading way (that is, as business rather than political consulting), we think it plain that the memo would properly have been treated as a "falsified" document: that is, it would have misrepresented the conversations on which it was based. Where the government is able to prove the knowledge and intent elements of the statute as well, that Rowland presented his notes in the form of a contract does not avoid his criminal liability under § 1519.

Our decision in *United States v. Jespersen*, 65 F.3d 993 (2d Cir. 1995), is instructive. In that case, we easily concluded that a contract was "false" when it was inconsistent with the true relationship between the parties. Jespersen, an IRS employee, arranged for government contractors to do repairs on his home for free in exchange for government contracts. *Id.* at 995-96. When the arrangement was uncovered, he created a backdated contract setting out a schedule of payments that he was supposed to make (but never did). *Id.* at 996. Jespersen was convicted under 18 U.S.C. § 1503 for, among other things, creating a false document in response to a grand jury subpoena. *Id.* at 997. We sustained his conviction on the basis that the contract was "not merely backdated, but fraudulently showed that [the contractor] had been paid for the work performed." *Id.* at 998. The fact that the document took the form of a contract erected

no barrier to our determination that it was "false." *See also United States v. Mandanici*, 729 F.2d 914, 920 (2d Cir. 1984) (in prosecution under 18 U.S.C.§ 1001, finding a contract to be "false" when promisor had no intention of complying with promise when making it); *United States v. Shah*, 44 F.3d 285, 294 (5th Cir. 1995) (same).

Rowland's use of the draft Greenberg contract as part of his effort to derail the government's investigation in 2013 does not conclusively establish his liability, but it does illustrate how the document falsified—i.e., misrepresented—the true relationship between the parties. In a letter to prosecutors, Rowland's counsel wrote that the draft contract "evidence[s] my statement that the discussion concerning raising funds for the charity took place in October and early November. As you will see from the contract, there is no mention of the campaign, and indeed the contract continues for a period of time long after the campaign would have ended." App. at 576. In fact, Greenberg testified at trial that the October and November negotiations principally concerned political consulting, not work for his charity. That the Greenberg document was styled as a contract does not preclude our conclusion that it was in fact "falsified" and therefore may be the basis for liability under § 1519.

The government's case that the Wilson-Foley contract was falsified is even stronger. First, the contract purported to establish a relationship between Rowland and Christian Shelton, Apple's attorney, when Rowland was in fact retained primarily to provide services to Lisa Wilson-Foley's political campaign. As Shelton wrote in an e-mail to

Foley, the drafters put Shelton's name on the contract to avoid direct "connections" between Rowland and Wilson-Foley, because of "Rowland's background and the compliance issue that creates." Gov't App. at 724. During the drafting process, Rowland suggested that the contract should use his corporate identity—JGR Associates, LLC—rather than his name, for "more cover." App. at 562.[4] Express references to political consulting that were present in the original contract were deleted from the final version, supplying further circumstantial evidence that the parties intended to conceal the true nature of the agreement. *Compare* Gov't App. at 726 *with* App. at 549-53. The jury could readily conclude from this and other evidence that Rowland and his co-conspirators intentionally created a document that misrepresented their relationships with the aim of concealing the truth from the FEC—and, not incidentally, the public.

Because the jury was entitled to conclude that both the Greenberg and Foley contracts were "falsified" in the sense that they were created to misrepresent the true relationships among the parties, Rowland's convictions under § 1519 stand, and we need not reach his argument that the "prejudicial spillover" from the § 1519 evidence requires us to overturn his convictions on all other counts.

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[4] In fact, the final contract was signed by Rowland personally, not as a representative of his LLC.

II. Alleged *Brady* Violation

Next, Rowland argues that he is entitled to a new trial because the government did not comply with its disclosure obligations under *Brady v. Maryland*, 373 U.S. 83 (1963). In particular, he contends that Lisa Wilson-Foley made exculpatory statements to the government during a March 10, 2014 interview that were omitted from the government's Memorandum of Interview (MOI) (which was provided to the defense) and not otherwise disclosed to Rowland. Had they been provided, the defense would likely have called her to testify about her statements, he asserts.

"*Brady* requires that the government disclose material evidence favorable to a criminal defendant." *United States v. Mahaffy*, 693 F.3d 113, 127 (2d Cir. 2012). "Evidence is favorable if it is either exculpatory or impeaching, and it is material if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Id.* (citations and internal quotation marks omitted). The defendant need not show that the suppressed evidence would have resulted in an acquittal. *See Youngblood v. West Virginia*, 547 U.S. 867, 870 (2006) (per curiam). Rather, a conviction must be reversed "upon a showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Id.* (internal quotation marks omitted).

When reviewing alleged *Brady* violations, we "examine the record *de novo* to determine whether the information in question is material as a matter of law." *Mahaffy*, 693 F.3d at 127. The trial judge's

assessment of the effect of nondisclosure is entitled to "great weight." *Id.*

Rowland bases his assertion of a *Brady* violation on (1) an affidavit by Craig Raabe, Wilson-Foley's attorney at the time of the interview with the government, and (2) an e-mail and notes written by another lawyer for the Foley family, Jessica Santos. According to Raabe, the MOI was incomplete in several respects, one of which Rowland identifies as a possible *Brady* violation. Raabe asserts that, despite pressure from the government during a break in the interview, Wilson-Foley refused to adopt the government's view that Rowland's work for Apple was a "sham" rather than a real job. App. at 446-47. Similarly, Santos's notes from the interview reflect that Wilson-Foley told the government that "it didn't ring out to her that Brian hired him as a sham; she didn't know this at the time." *Id.* at 513. Wilson-Foley's rejection of the government's characterization of Rowland's job as a "sham" is not expressly recorded in the MOI. After that interview, the government withdrew the joint plea agreement it had offered Foley and Wilson-Foley, under which Wilson-Foley would not have been prosecuted.

Rowland contends that Wilson-Foley's refusal to accept the government's characterization of his job as a "sham" tends to exculpate him by casting doubt on one of the government's key claims at trial: that when Rowland wrote "I get it" in an e-mail to Brian Foley, he was referring to the need to conceal their unlawful scheme to "employ" Rowland at Apple in

exchange for services that he would actually provide to the campaign.[5]

But the Raabe affidavit and Santos notes are basically consistent with the MOI, which *was* disclosed to Rowland. According to the MOI, Wilson-Foley denied telling her campaign manager, Chris Covucci, that "it was good to have Mr. Rowland working for her husband and there was no concern with Mr. Rowland and the FEC filings." Gov't App. at 868. When she was asked about Rowland's e-mail reminding her that he was a "volunteer," she told the government that "it did not register to her that her husband, Brian, was paying Mr. Rowland." *Id.* In other words, the MOI records Wilson-Foley's denial of

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[5] The context for the "I get it" e-mail tends to confirm this understanding. On September 14, 2011, Wilson-Foley spoke with campaign staffer Chris Syrek about hiring Rowland. Syrek attempted to dissuade her from hiring Rowland because Rowland's employment would have to be reported on the campaign's quarterly FEC reports. In response to these concerns, Wilson-Foley told Syrek, "Well, maybe the campaign doesn't have to pay him." Gov't App. at 358 (Tr. 1432:1-2). In the 20 minutes following this conversation, Wilson-Foley had three phone calls with Rowland. Twenty-two minutes after his final call with Wilson-Foley, Rowland wrote the following message to Brian Foley:

> Brian,
>
> had a brief chat with Lisa, I get it, let's you and I meet, good time for you ? . . .

App. at 556.

a connection between her campaign and Rowland's employment at Apple—exactly what Rowland now claims he did not know.

In addition, as the District Court found, Wilson-Foley's position that Rowland's employment with Apple was not a "sham" because she expected Rowland to do *some* work there was already known to the defense from other evidence. "[E]vidence is not considered to have been suppressed within the meaning of the *Brady* doctrine if the defendant or his attorney either knew, or should have known, of the essential facts permitting him to take advantage of that evidence." *United States v. Paulino*, 445 F.3d 211, 225 (2d Cir. 2006) (internal quotation marks omitted). Other evidence disclosed to Rowland—including a voicemail left for a prosecutor by Wilson-Foley's counsel shortly after this interview and statements she made to the press in 2012—evinced Wilson-Foley's stated belief that Rowland had a real job at Apple.

Rowland argues that he could have used Wilson-Foley's statements to impeach Brian Foley's testimony by emphasizing that Wilson-Foley had originally stuck to her story that Rowland was a volunteer for her campaign with a legitimate job at Apple. But Rowland had abundant other evidence with which to impeach Brian Foley, and in fact Rowland's counsel did cross-examine him on the fact that the original "package" plea agreement had changed. Gov't. App. at 296. "[W]here the undisclosed evidence merely furnishes an additional basis on which to challenge a witness whose credibility has already been shown to be questionable or who is subject to extensive attack by reason of

other evidence, the undisclosed evidence may be cumulative, and hence not material." *United States v. Avellino*, 136 F.3d 249, 257 (2d Cir. 1998).

Furthermore, Rowland has not shown that the Wilson-Foley statements put "the whole case in such a different light as to undermine confidence in the verdict." *Youngblood*, 547 U.S. at 870 (internal quotation marks omitted). We give "great weight" to the District Court's determination that, "[g]iven the strength of the other trial evidence against Defendant, . . . [he] has not met his burden of showing that there are grounds for a new trial." *United States v. Rowland*, No. 3:14cr79(JBA), 2015 WL 1190118, at *4 (D. Conn. Mar. 16, 2015). Here, there was considerable record evidence that Rowland, Foley, and Wilson-Foley conspired to conceal payments to Rowland made in exchange for services rendered to the Wilson-Foley campaign. For instance, Wilson-Foley's campaign manager testified that when he objected to the prospect of having Rowland on the official campaign payroll, she suggested that "maybe the campaign doesn't have to pay him." Gov't App. at 358 (Tr. 1432:1-2). Shortly after that conversation, Rowland and Wilson-Foley had three telephone conversations, which were followed by Rowland's "I get it" e-mail to Brian Foley. In another e-mail, Rowland also described his work on the campaign as "'helping,'" with quotation marks suggesting that "help" was a euphemism for paid work. *Id.* at 722. Later in the campaign, Rowland reminded Wilson-Foley that he was "just a volunteer helping you and 'many other Republican candidates' in case anyone asks." *Id.* at 743. Finally, as the District Court noted, Rowland's role on the campaign

expanded as soon as he agreed to the contract with Apple. He reported to campaign headquarters more frequently and his campaign-related e-mail correspondence also increased substantially. From the time the contract was signed in November 2011 until his campaign role was made public in April 2012, his work for Apple and his Apple-related correspondence remained minimal.

Against the backdrop of this powerful documentary and testimonial evidence of Rowland's guilt, neither Wilson-Foley's testimony—which, had it been favorable to Rowland, would have been subject to cross-examination by the government—nor the use of her interview statements to impeach Brian Foley would have changed the outcome of the trial. Accordingly, Rowland would not be entitled to a new trial even if he could persuade us—as he has not—that the government failed to meet its disclosure obligations.

III. Evidentiary Rulings

Rowland also challenges three of the District Court's evidentiary rulings. This Court reviews rulings on the admissibility of trial evidence for abuse of discretion. *See United States v. Fazio*, 770 F.3d 160, 165 (2d Cir. 2014). "A district court has abused its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence or rendered a decision that cannot be located within the range of permissible decisions." *Id.* (quoting *In re Sims*, 534 F.3d 117, 132 (2d Cir. 2008)). We will reverse only if an error affects a "substantial right," Fed. R. Evid. 103(a), meaning that the error "had a 'substantial and injurious effect or influence' on the jury's verdict,"

United States v. Garcia, 413 F.3d 201, 210 (2d Cir. 2005) (quoting *United States v. Dukagjini*, 326 F.3d 45, 62 (2d Cir. 2003)). "[W]here a court, upon review of the entire record, is sure that the evidentiary error did not influence the jury, or had but very slight effect, the verdict and the judgment should stand." *Id.* (quoting *Kotteakos v. United States*, 328 U.S. 750, 764 (1946)) (alterations and other marks omitted).

Only one of Rowland's evidentiary challenges merits detailed discussion. At trial, Rowland sought to introduce e-mails and text messages that he wrote to Apple Chief Operating Officer Brian Bedard about matters related to the company. The District Court ruled that the writings were inadmissible hearsay because they would in effect allow Rowland to testify without making himself available for cross-examination.

An out-of-court statement is hearsay only if it is offered "to prove the truth of the matter asserted in the statement." Fed. R. Evid. 801(c). Here, Rowland's purpose in offering the writings was not to establish the truth of his statements that, for instance, "the unions will push to nail non-union shops which of course flys [sic] in the face of saving $$," as Rowland wrote in one e-mail. App. at 578. Instead, Rowland sought to establish that he "was, in fact, working at Apple and taking the initiative to communicate with Bedard." Appellant's Br. at 54-55. The text messages and e-mails were therefore not hearsay and should have been admitted into evidence.

But no new trial is warranted, because this error was harmless. The defense was permitted to use the writings to refresh Bedard's recollection. Bedard then testified about the nature of the

communications: namely, that he and Rowland communicated via text message about the status of the contract negotiations. The defense also introduced other evidence of Rowland's actual work for Apple, such as a report that he prepared at Apple's request about a state-sponsored study of nursing care in Connecticut. Under these circumstances, we are confident that the District Court's evidentiary error "did not influence the jury, or had but very slight effect," and therefore no new trial is warranted. *Garcia*, 413 F.3d at 210 (quoting *Kotteakos*, 328 U.S. at 764).

Rowland's remaining evidentiary challenges are meritless. It was not error for the District Court to allow Brian Foley to testify about the meaning of Rowland's use of expressions like "I get it," "this arrangement," and "cover," because those expressions were ambiguous without the context that Foley supplied. *See United States v. Urlacher*, 979 F.2d 935, 939 (2d Cir. 1992). It was also proper for Sam Fischer and Marc Katz, Greenberg's campaign aides, to testify regarding what Greenberg told them about his meetings with Rowland, namely Rowland's proposal to work for the campaign while being paid by the Simon Foundation. What Greenberg told Fischer and Katz was not offered for the truth of the matters asserted, but instead to provide context for what Fischer and Katz knew during their subsequent meeting with Rowland. The statement was offered for its effect on the listeners, not its truth, and was therefore not hearsay. *See* Fed. R. Evid. 801(c). And even if we assume that the government may have, in its closing statement, treated Fischer and Katz's testimony as if it had been offered for the truth of the

matter, those comments were (1) not objected to by Rowland at the time and (2) not unfairly prejudicial. *See United States v. Rodriguez*, 968 F.2d 130, 142 (2d Cir. 1992) ("It is a rare case in which improper comments in a prosecutor's summation are so prejudicial that a new trial is required." (internal quotation marks omitted)).

IV. Jury Instructions

Rowland identifies a number of alleged errors in the District Court's jury instructions. We review those instructions *de novo*. *United States v. Roy*, 783 F.3d 418, 420 (2d Cir. 2015) (per curiam). "A jury instruction is erroneous if it misleads the jury as to the correct legal standard or does not adequately inform the jury on the law." *Id.* (quoting *United States v. Naiman*, 211 F.3d 40, 50 (2d Cir. 2000)). A defendant challenging a jury instruction on appeal must demonstrate that he requested a charge that "accurately represented the law in every respect," that the charge delivered was erroneous, and that he was prejudiced by the error. *Id.* (internal quotation marks omitted).

"[A] criminal defendant is entitled to have instructions presented relating to any theory of defense for which there is any foundation in the evidence, no matter how weak or incredible[] that evidence may be." *United States v. Durham*, 825 F.2d 716, 718-19 (2d Cir. 1987) (internal quotation marks omitted). The defendant bears the burden of establishing that an adequate evidentiary basis exists for the requested charge. *See United States v. Bok*, 156 F.3d 157, 163 (2d Cir. 1998). A district court's determination to the contrary is reviewed for

abuse of discretion. *See United States v. Hurtado*, 47 F.3d 577, 585 (2d Cir. 1995).

Rowland argues that the District Court erred by failing to instruct the jury that "Mr. Rowland contends that he understood that any payments he received were for work performed for Apple." App. at 293. The District Court rejected this charge, reasoning that "[i]t's a proxy for [Rowland's] testimony, which the jury didn't hear." *Id.* at 318. Instead, the jury was instructed that Rowland "contends that . . . any payments he received were for work performed for Apple Healthcare, Inc." *Id.* at 401-02. Rowland now argues that this instruction did not properly represent his defense, which was that—no matter what Brian Foley's intentions were—Rowland *believed* that he was being compensated only for his work for Apple. But this aspect of his defense was adequately reflected in other parts of the jury instructions, in which the court informed the jury that "Mr. Rowland . . . contends that he acted in good faith at all times and not with the intent alleged in each count of the Indictment" and that "Mr. Rowland contends that any work performed by him for the Wilson-Foley campaign was in a volunteer capacity. " *Id.* at 400-02. The District Court did not err in declining to use Rowland's preferred phrasing.

None of Rowland's other objections to the jury instructions has merit. His contention that the jury needed detailed instructions regarding the FEC rules that govern a candidate's contributions to his own campaign is unavailing. He argues that this instruction was needed to correct the "misimpression" from Greenberg's testimony that Rowland's proposal

to have Greenberg pay him directly was "wrong." Appellant's Br. at 52. But the jury was in fact told (albeit in other words) that Greenberg personally would have been permitted to pay Rowland for his services, as long as Greenberg reported those payments to the FEC. *See* Gov't App. at 666 (Tr. 2579:14-23). Rowland's final argument on jury instructions, that the court erred by instructing the jury that a defendant can falsify a document by knowingly omitting a material fact, is erroneous for the same reasons that Rowland's challenge to his § 1519 convictions fails.

V. Guidelines Calculation

Finally, Rowland challenges the District Court's application of a six-level sentencing enhancement for "the value of the illegal transactions" pursuant to U.S.S.G. §§ 2C1.8 and 2B1.1. "This Court reviews a district court's application of the Guidelines *de novo*, while factual determinations underlying a district court's Guidelines calculation are reviewed for clear error." *United States v. Cramer*, 777 F.3d 597, 601 (2d Cir. 2015).

The applicable 2014 Sentencing Guidelines include a sentencing enhancement for campaign finance offenses that is based on the value of the illegal transactions, if the value exceeds $5,000. *See* U.S.S.G. § 2C1.8 (2014). The District Court calculated the value of the illegal transactions to be $35,000, the total amount of the payments Rowland received from Apple. That results in a six-level enhancement under the 2014 Guidelines. *See* U.S.S.G. § 2B1.1 (2014).

Rowland argues that the District Court erred in its calculation. He does not dispute that he received $35,000 in payments from Apple. But he argues that the amount he received should have been offset by $5,000, which he asserts to be the value of the services he actually provided to the company.

The District Court rejected this argument on the ground that the value to Apple of any services Rowland rendered was simply "a byproduct of the attempted cover-up of the true nature of the campaign contributions." *United States v. Rowland*, No. 3:14cr79(JBA), 2015 WL 1275655, at *5 (D. Conn. Mar. 19, 2015). We agree with the District Court. The record supports the court's conclusion that the legitimate services Rowland performed for Apple were inseparably intertwined with the services he performed for Wilson-Foley's campaign, and that Rowland would not have performed services for Apple at all but for his planned cover-up. Because the District Court's factual finding regarding the nature of the payments to Apple is not "clear error," *Cramer*, *777* F.3d at 601, the six-level sentencing enhancement was proper and the sentence need not be disturbed.

CONCLUSION

Rowland's remaining argument, regarding the constitutionality of limits on individual campaign contributions, is foreclosed by the Supreme Court's decision in *Buckley v. Valeo*, 424 U.S. 1 (1976). Accordingly, for the foregoing reasons, we **AFFIRM** the judgment of the District Court.

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, v. JOHN G. ROWLAND.	Criminal No. 3:14cr79 (JBA) May 15, 2015

RULING GRANTING DEFENDANT'S MOTION FOR BOND PENDING APPEAL

Defendant John G. Rowland moves [Doc. # 248] for bond pending appeal of his conviction on all counts of the Superseding Indictment charging him with conspiracy and two counts each of falsification of records in a federal investigation, causing false statements, and illegal campaign contributions.

Under the Bail Reform Act, 18 U.S.C. § 3143, there is a presumption that a defendant appealing a conviction and sentence of imprisonment will be detained pending appeal. A defendant can overcome this presumption upon demonstrating that (1) "the defendant is not likely to flee or pose a danger to the safety of any other person or the community if released;" (2) the appeal is not for the purpose of delay; (3) the appeal "raises a substantial question of law or fact;" and (4) if that substantial question is decided in the defendant's favor on appeal, a reversal or an order for a new trial on all counts for which

imprisonment has been imposed is likely to result. 18 U.S.C. § 3143; *United States v. Randell*, 761 F.2d 122, 125 (2d Cir. 1985). The Government only disputes that Defendant has satisfied the fourth requirement. (*See generally* Gov't's Opp'n [Doc. # 250].)

Although § 3143(b)(2) states that a substantial factual or legal question on appeal must be "likely to result in reversal or an order for a new trial," the Second Circuit has not read this requirement literally, because such literality "might be taken to condition bail upon a district court's finding that its own judgment is likely to be reversed on appeal." *Randell*, 761 F.2d at 124. Because a "district judge who, on reflection, concludes that s/he erred may rectify that error when ruling on post-trial motions" and "[j]udges do not knowingly leave substantial errors uncorrected, or deliberately misconstrue applicable precedent," courts have declined to conclude that "Congress [intended] to have conditioned bail only on the willingness of a trial judge to certify his or her own error." *United States v. Miller*, 753 F.2d 19, 23 (3d Cir. 1985).

Rather, a "more appropriate interpretation of subsection (b)(2) . . . requires a district court to determine first whether any question raised on appeal is a 'substantial' one." *Randell*, 761 F.2d at 125. A "substantial question 'is one of more substance than would be necessary to a finding that it was not frivolous. It is a close question or one that very well could be decided the other way.'" *Id.* (quoting *United States v. Giancola*, 754 F.2d 898, 901 (11th Cir. 1985)). "If a court does find that a question raised on appeal is 'substantial,' it must then

consider whether that question is 'so integral to the merits of the conviction on which defendant is to be imprisoned that a contrary appellate holding is likely to require reversal of the conviction or a new trial.'" *Id.* (quoting *Miller*, 753 F.2d at 23).

Defendant contends that substantial questions of law and fact exist in this case, because (1) the contracts in Counts One and Three were not "false" as that term is used in 18 U.S.C. § 1519, especially in light of the Supreme Court's recent ruling restricting the reach of the statute in *Yates v. United States*, 135 S. Ct. 1074 (2015); (2) the Government failed to comply with its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963) to disclose exculpatory evidence; (3) the jury received erroneous instructions on the law; and (4) there were numerous erroneous evidentiary rulings.

While not all of Defendant's arguments present substantial issues on appeal, some issues he advances are "fairly debatable," *Randell*, 761 F.2d at 125, and implicate multiple counts or are "so integral to the entire case . . . that an appellate decision" in Defendant's favor "is likely to require reversal or a new trial of all counts on which [Defendant] has been sentenced to imprisonment," *Miller*, 753 F.2d at 24. Accordingly, after full review of the parties' filings on this motion, the Court concludes that the Motion [Doc. # 248] for Bond Pending Appeal should be GRANTED. Defendant may remain on bond subject to all conditions and requirements previously set April 11, 2014 [Doc. ## 6–7] until issuance of the mandate of the Second Circuit's decision on his pending appeal.

IT IS SO ORDERED.

/s/

Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut
this 21st day of May, 2015.

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, v. JOHN G. ROWLAND.	Criminal No. 3:14cr79 (JBA) March 16, 2015

RULING ON DEFENDANT'S MOTIONS FOR A NEW TRIAL AND FOR RECONSIDERATION

Defendant John G. Rowland moves [Doc. ## 233, 235] for a new trial pursuant to Fed. R. Crim. P. 33 and for reconsideration of the Court's Ruling [Doc. # 231], denying his request for discovery and an evidentiary hearing in support of the same. For the reasons that follow, Defendant's motions are denied and this case will proceed to sentencing as scheduled.

I. Background

The relevant facts are set forth in the Court's Ruling on Defendant's Request for an Evidentiary Hearing [Doc. # 231] ("the Ruling") and will not be repeated in their entirety here. Briefly, Mr. Rowland contends that the Government failed to disclose statements made by Brian Foley and Lisa Wilson-Foley during interviews with the Government, which Defendant Rowland contends collectively showed that Ms. Wilson-Foley did not join the charged conspiracy until sometime in 2012—rather than in September

2011 as alleged by the Government—because it was not until that point that she learned that "the payments to Mr. Rowland from Mr. Foley were not all for true value" and instead were partially intended to benefit her campaign. (Def.'s Mot. Continue Sentencing [Doc. # 195] at 1 & n.3 quoting *United States v. Foley, et al.*, Wilson-Foley's Sent. Mem. (Dec. 29, 2014) [Doc. # 51] at 3).) In support of his request for discovery and an evidentiary hearing to explore whether the Government failed to comply with its disclosure obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), Defendant relied heavily upon an affidavit prepared by Craig Raabe, counsel for Ms. Wilson-Foley, which disputes aspects of the Government's account of Ms. Wilson-Foley's March 10, 2014 proffer with the Government as documented in the Memorandum of Interview ("MOI") disclosed to the defense. (*See* Raabe Aff. [Doc. # 203]; MOI, Ex. 4 to Gov't's Opp'n [Doc. # 210].)

The Court rejected Defendant's request for discovery, concluding that Defendant had not offered "more than mere speculation that a [*Brady*] violation may have occurred" and that he largely failed to show "how any undisclosed or inaccurately described statements could have been favorable to his defense." (Ruling at 5, 7.) Additionally, the Court concluded that the purportedly undisclosed statements were not "suppressed" because the underlying information was otherwise made available to Defendant. (*Id.* at 11-12.)

II. Discussion

A. Motion for a New Trial

Defendant's Motion for a New Trial and his related Motion for Reconsideration largely reprise the

arguments that the Court has already considered in declining to exercise its discretion to order post-trial discovery in support of his *Brady* claim.[1] Defendant now faces a more substantial burden to obtain a new trial on the basis of this same record and additional items of newly submitted evidence. *Compare United States v. Avellino*, 136 F.3d 249, 261 (2d Cir. 1998) (district court has discretion to order an evidentiary hearing where there is "a nonspeculative basis for inferring that . . . the government had not made available to [the defendant] all pertinent material in its possession"), *with United States v. Owen*, 500 F.3d 83, 87 (2d Cir. 2007) ("A new trial pursuant to Rule 33 based on newly discovered evidence may be granted 'only upon a showing that the evidence could not with due diligence have been discovered before or during trial, that the evidence is material, not cumulative, and that admission of the evidence would probably lead to an acquittal.'" (quoting *United States v. Alessi*, 638 F.2d 466, 479 (2d Cir. 1980))).

Defendant disputes the Court's conclusion that each of Ms. Wilson-Foley's statements from the March 2014 proffer identified in the Raabe Affidavit were either not exculpatory and/or were not

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[1] Pursuant to *Brady* and its progeny, the "prosecution has a constitutional duty to disclose evidence favorable to an accused when such evidence is material to guilt or punishment," *United States v. Coppa*, 267 F.3d 132, 135 (2d Cir. 2001), or "could be used to impeach a key government witness," *id.* (citing *Giglio v. United States*, 405 U.S. 150 (1972)). Evidence is material in the *Brady* context only if "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Mahaffy*, 693 F.3d 113, 127 (2d Cir. 2012).

suppressed. "Evidence is not considered to have been suppressed within the meaning of the *Brady* doctrine if the defendant or his attorney either knew, or should have known, of the essential facts permitting him to take advantage of that evidence." *United States v. Paulino*, 445 F.3d 211, 225 (2d Cir. 2006) (quoting *United States v. Gonzalez*, 110 F.3d 936, 944 (2d Cir. 1997)). The Court has already identified numerous items of evidence that conveyed to Defendant the essential facts that would have permitted him to take advantage of the material that he contends was suppressed and would have furthered his cross examination of Mr. Foley and inform his decision whether to call Ms. Wilson-Foley as a trial witness. (*See* Ruling at 8-12.)

Defendant nevertheless maintains that "[w]itness statements relaying what Wilson-Foley stated before the Government's investigation commenced are no substitute for Wilson-Foley's own account *to the Government* at a time when she was under extreme pressure to conform her account to the Government's preferred version of events." (Def.'s Mem. Supp. New Trial [Doc. # 234] at 12 (emphasis in original).) Defendant further contends that he came "very close" to calling Ms. Wilson-Foley as a witness but ultimately did not "in large part, because Mr. Rowland had limited information as to what Ms. Wilson-Foley would say if called as a witness" (Def.'s Response to Raabe Aff. [Doc. # 214] at 3), but had he been provided with the information disclosed in the Raabe affidavit he "likely" would have called her to testify for the defense (Def.'s Mem. Supp. New Trial at 16).

Brady is not intended to eliminate the litigation risks associated with calling a witness whose testimony is uncertain. Ms. Wilson-Foley was available for Defendant to subpoena at trial to elicit the details that he now claims were lacking from the MOI in which Ms. Wilson-Foley purportedly maintained that Mr. Rowland performed some legitimate work for Apple. Defendant knew from other evidence: (1) after the March 2014 meeting, Ms. Wilson-Foley's former counsel left a voicemail for the Government in which he claimed that Mr. Foley had "kept his wife in the dark" and Ms. Wilson-Foley "really didn't know that this was a deal . . . for Rowland to work on the campaign" (Ex. 2 to Gov't's Mem. Opp'n Evid. Hr'g [Doc. # 210]); (2) in 2012 television and radio interviews Ms. Wilson-Foley maintained that Mr. Rowland performed valuable work for Apple and "did a very good job" (GX295A.01; GX294A.02); (3) Tiffany Romero Grossman and Chris Covucci both testified that when Apple was contemplating hiring Mr. Rowland, Ms. Wilson-Foley told them that there was actual work for him to do at Apple relating to union negotiations (Grand Jury Testimony of Grossman at 28-29 & Covucci at 15, Exs. 11 & 9 to Gov't's Opp'n); and (4) at her change of plea hearing, Ms. Wilson-Foley implied that Mr. Rowland was paid both for legitimate work at Apple and for his role on the campaign, explaining that "[w]hen my husband offered to hire John Rowland I knew that his hiring John Rowland would increase the work that John Rowland would do for my campaign" and that "I should have put *some* of the money that my husband paid to John Rowland towards a record of that for my campaign." *United States v. Foley, et al.*,

14cr65 (JBA), Change of Plea Tr. [Doc. # 23] at 32-33 (emphasis added).

Therefore, from this evidence Defendant had sufficient information available to him to elicit testimony from Ms. Wilson-Foley that she believed that Mr. Rowland provided some legitimate work to Apple. *See United States v. LeRoy*, 687 F.2d 610, 619 (2d Cir. 1982) (no *Brady* violation where the defendant "clearly was on notice of the facts necessary for him to take advantage of such exculpatory testimony [that witnesses] might conceivably furnish" and if he "had desired to have [their] testimony . . . , the obvious course was to subpoena . . . and call them to the witness stand"); *cf. United States v. Mahaffy*, 693 F.3d 113, 131 n.11 (2d Cir. 2012) (*Brady* violation established where the defendant "did not know that [witness] met with the SEC or that his previous testimony might be exculpatory"). Likewise there is no "general constitutional right to discovery in a criminal case," *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977), and Defendant's preference to receive material in a particular form that he believes would be most advantageous to his case is insufficient to establish a *Brady* violation. The "rationale underlying *Brady* is not to supply a defendant with all the evidence in the Government's possession which might conceivably assist the preparation of his defense, but to assure that the defendant will not be denied access to exculpatory evidence only known to the Government." *Tate v. Wood*, 963 F.2d 20, 25 (2d Cir. 1992) (quoting *United States v. LeRoy*, 687 F.2d 610, 619 (2d Cir. 1982) (emphasis omitted)).

Finally, Defendant has not demonstrated prejudice as that phrase is used in the *Brady* context, i.e., that in light of the trial record as a whole, there is a reasonable probability that the undisclosed evidence would have altered the result or undermined confidence in the fairness of the trial. *Strickler v. Greene*, 527 U.S. 263, 282 (1999) ("[S]trictly speaking, there is never a real '*Brady* violation' unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict.").

The evidence at trial showed that after the Foleys met with Mr. Rowland on September 14, 2011 when he outlined what he could do for the campaign, Ms. Wilson-Foley responded to concerns by Chris Syrek that hiring Mr. Rowland for the campaign would require disclosures to the FEC by saying, "Well, maybe the campaign doesn't have to pay him." (Syrek Tr., Vol. 1 [Doc. # 162] at 157-58.) Mr. Syrek, alarmed by his perception that Ms. Wilson-Foley was proposing an illicit arrangement for paying Mr. Rowland for his campaign work, emailed the campaign manager while he was driving, asking her to discuss the situation with Ms. Wilson-Foley immediately. (*Id.* at 158-59; GX107.) Less than one hour later, Ms. Wilson-Foley had two telephone conversations with Mr. Rowland and then Mr. Rowland emailed Mr. Foley, "Brian, had a brief chat with Lisa, I get it, let's you and I meet." (GX109.)

On September 23, 2011, Mr. Rowland sent Ms. Wilson-Foley an email asking, "Does Chris [Syrek] . . . know that I am 'helping'"? (GX120) with Defendant using quotation marks around the word "helping" from which it could be readily inferred that "helping"

was his coded euphemism for his true role as a paid consultant. On October 10, 2011, Ms. Wilson-Foley informed her new campaign manager Chris Covucci on his first day at work that "Mr. Rowland was going to become more involved with the campaign, that he had just signed a contract with Apple . . . and that way they wouldn't have to report it to the FEC, but conveniently there also actually was work for him to do at Apple." (Covucci Tr. [Doc. # 160] at 220-21.)

In November 2011, Mr. Rowland emailed Ms. Wilson-Foley with a "reminder" that he was "just a volunteer helping you and 'many other Republican candidates;' in case anyone asks" (GX183) with the quotation marks used to again refer to the coconspirator's cover story rather than the actual arrangement.

Moreover, after agreeing to the contract with Mr. Foley, Mr. Rowland immediately increased his role on the campaign, reporting to campaign headquarters frequently and assuming responsibility for strategy and operations, as evidenced at trial by a substantial increase in his campaign-related email correspondence. (GX1006-1015.) Prior to signing the consulting agreement, Mr. Rowland's role on the campaign was described by staffers as "minimal" and "not existent." (Grossman Tr. [Doc. # 156] at 122; Syrek Tr. Vol. 1 [Doc. # 162] at 171.) By contrast, the evidence showed that Defendant's work at Apple was only episodic, consistent with Mr. Foley's testimony that such work was only designed to provide a "cover" for Defendant's role on the campaign. (Foley Tr. Vol. II [Doc. # 158] at 65; Collette Tr. [Doc. # 167] at 130-43, Boynton Tr. [Doc. # 166] at 84-85.)

Given the strength of the other trial evidence against Defendant and that he has not shown that any material exculpatory evidence was suppressed, Defendant has not met his burden of showing that there are grounds for a new trial. *Coppa*, 267 F.3d at 141; *United States v. Bagley*, 473 U.S. 667, 675 (1985) (*Brady* is intended "to ensure that a miscarriage of justice does not occur.").

B. Motion for Reconsideration

After filing his Motion for a New Trial, Defendant moved for reconsideration of the Ruling denying him an evidentiary hearing, contending that he has obtained new evidence from Attorney Jessica Santos, who previously represented both Foleys before Ms. Wilson-Foley retained separate counsel, which shows that the Government "applied tremendous pressure on [Ms. Wilson-Foley] to conform her story to its own theory, and failed to disclose critical evidence of the behind-the-scenes drama that resulted in her guilty plea." (Def.'s Mem. Supp. Mot. Reconsideration at 6.) In particular, Defendant contends that the Government failed to disclose that during the March 2014 proffer, it advised Ms. Wilson-Foley that it wanted her to corroborate Mr. Foley's account before formalizing an agreement not to prosecute her and did not believe her contentions that she did not know that the arrangement between Defendant and Apple was a "sham." (*Id.* at 2 & Ex. A.) After Ms. Wilson-Foley refused to adopt the Government's view, Ms. Santos contends that the Government threatened to revoke Mr. Foley's cooperation agreement despite believing that he was truthful and refused to interview Ms. Wilson-Foley again, because she had

already done "too much damage" with her original proffer statements. (Def.'s Mem. Supp. at 2 & Ex. B.)

Defendant contends that this previously undisclosed information "provides powerful motive evidence that would have been relevant to both Mr. Foley and Ms. Wilson-Foley's testimony" by showing "the tremendous pressure exerted on the Foleys to conform to the Government's theory of the case with Mr. Foley's misdemeanor package deal directly tied to Ms. Wilson-Foley corroborating Mr. Foley's account" and "that Ms. Wilson-Foley stood by her account despite the fact that doing so jeopardized her husband's own plea deal." (*Id.* at 5.)

Defendant does not explain how such "motive evidence" would have been exculpatory. Defendant does not contend that Mr. Foley altered his testimony after the Government challenged the veracity of Ms. Wilson-Foley's statements such that Defendant could have sought to impeach Mr. Foley by challenging his motivation for giving testimony favorable to the Government.[2] Likewise, the "tremendous pressure" placed on Ms. Wilson-Foley by the Government is not claimed by Defendant to have caused her to change her account but rather Defendant implies that it would have bolstered her credibility because she "stood by her account." (Def.'s Mem. Supp. at 5.) But as discussed above, evidence of this "account" that Defendant provided value to Apple was otherwise

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[2] Defendant thoroughly cross-examined Mr. Foley on other evidence that suggested he had a motive to provide the Government with favorable testimony in order to avoid further investigation and potential prosecution of his children and other family members for making straw donations to the Wilson-Foley campaign. (Foley Tr. Vol. III [Doc. # 159] at 137-43.)

made available to Defendant (as well as to the television-viewing public) and thus was cumulative.

While there was nothing in the trial evidence suggesting that Ms. Wilson-Foley knew the "sham" nature of the actual contract,[3] there was substantial evidence that suggested that Ms. Wilson-Foley knew that Defendant's relationship with Apple was for the practical purpose of getting Defendant committed to only her campaign and should have been reported. (*See* Ruling at 12-14.) Her insistence that Mr. Rowland had provided value to Apple and that thus it did not constitute a sham relationship was never couched in terms that the relationship was merely coincidental to her campaign or its purpose was solely for Apple's benefit. Given her apparent unwillingness to embrace the characterization of the relationship the way the Government argued and the jury credited, it was hardly surprising that the Government would decline to enter into a cooperation agreement with a witness whose account it did not credit. It was also unsurprising that neither side risked calling Ms. Wilson-Foley as a witness at trial. Ultimately, despite whatever pressure was applied to Ms. Wilson-Foley, Defendant was aware that she was not given a cooperation agreement by the Government and that in pleading guilty, she provided

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[3] The structure of the contract between Apple's outside law firm and Mr. Rowland, rather than between Apple and Mr. Rowland, strongly suggested that it was designed to conceal that Mr. Rowland was being paid by Mr. Foley. Mr. Rowland submitted invoices for consulting services purportedly provided to the law firm and payments were routed to him from Mr. Foley's unrelated entity, Ridgeview Health Realty, LLC, via the law firm. (GX4-7.)

an adequate but tepid admission of her participation in the conspiracy. (*See* Def.'s Mem. Admiss. Coconspirator Stmts. [Doc. # 84-1] at 3 (contending that Ms. Wilson-Foley "engaged in a strained and lengthy colloquy that necessitated a break in the proceeding before reluctantly admitting participation in a conspiracy").

Finally, Defendant cites an email that Ms. Santos sent to defense counsel six months after trial in which she represents that during proffers with the Government, Mr. Foley said that "the value of Mr. Rowland's work for Apple was at least $5,000," which was not disclosed in the MOI. (Santos Email to Novak, Ex. C to Def.'s Mem. Supp.) The Government disputes this account as a factual matter, contending that Mr. Foley never ascribed a dollar value to Mr. Rowland's work and notes that Defendant has not provided any contemporaneous documentation of the statement but only Ms. Santos's recollection. (Gov't's Opp'n [Doc. # 237] at 20-21.)

Even if Mr. Foley in fact ascribed this dollar amount to Mr. Rowland's work at Apple, Defendant does not contend that such a statement constituted *Brady* material as to his criminal liability nor could he, given that Mr. Foley stated in his proffers and at trial that despite whatever value Defendant may have provided to Apple, Mr. Rowland was being paid by Apple for his work on the campaign.[4] Rather,

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[4] The cross-examination of Mr. Foley established that Mr. Rowland's work had some value to Apple but asking Mr. Foley to ascribe a dollar figure that was anything less than the full $35,000 he paid to Mr. Rowland likely would have been inculpatory, because Mr. Foley's testimony was that he "really hired him for Apple to work on the campaign" and Defendant's

Defendant contends that Mr. Foley's description of the value of Mr. Rowland's work at Apple is *Brady* material as to his sentencing exposure, which would not warrant a new trial. (Def.'s Mem. Supp. at 3 n.5.) Mr. Rowland will have the opportunity to make "effective use" of this information at his upcoming sentencing hearing with respect to his view of the applicable advisory sentencing guidelines and thus "the government has not deprived the defendant of due process of law simply because . . . the evidence [was not produced] sooner." *Coppa*, 267 F.3d at 144.

III. Conclusion

For the reasons set forth above, Defendant's Motions [Doc. ## 233, 235] for a New Trial and for Reconsideration are DENIED.

IT IS SO ORDERED.
/s/
Janet Bond Arterton,
U.S.D.J.

Dated at New Haven, Connecticut this 16th day of March, 2015.

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work at Apple was just an attempt to "legitimatiz[e]" the arrangement so "it wouldn't be discovered that the real reason was to have him work on the campaign." (Foley Tr. Vol. II at 65.)

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, v. JOHN G. ROWLAND.	Criminal No. 3:14cr79 (JBA) December 30, 2014

RULING ON DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL

Following a jury trial in which the jury returned a verdict of guilty on all seven counts in the Superseding Indictment, Defendant John G. Rowland moves [Doc. # 151] for a judgment of acquittal pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure.

Defendant previously made an oral motion [Doc. # 130] for judgment of acquittal pursuant to Fed. R. Crim. P. 29(a) after the close of the Government's case-in-chief "on the ground that the government's evidence at trial was insufficient to sustain a conviction on any count." (Sept. 15, 2014 Tr. [Doc. # 171] at 139.) Defense counsel did not elaborate on the facts in support of the motion and clarified that they were "making simply a general motion now, but we want to reserve the right to file a written motion that lays out our grounds in detail and also the cases on which we rely" after all evidence was received and before the jury was charged. (*Id.*) No further motion

was filed before the jury was charged and, on September 17, 2014 after the close of the evidence, the Court denied [Doc. # 136] Defendant's motion by text order.

Like his original oral motion, Defendant's current motion, filed September 24, 2014, without a supporting memorandum, sets forth no basis for the relief that he seeks. In a December 22, 2014, telephonic conference with counsel on the record, the Court indicated that it was considering denying Defendant's motion under Local Rule 7, which provides that any "motion involving disputed issues of law shall be accompanied by a written memorandum of law" and that "[f]ailure to submit a memorandum may be deemed sufficient cause to deny the motion." Loc. Civ. R. 7(a)1; Loc. Crim. R. 1(c). After this conference, Defendant filed [Doc. # 189] a memorandum of law in support of his motion, contending that Local Rule 7's requirement of a written memorandum did not apply and asking the Court to consider his motion on the merits but still failing to set forth any factual or legal basis for the relief sought.

Rule 29(a) of the Federal Rules of Criminal Procedure provides that the "court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." Because "the very nature of such motions is to question the sufficiency of the evidence to support a conviction," the Second Circuit has held that "the defendant need not specify the ground of the motion in order to preserve a

sufficiency claim for appeal." *United States v. Gjurashaj*, 706 F.2d 395, 399 (2d Cir. 1983).[1]

Because a Rule 29 motion involves factual and not legal questions, the Court concludes that the absence of a supporting memorandum is a proper basis, standing alone, for disposition of Defendant's pending motion. Whether this bare bones motion is sufficient to preserve Defendant's appellate challenge to the sufficiency of the evidence will be left to the Second Circuit.

However, Local Rule 7 further provides that "[n]othing in this Rule shall require the Judge ruling on the motion to review portions of the record in response to a motion, where the moving papers do not make specific reference to such portions of the record."[2] Loc. Civ. R. 7(a)1. Because Defendant has

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[1] By contrast in the civil context, the Federal Rules require that a motion "state with particularity the grounds for seeking the order," Fed. R. Civ. P. 7(c), language which is absent from Fed. R. Crim. P. 29. *See* 2A Wright & Miller, *Fed. Prac. & Proc. Crim.* § 466 (4th ed.) ("A general motion for a judgment of acquittal is a proper method to challenge the sufficiency of the evidence. . . . Specificity is not required by Rule 29 . . . ."); *United States v. Marston*, 694 F.3d 131, 135 (1st Cir. 2012) ("[G]eneral objections are permissible on Rule 29 motions.").

[2] Defendant contends that the "natural corollary" of the rule that a general motion for acquittal during trial is sufficient to preserve such an objection on appeal is that "once a defendant makes a general motion for acquittal, the burden shifts to the Government to set forth its proof." (Def.'s Mem. Supp. [Doc. # 189] at 3.) But the cases cited by Defendant are in the appellate context and do not hold that the Government bears the burden before the district court of setting forth its proof in response to a general motion under Rule 29. For example, in *Gjurashaj*, while the Second Circuit stated that in response to a general motion "it is incumbent upon the government to review

not expounded on any specific basis for the relief sought or cited to any portion of the record and the Court had no independent impression of any obvious deficiency in the sufficiency of the evidence supporting conviction, he has not met his "heavy burden" to overturn the jury's verdict at this juncture. *United States v. Nelson*, 277 F.3d 164, 195 (2d Cir. 2002).

Accordingly, Defendant's Motion [Doc. # 151] for Judgment of Acquittal is DENIED.

IT IS SO ORDERED.

/s/
Janet Bond Arterton,
U.S.D.J.

Dated at New Haven, Connecticut this 30th day of December, 2014.

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its proof as to the facts required to establish each element of each offense alleged," it did not hold that the government was required to set forth such facts to the district court but only that its "neglect to do so is not a charge upon the defendant" in terms of preserving the issue for appeal. *Id.* Likewise, the Seventh Circuit has explained that a general motion under Rule 29 serves the purpose of putting "the government on notice" that a defendant is contesting the sufficiency of the evidence and therefore preserves such a challenge on appeal. *United States v. South*, 28 F.3d 619, 627 (7th Cir. 1994).

APPENDIX E

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, v. JOHN G. ROWLAND.	Criminal No. 3:14cr79 (JBA) July 8, 2014

RULING DENYING DEFENDANT'S MOTION TO DISMISS THE SUPERSEDING INDICTMENT

Defendant John G. Rowland moves [Doc. # 36] to dismiss the Superseding Indictment, contending that the Government has failed to adequately allege that he agreed to engage in illegal conduct. For the reasons that follow, Defendant's motion will be denied.

I. Background

The Superseding Indictment alleges that Mr. Rowland "devised a scheme to work" as a consultant for two congressional candidates in Connecticut and drafted fictitious contracts in order to obscure from the public and the Federal Election Commission ("FEC") his role in these campaigns. (Superseding Indictment [Doc. # 38] ¶ 17.) Beginning in October 2009, Mr. Rowland allegedly proposed to "Candidate 2" that he work as a consultant on his congressional race and in order to "conceal the payments to

ROWLAND, which Candidate 2's campaign would otherwise be required to report to the FEC, ROWLAND proposed to be paid through a separate corporate entity, that is, the Animal Center," an animal rescue and adoption center owned by Candidate 2. (*Id.*) In order "to make the illegal arrangement appear legitimate, ROWLAND drafted and proposed to enter into a sham consulting contract with Candidate 2, pursuant to which ROWLAND would purportedly perform work for the Animal Center," thereby preventing "campaign contributions and expenditures from being reported to the FEC and the public." (*Id.*) On October 23, 2009, Mr. Rowland allegedly provided Candidate 2 with a draft contract (the "Draft Contract") outlining his consulting arrangement with the Animal Center when Mr. Rowland was in fact "proposing to perform paid campaign work for Candidate 2's Congressional campaign." (*Id.* ¶ 19.) Mr. Rowland is alleged to have created this "fictitious contract" in order to conceal from the FEC and the United States Department of Justice ("DOJ") that the payments made under this contract "would, in fact, be in consideration for work performed by ROWLAND on behalf of Candidate 2's campaign for election to the U.S. House of Representatives." (*Id.* ¶ 26.)

In September 2011, Mr. Rowland allegedly proposed a similar arrangement to Lisa Wilson-Foley, who was a candidate for the U.S. House of Representatives for Connecticut's Fifth Congressional District and who is charged separately as a co-conspirator. (*Id.* ¶¶ 3, 28-29.) Mr. Rowland, Ms. Wilson-Foley, and her husband Brian Foley, also charged separately, allegedly conspired to conceal Mr.

Rowland's role as a consultant in Ms. Wilson-Foley's campaign by having Mr. Foley pay Mr. Rowland's $5000 per month fee and routing it through the Real Estate Company that Mr. Foley owned to the law firm (the "Firm") of Attorney 1, who worked for the Nursing Home Company, which Mr. Foley also owned. (*Id.* ¶ 35(c).) In furtherance of this conspiracy, they allegedly created and executed a fictitious consulting agreement (the "2011 Agreement") purportedly between Mr. Rowland and the Firm and agreed that Mr. Rowland would provide "nominal services to the Nursing Home Company in order to create a 'cover' or pretext that he was being paid for providing consulting services to the Nursing Home Company when, in fact, he was being paid for his work on behalf of Wilson-Foley's campaign." (*Id.* ¶ 34(c).) The Superseding Indictment alleges that in doing so, Mr. Rowland and the Foleys concealed from the FEC and the public Mr. Foley's unlawful campaign contributions to his wife's campaign by causing the campaign to file disclosure reports with the FEC that failed to report these contributions, which were in excess of the limits set by federal election law. (*Id.* ¶ 34(d).)

The Superseding Indictment charges falsification of records related to a federal investigation in violation of 18 U.S.C. § 1519 as to the Draft Contract (Count One) and the 2011 Agreement (Count Three); Conspiracy in violation of 18 U.S.C. § 371 (Count Two); causing false campaign contribution disclosure reports to be filed with the FEC in violation of 18 U.S.C. §§ 1001(a)(2) and 2 (Counts Four and Five); and illegal campaign contributions in violation of 2

U.S.C. §§ 441a(1)(A), 441a(f), and 437(g)(d)(1)(a)(ii) (Counts Six and Seven).[1]

II. Discussion

"It is well settled that 'an indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense.'" *United States v. Alfonso*, 143 F.3d 772, 776 (2d Cir. 1998) (quoting *Hamling v. United States*, 418 U.S. 87, 117 (1974)). Although "an indictment must 'charge[ ] a crime with sufficient precision to inform the defendant of the charges he must meet and with enough detail that he may plead double jeopardy in a future prosecution based on the same set of events,'" it "need do little more than to track the language of the statute charged and state the time and place (in approximate terms) of the alleged crime." *Id.* (quoting *United States v. Stavroulakis*, 952 F.2d 686, 693 (2d Cir. 1992)) (alterations in original). "[T]he government need not particularize all of its evidence." *United States v. Cephas*, 937 F.2d 816, 823 (2d Cir. 1991).

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[1] After Defendant filed this Motion to Dismiss, the grand jury returned a Superseding Indictment which is identical to the original indictment in all respects except that it explicitly alleges that Defendant acted knowingly and willfully in Counts Six and Seven. (*See* Gov.'t's Opp'n [Doc. # 42] at 6 & n.1.) Except for this one change all of Defendant's arguments regarding the original indictment are equally applicable to the Superseding Indictment and Defendant addresses the impact of the Superseding Indictment in his reply brief [Doc. # 54] regarding Counts Six and Seven.

"Unless the government has made what can fairly be described as a full proffer of the evidence it intends to present at trial . . ., the sufficiency of the evidence is not appropriately addressed on a pretrial motion to dismiss an indictment" and the allegations in the indictment must be accepted as true. *Alfonso*, 143 F.3d at 776–77 (reversing dismissal of an indictment when the district court "looked beyond the face of the indictment and drew inferences as to the proof that would be introduced by the government at trial" to satisfy an element of the charge); *accord Costello v. United States*, 350 U.S. 359, 363 (1956) (If "valid on its face," a grand jury indictment "is enough to call for trial of the charge on the merits." (internal citations omitted)).

A. Counts One and Three (Falsification of Records)

Mr. Rowland contends that Counts One and Three charging falsification of records related to a federal investigation in violation of 18 U.S.C. § 1519 must be dismissed for two reasons. First, he claims that § 1519 only applies to "the falsification of *existing* documents, not the creation of new documents" that may be false. (Def.'s Mem. Supp. [Doc. # 36-1] at 7 (emphasis in original).) Second, he contends that the Draft Contract and 2011 Agreement were not false. (*Id.* at 10.) For the reasons that follow, the Court rejects both propositions.

18 U.S.C. § 1519 provides:

> Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence

> the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

1. Falsification of Documents Allegedly Created by Defendant

Counts One and Three allege that by creating the Draft Contract and the 2011 Agreement Defendant "did knowingly falsify and make material false entries in a document with the intent to impede, obstruct, and influence the investigation and proper administration of that matter." (Superseding Indictment ¶¶ 26, 37.) Defendant offers four reasons why to "falsify" and to make "false entries in a document" as used in § 1519 and the Superseding Indictment applies only to pre-existing documents. First, he contends that the "plain meaning" of "falsifies" is "to make a document false" and "[t]o make a false entry in a document connotes the making of a false statement in a form document," and both "presume a previously existing document." (Def.'s Mem. Supp. at 7-8.)

The Second Circuit has not yet addressed this issue, Defendant cites no cases in support of his interpretation, and as he acknowledges (*see id.* at 7 n.4), other courts have rejected his interpretation of § 1519. *See United States v. Stevens*, 771 F. Supp. 2d 556, 563 (D. Md. 2011) ("No federal court has endorsed [the defendant's] argument that a document must be pre-existing to be subject to § 1519's proscriptions. By contrast, many federal courts have

held that § 1519 applies equally to one who takes a pre-existing document and adds or deletes information from it to make it false, and to one who creates a false document from whole cloth.") (collecting cases).

For example, in *United States v. Hunt*, 526 F.3d 739, 744 (11th Cir. 2008), the defendant argued that § 1519 did not provide fair notice as required by the Due Process Clause that his false statement in a police report that he drafted regarding the use of force was within the ambit of the statute, because the language in the statute "'alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry' assumes there is evidence already existing upon which these acts could be performed." The Eleventh Circuit rejected this argument, holding that while the defendant "created the document in which he made the false statement, such an act is clearly covered by the language of the statute" and while the references to "[a]lteration, destruction, mutilation and concealment certainly suggest § 1519 is concerned partially with evidence destruction, . . . it is not *solely* concerned with destruction or tampering" and "[n]othing suggests the document mentioned in § 1519 must be already existing at the time the false entry was made." *Id.* at 744 (emphasis in original); *see also United States v. Schmeltz*, 667 F.3d 685, 688 (6th Cir. 2011) ("[Section 1519] plainly criminalizes the creation of a false document.").

The Court concurs with the conclusion of the Eleventh Circuit and all other federal courts that have addressed this issue. Contrary to Defendant's assertion, nothing in § 1519 or the meaning of the

phrases to "make a false entry" or "falsifies" necessitates a pre-existing document.

Second, Defendant contends that the canon of statutory construction, *noscitur a sociis*, [2] which "dictates that words grouped in a list should be given related meaning," *Dole v. United Steelworkers of Am.*, 494 U.S. 26, 36 (1990) (internal quotation marks omitted), supports his statutory interpretation because "the statute's prohibition on falsification follows its prohibition of alteration, destruction, mutilation, concealment, and covering up—actions that can only apply to existing documents" and thus "the statute's prohibition on falsification should be construed, like its adjacent words, as solely covering manipulation of pre-existing documents." (Def.'s Mem. Supp. at 8.)

However, as discussed above, there is nothing ambiguous in § 1519's use of "falsifies" or "makes a false entry" that would require resort to this canon of construction. *See United States v. Stevens*, 559 U.S. 460, 474-75 (2010) ("As that canon recognizes, an ambiguous term may be given more precise content by the neighboring words with which it is associated. . . . But the phrase . . . at issue here contains little ambiguity" and the terms "should be read according to their ordinary meaning." (internal quotation marks omitted)); *see also Hunt*, 526 F.3d at 744. Moreover, under Defendant's interpretation

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[2] "The maxim noscitur a sociis, that a word is known by the company it keeps, while not an inescapable rule, is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the Acts of Congress." *Jarecki v. G. D. Searle & Co.*, 367 U.S. 303, 307 (1961).

"falsifies" and "makes a false entry" would have essentially the same meaning as "alters," "mutilates," "conceals," and "covers up." Although the canon Defendant urges to be applied "counsels that a word 'gathers meaning from the words around it,'" it should not be used to give a word "essentially the same function as other words in the definition, thereby denying it independent meaning." *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687, 702 (1995) (quoting *Jarecki*, 367 U.S. at 307).

Third, Defendant contends that "[t]o the extent that there is ambiguity" in the statute, the Court may look to the legislative history of § 1519, which he contends supports his interpretation. (Def.'s Mem. Supp. at 8.) However, "[s]tatutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 541 U.S. 246, 252 (2004) (quoting *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985)). Here, "[t]he words of the statute are unambiguous, and, thus, 'judicial inquiry is complete'" without the need to consult legislative history. *United States v. Gray*, 642 F.3d 371, 377 (2d Cir. 2011) (quoting *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 254 (1992)); *see also Hunt*, 526 F.3d at 744 ("Hunt cannot avoid the result compelled by the plain language by selectively citing legislative history. We hold § 1519's plain language placed Hunt on notice that his action of knowingly making a false statement about the circumstances of Woodard's

arrest with the intent to impede an FBI investigation was conduct sufficiently proscribed by § 1519.").

Fourth, Defendant asserts that "to the extent there are any doubts as to the construction of the statute, the rule of lenity militates in favor of the more limited scope urged here." (Def.'s Mem. Supp. at 9.) Under the rule of lenity "where there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant." *United States v. Simpson*, 319 F.3d 81, 86 (2d Cir. 2002) (quoting *United States v. Bass*, 404 U.S. 336, 348 (1971)). "The rule of lenity, however, is not applicable unless there is a grievous ambiguity or uncertainty in the language and structure of [a statute] such that even after a court has seized [everything] from which aid can be derived, it is still left with an ambiguous statute." *Chapman v. United States*, 500 U.S. 453, 463 (1991) (internal citations, quotation marks and alterations omitted). Since the Court has concluded, as discussed above, that § 1519 is not ambiguous, the rule of lenity is not applicable.

2. False Statement Alleged

Defendant next contends that Counts One and Three should be dismissed because the documents created by Mr. Rowland were not false. He contends that the Draft Contract charged in Count One, "an unsigned, unexecuted draft contract between private parties (on which no work was ever performed and no payments were ever made) cannot be false" and to hold "otherwise would be tantamount to criminalizing an inchoate thought crime." (Def.'s Mem. Supp. at 9.) Defendant cites no authority for this proposition and the Superseding Indictment does not allege any "inchoate thought crime" but rather that Mr. Rowland actually drafted and "provided

Candidate 2 with the fictitious contract, purporting to establish a paid consulting relationship between ROWLAND and the Animal Center" (Superseding Indictment ¶ 19) and that this contract was false, because it "outlined fictitious duties that ROWLAND would perform for the Animal Center" (*id.* ¶ 18) when Mr. Rowland was in fact "proposing to perform paid campaign work for Candidate 2's Congressional campaign" (*id.* ¶ 19) and that he drafted this contract in order "to prevent actual campaign contributions and expenditures from being reported to the FEC and the public" (*id.* ¶ 17).

Defendant further contends that the Draft Contract cannot be considered "false" based on *United States v. Blankenship*, 382 F.3d 1110, 1133 (11th Cir. 2004) in which the Eleventh Circuit noted that because a contract "gives each party nothing more than a legal expectancy in having the other party either perform or (generally) respond in damages," a contract is not "false" merely because a party later breaches it. Instead, the *Blankenship* court concluded that "it appears there are only two ways in which a contract can possibly be considered 'false:'" (1) "if a person forges or alters it" or (2) "if it contains factual misrepresentations." *Id.* at 1132.

Blankenship does not support Defendant's argument, however, because Mr. Rowland is not charged with breaching an otherwise valid contract, but rather with creating a contract that was entirely "fictitious" in order to obstruct federal campaign finance laws. This contract is thus alleged to contain "factual misrepresentations" and can be considered "false" under the second category outlined in *Blankenship*. *See id.* at 1132. For example, in

United States v. Jespersen, 65 F.3d 993, 998 (2d Cir. 1995), the defendant was an IRS employee who required one of the IRS's contractors to remodel his home for free, and once a grand jury started investigating the arrangement, had the contractor create a false and backdated contract showing that the work had been paid for. The Second Circuit affirmed his conviction for obstruction of justice, because the contract "fraudulently showed that [the contractor] had been paid for the work performed." *Id*

Second, Defendant maintains that even if such a document could be false, it was not in this case, because the Draft Contract called for Mr. Rowland's consulting company to provide "wide-ranging and open-ended obligations" to Candidate 2's company, which is "consistent with what the Indictment claims was falsely concealed in the Draft Contract: that Mr. Rowland would be paid for work for the candidate's campaign." (Def.'s Mem. Supp. at 10.) As discussed above, the Superseding Indictment alleges otherwise and whether that allegation can be proven is an issue for the jury to determine at trial on the basis of the evidence, not for the Court on a pre-trial motion to dismiss. *See United States v. Velastegui*, 199 F.3d 590, 592 (2d Cir. 1999) ("There was no basis for the District Court to [make] assum[ptions]" regarding what the evidence would show because "the facts alleged by the government must be taken as true.").

Defendant likewise argues as to Count Three that "the 2011 Agreement, as alleged, was not false" because it "provided that Mr. Rowland would perform services for the Firm and its clients and be paid by the Firm for those services" and the Superseding

Indictment "alleges nothing to the contrary and points to no false statements in the 2011 Agreement." (Def.'s Mem. Supp. at 10.) However, the Superseding Indictment alleges that this agreement was "fictitious" and "part of the conspiracy that Foley made payments to ROWLAND for his work on behalf of Wilson-Foley's campaign in excess of the legal contribution limits, and routed those payments from the Real Estate Company," controlled by Mr. Foley, "through the law offices of Attorney 1 and on to ROWLAND." (Superseding Indictment ¶¶ 34(a)-(b).) Mr. Rowland is further alleged to have "provided nominal services to the Nursing Home Company in order to create a 'cover' or pretext that he was being paid for providing consulting services to the Nursing Home Company when, in fact, he was being paid for his work on behalf of Wilson-Foley's campaign" (*id.* ¶ 34(d)) "in order to conceal from the FEC and the [DOJ] the fact that payments made pursuant to the fictitious contract would, in fact, be in consideration for work performed by" Mr. Rowland on behalf of the Wilson-Foley campaign" (*id.* ¶ 37).

While at trial Mr. Rowland may be able to develop an evidentiary basis for his position that the contract was not false because he did in fact provide consulting services to Attorney 1, the Superseding Indictment need not specifically rule out this. *See United States v. Sisson*, 399 U.S. 267, 288 (1970) ("It has never been thought that an indictment, in order to be sufficient, need anticipate affirmative defenses."). It is sufficient that the Superseding Indictment alleges and describes how the 2011 Agreement was false, i.e., that it was intended to conceal Mr. Rowland's involvement with the Wilson-

Foley campaign in order to influence a federal investigation.[3] (*See* Superseding Indictment ¶ 37.) Accordingly, Defendant's motion to dismiss Counts One and Three is denied.

B. Counts Four and Five (Causing False Statements to be Filed)

Defendant contends that Counts Four and Five, charging that Mr. Rowland caused the filing of false campaign disclosure reports omitting the in-kind

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[3] In his reply brief, Defendant acknowledges that the "validity of an indictment is tested by its allegations, not whether the Government can prove its case" but contends that he has "appropriately challenged the sufficiency of the Indictment's *allegations*" and "that a conclusory recitation of the elements of the offense is insufficient where the specific facts alleged do not constitute a crime." (Reply [Doc. # 51] at 6 (internal quotation marks omitted) (emphasis in original).) As made clear by *United States v. Bergrin*, 650 F.3d 257, 264 (3d Cir. 2011) cited by Defendant in support of this proposition, however, "no greater specificity than the statutory language is required so long as there is sufficient factual orientation to permit the defendant to prepare his defense and to invoke double jeopardy in the event of a subsequent prosecution." (internal quotation marks omitted). Only if "a charging document fails to state an offense [because] the specific facts alleged in the charging document fall beyond the scope of the relevant criminal statute, as a matter of statutory interpretation" is dismissal of an indictment appropriate. *Id.* at 264-65 (internal quotation marks omitted); *see also, e.g., Gov't of the V.I. v. Greenidge*, 600 F.2d 437, 438-40 (3d Cir. 1979) (indictment alleging assault on male companion of a rape victim does not, as a matter of law, state an offense under statute that criminalizes assaulting a rape victim). Here, however, the Superseding Indictment alleges in what manner the Draft Contract and 2011 Agreement were false and how they were intended to impede a federal investigation, which is plainly within the scope of § 1519.

contributions by Mr. Foley to his wife's campaign through the Firm, in violation of 18 U.S.C. §§ 1001(a)(2) and 2, must be dismissed for three reasons: (1) the Superseding Indictment fails to allege Mr. Rowland's involvement in the campaign disclosure such that he could have "caused" it as charged; (2) it fails to allege Mr. Rowland's knowledge of the false disclosures; (3) and the allegations of in-kind contributions by Mr. Foley are "equally consistent" with in-kind contributions by Ms. Wilson-Foley, and although, such contributions would trigger their own reporting obligations, the failure to satisfy these obligations is not alleged. (Def.'s Mem. Supp. [Doc. # 36-3] at 1.)

18 U.S.C. § 1001 provides:

> [W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully . . . makes any materially false, fictitious, or fraudulent statement or representation . . . shall be fined under this title, imprisoned not more than 5 years . . . or both.

18 U.S.C. § 1001(a)(2). Defendant is also charged under the aiding and abetting statute, which provides that "[w]hoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal," 18 U.S.C. § 2(a) and "[w]hoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal," *id.* § 2(b).

Defendant first contends that the Superseding Indictment "simply does not allege how Mr.

Ro[w]land caused the Wilson-Foley campaign to file false disclosures" nor "that he had any involvement in that decision, let alone that he caused it." (Def.'s Mem. Supp. at 2.) To the extent that Defendant faults the Superseding Indictment for not outlining the Government's evidence against him, no such showing is required in an indictment. *See Cephas*, 937 F.2d at 823. In his reply brief, Defendant clarifies that he challenges the legal sufficiency of these counts, contending that "the Government's generic recitation of the elements of the offense are insufficient because the specific facts alleged, even if proven, would not demonstrate any involvement by Mr. Rowland in any false disclosures" because the Superseding Indictment only alleges that "Mr. Rowland received payments for work on the campaign from the Firm" but not "any participation in, or aiding of, the preparation of the campaign's subsequent disclosure." (Reply [Doc. # 53] at 2.)

The Superseding Indictment alleges that Mr. Rowland, Mr. Foley, and Ms. Wilson-Foley "did unlawfully, knowingly and intentionally conspire, combine, confederate and agree with each other to:" (1) "knowingly falsify and make false entries in a document" (Superseding Indictment ¶ 32(a)); (2) to "falsify, conceal, and cover up by trick, scheme, and device a material fact . . . by, among other things, causing the Campaign Committee to create and file false and misleading campaign finance reports with the FEC" (*id.* ¶ 32(b)); (3) to make illegal campaign contributions by Mr. Foley through the Real Estate Company (*id.* ¶ 32(c)); and (4) to "defraud the United States by impairing, impeding, obstructing, and defeating, through deceitful and dishonest means,

the lawful government functions of the FEC" (*id.* ¶ 32(d)). All this was allegedly done with the objective of "conceal[ing] from the FEC and the public that ROWLAND was paid money in exchange for services he provided to Wilson-Foley's campaign for election to the U.S. House of Representatives." (*Id.* ¶ 33.)

Although Defendant is correct that the Superseding Indictment does not specifically allege how Mr. Rowland caused a false filing with the FEC, it need not do so. It is sufficient to track the language of the statute and detail how Mr. Rowland was part of a conspiracy that had as its objective the filing of the false report and that he aided and abetted the filing of this report. For example, in *United States v. Resendiz-Ponce*, 549 U.S. 102, 108 (2007), the Supreme Court held that an indictment charging attempted illegal reentry into the United States was not defective for failing to allege the "specific overt act" that would be proven at trial. Because the "two constitutional requirements for an indictment" are that it "'contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, [that it] enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense,'" the indictment's "use of the word 'attempt,' coupled with the specification of the time and place of respondent's attempted illegal reentry, satisfied both" because it "provided respondent with more adequate notice than would an indictment describing particular overt acts" and "the time-and-date specification in respondent's indictment provided ample protection against the risk of multiple

prosecutions for the same crime." *Id.* (quoting *Hamling*, 418 U.S. at 117 (alterations in original)). Likewise, the Superseding Indictment here is not defective for not alleging the specific steps that Defendant took to cause with his alleged co-conspirators the filing of a false report and adequately alleges the elements of the charged offense and the specific dates of filing the specific reports at issue and the time period they covered. (*See* Superseding Indictment ¶ 39.)

Second, Defendant contends that the Superseding Indictment fails to adequately allege intent by Mr. Rowland, because it "does not allege any knowledge by Mr. Rowland that the campaign would fail to report the alleged contributions by Mr. Foley, or even that Mr. Rowland knew the payments from the Firm originated with Mr. Foley" and "has instead only alleged knowledge that the campaign hoped to obscure payments to Mr. Rowland," which "does not support an inference that Mr. Rowland knew the campaign would fail to disclose Mr. Foley's alleged contributions." (Def.'s Mem. Supp. at 2.) However, the Superseding Indictment alleges that Mr. Rowland "did knowingly falsify and make material false entries . . . in a contract for services between ROWLAND and the [Firm] in order to conceal from the FEC and the [DOJ] the fact that payments made pursuant to the fictitious contract would, in fact, be in consideration for work performed by ROWLAND on behalf of Wilson-Foley's campaign for election to the U.S. House of Representatives." (Superseding Indictment ¶ 37.) Additionally, it alleges that Mr. Rowland conspired with Wilson and Wilson-Foley to accomplish these ends. (*Id.* ¶ 34.)

Defendant contends that these factual allegations are not sufficient, because "[o]bscuring payments to Mr. Rowland did not depend upon the campaign filing false contribution reports." (Def.'s Mem. Supp. at 2.) As discussed *infra* regarding Count Two, the fact that Defendant can argue potential scenarios under which obscuring the payments to him would not have been illegal does not make the indictment deficient for failing to refute such potential defenses. *See Sisson*, 399 U.S. at 288. Accordingly, Defendant's Motion to Dismiss is denied as to Counts Four and Five.

C. Counts Six and Seven (Illegal Campaign Contributions)

Defendant contends that Counts Six and Seven, charging that he caused illegal campaign contributions in excess of the legal limits, in violation of 2 U.S.C. §§ 441a(1)(A), 441a(f), and 437(g)(d)(1)(a)(ii), must be dismissed, because (1) the underlying campaign contribution limits are unconstitutional; (2) they fail to allege that Mr. Rowland acted willfully; and (3) "the payments the Indictment has characterized as campaign contributions by Mr. Foley are equally consistent with campaign expenditures from the personal funds of Ms. Wilson-Foley, which are not subject to any limit." (Def.'s Mem. Supp. [Doc. # 36-4] at 2.)

As Defendant acknowledges, the Supreme Court has not revisited the constitutionality of individual campaign contribution limitations since it upheld those limitations in *Buckley v. Valeo*, 424 U.S. 1 (1976). (*See* Def.'s Mem. Supp. [Doc. # 36-5] at 1 n.1.) In *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1442 (2014), the Supreme Court held that

"aggregate limits," which "restrict[] how much money a donor may contribute in total to all candidates or committees" in a given election cycle violated the First Amendment. *McCutcheon*, however, did "not involve any challenge to the base limits" that are alleged to have been violated in this case and "restrict how much money a donor may contribute to any particular candidate or committee" and which *Buckley* "previously upheld as serving the permissible objective of combatting corruption." *Id.* Although in Defendant's view, base contribution restrictions limiting individual contributions to an individual candidate "are no longer sustainable" in light of the reasoning of *McCutcheon* (Def.'s Mem. Supp. at 3), the Court will follow *Buckley*'s holding that such contributions are constitutional and leave "to [the Supreme] Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484 (1989).

As to Defendant's contention that Counts Six and Seven of the original Indictment fail to allege that he acted willfully even in conclusory terms, "out of an abundance of caution" after Defendant filed this motion, the Government presented to and received from the grand jury the Superseding Indictment that expressly alleges in Counts 6 and 7 that Defendant acted knowingly and willfully. (Gov.'t's Opp'n [Doc. # 42] at 6.) Defendant counters that this "technical correction, while necessary, was not sufficient," because the Superseding Indictment's "formulaic recitation of the elements of the offense is insufficient since the specific facts alleged in the Indictment, even if proven, would not demonstrate the requisite knowledge by Mr. Rowland" and he "is not alleged to

have had any knowledge of the source of the funds, such that he could know he was causing an unlawful campaign contribution." (Reply [Doc. # 54] at 2.)

However, as discussed above, Mr. Rowland is alleged to have "knowingly and willfully caused contributions, which aggregated $2,000 or more (but less than $25,000) during a calendar year, to be made by Foley through the Real Estate Company to the Campaign Committee in excess of the limits of the Election Act." (Superseding Indictment ¶¶ 41, 43.) Additionally, Mr. Rowland is alleged to have been part of a conspiracy in which "Foley made payments to ROWLAND for his work on behalf of Wilson-Foley's campaign in excess of the legal contribution limits, and routed those payments from the Real Estate Company through the law offices of Attorney 1 and on to ROWLAND." (*Id.* 34(b).) Thus, the Superseding Indictment sufficiently puts Defendant on notice of the offense charged and alleges facts and conduct that are not outside the ambit of the charged offense. *See Bergrin*, 650 F.3d at 264-65.

Finally, Defendant argues that Counts Six and Seven are deficient, because "the conduct alleged does not necessarily constitute a contribution in excess of the legal limits by Mr. Foley" given that "[o]n the specific facts alleged, the payments at issue could just as well be lawful campaign expenditures by Ms. Wilson-Foley" to her own campaign and federal election law allows candidates to "'make unlimited expenditures from personal funds.'" (Def.'s Mem. Supp. at 2 (quoting 11 C.F.R. § 110.10).) Further, Defendant contends, because a candidate's personal funds include joint marital assets, *see* 11 C.F.R. § 100.33, the Superseding Indictment is

deficient because "[t]here is no allegation . . . that assets used by Mr. Foley to allegedly pay the Firm were not originally" joint marital assets and "assuming they were . . . the payments would constitute payments made by Ms. Wilson-Foley." (Def.'s Mem. Supp. at 2-3.) Defendant thus argues that "the allegations are equally consistent with the payments being lawful expenditures made by Ms. Wilson-Foley, not impermissible contributions by Mr. Foley" (*id.* at 3) and the Superseding Indictment is "deficient in that it failed to allege that the funds used did *not* qualify as personal funds of Ms. Wilson-Foley." (Reply [Doc. # 54] at 2 (emphasis in original).)

As discussed above, however, an indictment need not refute potential defenses in order to be valid, *see Sisson*, 399 U.S. at 288, and the Court cannot make inferences regarding what the evidence will show at trial on a motion to dismiss. It is sufficient that the Superseding Indictment alleges and details how Mr. Rowland participated in an agreement to make illegal campaign contributions without refuting every potential scenario under which this arrangement could have been legal. Therefore, Defendant's Motion to Dismiss is denied as to Counts Six and Seven.

D. Count Two (Conspiracy)

Defendant argues that the conspiracy charge in Count Two is deficient because (1) there are no "allegations of an agreement to commit" the offenses alleged in Counts Three through Seven "beyond the allegations that purport to establish the underlying offenses themselves" and because Counts Three through Seven are deficient, Count Two must fail as well; and (2) the Superseding Indictment "does not allege any unlawful agreement that would interfere

with or obstruct the FEC's lawful functions." (Def.'s Mem. Supp. [Doc. # 36-2] at 2-3.)

A conspiracy conviction under § 371 requires proof of three essential elements: (1) an agreement among two or more persons, the object of which is an offense against the United States or to defraud the United States; (2) the defendant's knowing and willful joinder in that conspiracy; and (3) commission of an overt act in furtherance of the conspiracy by at least one of the alleged co-conspirators. *United States v. Svoboda*, 347 F.3d 471, 476 (2d Cir. 2003).

As discussed above, the Court has concluded that the Superseding Indictment has validly alleged offenses in Counts Three through Seven. Thus, even if Defendant were correct that Count Two would fail derivatively if those counts were dismissed, given that those counts still stand, there is no basis to dismiss Count Two. Additionally, a conspiracy count does not necessarily fail if the underlying offenses that are the object of the conspiracy are not adequately pled, because "[i]t is well settled that in an indictment for conspiring to commit an offense—in which the conspiracy is the gist of the crime—it is not necessary to allege with technical precision all the elements essential to the commission of the offense which is the object of the conspiracy." *United States v. Wydermyer*, 51 F.3d 319, 325 (2d Cir. 1995) (quoting *Wong Tai v. United States*, 273 U.S. 77, 81 (1927)). "The rationale is that the crime of conspiracy is complete whether or not the substantive offense which was its object was committed" and an "indictment need only put the defendants on notice that they are being charged with a conspiracy to commit the underlying offense." *Id.*

Defendant next argues that the Superseding Indictment fails to allege "any unlawful agreement" to defraud the United States, i.e., one "that would interfere with or obstruct the FEC's lawful functions" and "at most, alleges a conspiracy to conceal payments to Mr. Rowland." (Def.'s Mem. Supp. at 3.) Defendant contends that such an agreement, however, "is a permissible objective, and therefore does not interfere with or obstruct any FEC functions, because it could have been accomplished in at least two lawful ways." (*Id.*) First, Defendant posits that "Mr. Foley's payments qualify as in-kind contributions to the campaign and there is no obligation to disclose the ultimate recipient of payments for such in-kind services," in this case Mr. Rowland, but only the individual making the contribution and the general purpose of the expenditure. (*Id.* (citing 11 CFR §§ 100.52 (d)(1) and 100.111(e)(1).) Thus, Mr. Rowland argues, because "it would have been perfectly permissible for the Wilson-Foley campaign to only disclose that it received in-kind contributions from Mr. Foley and the general purpose of those contributions," Defendant contends that the Superseding Indictment fails to allege an unlawful agreement to interfere with or obstruct FEC functions. (*Id.* at 3-4.) Alternatively, Defendant posits that "even if the alleged payments had been made by the Wilson-Foley campaign to the Firm, the Wilson-Foley campaign would only have been required to disclose payments to the Firm" and not "that those payments ultimately went to Mr. Rowland," because "there is no obligation for a campaign to disclose payments made, as alleged, by a

vendor, like the Firm, to a sub-vendor, like Mr. Rowland." (*Id.* at 4.)

Defendant acknowledges that each of these potential scenarios would have triggered its own disclosure requirement, with the first requiring the campaign to disclose the in-kind contribution from Mr. Foley and the second requiring the campaign to disclose its payments to the Firm, but contends that the Superseding Indictment is deficient because it "does not allege an agreement by Mr. Rowland to conceal in-kind contributions made by the Foleys or campaign expenditures to the Firm." (Reply [Doc. # 52] at 3-4.) However, that Defendant is able to posit potential scenarios under which his conduct could have been legal based on facts that are not alleged in the Superseding Indictment is not grounds to dismiss an indictment pre-trial. *See Sisson*, 399 U.S. at 288. It is sufficient that the Superseding Indictment states facts that allege that Defendant committed the elements of the offenses charged and has put Mr. Rowland on notice of the underlying offense that he is alleged to have conspired to commit. *See Wydermyer*, 51 F.3d at 325.

III. Conclusion

For the reasons set forth above, Defendant's Motion [Doc. # 36] to Dismiss is DENIED.

IT IS SO ORDERED.
/s/
Janet Bond Arterton,
U.S.D.J.

Dated at New Haven, Connecticut this 8th day of July, 2014.

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 17th day of June, two thousand and sixteen.

Before: Ralph K. Winter,
Denny Chin,
Susan L. Carney,
Circuit Judges.

United States of America,

Appellee,

v.

John G. Rowland,

Defendant - Appellant.

JUDGMENT
Docket No. 15-985

The appeal in the above captioned case from a judgment of the United States District Court for the District of Connecticut was argued on the district

court's record and the parties' briefs. Upon consideration thereof,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the district court's judgment is AFFIRMED.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court
s/ Catherine O'Hagan Wolfe

APPENDIX G

18 U.S.C. § 1519

§ 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

APPENDIX H

CHRISTIAN B. SHELTON

ATTORNEY AT LAW

7 SOUTH MAIN STREET, BRANFORD, CT 06405

P: 203.483.9333 P: 203.483.9888

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (the "Agreement") is made and entered into this 1st day of October 2011 (the "Effective Date") by and between the Law Offices of Christian B. Shelton, Esq. LLC, with its principal place of business at 7 South Main Street, Branford, CT 06405 (hereinafter referred to as the "Company") and John Rowland of 98 Leonard Road, Middlebury, Connecticut 06772 (hereinafter referred to as the "Consultant").

WHEREAS, the Company wishes to engage the Consultant to provide the services described herein and Consultant agrees to provide the services for the compensation and otherwise in accordance with the terms and conditions contained in this Agreement,

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, accepted and agreed to, the Company and the Consultant, intending to be legally bound, agree to the terms set forth below.

I. TERM.

Commencing on the Effective Date, and continuing for a period of six (6) months ("Term"), unless earlier terminated pursuant to Article 4 hereof, the Consultant agrees that he will serve as a consultant to the Company. This Agreement may be renewed or extended for any period as may be agreed by the parties.

II. DUTIES.

The Consultant shall provide the following services ("Services"):

a) Perform such consulting services for the Company regarding marketing, strategic advice and business consulting for the Company's clients or managing Members employment interests;

b) The Consultant shall meet with the Company or the Company's designees as needed but at least two times per month;

c) Provide education, opinions and information on any issue the Company or its Managing Member requires.

The Consultant represents and warrants to the Company that there are no contractual or other restrictions or obligations which are inconsistent with the execution of this Agreement, or which will interfere with the performance of Services. Consultant represents and warrants that the execution and performance of this Agreement will not violate any policies or procedures of any other person or entity for which he/she performs Services concurrently with those performed herein.

In performing the Services, Consultant shall comply, to the best of their knowledge, with all business conduct, regulatory and health and safety guidelines established by the Company for any governmental authority with respect to the Company's business.

III. CONSULTING FEE.

(a) The Company shall pay Consultant a consulting fee of Five Thousand Dollars and Zero Cents ($5,000.00) per month for Services provided to the Company ("*Consulting Fee*") on the first day of each month beginning on October 1, 2011. The Consultant shall submit a monthly invoice. The Consulting Fee shall be paid within fifteen (15) days of the Company's receipt the invoice.

(b) The Consultant agrees that all Services will be rendered by the Consultant as an independent contractor and that this Agreement does not create an employer-employee relationship between the Consultant and the Company. The Consultant shall have no right to receive any employee benefits including, but not limited to, health and accident insurance, life insurance, sick leave and/or vacation or workers compensation benefits. Consultant agrees to pay all taxes including, self-employment taxes due in respect of the Consulting Fee and to indemnify the Company in the event the Company is required to pay any such taxes on behalf of the Consultant.

IV. EXPENSES.

The Company shall not pay any of the Consultant's expenses incurred while the Agreement between Consultant and the Company exists including any and all travel expenses to and from all work sites,

meal expenses; administrative expenses; lodging expenses if work demands overnight stays; and miscellaneous travel-related expenses (parking and tolls).

V. TERMINATION.

(a) If the Consultant voluntarily ceases performing Services, becomes physically or mentally unable to perform the Duties, or is terminated for cause, the Consulting Fee shall cease and terminate as of such date.

(b) Upon termination, neither party shall have any further obligations under this Agreement. Upon termination and, in any case, upon the Company's request, the Consultant shall return immediately to the Company all Confidential Information, as hereinafter defined, and copies thereof.

VI. PROPRIETARY RIGHTS.

(a) *Concept and Ideas*. Those concepts and ideas disclosed by the Company or its Managing Members to Consultant or which are first developed by Consultant during the course of the performance of Services hereunder and which relate to the Company' present, past or prospective business activities, services, and products, all of which shall remain the sole and exclusive property of the Company. The Consultant shall have no publication rights and all of the same shall belong exclusively to the Company.

(b) *Confidential Information*. For the purposes of this Agreement, Confidential Information shall mean and collectively include: all information relating to the business, plans and/or technology of the Company or the Managing Member's interests including, but not limited to technical information including

inventions, methods, plans, processes, specifications, characteristics, assays, raw data, scientific preclinical or clinical data, records, databases, formulations, clinical protocols, equipment design, know-how, experience, and trade secrets; developmental, marketing, sales, customer, supplier, consulting relationship information, operating, performance, and cost information; computer programming techniques whether in tangible or intangible form, and all record bearing media containing or disclosing the foregoing information and techniques including, written business plans, patents and patent applications, grant applications, notes, and memoranda, whether in writing or presented, stored or maintained in or by electronic, magnetic, or other means.

Notwithstanding the foregoing, the term "Confidential Information" shall not include any information which: (a) can be demonstrated to have been in the public domain or was publicly known or available prior to the date of the disclosure to Consultant; (b) can be demonstrated in writing to have been rightfully in the possession of Consultant prior to the disclosure of such information to Consultant by the Company; (c) becomes part of the public domain or publicly known or available by publication or otherwise, not due to any unauthorized act or omission on the part of Consultant; or (d) is supplied to Consultant by a third party without binder of secrecy, so long as that such third party has no obligation to the Company or any of its affiliated companies to maintain such information in confidence.

(c) *Non-Disclosure to Third Parties*. Except as required by Consultant's Services, Consultant shall not, at any time now or in the future, directly or indirectly, use, publish, disseminate or otherwise disclose any Confidential Information, Concepts, or Ideas to any third party without the prior written consent of the Company which consent may be denied in each instance and all of the same, together with publication rights, shall belong exclusively to the Company.

(d) *Documents, etc.* All documents, diskettes, tapes, procedural manuals, guides, specifications, plans, drawings, designs and similar materials, lists of present, past or prospective customers, customer proposals, invitations to submit proposals, price lists and data relating to the pricing of the Company' products and services, records, notebooks and all other materials containing Confidential Information or information about Concepts or Ideas (including all copies and reproductions thereof), that come into Consultant's possession or control by reason of Consultant's performance of the relationship, whether prepared by Consultant or others: (a) are the property of the Company, (b) will not be used by Consultant in any way other than in connection with the performance of Services, (c) will not be provided or shown to any third party by Consultant, (d) will not be removed from the Company's or Consultant's premises (except as Consultant's Services require), and (e) at the termination (for whatever reason), of Consultant's relationship with the Company, will be left with, or forthwith returned by Consultant to the Company.

VII. WAIVER.

Any waiver by the Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision hereof. All waivers by the Company shall be in writing.

VIII. SEVERABILITY; REFORMATION.

In case any one or more of the provisions or parts of a provision contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement; and this Agreement shall, to the fullest extent lawful, be reformed and construed as if such invalid or illegal or unenforceable provision, or part of a provision, had never been contained herein, and such provision or part reformed so that it would be valid, legal and enforceable to the maximum extent possible. Without limiting the foregoing, if any provision (or part of provision) contained in this Agreement shall for any reason be held to be excessively broad as to duration, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the fullest extent compatible with then existing applicable law.

IX. ASSIGNMENT.

The Company shall have the right to assign its rights and obligations under this Agreement to a party which assumes the Company' obligations hereunder. Consultant shall not have the right to assign his/her rights or obligations under this Agreement without the prior written consent of the

Company. This Agreement shall be binding upon and inure to the benefit of the Consultant's heirs and legal representatives in the event of his/her death or disability.

X. AMENDMENTS.

This Agreement may be amended or modified, in whole or in part, only by an instrument in writing signed by all parties hereto. Any amendment, consent, decision, waiver or other action to be made, taken or given by the Company with respect to the Agreement shall be made, taken or given on behalf of the Company only by authority of the Company's Board of Directors.

XI. NOTICES.

Any notices or other communications required hereunder shall be in writing and shall be deemed given when delivered in person or when mailed, by certified or registered first class mail, postage prepaid, return receipt requested, addressed to the parties at their addresses specified in the preamble to this Agreement or to such other addresses of which a party shall have notified the others.

XII. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof, and replaces and supersedes all other agreements or understandings, whether written or oral. No amendment or extension of the Agreement shall be binding unless in writing and signed by both parties.

XIII. DEFENSE AND INDEMNIFICATION

The Company agrees, at its sole expense, to defend the Consultant against, and to indemnify and hold the Consultant harmless from any claims or suits by a third party against the Consultant or any liabilities or judgments based thereon, either arising from the Consultant's performance of services for the Company under this Agreement or arising from any Company services which result from the Consultant's performance of services under this Agreement.

The Company will not use the Consultant's name in any commercial advertisement or similar material used to promote or sell products, unless the Company obtains in advance the written consent of the Consultant.

XIV. GOVERNING LAW.

This Agreement shall be construed in accordance with and governed for all purposes by the laws of the State of Connecticut applicable to contracts executed and wholly performed within such jurisdiction.

EXECUTED, under seal, effective as of the Effective Date.

John G. Rowland	Law Offices of Christian B. Shelton, Esq. LLC
By:s/ John G. Rowland John Rowland	By:s/ Christian B. Shelton Christian B. Shelton Managing Member
Date: 11/11/11	Date: 11/11/2011

APPENDIX I

Consulting Agreement

This Consulting Agreement (the "Agreement"). Effective the 1st day of Nov. 2009, is made by and between JGR Associates, LLC ("Consultant") and Mark Greenberg (the "Company") or any of its affiliates.

Consulting Services: Consultant agrees to perform such consulting services (the "Services") for Mark Greenberg, as may be reasonably requested by him with respect to the marketing of his Company's sales and service, strategic advice, public relations, business consulting, or such other services as may be required. Consultant also agrees to these same services for "The Simon Foundation", but also including fundraising. Consultant agrees that he shall be reasonably available to provide the Services during the term of this Agreement and shall devote an adequate portion of the Consultant's time to ensure satisfactory performance of the Services.

Term: The term of this Agreement will commence on Nov. 1, 2009 and shall expire Jan. 1, 2012, unless both parties agree to an extension.

Compensation: In consideration of the Services performed by the Consultant hereunder, Consultant will receive compensation as follows;

Monthly retainer of $35,000 per month, payable on the first of each month. The first payment will be the first 3 months in advance, payable on the day of execution of the contract, the retainer will then continue to be paid on the first of each month. [The second payment will be due 30 days after execution.] This payment schedule will continue until Jan. 1, 2011 and then the retainer will convert to $25,000 per month, until Jan. 1, 2012. If the monthly retainer is past due over 30 days, then the contract will be in non-compliance. Both parties agree a contract in non-compliance or is rejected by the company, will cancel the contract and 90% of the remaining contractural retainer will be due within 60 days.

The Company will reimburse the Consultant for reasonable, preapproved out-of-pocket travel, hotel and other business expenses incurred at the request of the Company as soon as practicable following submission of statements of expenses incurred, accompanied by supportable documentation acceptable to the Company.

If there are any disputes of this contract, referral to a court will take place within Connecticut jurisdiction.

Confidential Information: Consultant and the Company each acknowledge that the terms of this Agreement constitute confidential information of the other party and each agrees that no disclosure concerning this Agreement or the terms hereof shall be made by either Consultant or the Company or its agents, officers, directors and employees as may be required by process of law or regulation.

Independent Contractor: The parties to this Agreement acknowledge and agree that the Consultant's relationship shall be that of an independent contractor, that nothing contained herein shall be construed as to create any other relationship between Consultant and Company, whether as partners, as joint ventures, or as employer and employee, and that neither party shall have any power or right to incur any liability on behalf of the other party.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto, as of the date first above written

John G. Rowland, Principal JGR Associates, LLC	Mark Greenberg
Witness	Witness

[2nd page of Consulting agreement between JGR Associates and Empower Software Solutions, effective July 1, 2009]

APPENDIX J

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

* * * * * * * * * * * * * * *	*	
	*	
UNITED STATES OF AMERICA,	*	Case No 14cr79 (JBA)
	*	
	*	
Government,	*	
	*	
vs.	*	
	*	
JOHN G. ROWLAND,	*	September 3, 2014
	*	
Defendant.	*	
	*	
* * * * * * * * * * * * * * *	*	

TRIAL TRANSCRIPT
VOLUME I

BEFORE: THE HONORABLE JANET BOND ARTERTON, U.S.D.J.

And jury

APPEARANCES:

FOR THE GOVERNMENT: LIAM BRENNAN, ESQ.
U.S. Attorney's Office
157 Church Street
New Haven, CT 06510

	CHRISTOPHER M. MATTEI, ESQ. U.S. Attorney's Office 450 Main Street Hartford, Ct 06103
FOR THE DEFENDANT:	REID WEINGARTEN, ESQ WILLIAM DRAKE, ESQ. MICHELLE LEVIN, ESQ. Steptoe & Johnson 1330 Connecticut Avenue NW Washington, DC 20036
Court Reporter:	Sharon Montini, RMR, FCRR 141 Church Street New Haven, CT 06510

Proceedings recorded by mechanical stenography, transcript produced by computer.

* * *

DIRECT EXAMINATION OF MARK GREENBERG

BY MR. MATTEI:

[Page 85]

Foundation. When did you start the Simon Foundation?

A. Well, we receive 501(c)(3) status approximately seven years ago, six, seven years ago, but Linda and I started to save animals that were in jeopardy before then, about 12 years ago when we first adopted Ashley. She was in a newspaper article, and she was in peril, she was—she needed a home. She had a bite history. So my wife said to me, "Can we take Ashley back home?" and I said, "Sure."

So that started a process where we would then save other animals at various facilities; Hartford, we would go to the facility in Hartford, which was a K-9 facility in Newington, before we took over the caretaking of these dogs for Hartford, and we would save dog after dog after dog, and it became a passion of ours.

Q. And so to accommodate all of those adoptions, that's when you started the Simon Foundation?

A. Well, we actually purchased a kennel in Bethlehem to accommodate some of these dogs, which were increasing in number, and that kennel is Hemlock Kennels in Bethlehem, Connecticut. And at Hemlock we then built another facility there, which had another 24 dog kennels. And it was during the ownership of Hemlock that we decided we had to expand even further, and we started to look for land for the Simon Foundation. We started to develop some the blueprints and plans and start to realize our dream of building a state-of-the-art facility, which is now in Bloomfield, Connecticut.

Q. Okay. And how long has that facility been in operation?

A. We opened April 1, 2010.

Q. And how many animals can you house there?

A. We can house 100—well, we have 130 dog pens, 75 cat condos. We often have puppies saved from mothers that were pregnant. So we have a real capacity of about 145 dogs, 75 cats.

Q. Are all of these animals animals that would otherwise be slated to be put down?

A. Yes. Yes, every one of them was on death row.

Q. So does the foundation then also run adoption services for people who want to adopt these dogs?

A. Yes, we do. We advertise on Pet Finder, plus our website, and some of the dogs are, frankly, not adoptable because of past occurrences that happened to them. So they're our sanctuary dogs. As long as they'll live out a good life at the Simon Foundation, we keep them there, we walk them and play with them, and they have a good life.

Q. Mr. Greenberg, what's been the primary funding source for this organization you founded?

A. Linda and myself.

Q. How much would you say you've put into that charity over the years?

A. To date, approximately $3.5 million.

Q. Mr. Greenberg, let me ask you, you mentioned that you're a congressional candidate now, you've been a congressional candidate in the past. When did you first start consider running for public office?

A. I started to consider during the second term of George Bush Jr. I felt that he wasn't representing Republican values in the last two years of his second term, and I was, frankly, angry about that, and I started to talk to the TV and got angry about it and decided I had to do something about it. It was never my way to complain and not try to do something to change things. So my first thought was in the summer of 2009.

* * *

[Page 90]

thinking about made any sense.

Q. Had you ever met him before?

A. No.

Q. Had you ever spoken to him before?

A. No.

Q. And so when did that meeting take place, approximately?

A. In the summer of 2009.

Q. Where did the meeting take place?

A. Maples Restaurant in Middlebury.

Q. And what I'm pulling up on your screen here is Government Exhibit 704.

MR. MATTEI: I'd offer it without objection, your Honor.

THE COURT: 704 is a full exhibit.

MR. WEINGARTEN: Without objection.

THE COURT: Thank you.

MR. MATTEI: May I publish it, your Honor?

THE COURT: You may.

A. That's Maples.

Q. I'm just going to try to pull it up for the jury, if I can. It might take a second.

All right, we got it. That's the Maples Diner?

A. Yes, it is.

Q. Where is that located?

A. Middlebury, Connecticut.

Q. Okay. And what time of day, if you recall, did this meeting take place?

A. This was breakfast time.

Q. Who attended?

A. Vin DeRosa and John Rowland and myself.

Q. Scrolling down to the second page of Government Exhibit 704—it looks like we're going to have to wait for the second page.

Mr. Greenberg, describe that meeting. What transpired at that meeting?

A. Well, it was a very cordial, nice meeting. We had breakfast together, had coffee, and I discussed with John the possibility that I wanted to run for U.S. Senate. I believe at that time it was going to be for Chris Dodds' seat. I don't know whether he had backed out of running or whether he was still interested in running, but this was a seat that I had shown an interest in in running for, and he said to me that would be a bad idea, it's trying to perform too much going into a race without any background, and he suggested I think about Congress where he described to me that when he was in

* * *

[Page 96]

* * *

A. Yes.

Q. Can you describe the context in which that came up, please.

A. Well, that came up—we had our first meeting after Maples at the Simon Foundation facility.

Q. Before we get to the Simon Foundation, I'm talking about the intervening conversations that you had with Mr. Rowland. During those conversations,

did you discuss a proposal by Mr. Rowland to work for your campaign should you run?

A. Yeah, he offered his services to be an advisor, be a consultant for the campaign in telephone conversations and e-mails over that period of time.

Q. Okay. And did—when you say he offered to be an advisor or consultant, did you understand that to be a paid role with your campaign?

A. Yes. A paid role, for sure.

Q. You didn't understand him to be requesting permission to volunteer for your campaign?

A. No. No, it was going to be a paid consultancy role.

Q. Let me ask you this, Mr. Greenberg: During

* * *

[Page 99]

referring to?

A. Conviction.

Q. His conviction while governor?

A. Excuse me?

Q. His conviction while he was serving as governor?

A. Yes.

Q. Why did you think that that would harm your campaign if your campaign was associated with him?

A. Well, I mean, ultimately I think that the people would reject that kind of consultancy or involvement by the ex-governor in my campaign. My feeling, frankly, was that for some people it would be helpful, but for most people it would be harmful.

Q. Now, leading up to that meeting—sir, you mentioned that there was a meeting at the Simon Foundation. Do you recall when that meeting took place, approximately?

A. It took place mid-October.

Q. All right. Let me show you—we're off the screen here, right?

THE COURT: Did you want to offer 407, Mr. Mattei, the FEC 2?

MR. MATTEI: I will offer it. Thank you, your Honor.

* * *

[Page 114]

what's depicted here? Zero in.

A. These are—on the left are simulation rooms. These are rooms that we would have potential adopters meet their potential pet where there are couches and other household items, you might say. This is the front desk to the right. And the door straight ahead goes to what will be a veterinarian facility in the future.

Q. And is this the location, absent some of these fine finishing touches, where you and Mr. Rowland had the conversation after he wanted to be alone with you?

A. Yes.

Q. I want you to walk the jury step-by-step through that conversation, please.

A. Well, basically it was a conversation in which he handed to me a contract, which was within a glossy folder, which was the City of Waterbury

Development folder. I think the front of it had the Palace Theater on the front of it, and the contract was in it. And he said, "Get back to me at your earliest convenience about the contract in it."

Q. Did he say anything about what it is that he was proposing to do?

A. Well, you know, again, the proposal was completely related to giving political advice on the campaign. Whether he discussed that specifically at the Simon Foundation or whether in e-mails or calls or conversations before that, there was no doubt in my mind that the consultancy related to political consultancy.

Q. And is it your best recollection that he also indicated that to you during that meeting?

A. Yes.

Q. Did he also indicate to you during that meeting how he proposed to be paid for that work on the campaign?

A. Again, I don't know whether he said at that meeting that he would be paid from other entities than the campaign, whether Simon Foundation or other real estate entities. I know he did make it clear that also at the same time he would be happy to open up his Rolodex for fund-raising functions at the Simon Foundation.

Q. And when he said that, did you understand him to mean that that's what his proposal was, that's what he was proposing to do for money?

A. The proposal is for consultancy, political consultancy, plain and simple.

Q. Is there any doubt in your mind about that?

A. No, zero.

Q. Had you ever talked to him prior to that meeting about him fund-raising for the Simon Foundation?

A. No. I think that was the first meeting that that discussion about his lengthy Rolodex and capability of doing some fund-raising came, came up.

Q. He said, get back to me and let me know what you think?

A. Yeah, yeah.

Q. Did you look at the document he provided you right there at the time?

A. I don't have a recollection of that. I have more of a recollection of going out to my wife. I think that we needed to pick up our kids at Washington Montessori School. So we were sort of in a rush at that point in time because school ends at three o'clock. So I think I put it in the center area between the seat and the center console, and I don't think I looked at it then. I think I looked at it later at home, but I'm not completely sure about that.

Q. Okay. So after you left the meeting, did Mr. Rowland go off in his own car as well?

A. Yes, he did.

* * *

BY MR. WEINGARTEN:

[Page 205]

additional services proposed for Simon. Fair?

A. Yes.

Q. Okay. And included in those services for Simon are specific references to fund-raising. Fair?

A. Yes.

Q. And, in fact, consistent with your testimony on direct, Mr. Rowland talked about his Rolodex that he could bring to the fore to help you raise money for your foundation. Fair?

A. Fair.

Q. Okay. And were there discussions with Mr. Rowland about fund-raising before he presented you with this contract?

A. There could have been prior to that actual meeting.

Q. And wouldn't it be a logical conclusion that there were because he put it in the contract?

A. Yeah.

Q. Now, let's talk about the term. "The term of the agreement will commence on November 1, 2009, and shall expire January 1, 2012." Correct?

A. Yes.

Q. Okay. The contract would postdate your election by at least a year, correct?

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BY MR. WEINGARTEN:

[Page 207]

consultant who would get paid this kind of money just for political consultancy?

MR. MATTEI: Objection, your Honor. Relevance.

THE COURT: Overruled. The concept has been raised with respect to how rich is rich.

You may proceed.

A. This is extremely rich for Connecticut politics by about a seven-fold number, yeah.

Q. It is, isn't it?

A. Yes.

Q. Now, it is true, is it not, that you did not accept this proposal?

A. That's correct.

Q. And at some point very soon after receiving it, you ripped it up.

A. The same day.

Q. Ripped it up, done.

A. Correct.

Q. So there was never a nanosecond in time when this contract was alive for your purposes, correct?

A. That is correct.

Q. And this contract that you ripped up that day is the only contract he ever presented to you?

A. That is correct.

Q. Now, if we may, let's turn to the second page, second page of consulting agreement between JGR Associates and Empower Software Solutions. Do you see that?

A. Yes, I do.

Q. Now, you are not Empower Software, are you?

A. No, I'm not.

Q. And you concluded, did you not, that this was simply a model he had pulled off the shelf that he had used with other clients?

A. I concluded it was a cut and paste job.

Q. Okay. And if you had accepted this contract, Mr. Greenberg, and paid him this amount of money, or a lesser amount, and used him for consultancy purposes and reported his work and the money you paid him to the FEC, that certainly would have been an option for you, wouldn't it?

MR. MATTEI: Your Honor, I don't know if—that was a lengthy question. Perhaps we can break it down for the witness.

THE COURT: Do you understand the question, Mr. Greenberg?

THE WITNESS: Yeah. I mean, I do.

THE COURT: So go ahead and answer.

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APPENDIX K

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA,	*	Case No 14cr79 (JBA)
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Government,	*	
	*	
vs.	*	
	*	
JOHN G. ROWLAND,	*	September 4, 2014
	*	
Defendant.	*	
	*	
* * * * * * * * * * * * * * *	*	

TRIAL TRANSCRIPT
VOLUME II

BEFORE: THE HONORABLE JANET BOND ARTERTON, U.S.D.J.

And jury

APPEARANCES:

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	CHRISTOPHER M. MATTEI, ESQ. U.S. Attorney's Office 450 Main Street Hartford, Ct 06103
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Court Reporter:	Sharon Montini, RMR, FCRR 141 Church Street New Haven, CT 06510

Proceedings recorded by mechanical stenography, transcript produced by computer.

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CROSS-EXAMINATION OF MARK GREENBERG

BY MR. WEINGARTEN:

[Page 278]

Q. So you wanted to meet with Mr. Rowland at this time, correct?

A. That's correct.

Q. And this followed the Bush dinner, fair?

A. Yeah.

Q. And this followed the convention you talked to us about, correct?

A. Yes.

Q. And isn't it true that the reason you wanted to meet with him is because you were considering hiring him?

A. No. The reason was that I was considering to tell him that we could not and would not hire him. Exactly the opposite.

Q. All right. Did you not say—were you not asked this by the government in the course of your interviews with them? Were you not asked this question?

A. I had interviews with the government, that's true.

Q. And did you not say in advance of this meeting, at the time you were toying with the idea of having Mr. Rowland's help, but Mr. Katz had had enough?

A. No, that's not true at all. This May and

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[Page 284]

A. 790,000 is pretty delusional.

Q. That's what you think, right?

A. Yes.

Q. I see. But you were considering hiring him until you saw that number. You were perfectly comfortable hiring him for his political consultancy.

A. No.

Q. Didn't you just say that?

A. Yeah, I did say that, but—

Q. Are you taking that back?

A. No, I said that the discussion was mild, it did not go that far. When you are a candidate the first

time, you have never done this thing, and you have a person that's as powerful as Governor Rowland start giving you e-mails and political advice, you think about it. I thought about it; not long, though. And that—thinking about it, and pretty abruptly on October 25th, when I got the contract, I looked at it later and I ripped it up and put it in the garbage. So from that point of view it wasn't that long of any consideration.

Q. All right. So, again, just so we have this cleared. You thought seriously about hiring him, correct?

* * *

REDIRECT EXAMINATION OF MARK GREENBERG

BY MR. MATTEI:

[Page 315]

A. Yeah, we had telephone conversations, or there may have been some e-mails between.

Q. And so you show up at the Simon Foundation in October. That's the second time you ever met him, right?

A. Correct.

Q. And you said that there were some communications between you and Mr. Rowland. Before you get to the Simon Foundation on October 21st, had Mr. Rowland ever suggested to you that he could provide business consulting to any of your companies?

A. No.

Q. Had he ever suggested to you that he could provide sales and services for your companies?

A. No.

Q. Had he ever suggested to you that he could provide strategic advice to any of your companies?

A. No.

Q. Had he ever suggested to you before October 21st that he could fund-raise for the Simon Foundation?

A. He may have suggested that before that date.

Q. Do you have a recollection of that, sir?

A. I don't have a firm recollection, but there was discussion about fund-raising for the Simon Foundation. I don't know if it was at that meeting on the 21st or slightly before, I just don't know.

Q. You don't know. So you don't have a recollection of that?

A. No.

Q. And then Mr. Weingarten showed you an e-mail, I believe. And let me just see if I can pull it up just on your screen. Is your screen up, sir?

A. It doesn't show anything. Oh.

Q. Are you with me now?

A. Yeah.

Q. This is Defense Exhibit 2. Do you remember Mr. Weingarten asked you about a plane?

A. Yes.

Q. Your plane. Did you offer your plane to Mr. Rowland or did he ask for it?

A. Do you know, it could have gone either way. We could have had conversations with him, I may have, where I mentioned that I had a plane and I wanted to get some hours in.

Q. Did Mr. Rowland say to you, I need your plane?

* * *

[Page 319]

A. Well, the purpose of the contacts with Mr. Rowland were twofold. My belief is that he wanted to continue to engage me regarding the consultancy, that—where the first meeting didn't go well, on October 21st, and part of my engagement on the very spotty basis was to hear his political understanding of the race, you might say.

Q. So it was all politics, right?

A. Political chitchat, yeah.

Q. Now, sir, let's just go back to—let's go to Government Exhibit No. 2. All right. Now, Mr. Greenberg, let's look at this contract again. This is what Mr. Rowland handed you that day, right?

A. Yes, in the Waterbury portfolio.

Q. And just remind the jury what he said to you as he handed this to you?

A. Well, he said something like, here's a contract, take a look at it, we'll speak later.

Q. And what did he tell you was the purpose of the contract?

A. Well, the purpose of the contract was for political consultancy regarding my campaign.

Q. Okay. And what did he tell you about the way he wanted to be paid?

A. Well, do you know, again, I don't know

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[Page 321]

A. Yes.

Q. What's your company?

A. What's my company?

Q. Yeah, what company do you own?

A. I own many companies. And if you are asking me to interpret this contract, I can't because it's poorly written and it's obviously a cut and paste at the bottom of the second page. All I can tell you is that he wanted to be paid by—other than the campaign. He wanted to be paid by the Simon Foundation or the other entities, of which I have many.

Q. Understood. What's your principal business?

A. Real estate.

Q. All right. And the companies that you operate and own, do they all relate to real estate, sir?

A. No. No. I still own a plane; that's a company that relates to aviation. I had at the time—I have a kennel; that's not real estate. So I do have some businesses that are—they're not related to real estate. So I would say 95 percent are.

Q. Great. For your real estate business, what kind of sales and service does your real estate

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[Page 324]

* * *

THE COURT: Let's do this.

Q. Does that refresh your recollection, Mr. Greenberg, about whether when you were standing with Mr. Rowland, he provided you with that contract, he indicated to you what his purpose was?

A. Yes, it does.

Q. Okay. And while you were standing with Mr. Rowland when he offered you that contract, what did he say to you?

A. Well, he said that—without reading it, he said he didn't want to be paid by the campaign, he wanted to be paid by other entities.

Q. Thank you. And during that same conversation, did Mr. Rowland make mention of potential fund-raising for the Simon Foundation?

A. Yes, I believe he did.

Q. What was the context in which he mentioned that?

A. Well, something like, I could also do fund-raising for the Simon Foundation, I have a pretty large Rolodex and maybe I can help, help the foundation that way.

Q. Did you understand that to be the purpose of what he was offering?

A. No, it was ancillary.

Q. Did you understand that that's what he was proposing to be paid for?

A. No. Again, it was ancillary. It was essentially a throw-in.

Q. Thank you. Now, Mr. Greenberg, you mentioned that there were times when you were willing to hear Mr. Rowland's political advice, correct?

A. Sure. Always.

Q. Is there a difference in your mind between getting political advice occasionally from Mr. Rowland and tying yourself to him by hiring him on your campaign?

A. Well, it was a big difference in my opinion. I mean, I hear political advice, and have over the last four years, from a number of people, by telephone calls or e-mails. Everybody likes to give an opinion, and, you know, I listen to most of it and I digest it and I act appropriately.

Q. And with respect to hiring him on your campaign, what was the word that you and your staff used when describing the effect that hiring him would have on the campaign?

A. The word was toxic.

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APPENDIX L

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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	*	
UNITED STATES OF AMERICA,	*	Case No 14cr79 (JBA)
	*	
	*	
Government,	*	
	*	
vs.	*	
	*	
JOHN G. ROWLAND,	*	September 5, 2014
	*	
Defendant.	*	
	*	
* * * * * * * * * * * * * * *	*	

TRIAL TRANSCRIPT
VOLUME III

BEFORE: THE HONORABLE JANET BOND ARTERTON, U.S.D.J.

And jury

APPEARANCES:

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Court Reporter:	Sharon Montini, RMR, FCRR 141 Church Street New Haven, CT 06510

Proceedings recorded by mechanical stenography, transcript produced by computer.

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CROSS-EXAMINATION OF MARC KATZ

BY MR. WEINGARTEN

[Page 549]

THE COURT: You may if he does not have a recollection.

Q. I would respectfully—

MR. WEINGARTEN: And this is, for the record, the May 14, 2013, MOI.

Q. I respectfully request that you look at the paragraph I'm pointing to.

THE COURT: And the question is: Do you remember being asked the first time you met with Mr. Rowland.

That's the question?

MR. WEINGARTEN: Yes.

A. I was aware of this meeting. I was not at this meeting.

Q. All right. Let me sort of go through the rigamarole.

A. Got it.

Q. Does this refresh your recollection, what you just read, that the first time you met with Mr. Rowland was at the Maples Restaurant?

A. No.

Q. Do you remember whether or not you were asked that by the agents?

A. I don't recall.

Q. Is it true that you told the agents that you said the first time, your first meeting with Mr. Rowland, was a meeting at the Maples Restaurant, Mr. Greenberg and Vin DeRosa and Mr. Rowland explained to Mr. Greenberg running for U.S. Senate?

MR. MATTEI: Objection, your Honor. First of all, Mr. Weingarten is reading from a document not in evidence.

THE COURT: You can't read from that. If it doesn't refresh his recollection you need to just leave it there.

MR. WEINGARTEN: May I seek to impeach?

THE COURT: With that?

MR. WEINGARTEN: With this MOI.

THE COURT: No. You can use that otherwise through another witness.

MR. WEINGARTEN: Okay.

Q. You didn't say this—you didn't tell—did you or did you not tell the agents that the first time you met Mr. Rowland was at that Maples meeting?

A. Did not.

Q. Now, there was a lot of questioning of you about the contract that Mr. Rowland presented to Mr. Greenberg. Do you recall those questions?

A. Yes.

Q. And obviously you were not at that meeting, correct?

A. Correct.

Q. And obviously you've testify you've never seen the contract. Correct?

A. I had not seen the contract before.

Q. And all your understanding about the contract was what you'd heard from Mr. Greenberg. Correct?

A. Correct.

Q. And you assumed from what Mr. Greenberg said that the contract was between Mr. Rowland and the Simon Foundation. Fair?

A. Fair.

Q. Now, is it true that following the meeting at the foundation, at the Simon Foundation, Mr. Greenberg would boast to you about his relationship with Mr. Rowland?

A. I wouldn't call it boasting.

Q. Well, would he tell you that he would call—

MR. MATTEI: Objection, your Honor.

THE COURT: Basis?

MR. MATTEI: I believe he's about to elicit hearsay.

THE COURT: It's not for the truth, it's for what—what is the purpose?

MR. WEINGARTEN: Mr. Greenberg's state of mind right following the meeting at the dog foundation.

THE COURT: Let's focus it on that time period.

MR. WEINGARTEN: Yes.

Q. Is it true that following the meeting at the foundation, Mr. Greenberg would say to you—that he would refer to Mr. Rowland as John, as JR, as the Gov.

A. He would.

Q. And he would tell you that he had this familiar relationship with Mr. Rowland. Fair?

A. He didn't discuss it that way.

Q. But he would tell you he would refer to him as John, JR and the Gov?

A. He did.

Q. Okay. I'd like to ask you one or two questions about the December meeting that you testified about, and that was the meeting you had at campaign headquarters with Mr. Fischer.

A. Yes.

Q. And Mr. Rowland came right to the headquarters, correct?

A. Yes.

Q. And he was proposing to be part of Mark Greenberg's campaign, correct?

A. He was proposing strategy for Mark Greenberg's campaign.

Q. Including a role for him?

A. Yes.

Q. And what kind of activities was he proposing that he could do for Mark that would be valuable?

A. Well, he was just discussing—I was so new to the process that I didn't—I wasn't all that familiar even with the terminology. The whole process, the whole procedure, it was new to me. So most of that conversation was more I was referring to it as political niceties and pleasantries.

Q. Did he ever offer some idea what he could do for the campaign?

A. Yes.

Q. What were those things?

A. Well, he offered the idea that—he was well liked or loved throughout the—in the district, and he could be helpful.

Q. And how could he be helpful? How could he

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DIRECT EXAMINATION OF MARC KATZ

BY MR. MATTEI

[Page 638]

and her friendship with Mr. Rowland, but I told her that that would cause big problems for her in her campaign because as soon as she hired him it would be on the FEC reports, it would be public, you would give one of other opponents in the race who had not yet gained any traction to speak of, you would give him traction, and you would be giving fodder to the opponents, the other opponents in the primary race, and was most definitely in the general election, and that would be very detrimental to her campaign.

Q. And did you tell her what it was about Mr. Rowland that would cause her those problems if she hired him?

A. That people would—yes.

Q. What did you tell her?

A. I told her that people would be trying to label her as corrupt and they would try to equate her with Mr. Rowland's offenses in the past.

Q. And when you told her that she would give traction to one of her opponents who didn't have any traction, which opponent were you referring to?

A. Mike Clark.

Q. And why would hiring Mr. Clark—Mr. Rowland give Mr. Clark traction?

A. Well, Mr. Clark, as I understood it, had been the lead FBI agent—I don't know what his title was at the time—investigating Mr. Rowland, which ultimately led to Mr. Rowland's departure from office. So Mike had been running on a platform of anticorruption and being kind of the good guy, which is wonderful, but not an issue of the day. So he

wasn't really getting anywhere on that particular platform and he didn't have a big organization. He just didn't have the kind of operation that Lisa or Mark Greenberg had in place. So he was probably going to fade off. We figured he would not last very long in that race. But if Lisa had hired Mr. Rowland, all of a sudden Mike Clark becomes very relevant and has a lot to say, and the press would probably be very interested in talking about Mike again, where he had been, I would say, largely ignored until that point.

Q. And you also mentioned to Ms. Wilson-Foley that it would cause her, in addition to the public filing in the FEC reports and Mike Clark, cause her problems in the general election. Why did you express that to her?

A. Well, the television ad writes itself. I mean, the last thing I wanted Lisa to see was—you know, winning the primary election somehow, given

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DIRECT EXAMINATION OF BRIAN FOLEY

BY MR. BRENNAN:

[Page 700]

Q. And was your family involved in a business?

A. It was. My mother owned a small boarding home in Glastonbury, Connecticut, in the early '60s.

Q. And, Mr. Foley, when you graduated from college, what did you start doing?

A. When I graduated from college, I went right into a job as a nursing home administrator.

Q. And then after that, can you kind of walk us through your employment history.

A. Okay. So in 1974 I graduated from UConn and went to work for a nursing home company for one year, and when I was 23 or 24 years old, I bought my first nursing home in Sandisfield, S-a-n-i-s-f-i-e-l-d, Massachusetts.

Q. And today, Mr. Foley, what do you do?

A. Today I'm still in the same business. I have 26 nursing homes, the company is called Apple Rehab, 24 in Connecticut and two in Rhode Island.

Q. And, Mr. Foley, is Apple Rehab your only business that you own?

A. No, I have some other small businesses. I have a small mall in Avon, Connecticut. I have a nightclub, Newport Blues Cafe, in Newport, Rhode Island, and some other real estate investments.

Q. Can you tell us a little bit—do you know how many different companies you own?

A. I think there is—actually with the nursing homes, there is 26 nursing homes, and there is 26 operating companies and there is 26 realties. So there is actually 50—54 different companies with that entity, and I probably have another 10 or 15 other entities. So there's probably about 70 different businesses that I have.

Q. Mr. Foley, let's kind of go through the structure. When you say there's 26 nursing homes and there's 26 operating companies and realty companies. Can you explain to us the difference between these operating companies and realty companies?

A. I can. So let's just take one nursing home. So with one nursing home, the land and the building is

one entity, typically an LLC, and that is leased to an operating company, which typically would only own the equipment and actually operate the business. And all of those businesses I'm 100 percent owner with the exception of two or three of the realty companies that my children are also owners.

Q. So each one of these 26 nursing homes, each one is an independent company?

A. Yes.

Q. And Apple Rehab, when you say you own a company named Apple Rehab, is that like a management company?

A. It is. So Apple Rehab is a separate entity, and it's actually a management company that provides management services just to my 26 facilities.

Q. And then the 26 facilities, all managed by Apple Rehab, independent nursing homes, the realty companies, what do they do in relation to those nursing homes?

A. The realty companies don't do anything. They own the land and the buildings, and there is a lease between the realty company and the operating company. So the realty companies don't do anything, they just collect rents.

Q. And, Mr. Foley, you work at that sort of management company level?

A. I do.

Q. And where is the management company located?

A. It's located in Avon, Connecticut.

Q. Mr. Foley, at the Avon, Connecticut, location, are there other businesses there?

A. There are. My wife, Lisa, has some businesses there. She has an institutional pharmacy that's—the management company is based there. And she has a therapy company, physical therapy company that also operates out of there.

Q. And your position in Apple Rehab, what is it?

A. President.

Q. And, Mr. Foley, do you have like an executive vice president?

A. I do.

Q. Who would that be?

A. Brian Bedard.

Q. And do you have a CFO?

A. I do.

Q. Who is that?

A. Mark Hambley, H-a-m-b-l-e-y?

Q. Is Mark Hambley currently your CFO?

A. No, he is not.

Q. Who is your CFO now?

A. My CFO now is Ryan Vess, who is my son-in-law.

Q. And Mr. Hambley, how long was he your CFO?

A. Mr. Hambley was there for 26 years.

Q. And Mr. Bedard, how long has he worked for you?

A. It's over 20 years.

Q. And how about legal services for your company, do you have general counsel?

A. I do, and his name is Christopher Shelton.

Q. What?

A. I was going to spell it, but that's okay. Christopher Shelton.

Q. Is it Christopher?

A. It's Christian. I call him Chris. So Chris Shelton is the legal counsel. And he's been with me for probably seven or eight years.

Q. And what about, let's say, human resources. Does somebody do human resources?

A. Yes, that would be Jack Boynton. Jack has been there for probably 20 years as well.

Q. How about business development?

A. Business development would be Ann Collette, C-o-l-e-t-t-e , and she's been with me seven or eight years.

Q. Okay. Mr. Foley, what about like a board of directors? Is there a board of directors at your company?

A. Do you know, technically with all of the operating companies, they're all LLCs or

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[Page 709]

A. Yes.

Q. Can you tell us a little bit about that?

A. The first time was in 2010 when she ran for lieutenant governor.

Q. How did that come about?

A. It actually came from—the lieutenant governor at that time under Judy Rell was Mike Fedele. And so Mike Fedele was running for governor, he was from Fairfield County, and he was looking for a candidate, a female candidate, from the Hartford area with a business background, because at that point, at that time, the buzz was we want business people and not career politicians. So he called her and met with her.

Q. Was this kind of a vetting to get her involved in it?

A. Yes, it was.

Q. Did she run for lieutenant governor?

A. Yes.

Q. Did she run with Mr. Fedele.

A. No, she ran independently.

Q. Did she run in a specific political party?

A. Yes, she ran as a Republican.

Q. What year was that?

A. That was the 2010 election.

Q. Okay. And after that, did she run for another office?

A. Yes, after that she ran for the Congress seat in the 5th District, which is western Connecticut, and includes Avon, Simsbury and Farmington. And that was for the 2012 election.

Q. And, Mr. Foley, can you tell us a little bit about when she decided to run for Congress in 2012?

A. Well, she lost the lieutenant governor race and the primary to Mark Boynton, who is the mayor of Danbury. So that was 2010. So it was right around

the end of 2010 that I think she had a conversation with Chris Healy, who was the former chairman of the Republican party, and said, you know, you got recognition, the seat is coming up, Chris Murphy is moving on, and it may be a good opportunity for you to actually win that seat in Congress.

Q. Do you remember then when she actually decided to get in?

A. I think it was right after the first of the year. So that would be actually 2011. So right after the first of the year I think is when she actively got involved in running for the congressional seat.

Q. Mr. Foley, do you know a man named John Rowland?

A. I do.

Q. How do you know John Rowland?

A. I first met Mr. Rowland probably almost 20 years ago, and it was when John Larson was running for the democratic nomination, the Democrat party, and he was running against Bill Curry, actually, and he was beat by Bill Curry, and Mr. Rowland was on the Republican side, and I think within two or three weeks after Mr. Larson lost, I got a call from Mr. Rowland.

Q. Okay. So you were talking there was a governor race at that time?

A. Yes.

Q. And Mr. Larson and Mr. Curry are running as Democrats?

A. That's correct.

Q. And you are supporting one of them?

A. I was supporting Mr. Larson, yes.

Q. So Mr. Larson loses and Mr. Rowland gives you a call?

A. Yes.

Q. What happens after that?

A. So we met—this goes back at least ten years or so. So we met, and I don't recall where we met.

Q. Mr. Foley, ten years ago would be 2004.

Was it 2004 or—

A. No, I don't know. Maybe it was 20 years ago. I don't know when the election was.

Q. Okay, go on, Mr. Foley.

A. So it may have been 20 years ago. So we met and had, I think, a short meeting, I forget where it was, and I liked him, I thought he was a good candidate, and after that I decided to support him.

Q. And support him, what did you do?

A. After that—I also belong to the Nursing Home Association, and I went to fund-raisers that he was at, and then later, over the next—while he was governor for the—I think it was eight years, held a couple of fund-raisers at our house for that. And also there was a couple of fund-raisers at my wife's golf course, but I think those were for the entire Republican party.

Q. And when you say you held a couple fund-raisers at your house, did Mr. Rowland go to your house for those fund-raisers?

A. Yes.

Q. Talk about how many of those do you think there were?

A. I think there were two.

Q. At the golf course?

A. I think there were two as well.

Q. And was Mr. Rowland at those as well?

A. Yes.

Q. Even though—did you say they were party fund-raisers?

A. The money was going to the Republican party.

Q. And during that time period, was your—did you have regular contact with Mr. Rowland?

A. No, you know, we never—not on a personal level. We never went out personally. It was always a business relationship. There was also a time, 10 or 12 years ago, when I bought a basketball team in Hartford. That was the former Hell Cats minor league team, and I bought the team and called it the Connecticut Pride, and Mr. Rowland was helpful in calling some owners, and he attended a couple press conferences. We eventually were able to bring the team back.

Q. And when you say you bought the Connecticut Pride and Mr. Rowland was helpful, what position did he have at that time?

A. He was governor then.

Q. And so he was useful in bringing Connecticut Pride to Hartford with you?

A. No. It was already—there was a team that folded. He was helpful with helping me get the team transferred. You know, you had to go through a process because it defaulted and we actually had to wait for a year. So he was helpful. I mean, he made

some calls to owners, as I recall, and was supportive of it.

Q. And during this time you said you never met socially together. Did you talk on the phone?

A. I don't think we ever did. I don't believe we ever talked on the phone.

Q. What about, like, letters or notes?

A. Yeah, during that time with the fund-raisers Mr. Rowland would write thank you notes. And with the basketball team when we were successful and brought it back, he attended a press conference and he also did a handwritten note.

Q. Did you keep any of those notes?

A. I did.

Q. Any specific one?

A. Well, I have the basketball ones, but not

the political ones.

Q. Mr. Foley, was Mr. Rowland ever involved in your wife's political runs?

A. Yes.

Q. Let's start with the lieutenant governor one. Did you ever meet with Mr. Rowland during the lieutenant governor run?

A. Yes, I did.

Q. Okay. About how many times?

A. I think on the lieutenant governor race there was three or four times I met with Mr. Rowland with Lisa.

Q. And do you think those were the only times Mr. Rowland met with Lisa?

A. No, I know that she met other times with him during the lieutenant governor race.

Q. How many times?

A. I wasn't at all of the meeting. I think there was probably another three or four meetings where she met separately with Mr. Rowland.

Q. Okay. So going to the top, you are talking about seven total meetings?

A. Seven or eight.

Q. At the maximum seven or right?

A. Seven or eight. But, again, I wasn't at all of the meetings, so those are just the one I would have been aware of.

Q. But are you aware that there were any more?

A. I'm not.

Q. During those meetings, what sort of stuff, the ones you attended, would you talk about with Mr. Rowland?

A. Well, I think at the first meeting it was Lisa's first, you know, trial, trial in terms of running for office, and I recall the first couple of meetings that he encouraged her to run, and basically he laid out a strategy and, you know, he was helpful. He was helpful in the lieutenant governor race with advice.

Q. And during that time period what—can you kind of give us the months?

A. Sure.

Q. You say she gets in the race in January, or right after the first of the year?

A. Yeah, so the election was in November 2010. So she got in late and she didn't announce that she

was going to run for lieutenant governor until right before the convention. It may have been like February of 2010 that she made an announcement she was running for lieutenant governor.

Q. Did she go all the way through the Republican primary?

A. She went to the Republican primary. That was in August, and she ran against Mark Boynton.

Q. Mark Boynton, who is he?

A. He was, and he still is, the mayor of Danbury.

Q. So during this time you have three, maybe four meetings with Mr. Rowland?

A. Yes.

Q. And were your contacts with him during this time only political?

A. They were primarily political, and I think there was a couple of times when Mr. Rowland recommended some companies, I think it was during the lieutenant governor race, to work for Apple.

Q. What do you recall about that?

A. I think the first company was a company that if there's a disaster in one of the facilities, that they would come in and they would clean up, if there was, you know, a water leak or whatever it might be. And so what I did is I passed that information of that company on to my purchasing guy who manages that, a guy named Stu Fisher.

Q. Okay. And so you got—he kind of comes to you with a couple companies, you think?

A. Yes.

Q. For your—for Apple Rehab to contract with?

A. Yes.

Q. And he's given you—met with you to give some political advice on a few occasions?

A. That's correct.

Q. And, Mr. Foley, after the lieutenant governor race, were you involved in your wife's congressional race?

A. I was.

Q. How involved were you?

A. I was very involved. I was very supportive and spent a lot of time in the initial stages, you know, trying to give advice and so forth.

Q. And when—do you know who Tiffany Romero Grossman is?

A. I do.

Q. Who is she?

A. Tiffany was Lisa's first campaign manager for the congressional race.

Q. And, Mr. Foley, when Ms. Wilson-Foley gets into the race, who is the first person she brings on board?

A. I think it was Tiffany, I believe.

Q. Okay. And let's talk about the time period in the congressional race. So you think it's beginning of 2011 she gets in?

A. Yeah. So the congressional race, it was—the election was in 2012. So, yes, it was probably in the spring of 2011 when she started to actively get involved in the congressional race.

Q. I want to talk to you about the spring of 2011 to the time period of about September 2011. Okay? All right, during that time period, Mr. Rowland—Mr. Foley, did you have any involvement with Mr. Rowland?

A. Yes.

Q. What was that?

A. It was similar to the lieutenant governor race. Lisa reached out to him again and was looking for advice, you know, on running for Congress.

Q. And did you meet with Mr. Rowland during that time?

A. I did.

Q. About how many times?

A. I think there were probably another three or four meetings prior to September that I met with Lisa and Mr. Rowland.

Q. And during those meetings—where were those meetings?

A. All the meetings were over at the Farmington Marriott.

Q. And during those meetings, what type of stuff did you discuss?

A. Well, I think the first couple, you know, Mr. Rowland who had that seat in the 5th District, and had done very well with it, I think it was the same kind of advice. He was encouraging Lisa to run and giving her strategy, often would come with handwritten notes about what to do and how to do it. He was like the main advisor, because she didn't have an advisor before that, at that point in time.

Q. She had folks on her campaign, didn't she, Mr. Foley?

A. I think—let's see, in September? September was when Tiffany came on, and also—

Q. No. Did Tiffany come on in September, Mr. Foley?

A. Let's see, I'm trying to think when she came on. So Tiffany—

Q. Mr. Foley, do you remember Tiffany leaving the campaign?

A. I do.

* * *

[Page 728]

Q. And do you recognize this e-mail address up here?

A. I do.

Q. Who is this?

A. That's my wife, Lisa.

Q. All right. And this right here, do you know who this is?

A. Mr. Rowland.

Q. All right. And this was sent on Sunday the 11th of September 2011?

A. Correct.

Q. And, Mr. Foley, so did you meet with Mr. Rowland on September 12th?

A. Yes.

Q. And where did you guys meet?

A. The same place, at the Farmington Marriott.

Q. Mr. Foley, I'm going to show you Exhibit 726.

MR. BRENNAN: I don't think there is an objection. Okay. No objection, your Honor to 726.

THE COURT: Full exhibit.

Q. Mr. Foley, do you recognize this?

A. I do.

Q. What is this?

A. This is the Farmington Marriott, but it looks like it's been renovated since we met there years ago.

Q. Can you see—you can't really see it up on the screen up here, but can you tell whereabouts you and Mr. Rowland were—where you and Lisa were when you met Mr. Rowland?

A. If you look at the partition in the middle, I believe it was to the right of the partition. There are some tables behind there.

Q. So the partition in the middle? This thing?

A. Yes.

Q. Behind the partition over here or back here?

A. To the right.

Q. Here?

A. Yes.

Q. And, Mr. Foley, can you tell us what happened at that meeting.

A. This is the meeting where—you know, it's just following up on the e-mail where Mr. Rowland had an idea. So Lisa and I met with him, and I think the meeting took about an hour, and it was basically a proposal to work for the campaign. And Mr. Rowland was reading from some—I was actually across from

him—reading from some handwritten notes, and he went into great detail about how Mr. Rowland would be helpful to the campaign.

Q. All right, let's break this down. When you go to the Marriott, who gets there first?

A. Lisa and I got there first.

Q. And Mr. Rowland arrives. You say he came with notes?

A. Yes.

Q. And what did he tell you about how he could be useful to the campaign?

A. He went through—I think there was probably three or four pages of notes, but he went through several areas where he could be helpful. First was, obviously, as a consultant and felt that the consultant that Lisa was using then from Washington, a gentleman named Evan Koslow, that she wouldn't need the Washington consultant if Mr. Rowland came to work.

Q. Okay. Did he say—he told you she wouldn't need the Washington consultant?

A. That's correct.

Q. And did he tell you why?

A. Because he could give her advice, which I think was true, that he could give her advice on the

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APPENDIX M

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA,	*	Case No 14cr79 (JBA)
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	*	
Government,	*	
	*	
vs.	*	
	*	
JOHN G. ROWLAND,	*	September 8, 2014
	*	
Defendant.	*	
	*	
* * * * * * * * * * * * * * *	*	

TRIAL TRANSCRIPT
VOLUME IV

BEFORE: THE HONORABLE JANET BOND ARTERTON, U.S.D.J.

And jury

APPEARANCES:

FOR THE GOVERNMENT: LIAM BRENNAN, ESQ.
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New Haven, CT 06510

	CHRISTOPHER M. MATTEI, ESQ. U.S. Attorney's Office 450 Main Street Hartford, Ct 06103
FOR THE DEFENDANT:	REID WEINGARTEN, ESQ WILLIAM DRAKE, ESQ. MICHELLE LEVIN, ESQ. Steptoe & Johnson 1330 Connecticut Avenue NW Washington, DC 20036
Court Reporter:	Sharon Montini, RMR, FCRR 141 Church Street New Haven, CT 06510

Proceedings recorded by mechanical stenography, transcript produced by computer.

* * *

CONTINUED DIRECT EXAMINATION OF BRIAN FOLEY

BY MR. BRENNAN:

[Page 796]

A. Right, those are towns in the 5th District.

Q. Okay. So, Mr. Foley, you go over all of this with Mr. Rowland, you guys talk. What happens next?

A. So the meeting was about an hour, and after the meeting, Lisa and I had separate cars, then we walked out and we talked about it.

Q. Okay. And what do you recall? What did you guys talk about?

A. I recall coming to the calculation that he could be very helpful, you know, with the campaign, but we were concerned about the negatives.

Q. And at that point, your thoughts? What were the negatives you were concerned about?

A. Well, having him directly connected to the campaign, and the negatives that would come from, you know, just having a former governor who was a convicted felon connected to the campaign as an advisor was the concern.

Q. Okay. So what did you guys decide to do?

A. As we're walking out, I think that day and the next day, Lisa said she would reach out to some people and get some feedback about the prospect of hiring Mr. Rowland as a consultant.

Q. Okay. All right, Mr. Foley. I would like

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[Page 802]

A. The issue, my best recollection would be we discussed it that evening.

Q. What kind of stuff do you recall discussing?

A. I think the same thing. I don't recall if Lisa got some feedback and she told me the next day, but I think that first night I think we talked about it in general. But she got some feedback and relayed it to me that night or the next day.

Q. Let's focus on what you recall. Let's go to the next day, Mr. Foley.

A. Yes.

Q. So she gets that phone call the next meeting, you discuss it with Mr. Greenberg. Do you recall discussing it the next day?

A. I do.

Q. How do you recall the course of your discussions going?

A. The next day I read the Pellegrino e-mail, and the next day sometime during the daytime Lisa went to work, and I think—I often work from home, I got other feedback as Lisa did about it being a negative for the campaign. So we kind of came to the same conclusion the next day that, you know, it would be bad for the campaign to have him connected to it.

Q. Okay. So Ms. Wilson-Foley was telling you she was getting feedback?

A. Yes.

Q. And then so that evening, the next night, you go to bed that evening, what are you thinking? Tell us what you are thinking.

A. So that night it was still unresolved, you know. I guess it was a problem. The problem was he felt he would be very good for the campaign, but it would be a big negative. So I went to bed still with that thought in my mind, and I actually thought about that during—you know, during that night.

Q. Mr. Foley, were you hoping to try to find some way to hire Mr. Rowland?

A. I was. I was trying to find a solution, yes.

Q. So what happens the next morning?

A. So the next morning, so I wake up, and my mind is clear and I came up with the idea that if I

were to hire Mr. Rowland for Apple, he would then be supportive for the campaign and that would solve that problem.

Q. What do you mean if you were to hire him for Apple he would be supportive of the campaign?

* * *

[Page 814]

* * *

Q. And, Mr. Foley, you said—you just told us that you wanted to hire Mr. Rowland through Apple to, again, work on the campaign?

A. Yes.

Q. Did you say that at that meeting?

A. No, I never said that anywhere anyplace in two years.

Q. Why didn't you say that?

A. Because I understood that to have—that would be a smoking gun, and I made sure, really, over the whole two-year period not to write any e-mails or not to say to anybody that, hey, this is really for the campaign, I'm going to hire him for Apple. In fact, in all of the evidence you'll see nothing from me in that regard. So I was very careful never to use those words that would acknowledge that this was really for the campaign.

Q. Okay. Mr. Foley, did you—you said you then went on about Apple and you just talked about Apple in response.

A. I did.

Q. Were there like specific topics at Apple that you told Mr. Rowland about?

A. Yes, I told him four areas where we could

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[Page 873]

protect the money in case there was a problem, and secondly I did say to Mr. Bedard something to the effect that, you know, don't pay him unless you are satisfied that he actually did the work.

Q. And, Mr. Foley, why did you say that?

A. Because—I said that to Mr. Bedard because it—actually in terms of the contract part and the legitimization, it added another level of putting someone in charge that—who would—you know, not to pay him unless he actually did the work. I did it for that reason.

Q. Could you just restate that. I'm not sure—

A. All right. So the purpose of putting—first the escrow thing, we understand, I said I put the first ones in escrow. And then after that they paid him directly. But one of the things I did do in the whole cover, the legitimization, however, you want to characterize it, is I specifically told Mr. Bedard, I thought I told Mr. Shelton as well, not to pay Mr. Rowland unless they were satisfied that he had done the work.

Q. And when you say legitimization, like what does that do for you for legitimization purposes?

A. Well, I think it's legitimization in terms

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[Page 918]

A. Could you scroll down some more?

Q. I think that's the end of that page. The next page.

A. Okay.

Q. Okay?

A. Yeah.

Q. Did there come a time where Mr. Bedard gave information to your attorney for letters to be written to the U.S. Attorney's Office?

A. Yes.

Q. And what were the purpose of those letters, Mr. Foley?

A. The purpose on this one here was to explain Mr. Rowland's help in dealing with—helping dealing with issues about Lisa being in those commercials.

Q. Were you under investigation at the time?

A. Yes.

Q. Why was your attorney sending all of these letters?

A. To paint as good a picture as possible in terms of—I was in the defensive mode then, and it was to paint as good a picture as possible that everything was legitimate.

Q. And Mr. Rowland—Mr. Foley, in your

* * *

CROSS EXAMINATION OF BRIAN FOLEY

BY MR. WEINGARTEN:

[Page 988]

Q. Ridgeview, I'm sorry. So that's a real estate company that doesn't own any of the nursing homes,

it's completely independent, but it's similar to Apple because you own 100 percent?

A. Correct.

Q. So if money was paid to Mr. Rowland from Apple or the real estate company, it would be money from you, correct?

A. Yes.

Q. And this Mr. Shelton, he's your inside counsel; is he not?

A. He is.

Q. So he's the general counsel and chief compliance officer for the Apple empire. Fair?

A. Yes.

Q. I just want to get these points clear. Now, you keep using the word "legitimization." Do you remember?

A. I do.

Q. Okay. Is it fair to say that as a matter of English what legitimization means is to make legitimate?

A. Yes.

Q. Okay. Just a few more points that I want to clarify and then we'll get started. So you went through this matter of your friends and employees and relatives making campaign contributions very, very quickly. I just want to make sure, I have one now, and that would be your sister?

A. Yes.

Q. So would this be in 2012 and 2010?

A. Just 2012.

Q. Did you follow this practice in 2010?

A. I would have to go back and look in 2010. You mean the lieutenant governor race?

Q. Yes.

A. I would have to go back and look at their actual contributions.

Q. The common name for this activity, which is criminal of course, is straw donations?

A. Conduit donors, the same thing.

Q. The same thing?

A. Yes.

Q. So did I understand your testimony correctly that you contacted your sister and said, sis, I want you to contribute to Lisa's campaign in 2012 and I'll make you whole?

A. Actually, she called me.

Q. Okay. And she suggested it and you agreed to it?

A. She said—she suggested it, yes, and I agreed to it. Yes.

Q. And that's, in fact, what happened, correct?

A. That's correct.

Q. And it also happened with her daughter?

A. Yes.

Q. Okay. So did you know that you were engaging in federal criminal wrongdoing when you did this?

A. Yes.

Q. And did you willingly put your sister and her daughter at risk?

A. I guess I did, yes.

Q. So your wife's congressional campaign was so important to you that you put your sister at federal criminal risk? Is that what you are saying to this jury?

A. What I'm saying is that—with my sister and my niece, is that there was an understanding, and I thought it would be clean enough that if we went to trial that there was no quid pro quo.

Q. Did you, in fact, reimburse your sister and her daughter for these contributions?

A. Yes.

Q. So you committed a crime, right?

A. Yes.

Q. You put yourself at risk, correct?

A. Yes.

Q. And you thought helping Lisa's campaign treasure was worth putting yourself as risk?

A. Yes.

Q. And you did the same for your sis, correct?

A. Yes.

Q. And you thought, in truth, you would get away with it, correct?

A. Yes.

Q. Was your sister an unwitting dupe or did she, too, know she was committing federal crimes?

A. No, it was her idea. And, in fact, she wrote me an e-mail and she said in the e-mail "how about you pay these bills," she had some specific bills and then, you know, "and then you reimburse me in some way."

Q. Did you have any reason to believe that either your sister or her daughter knew that they were committing federal crimes while they were helping Lisa?

A. I don't think they believed they were.

Q. So they were dupes?

A. Well, she wrote the e-mail and she said "pay for these specific bills," and I said "no."

Q. Well, she wanted you to reimburse her, correct?

A. Yes.

Q. But she didn't know she was committing a federal crime?

A. Yes.

Q. What about your guardian or your—

A. My nephew.

Q. Same with him?

A. Do you know, it is the same, but there's a history of them having contributed, and, I mean, my nephew, I paid two- or three-hundred thousand dollars a year to, many millions over the years. So there was also an understanding now if they contribute to the campaign that I would continue to be generous without going into specifics.

Q. They would generally be reimbursed, correct?

A. Yes, they would be generally reimbursed but without the specifics of—

Q. So you were willing to put your nephew at risk, too, for Lisa's campaign?

A. Yes, I didn't think the risk was great, but yes, to answer your question.

Q. And you thought you would get away with it.

A. Yes.

Q. How about your buddy, the guy you went to school with? I forget his name.

A. Ken Lewis.

Q. Ken Lewis. The same thing with him?

A. The same thing.

Q. So you were prepared to commit a federal crime for Ken Lewis, correct, for Lisa's campaign?

A. Yes.

Q. Put yourself at risk, correct?

A. Yes.

Q. And put your buddy at risk, too?

A. At risk—I didn't see the risk as being great. So, yes. The answer to your question, yes.

Q. So if there is a conduit campaign contribution, the person making the contributions is culpable, correct?

A. Yes.

Q. And the person who is reimbursing the maker is culpable, too, correct?

A. It has to be proved.

Q. So you were confident that through your means that none of this conduit campaign contribution stuff would get out, right?

A. Yes, because there was just an understanding and there wasn't the confirmation I'll pay for this and so forth, so yes.

Q. So did you involve your children as well?

A. I did.

Q. How many kids did you get involved in this conduit scheme?

A. With the children—there's three of my children whose records were subpoenaed for the contributions that they—three of the children made to my wife's campaign.

Q. So three of your children are put at risk because of your desire to make Lisa's campaign war chest look good, right?

A. Well, with my children, the three children, I—the three older children, I've controlled—I have accounts for them where there is many, many millions of dollars I've put away for them, and I have their approval to buy—they don't know what's in the accounts. I've always had their approval to do whatever I wanted to do with the account. But I did not call them and say to them, hey, look, I'm going to take 7,500 from your account that has millions in it to give to Lisa. I did not call them. However, they will tell you that I've always had their approval to do whatever I wanted to do.

Q. So their risk was a little bit less than your sister's, correct?

A. I don't think there was any risk on that one because I had their—but my concern—I don't think the risk was greater, but my concern was mostly about them. I did not want them to be subpoenaed in then front of a grand jury.

Q. The whole point here is that you were willing to engage in this kind of criminal activity.

A. Yes.

Q. Because you didn't think you were going to get caught.

A. Yes.

Q. And is that how you engage in the world generally?

A. No.

Q. So just in terms of Lisa Foley's congressional campaign, you were willing to commit crimes, and nowhere else do you calculate the risk and commit crimes when you are able to get away with them?

A. No. In the campaign, in particular, I thought the risk was very little because there was never quid pro quo. There was an understanding. There was a history with my sister. In the two years before that I gave her $300,000 to help out with her. So I didn't think the risk was great, no.

Q. So the reason you didn't think the risk was great, let's take your sister, for example—

A. Okay.

Q. —there was no explicit quid pro quo?

A. There was not.

Q. And there was just some general understanding that if she contributed to Lisa's campaign—

A. Yes.

Q. —you'd make her whole?

A. Yes, there was.

Q. And nothing explicit?

A. Correct.

Q. And as a result of that, you didn't think she was exposed, correct?

A. I thought the risk was very low that she would be exposed, that's correct.

Q. Just a couple more points before we dig in. I want to ask about your preparation for trial. About how many times did you meet with the prosecutors?

* * *

[Page 1013]

alter ego, but—

Q. Or following in his footsteps?

A. He used to call her grasshopper.

Q. So the governor, former governor, called your wife grasshopper?

A. Yes.

Q. I take it that was a term of endearment.

A. Yes, I hope so.

Q. I hope so, too. And he referred to her as the perfect candidate, correct?

A. In this one, yes.

Q. And did you have a sense that he was mentoring her?

A. Yes.

Q. And did you have a sense that he wanted her to follow in his footsteps?

A. Not—he wanted her to win. He didn't want her to follow in his footsteps, but he was excited about her, yes.

Q. Fair enough. Let's turn to the one, two, three—fourth page and talk about this press piece. I

think it says on the top "the *Hartford Courant* will go crazy, who cares," and then "a couple of cheap shots, article."

Generally speaking, and I think this was your testimony on direct, there was a concern about what would happen in the press if Lisa was associated with John. Fair?

A. Correct.

Q. And there was a specific emphasis at the *Hartford Courant*, correct?

A. Yes.

Q. And there was a view, at least on John's part that he articulated to you, that he was not well liked there, correct?

A. Yes.

Q. And you shared that concern?

A. Yes, we did.

Q. And the bottom line is the big negative that you saw from the outset with John Rowland in any capacity was Lisa being associated with him and generating negative press. Fair?

A. Fair. That's true.

Q. All right. And that the *Hartford Courant* problem was magnified by Mike Clark being in the race, correct?

A. That's correct.

Q. And that's because Mike Clark was an ex-FBI agent who was involved in John's investigation, correct?

A. Correct.

Q. And what you envisioned and what you feared was if there was any association between Lisa and John there would be a headline that Mike Clark locks him up, Lisa Foley gets close to him. Fair?

A. Fair.

Q. And that's why you turn down the proposal, correct?

A. Yes.

Q. Okay.

MR. WEINGARTEN: Your Honor, is this a good time, because I'm about to turn to something else?

THE COURT: All right. We'll be back tomorrow nine o'clock. Have a pleasant evening don't read about the case.

(Jury exited the courtroom.)

THE COURT: All right, Mr. Foley, you are excused until tomorrow at nine. Same rules.

THE WITNESS: Okay, thank you.

THE COURT: Thank you.

All right. Anything before we recess today?

MR. MATTEI: Your Honor, just a couple matters. Number one, we don't yet know from counsel

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APPENDIX N

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA,	*	Case No 14cr79 (JBA)
	*	
	*	
Government,	*	
	*	
vs.	*	
	*	
JOHN G. ROWLAND,	*	September 9, 2014
	*	
Defendant.	*	
	*	
* * * * * * * * * * * * * * *	*	

TRIAL TRANSCRIPT
VOLUME V

BEFORE: THE HONORABLE JANET BOND ARTERTON, U.S.D.J.

And jury

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript produced by computer.

* * *

CONTINUED CROSS-EXAMINATION OF BRIAN FOLEY

BY MR. WEINGARTEN:

[Page 1040]

you spent about ten occasions with the prosecutors. Correct?

A. I said about ten occasions with the prosecutors, about six hours each, but some of them were shorter. So it may have been 50 hours total.

Q. Fair enough.

A. Okay.

Q. Did you ever tell them that you made a $500,000 contribution to Lisa's campaign?

A. No, I did not.

Q. One more point. You talked about in the context of the conduit contributions that we talked about that your children were involved in some of them. Do you recall that testimony?

A. I do.

Q. What are the ages of your children?

A. Well, in order to donate they need to be at least 18 years old. So there were three children; one was 18, the other was 24, and the other was 29.

Q. And I believe you also testified in response to the question from me you did not want them going to the grand jury. Correct?

A. That's correct.

Q. And was that threatened?

A. Well, the subpoenas received were for financial information on the kids, my children's accounts, and I thought that the next thing would be that they would be subpoenaed to the grand jury, yes.

Q. Now, we spoke extensively about Mr. Rowland's volunteer work for your wife's lieutenant governor campaign yesterday. Do you recall that?

A. I do.

Q. I just have one more question along those lines.

THE COURT: Is your mic on? It's not being amplified.

MR. WEINGARTEN: No problem.

THE COURT: Maybe you need to just pull it forward.

MR. WEINGARTEN: Okay.

THE COURT: Thank you.

MR. WEINGARTEN: Sure. Sorry, your Honor.

THE COURT: If you can't hear at any point, ladies and gentlemen, you need to let me know because this is all for you. Okay?

Q. Who is Tom Foley?

A. Tom Foley is the gubernatorial candidate for the Republican party running for governor.

* * *

[Page 1058]

Rowland about the FEC in connection with the work he was doing at Apple, correct?

A. Correct.

Q. But there were discussions about the FEC with Mr. Rowland when he was telling you that you can't put Lisa's commercials on because there could be implications with the FEC.

A. Correct.

Q. Okay. And were there ever any discussions with Mr. Rowland that he initiated—withdrawn. This has been asked and answered. I don't want to be repetitive.

Now, did I understand your testimony that the reason you engaged in this relationship with Mr. Rowland is because you wanted him to continue to help Lisa in her campaign? Correct?

A. Yes, that's correct.

Q. And you also wanted to keep him from working for anyone else, correct?

A. Correct.

Q. And isn't it also true that you saw some value in Mr. Rowland working at Apple?

A. That was not the primary purposes, but I did see that there could be some value on some issues. However, the hiring of Mr. Rowland was primarily for him to help with Lisa's campaign.

Q. Whatever the ratio, you saw the potential for Mr. Rowland, former governor for ten years of Connecticut, actually helping your company, correct?

A. I saw the potential for some of that, correct.

Q. And that would be one of the reasons you engaged in the relationship with him. Fair?

A. It's an interesting question. I think that if not for the campaign, if I were going to hire Mr. Rowland as a consultant, it would have been for a month or two and then I would have seen how he would have done. I would not have hired him for six months if not for the campaign.

Q. At the outset you saw some potential value that Mr. Rowland could bring to Apple, correct?

A. I did, yes.

Q. So is it your testimony that the moment you saw "I get it" in the e-mail you believed you were in a criminal conspiracy with Mr. Rowland?

A. I think it goes to intent. And, you know, my intent at that point, we talked about it yesterday, was to do exactly that.

Q. To commit a crime?

A. Yeah. Yes, to have him be paid through

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[Page 1091]

Q. Okay. And what did you understand Mr. Rowland to mean when he says "Ritter is on board"?

A. I asked Mr. Rowland to recommend a lobbyist, and then he called me a few days later and he recommended Ritter, and I thought it was a good choice and I told him to, you know, negotiate a $25,000 contract with him, which he did.

Q. And this is not a pretext, is it? This is work?

A. I'm confused. Pretext? I don't—

Q. Was this a sham? Was this a cover-up? Does this cover up his relationship with you when he's getting Ritter on board, the former speaker of the House?

A. You know, I think it goes back to I would not have hired Mr. Rowland if I didn't feel it would be primarily beneficial to the campaign.

Q. Did you consider this a value to you?

A. I did.

Q. Let's see how you respond. Please read it.

A. Okay, this is from me to Mr. Rowland on October 11th. "Great. Wethersfield Manor, a 240-bed nursing home in our market area is in Wethersfield. Told their employees this week that they are closing. It is owned by Healthbridge. We tried to close one of their other facilities a few years ago, but Rell opposed it even though there were empty beds in other facilities. This one should close.

Lots of empty beds in the Wethersfield service area and an owner who wants to close. Good to get Tom involved as soon as possible. Lisa has checks for $3,000 already written out to Jajura from me and other supporters. I will have her follow-up with you. Tuesday, Wednesday next week is good. I will follow up with details."

Q. Mr. Foley, in plain English, what is the significance of what you are reporting to Mr. Rowland about the Wethersfield Manor Nursing Home?

A. About the Wethersfield Manor Nursing Home, it would be good for us, and there was rumors that it would was going to close, and I was looking for some information from Mr. Ritter, who is a Democrat, about the process, and, you know, if he could help to have it close. It was—I think it was like four or five miles from our major facility in Rocky Hill.

Q. Why are you telling that to Mr. Rowland?

A. Because I wanted him to see if Ritter could get inside information and assist us with maybe helping that facility close because it would be beneficial to our company.

Q. So this is Apple work?

A. This is Apple work, yes.

Q. And you are communicating substantive information to Mr. Rowland?

A. I am.

Q. And this is not because you think the FBI has a wiretap on your computer, correct?

A. Let me think about that one for a minute. I think they did have a tap on my computer, but—it

did. They subpoenaed all my e-mails and they—I think they were on my computer. So what's the question?

Q. Well, did you send this e-mail to Mr. Rowland because you were paranoid and you thought the FBI was looking over your shoulder or because you wanted to communicate information that was relevant to Apple to Mr. Rowland?

A. I'm sorry, this is before the investigation started. So I wasn't thinking that my computer was being tapped because the investigation started in April. But the answer to your question is yes.

Q. "Yes" what? It's real work?

A. It's real work, yes.

* * *

[Page 1101]

A. No.

Q. Okay. And just Defense Exhibit 126. What is 126?

A. Oh, this is an e-mail from Ann Collette, who is my marketing director and business development person, regarding a meeting with Mr. Rowland.

MR. WEINGARTEN: Move it in, your Honor.

THE COURT: Full exhibit.

Q. All right. Let's just read it and then let's talk about it.

A. Do you want me to read it?

Q. Please.

A. It reads from Ann Collette on November 17th to me, "Just wanted to let you know that Brian," meaning Brian Bedard, "and I are meeting with John," meaning Mr. Rowland, "Wednesday at noon at Farmington Valley," which is our facility in Plainville.

Q. So it's one of your nursing homes?

A. It is.

Q. Whose idea was it to have this meeting?

A. I think it was Brian Bedard's.

Q. Was it pretext? Was it to come up with some alibi that we took Rowland to a nursing home?

A. No, it wasn't.

Q. This was the real deal? This was real work?

A. Yes.

Q. And Brian Bedard runs your show, doesn't he?

A. Yes.

Q. He's a valuable guy?

A. Yes.

Q. And him spending—how close is it from headquarters to this facility?

A. 15 minutes.

Q. So driving there, spending the time there and driving back, that's a valuable commodity for Apple, right?

A. Driving?

Q. Brian Bedard's time?

A. Oh, his time. Okay, I don't know what you mean.

Q. This was not show, this was real work?

A. It was real work, yeah.

MR. WEINGARTEN: Defense Exhibit 132.

Q. Do you remember this, Mr. Foley?

A. I do.

Q. What is it?

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[Page 1110]

A. He says, "How about a retired hospital CEO, the guy from New Milford Hospital? How about Joe Stango, the leader of Money Follows the Person?" Which is a state program. "He is the main advocate. Other areas? What are you looking for in particular?"

Q. So he gets back to you within 24 hours, correct?

A. Correct.

Q. Is he asking substantive questions?

A. Yes.

Q. And did you view this as real work?

A. Yes.

Q. Because we're going to go see this again, in the simplest terms, can you explain to us what Money Follows the Person is?

A. Yeah, it's a program the State of Connecticut has where they allocate millions of dollars for people who want to move out of nursing homes to support them in independent living situations.

Q. And was that an extremely important subject for you at the time?

A. Yes.

Q. And how do you respond to Mr. Rowland, just

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[Page 1143]

* * *

Q. Is it fair to say after the investigation started and after Mr. Rowland was no longer working for you, correct?

A. Correct.

Q. After the campaign was long over?

A. Yes.

Q. He called you up and asked if there was some work for him to do with Apple again?

A. He did.

Q. And, again, it was long after the campaign was over, right?

A. It was. I was surprised at the phone call because there was an investigation going on.

Q. And he called and said I would like to work for Apple again?

A. Yes.

Q. So let's turn and talk about what Mr. Rowland did at the campaign for your wife. Okay?

A. Okay.

Q. And it's fair to say that you didn't regularly go to the campaign headquarters, correct?

A. That's correct.

Q. In the main, you would see Mr. Rowland, when you did, at functions?

A. Yes.

Q. There were occasions when he could come to your house and help Lisa with debates?

A. Yes.

Q. So just to zero in on that, that would be she would be debating other candidates?

A. Yes.

Q. And he would be giving her substantive tips?

A. Yes.

Q. And perhaps in addition how to present herself?

A. Yes.

Q. And she had debates in the lieutenant governor race, too, didn't she?

A. Yes.

Q. And he helped her with those, too, correct?

A. I think he did. Like I said, he met with her. I knew of three or four meetings, but I think he did help her with some of those.

Q. And the events you saw him at were public events, correct?

A. Yes.

Q. What kind of stuff?

A. There were fund-raisers of the—mostly fund-raisers I saw him at, I think. Yeah, I think that was it.

Q. And he's a pretty well-known guy in those circles?

A. Yes.

Q. And this is the 5th District?

A. It is.

Q. And can he go into a fund-raiser or a town committee meeting with people not knowing who he is?

A. No, they know him.

Q. And he was openly supporting your wife?

A. Yes.

Q. I believe you testified that he was—he did more than you expected?

A. He did.

Q. So what you expected was steady as she go, correct?

A. What I expected for the money that he was—that I was paying? No, I wouldn't say that.

Q. All right. But whatever you expected, he surpassed it?

A. He did, yes.

Q. He actually showed up at public meetings that you didn't expect him to show up at?

A. There were fund-raisers at the campaign—I wasn't there, but they were surprised he was showing up at some of the fund-raisers unannounced.

Q. And, again, these are public events?

A. Yes.

Q. Where he's well-known?

A. Yes.

Q. Did you ever say to him, John, this is supposed to be secret, get us delegates secret, but don't show your face, the idea here is to keep you behind the scenes, but not in the open?

A. No.

Q. You never had that conversation?

A. No.

Q. Never told him to back off?

A. No.

Q. Did he seem to enjoy working for your wife?

A. Yes.

Q. Were you made aware that there was talk in the street that Mr. Rowland was working for your wife long before the leak?

A. So when was the leak?

Q. April 2012. Consistent with your testimony, and I could show you on the screen.

A. Yeah, the leak was in April. So could you ask that question one more time?

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[Page 1174]

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Q. So just to get us oriented, there's the leak in April 2012, correct?

A. In April 2012, yes.

Q. And you—the public statements are made on behalf of the campaign and Apple, and letters go to the U.S. Attorney's Office on your behalf, all of which are advocating a position that your relationship with Mr. Rowland was 100 percent genuine and benign, correct?

A. Yes.

Q. Is it also not true that at that point, sometime after all of that activity, you learn that you are under investigation for these illegal campaign contributions?

A. No, I learned I was under investigation for the Rowland situation.

Q. Well, you later—

A. Oh, later. That was—so I pleaded back in April of 2013. So it was a couple months before that that the conduit donor information became front and center.

Q. And isn't it true that when that conduit campaign investigation came to your attention, you realized you were massively exposed?

A. Yes.

Q. And you realized and learned that for every illegal campaign contribution there is a potential five-year felony attached to it?

A. That's correct.

Q. So that if you had your sister make three contributions of $2,500 each, and there were FEC reports that went out and didn't include you, but included her, each one would be a false document, correct?

A. Would be what?

Q. A false document?

MR. BRENNAN: It's calling for a legal opinion, your Honor.

MR. WEINGARTEN: I can summarize this.

Q. It's true, is it not, that, for example—what's your sister's first name, Patricia?

A. Yes.

Q. That just for her alone you could face three felony counts?

A. I actually was not aware of that, but I thought it would be one felony count for the entire amount.

Q. All right. Well, let's—

A. Okay.

Q. Leave it at that.

A. All right.

Q. So you had, I believe, your sister, correct?

A. Yes.

Q. Your sister's daughter?

A. Yes.

Q. Your friend Ken Lewis?

A. Yes.

Q. Your nephew?

A. Yes.

Q. And your children?

A. They never charged the children, they only asked for information on the children.

Q. Well, they haven't been charged with any of this is the point of it.

A. But they were never subpoenaed to the grand jury. But, yep, they haven't been charged.

Q. But you were engaged in the wrongdoing?

A. I don't know if on the children I was, but the other ones I do agree. Because I had their overall approval, so I don't know the answer to the one on the children.

Q. So let's take it from your perspective. That's at least 20 years' exposure, correct?

A. That's correct.

Q. And you just testified a couple minutes ago that you sent misleading letters to the U.S. Attorney's Office with the idea that you wanted to trick them, mislead them, correct?

A. To my attorney, yes.

Q. And I'm sure you know that obstruction carries with it a potential sentence of 20 years, correct?

A. I didn't know then, but now I do.

Q. So it's fair to say, is it not, that you were massively exposed?

A. That is correct, yes.

Q. And, in addition, people you cared about had potential exposure, too?

A. That's correct.

Q. Including your sister?

A. Yes.

Q. Now, did you know that your sister was interviewed by the feds?

A. I did.

Q. And did you know that she didn't tell them the truth?

A. I knew she got immunity.

Q. Well, did you know when she was first

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[Page 1179]

it was, did you tell her to tell the truth. You said you did. And I think the next question was where we got into the problem.

Q. Did you know before she got immunity that your sister lied to the feds?

MR. BRENNAN: It assumes facts not in evidence, your Honor.

A. I don't know.

THE COURT: He doesn't know. We can move on.

Q. Now, it is true, as you said, that when your children—your children received grand jury subpoenas for documents, correct?

A. Yes.

Q. And you didn't like that, did you?

A. No.

Q. And as you testified before, you anticipated that that would lead to a situation where they could get involved in this investigation, correct?

A. That they would be, you know, subpoenaed to the grand jury, yes.

Q. And following that event, the subpoena for your children, and following you realizing how massively exposed you were as a result of your own crimes related to campaign contributions, you went from defending the relationship with Mr. Rowland to incriminating him. Fair?

A. I went from—I don't know about incriminate him. I became a government witness and cooperated for the government. If that's incriminating, yes.

Q. And the deal you got requires you to cooperate with the feds, correct?

A. Correct.

Q. And to share with them any and all information you have about wrongdoing that you engaged in, correct?

A. That's correct.

Q. And you—again, you didn't tell them about the $500,000 correct?

A. I did not believe that was illegal.

Q. And you didn't talk to them about any of the incidents that we just reviewed with these e-mails about people who wanted to work for Apple?

A. I don't think anything in those e-mails was illegal.

Q. And the deal that you received is a misdemeanor, correct?

A. Correct.

Q. That means the most you could possibly get, worst case scenario, would be a year, correct?

A. That's correct.

Q. And you are going to go before a sentencing judge and the prosecutors will make a recommendation and they will report to the judge about your cooperation, correct?

A. Correct.

Q. And do you subjectively believe in your own mind that you'll get a better recommendation if Mr. Rowland is convicted or acquitted?

MR. BRENNAN: Objection, your Honor.

THE COURT: I'm going to permit that. It goes to the jury's consideration on the issue of credibility. It's limited to that.

A. Could you ask the question one more time.

Q. Just to set it up. When you go to sentencing one day—and it will be following this trial, correct?

A. Yes.

Q. And the prosecutors will make a recommendation and they will report to the Court about your cooperation, correct?

A. Correct.

Q. And subjectively, inside, do you believe

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[Page 1184]

A. No, those are all mine.

Q. So the deal that you cut is that you get the misdemeanor, correct?

A. Yes.

Q. Lisa gets a misdemeanor?

A. No, Lisa was getting nothing.

Q. The final deal Lisa gets—

A. The final deal, yeah.

Q. No one in your family gets prosecuted?

A. Yeah, no one else.

Q. No one at Apple?

A. That was the agreement.

Q. No one in the campaign?

A. No one.

Q. So you get the misdemeanor, Lisa gets a misdemeanor, and the only other person prosecuted is Mr. Rowland?

A. That's correct.

Q. After you start facing at least 40 years in prison?

A. Correct.

Q. And you have some expectations about the sentence you are going to receive, don't you?

A. Yeah, I do.

Q. And your hope, of course, is that you are

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DIRECT EXAMINATION OF CHRISTOPHER COVUCCI

BY MR. MATTEI:

[Page 1253]

Q. You mentioned that, so we'll get back to the meetings. But since you mentioned it, you ended up finding another job within six weeks, didn't you, sir?

A. Yes.

Q. So what would you say, kind of end of November, early December is when you are out of there?

A. Yeah, before Thanksgiving.

Q. And that's because you resigned. Right?

A. Yes.

Q. So talking about these staff meetings, is that for paid staff, generally?

A. Yes.

Q. And did Mr. Rowland show up to those?

A. Yes.

Q. Did you come to understand that Mr. Rowland held a position of authority within the campaign?

A. Yes.

Q. What do you mean by that?

A. Lisa respected and listened to his advice.

Q. What about in terms of the hierarchy of the campaign? Did you feel like he was—you were subordinate to Mr. Rowland?

A. Yes. He was functioning more in the role

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[Page 1255]

were going to talk about the different parts of the campaign in some detail, and what I would like to do now is focus on the campaign's communication strategy. Okay?

A. Okay.

Q. I'm not going to have you define that, you've already defined it. Basically press relations, getting the message out, right?

A. Correct.

Q. How important is that to the campaign?

A. It's a central part of the campaign.

Q. Why?

A. You need to get your candidate's message out. Free media is important and tremendously valuable.

Q. I mean, the whole idea is to get people to vote for you, right?

A. Right.

Q. So you want to get your message out there and hope people support it?

A. Yeah, name ID and your ideas.

Q. And with respect to the communication strategy, what was Mr. Rowland's role in the campaign's communication strategy when you were

there—or in the campaign's communications operations when you were there?

A. He generated a number of the ideas for the releases we put out. I think maybe all of them during the time I was there.

Q. And did he also have a hand in executing the campaign's messaging strategy, not only coming up with the ideas, but also strategizing about how to communicate them most effectively?

A. Yeah, when and—when and how, yeah.

Q. And did Mr. Rowland do anything in particular to help—to help get the campaign's message out there?

A. He did after—on two occasions we put out a press release that he talked about Lisa's position on his show.

Q. On his radio show?

A. Yes, on his radio show.

Q. And what radio show was that?

A. On WTIC, the drive time show.

Q. Church and State?

A. Yes.

Q. That was Mr. Rowland's afternoon radio gig?

A. Yes.

Q. And could you tell the jury, you know, a little bit about that show.

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APPENDIX O

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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	*	
UNITED STATES OF AMERICA,	*	Case No 14cr79 (JBA)
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Government,	*	
	*	
vs.	*	
	*	
JOHN G. ROWLAND,	*	September 10, 2014
	*	
Defendant.	*	
	*	
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TRIAL TRANSCRIPT
VOLUME VI

BEFORE: THE HONORABLE JANET BOND ARTERTON, U.S.D.J.

And jury

APPEARANCES:

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Court Reporter:	Sharon Montini, RMR, FCRR 141 Church Street New Haven, CT 06510

Proceedings recorded by mechanical stenography, transcript produced by computer.

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CONTINUED DIRECT EXAMINATION OF CHRISTOPHER COVUCCI

BY MR. MATTEI:

[Page 1326]

block off the back room with a door as private space to make phone calls. Who should I have Cathy contact about doing this?"

Q. And why is it that you just didn't recommend this to Ms. Wilson-Foley yourself?

A. She was much more inclined to listen to advice from Healy and Rowland.

Q. Now, Mr. Covucci, what I'm going to start to get to now is the circumstances of you leaving the campaign. But before I do, I just want to review, if you would, just during your, whatever it was, six weeks, ten weeks at the campaign, just describe for the jury Mr. Rowland's level of involvement in the campaign and different areas he was involved.

A. Sure. He was heavily involved, offering strategy on every issue of the campaign, involved in a more hands-on level with the communications, but heavily involved with everything the campaign was doing at the time, from the fund-raising to the prep work for the convention to communications strategy.

Q. Did he vet press releases?

A. I'm sorry, I didn't hear.

Q. Did he vet press releases?

A. Yes.

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APPENDIX P

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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	*	
UNITED STATES OF AMERICA,	*	Case No 14cr79 (JBA)
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	*	
Government,	*	
	*	
vs.	*	
	*	
JOHN G. ROWLAND,	*	September 11, 2014
	*	
Defendant.	*	
	*	
* * * * * * * * * * * * * * *	*	

TRIAL TRANSCRIPT
VOLUME VII

BEFORE: THE HONORABLE JANET BOND ARTERTON, U.S.D.J.

And jury

APPEARANCES:

FOR THE GOVERNMENT:	LIAM BRENNAN, ESQ. U.S. Attorney's Office 157 Church Street New Haven, CT 06510

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Court Reporter:	Sharon Montini, RMR, FCRR 141 Church Street New Haven, CT 06510

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CONTINUED DIRECT EXAMINATION OF CHRISTOPHER SYREK

BY MR. MATTEI:

[Page 1613]

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Q. And they've seen Government Exhibit 245 where Mr. Rowland is asking whether Mr. Green had asked about his role, correct?

A. Yes.

Q. Now, you testified in March Mr. Rowland attended this St. Patrick's Day event, correct?

A. Yes.

Q. What happened two weeks later?

A. I'm not sure what—you're bringing something up to refresh my memory?

Q. I sure do. Showing you Government's Exhibit 265A. Do you see that?

A. I do.

Q. And showing you Government's Exhibit—

MR. MATTEI: One moment, please.

Q. And Government's Exhibit 266A. Do you see that?

A. I do.

Q. Does this refresh your recollection as to whether—as to what happened in early April to the campaign?

A. Yes.

Q. What happened?

A. There was a couple press stories questioning Mr. Rowland's involvement in the campaign.

Q. And did that cause you concern, sir?

A. Yes.

Q. And did—on April 5, 2012, did an article run in the *Torrington Register Citizen* offering information about Mr. Rowland's role in the campaign?

A. Yes.

Q. Okay. And what was the campaign's reaction to this public disclosure that Mr. Rowland was associated with the campaign?

A. We were concerned.

Q. Later that month—showing you Government's Exhibit 268A, did you receive a call from an individual named Jordan Fenster?

A. Yes.

Q. What date did you receive that call?

A. Friday, October 20th.

Q. Do you recall where you were when you received that phone call?

A. At the campaign office.

Q. Who is Jordan Fenster?

A. A reporter with the *New Haven Register*.

Q. And—

THE COURT: I'm sorry, did you say October?

MR. MATTEI: If I did, I was mistaken, your Honor. February 20th—April 20th. Oh, my goodness. April 20th.

A. Yes.

Q. I think you said April 20th, right?

A. I did.

Q. Okay. And is the—is Government's Exhibit 268A an e-mail exchange between you and Mr. Healy regarding Mr. Fenster's coverage of the campaign and his inquiry to the campaign?

A. Yes.

Q. And when Mr. Fenster originally called you, sir, what did he say?

MR. DRAKE: Objection, your Honor. Hearsay.

MR. MATTEI: We're not offering this for the truth, your Honor. We're offering this as context for the campaign's reaction to these public disclosures.

THE COURT: All right, I'm going to permit that, but it is not for the truth of what Fenster said or that he said it, except to the extent that is how he—how the witness heard it.

MR. MATTEI: Thank you, your Honor.

Q. So Mr. Fenster calls you at the campaign office, correct?

A. That's correct.

Q. Friday evening, April 25th?

A. That's correct.

Q. Did you take the call?

A. I did.

Q. What does he say?

A. He said he had a question for me regarding Mr. Rowland's involvement in the campaign, and I asked him what the question was. He asked if the campaign had hired Mr. Rowland and was paying him. I said that we had not, we were not. And he asked a follow-up question as to how about any of Ms. Wilson-Foley's businesses. I said that I didn't know, you'd have to talk to Lisa. And he asked another follow-up question about any of Mr. Foley's businesses, and I gave the same response, that I didn't know, you would have to talk to Mr. Foley.

Q. Okay. Now, when you get this call, are you harkening back to that conversation you had with Ms. Wilson-Foley on September 14th?

A. Yes.

* * *

[Page 1626]

Q. These were for talking points?

A. Yes.

Q. "Add consulting role when he worked for another firm." What was your understanding of that?

A. I had no knowledge of a consulting role when—I don't know who "he" is or what other firm that could have been.

Q. So did there come a point, sir, when the campaign met formally? I mean, were you meeting over the weekend on April 21st?

A. No, just by phone and e-mail.

Q. And did Mr. Fenster ultimately publish an article on April 23rd disclosing Mr. Rowland's paid relationship with—well, paid relationship with a law firm associated with Apple?

A. Yes.

Q. So when this is happening, Mr. Syrek, when you get the call Friday night, you are in calls over the weekend, you get an article on April 23rd, what's the atmosphere between you, Ms. Wilson-Foley, Mr. Rowland, Mr. Healy and Mr. Foley?

A. I don't think we hit crisis mode yet, but we were definitely on edge about the situation and were certainly watching it closely.

Q. And what happened once Mr. Fenster

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APPENDIX Q

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA,	*	Case No 14cr79 (JBA)
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Government,	*	
	*	
vs.	*	
	*	
JOHN G. ROWLAND,	*	September 15, 2014
	*	
Defendant.	*	
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TRIAL TRANSCRIPT
VOLUME IX

BEFORE: THE HONORABLE JANET BOND ARTERTON, U.S.D.J.

And jury

APPEARANCES:

FOR THE GOVERNMENT: LIAM BRENNAN, ESQ.
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New Haven, CT 06510

	CHRISTOPHER M. MATTEI, ESQ. U.S. Attorney's Office 450 Main Street Hartford, Ct 06103
FOR THE DEFENDANT:	REID WEINGARTEN, ESQ WILLIAM DRAKE, ESQ. MICHELLE LEVIN, ESQ. Steptoe & Johnson 1330 Connecticut Avenue NW Washington, DC 20036
Court Reporter:	Sharon Montini, RMR, FCRR 141 Church Street New Haven, CT 06510

Proceedings recorded by mechanical stenography, transcript produced by computer.

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DIRECT EXAMINATION OF BRIAN BEDARD

BY MR. WEINGARTEN:

[Page 2171]

A. Okay.

Q. Were there some meetings?

A. Yes.

Q. Have you made some effort to determine how many there were?

A. Yes.

Q. And have you been able to identify a number with specificity?

A. Yes. Generally I believe there were—yes.

Q. And how many?

A. I believe there were eight. Ten, eight.

Q. And just describe generally how the meetings would occur and what would happen at the meetings.

A. There were some differences. At one point I had—one of them was a lunch with John; at other times it was myself, Brian and John; there were meetings with Mark, John; the CFO, myself, Mr. Rowland and the owner. There were meetings with Mr. Ritter, the lobbyist, and Tim Coburn, another industry expert.

Q. Were these subsequent meetings?

A. Yes.

Q. Generally speaking, and we'll get to the specific meetings, what subjects were covered?

A. The subjects that I discussed. And I can't remember specifically, it was a long time ago, but we talked about the industry, we talked about the labor unions, the nursing homes closing, we talked about reimbursement, about Apple and the potential for negatives ads.

Q. Did Mr. Rowland participate substantively in these meetings?

A. Yes.

Q. Or was he playing with his cell phone?

A. I never saw him playing with his cell phone. I may have played with my cell phone.

Q. Okay.

MR. WEINGARTEN: Let's take a look at defense—excuse me, Government Exhibit 145. I believe it's in, your Honor.

THE COURT: All right.

MR. WEINGARTEN: Would you put it on the screen.

Q. Do you see that before you, sir?

A. Yes.

Q. And is it fair to say it's an e-mail exchange basically setting up a meeting?

A. Yes.

Q. Okay. And why don't we just read the top. I'll read it to save your voice. It's from you to Mr. Foley. Let's work up so we know what we're talking about. Starting at the bottom on Thursday December—excuse me, October 6th, from Brian Foley to Mr. Rowland. "Could you give me a couple dates for October for 2 to 3 hours at your convenience to meet my CEO and CFO at the Apple Rehab headquarters in Avon." Do you see that?

A. Yes.

Q. And do you understand that you are the CEO he's referring to there?

A. In his mind, yes.

Q. So that would be an occasion you were the CEO, right?

A. Yes.

Q. Mr. Rowland responds, "13th, 14th mornings or anytime the following week."

And then Brian Foley to you and Mark, "How do the dates look for you."

And you say, "Will confirm on Monday. I have my schedule on my desk and it has changed due to union activity. Will let you know Monday a.m. Of course I will make every effort to be available. Working on consulting document between John and Apple." Do you see that.

A. Yes, sir.

Q. And is that the contract?

A. It may have been, yes.

Q. I mean, were you actually working on it at that moment?

A. No. Other than potentially telling Chris—and I don't recall this, but I may have told Chris, you need to write a contract for John. I did not work on it, no.

MR. BRENNAN: Objection, your Honor. Speculation.

THE COURT: That is speculation. He doesn't know. That will be stricken. You can reask your question in a different form.

Q. Did you have any—do you remember any interaction with Shelton regarding the contract?

A. No.

Q. Now, is it fair to say that what this e-mail reflects is the scheduling of the first meeting with John?

A. Yes.

Q. All right. Let's just take a look at Defense Exhibit 92. It's not in. This is another e-mail talking about the scheduling of this meeting?

A. Yes.

MR. WEINGARTEN: Move it in, your Honor.

MR. BRENNAN: No objection, your Honor.

THE COURT: This is October 10, 2011. Full exhibit.

Q. Okay. We're moving up a couple days on 10/10. Brian Foley to Rowland, "How does Thursday at 11:00 look?"

Rowland, "Sounds good. I have a 12:30 lunch in Hartford that I can move. Can we make it earlier, like 10:00-ish, but I will make 11:00 work if that works for the guys. No problem. Where will we meet."

"10:00 a.m. is good at 21 Waterville Road, Avon. The old courthouse building on the west side of Route 10. Travelling from Farmington, just before the intersection of 44."

Is that part of corporate headquarters?

A. Yes, it is headquarters.

Q. And was there, in fact, a meeting on October 13, 2011?

A. Yes.

Q. And did you prepare anything in connection with that meeting?

A. Yes.

Q. What did you prepare?

A. I prepared an agenda.

MR. WEINGARTEN: Defense Exhibit 97. Put it on the screen. It's not yet in evidence.

Q. Did you prepare that for the meeting?

A. Yes.

MR. BRENNAN: Your Honor, I've looked at this exhibit. This is part of 213A, which is already in evidence. I checked the Bates number and it's actually part of 213A.

THE COURT: All right. So we can admit it.

MR. WEINGARTEN: Okay, I'm sorry.

THE COURT: If you think it's necessary later to omit it because it's already an exhibit, that's fine, but you are focussing on this. All right.

Q. Okay. If you would take me through this document. Agenda, October 13, 2011, at 10:00 a.m. Who did you prepare this document for?

A. I prepared it for the participants of the meeting.

Q. And who were they?

A. My understanding, it was: Myself; Mr. Hambley, the CFO; Brian Foley; and myself.

Q. Say—do that again.

A. I believe it was for: Mark Hambley, the CFO; Brian Foley, the owner; myself; and Mr. Rowland.

Q. Okay. And is it your recollection those are the four participants in this meeting?

A. That's my recollection.

Q. Okay. And just so we're clear on this, have the meetings merged and blended some over time?

A. Absolutely.

Q. So we understand that. So "Company Infrastructure. Board of Directors." And why did you put that there?

A. I recall being asked to explain to John who we are. How do we operate? Who reports to who? Just the general structure of Apple I gave to you today.

Q. And who asked you to do that?

A. I believe it was Mr. Foley.

Q. Okay. And "Executive Vice President, CFO, Responsibilities and Role Definition." Is that just consistent with what you just said?

A. Yes.

Q. And you provided an explanation to Mr. Rowland?

A. I believe so, yes.

Q. Was there ever a moment in time during this meeting when you thought this was just a pretext?

A. No.

Q. That you were putting on a show to provide a cover for Mr. Rowland's work for Lisa Wilson-Foley?

A. No.

Q. Did that ever occur to you at this meeting?

A. No.

Q. Then there's a bullet for "Union Avoidance." Do you see that?

A. Yes. Hold on, I see "1199 Infrastructure." "Union Avoidance."

Q. Yes.

A. Yes.

Q. That's the headline, correct?

A. Yes.

Q. And you talked about it some, but with more specificity, what is your recollection as to what the conversation was Mr. Rowland at this meeting?

A. Again, these meetings blended, but I know that I had conversations certainly to explain 1199, who they are. Obviously people already knew, but just more about the fact that we're always a target. Apple is always a target.

Q. And were there important things happening at Apple with regard to union initiatives at that time?

A. My recollection is that we were in the midst of negotiating a contract at one of our facilities, and that I believe this was the time period in which there was an article printed about Mr. Foley's wealth, and I was having a difficult time with that. It was related to the campaign, and it was printed, I believe, about Westfield Manor in Meriden.

Q. Okay. And what was the point, again, of providing Mr. Rowland with this information?

A. I was trying to figure out—exactly this was my assumption of what Mr. Foley wanted us to do, to provide this to John. It was my assumption.

Q. And do you remember at this meeting and subsequent meetings, was it a one-way street or was there a give and take and an exchange?

A. I recall it being very informal. They weren't formal meetings, but definitely a healthy exchange of just ideas, concepts and just commenting. You know, most of the specifics I can't recall, but I know we had a meeting and I know it was substantive and I know it was industry-related activities.

Q. And the next bullet point is Reimbursement Initiatives. You talked about that some I think about 15 minutes ago. "DSS Medicaid applications." Just to get to the point, is that the concern Apple had that you weren't getting reimbursement quickly enough?

A. Yes. There was a considerable drag time in the Medicaid application process. It took 9 to 12 months to get them granted and there was legislation that Mr. Hambley was working on that certainly affected that.

Q. And the legislation was in the Connecticut legislature?

A. That's my understanding, yes.

Q. And there was a hope that a law would be passed?

MR. BRENNAN: I'm just going to object to the form.

MR. WEINGARTEN: I'm trying to speed this up.

THE COURT: Let's do it the way it needs to be done.

Q. What was the hope? What service could Mr.

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APPENDIX R

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA,	*	Case No 14cr79 (JBA)
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Government,	*	
	*	
vs.	*	
	*	
JOHN G. ROWLAND,	*	September 16, 2014
	*	
Defendant.	*	
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TRIAL TRANSCRIPT
VOLUME X

BEFORE: THE HONORABLE JANET BOND ARTERTON, U.S.D.J.

And jury

APPEARANCES:

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FOR THE DEFENDANT:	REID WEINGARTEN, ESQ WILLIAM DRAKE, ESQ. MICHELLE LEVIN, ESQ. Steptoe & Johnson 1330 Connecticut Avenue NW Washington, DC 20036
Court Reporter:	Sharon Montini, RMR, FCRR 141 Church Street New Haven, CT 06510

Proceedings recorded by mechanical stenography, transcript produced by computer.

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CONTINUED DIRECT EXAMINATION OF BRIAN BEDARD

BY MR. WEINGARTEN:

[Page 2227]

with your staff. And I had some concern that—not a significant concern, but I thought potentially maybe John was there to take my job. It's very odd when the owner brings someone else in and has him evaluate your performance. That's the second time he did that, and I felt the same thing with Mr. Coburn.

Q. We talked about union avoidance yesterday, and I'm not sure I asked you this specific question. Do you remember that conversation we had?

A. Yes.

Q. And just to get us back together, union avoidance is what?

A. Union avoidance is everything that encompasses creating a culture and a relationship with the staff where they trust you; me, personally, the company.

Q. So as to discourage unions coming in successfully. Fair?

A. Yes.

Q. Did you show Mr. Rowland materials that you had prepared to accomplish that goal?

A. Yes.

Q. And what were those materials?

A. I prepared boards that I was using in a presentation at one of the facilities, and I showed those to John as to—this was the other side of the argument that the union may make. This addressed the concerns of the staff. This was the truth that maybe they may not be aware of, and I reviewed those with Mr. Rowland.

Q. And did you do it as a pretext or was this real work?

A. It was real work.

Q. And did you receive feedback from Mr. Rowland?

A. I don't recall the specifics. He seemed pleased with it.

Q. Were you actually realistically interested in his view?

A. Yes. I also wanted—I also did it because, again, he was evaluating my performance, and part of it is to illustrate that this is the effort I'm putting in to it, this is what I'm doing. It was as much about that and showing John the quality of my work.

Q. You testified yesterday, and I think we need context here, that there came a time when Mr. Foley advised you to pay Mr. Rowland only if he had worked. Do you recall that testimony?

A. I do.

Q. What was the context of that?

A. We were in the main lobby walking out of a meeting, and that's when he told me to use him as a resource and to make sure he worked and that he won't pay him if he won't work.

Q. And did you think that instruction was a pretext or not?

A. No, it was not a pretext.

Q. And did you actually authorize payment to Mr. Rowland?

A. Yes. Mr. Shelton asked me if it was okay to pay him.

Q. And your response was what?

A. It was okay, yes.

Q. Now, we were discussing yesterday chronologically some of the meetings you had with Mr. Rowland. Do you recall that testimony?

A. Yes.

Q. Do you recall a meeting with Mr. Rowland on January 13, 2011?

A. I'd have to refresh my memory of the—yeah.

Q. You remember meetings, but not specific dates?

* * *

[Page 2235]

Q. You can put that aside. Now, the ladies and gentlemen of the jury have heard a great deal of evidence about the Mercer report and some of it came from you yesterday. Just to sort of get us together, what is the Mercer report? Who is Mercer and what was its significance?

A. My understanding is Mercer is a consulting company, I believe they're from Arizona, and to make it very simple, they were performing a needs-based assessment on beds, beds available, where—looking at the entire state and assessing—I told you that one in every ten nursing home beds in the state were empty, and Mercer was the roadmap and the need study for the state to say this is based on the population density and future demographics, this is what you could expect with nursing home bed need in the future.

Q. And was Mercer engaged by the state to make the report?

A. That is my understanding, yes.

Q. So they were paid by the state of Connecticut for a report that would have an affect your business. Fair?

A. That's my understanding.

Q. And did Mr. Rowland make a report to you analyzing the Mercer report?

A. In fact, he did, yes.

MR. WEINGARTEN: Government Exhibit 218A. Already in, your Honor.

Q. So 218A is from Mr. Rowland to you and to Mr. Foley, correct?

A. Correct.

Q. And he goes, "Brian, I have attached a little summary analysis that I have done of the Mercer report. Let me know what days are good to meet per Brenda's request. Noon is always good. Can you do any day next week except Tuesday?" Do you see that?

A. I do.

Q. By the way, was there ever an occasion when you asked Mr. Rowland for something and he refused to do it?

A. No.

Q. Did you ever ask him for a meeting when he didn't come?

A. No.

Q. Okay. The ladies and gentlemen of the jury have had some access to this summary report. Is it fair to say that it's 3 1/2 type written pages?

MR. BRENNAN: Your Honor, I want to raise an objection to form of the questions.

THE COURT: Let's stick to the form that should be proper on direct.

MR. WEINGARTEN: Just trying to get to the point here, your Honor, trying to move.

MR. BRENNAN: Yeah, but it's moving the witness.

THE COURT: Move appropriately.

Q. How long is the report; do you remember?

A. I believe it's 3 1/2 pages.

Q. Do you—would take a look at it. So the first paragraph, and we'll take turns reading relevant portions, "Mercer Report Analysis, Thoughts and Observations." By the way, 3 1/2 pages, how would that compare with other reports Mr. Foley has received from consultants?

MR. BRENNAN: Objection. What about what Mr. Foley received?

Q. To your knowledge?

A. Can you repeat the question.

Q. In terms of analyst reports that have come through to Mr. Foley, to your knowledge, how does this compare to others in terms of length?

A. It's too long. I told you, one page with lines.

Q. The first paragraph, why don't you read it.

A. "As I look at the population projections in Connecticut in this report, 40% growth in individuals at age 65 and older between 2010–2025. I would point out that our tax, cost of living, environment bill have some impact on these numbers, and, more importantly, on who will still be here in Connecticut as those age."

Q. "As those ages"?

A. Yes.

Q. And you've read this summary by—or this analysis by Mr. Rowland, correct?

A. Yes.

Q. And is it fair to say the first part is basically an analysis of the demographic issues? Do you recall?

A. Yes.

Q. And I'll just read the next two lines. "For example, this months's retirement magazine continued to name Connecticut as one of, if not the, worst place to retire. So this begs the question as to who will leave the state and retire elsewhere. Will it be wealthier residents who can afford many options or will it be the lower- to middle-fixed income crowd?" And that, of course, is relevant to your business, correct?

A. Correct.

Q. Let's take a look at the next page, "Political Observations on MFP." And the jury has heard that MFP stands for money follows the patient.

A. Person.

Q. Excuse me, money follows the person?

A. Money follows the person.

Q. Just so we're clear on that, in the most summary fashion, what does that mean?

A. Moving resources from the institution or the patients in nursing homes to creating more community-based services and money following that person. So it allows patients to stay in a more independent environment, particularly in their homes, as opposed to having to go into a nursing home on the Medicaid—particularly on the Medicaid side.

Q. So the Medicaid side, the whole point is if someone is not in a nursing home or at home or community facility, that person would tend to get benefits ?

A. If they were—yes, yes.

Q. That's the point of that?

A. Yes.

Q. So the political observations on MFP, would you read No. 1. We'll take turns.

A. "Politicians' hearts will be with MFP, but they will have trouble actually taking the leap and funding it. It is an unnatural act for them to fund up front even knowing that it will save money in the long-term. Always hard to bite the bullet."

Q. What is your understanding of that?

A. That statement was probably in my opinion the most important part of the report because up until that point I was very concerned about moving patients out of nursing homes, the bed need declining, and certainly we had closed units at the time and our bed census was declining, but that resonated in the sense that the government typically is reactive, not proactive. And that was John's point, that the government reacts to a problem, they don't fund something up front, and with a state budget crisis it's going to be very difficult for them to fund this and make it a reality.

Q. And did that have an affect as to how Apple saw the future?

A. It made me less anxious about the MFP and the Mercer report because I felt that was a very good

point. Funding it up front was going to be—not going to happen.

Q. And No. 2, "MFP also goes against the grain of government bureaucracies. Bureaucrats hate to give up power even though they may like MFP." He's just commenting on government structure there, correct ?

A. Yes.

Q. 3, "Most important concept 'in government everyone loves progress as long as there is no change'. Change does not come easily or from within."

He's basically—

MR. BRENNAN: Your Honor. No, your Honor, the witness should testify.

Q. What's the significance of what that is?

A. John is explaining what happens above our level at the level the state really functions, the reality of how state government actually functions. This is how it happens. They may say this, there may be good intentions, they may have all of these nice committees, but getting people to collaborate, give up power, fund things up front, based on his experience as a former governor, managing that process, these things don't happen as easily as they say.

Q. No. 5, why don't you read that one.

A. "Is the macaroni cooked enough to move forward? I don't believe so. Not enough to champion and advocate in the right leadership positions. In addition, the economic downturn and subsequent downturn in revenue slows progress and up front investments. Programs and proposals that require up front investments to save later are difficult to get

past the bean counters at Office of Policy Management, OPM."

Q. And what was your interpretation of the "macaroni being cooked enough"?

A. Just that this process is cumbersome, getting people at those leadership positions again to fund things up front and to get it past people that actually make decisions. It explained to me that there are people that come up with the legislation, great ideas, but getting it past the people that fund it, likely not going to happen.

Q. And let's take a look at the next page, "Rightsizing." And, again, we had some talk about rightsizing, but nail it down.

A. Rightsizing is instead of having all of these empty beds around the state and creating facilities that are all having financial issues, it's based on the Mercer report and identifying based on demographics, present and future, what is the right size of this industry. How can—and then with the empty beds that exist, how can we create other more contemporary models of care that are more appropriate for today and the future.

Q. Let's see what Mr. Rowland has to say. Would you read the first paragraph, please.

A. "Budget issues should and will drive these decisions and state revenue problems will require action. Possible change in Washington, both in the White House and more fiscal conservatives in the House and Senate will put pressure on. The intent of the committee is great. Many self-interests, but some of the recommendations and strategies are unrealistic."

Q. And does he provide some examples right from the Mercer report?

A. Yes.

Q. And would you read them, please.

A. "Cross-agency collaboration, not in our lifetime.

"Strategic partnership between all agencies, state, federal and quasi-public. Not a chance.

"There are numerous references to partnerships, collaborations, new units, new programs. Nightmare.

"A lot of these new concepts will actually slow progress. More bureaucracy means less results.

"References to challenges to success are not challenges, they are permanent roadblocks.

"The challenge to success on page 22 is more realistic and doable."

Q. The pages he's referencing are to the report itself?

A. Yes.

Q. And does Mr. Rowland provide some conclusions ?

A. Yes.

Q. Would you read that, please.

A. "CF, better known as command focus, is what we need to implement. Where can we help the state have some wins and complement our interests. We need to push the appropriate players to close ineffective high-cost nursing homes. They are a drain, producing poor results and affecting costs and quality. We need to encourage the committee to take baby-steps. Get early wins for budget votes. Any time there are large committees with diverse

interests, the results are many ideas, which may be complex and hard to accomplish and everyone gets stuck in the mud trying to accomplish too much.

"The goals should be simpler, easier to accomplish, and within the scope and power of the state and its agencies. Typical of these committees are very aggressive unattainable goals and produce no action or change. We should pursue our interests. How can we manipulate in a good way all the players to focus on true rightsizing, true cost savings, and, of course, driving patients into our homes.

"Also, it's important to identify the players that truly will lead to change. Who are they? Usually two or three at most. The rest of the crowd are bureaucrats who actually add up to the complexity and lack of focus. The report will obviously be the focal point of rightsizing committee, but it really doesn't do much for us. We need to aggressively quietly push the right people into closing the right homes for the right reasons."

Q. And in the sentence just above the last paragraph when he talks about "how can we manipulate in a good way all the players to focus on true rightsizing, true cost savings and, of course, driving patients into our homes," whose homes did you understand him to mean?

A. Apple homes.

Q. Now, I believe we saw it on the last e-mail that Mr. Rowland sent his analysis to you and Mr. Foley; is that correct?

A. Yes.

MR. WEINGARTEN: Defense Exhibit 180. It's already in, your Honor.

Q. Did Mr. Foley respond to both the report and the analysis and send it along to you?

A. Yes.

Q. Okay. And what does he say?

A. "I like where we are positioned. Mercer report and rightsizing are interesting, but the reality is that Malloy is closing poor performing facilities by not granting the increases. Our census will continue to increase in markets where facilities close. We are well positioned with our low operating costs, locations, non-union and reputation to attract preferred patients, Medicare, private pay patients with health insurance. Not too concerned about patients, people being moving out of state, we just need the largest market share of patients remaining. Looking forward to meeting with the Gov and others outside the company to identify areas for improvement."

Q. All right. When he indicated to you that he was looking forward to meeting with the Gov, did you take that to mean Rowland?

A. Yes.

Q. And did you take that to be a pretext in any way, shape or form?

A. No.

Q. And how do you respond?

A. "I agree. I did respond to the Gov on Friday with something similar, complimented him on his work."

Q. All right. So when you say you responded to the Gov on Friday, do you recall the context of that? Was it a telephone conversation? Was it a meeting? What do you remember?

A. I don't recall.

Q. Do you remember the substance of the exchange at all?

A. No, other than what I've testified to, which was likely. I don't recall the exact conversation.

MR. WEINGARTEN: Can we put up defense

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APPENDIX S

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA,	*	Case No 14cr79 (JBA)
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	*	
Government,	*	
	*	
vs.	*	
	*	
JOHN G. ROWLAND,	*	September 17, 2014
	*	
Defendant.	*	
	*	
* * * * * * * * * * * * * * *	*	

TRANSCRIPT OF CHARGE CONFERENCE

BEFORE: THE HONORABLE JANET BOND ARTERTON, U.S.D.J.

APPEARANCES:

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New Haven, CT 06510

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FOR THE DEFENDANT:	REID WEINGARTEN, ESQ WILLIAM DRAKE, ESQ. MICHELLE LEVIN, ESQ. Steptoe & Johnson 1330 Connecticut Avenue NW Washington, DC 20036
Court Reporter:	Sharon Montini, RMR, FCRR 141 Church Street New Haven, CT 06510

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[Page 60]

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THE COURT: I don't see any problem, particularly since we then say "material false entries."

MR. NOVACK: We just were concerned the absence in front of it could lead someone to an incorrect conclusion, that they're different in that respect.

THE COURT: Okay.

MS. LEVIN: And then the second issue on this page is just that it includes "omission" and I don't think that's warranted here.

MR. NOVACK: We think that for the same reason "oral statements" came out "omissions" would also come out given that the premise of the indictment in the case is that it was just false, not that there was an omission.

MR. BRENNAN: No, we're going to object to that.

THE COURT: Wait a second. Untrue statement or representation, "A defendant falsifies a document by knowingly including within the document any untrue statement or representation or by knowingly omitting from the document any material fact." I don't—

MS. LEVIN: The theory of the government's case, I understand, is the contract is false. There is no omission aspect to it.

THE COURT: Well, there is the restricted activity omission.

MR. NOVACK: That's not the ultimate draft contract, your Honor.

MS. LEVIN: That's an earlier draft.

THE COURT: I know that, but it is the omissions from the later draft. But let me—the knowingly omitted, what's the government claiming was knowingly omitted?

MR. BRENNAN: So I wasn't actually thinking about the Shelton contract in that instance, your Honor. I was thinking about the Greenberg contract. And the Greenberg—the defense has continually tried to shoehorn political consulting into the language of the Greenberg contract. Greenberg understood the contract to be false, to represent one thing when it was supposed to be about political

consulting, and it is our contention that all of the evidence—the fact that political consulting is not in there is on purpose, that it is intentionally omitted from the contract to deceive.

MS. LEVIN: We would respond that the contract contains the word strategic—what's the—

MR. NOVACK: Public relations, strategic advice.

MS. LEVIN: Strategic advice, and Mr. Greenberg himself said that he would argue that would include political consulting services.

MR. NOVACK: This doesn't need a shoehorn. It's a big shoe.

THE COURT: The fact that it is the government's claim that material information is knowingly omitted needs to be reflected here. We've reflected the defendant's theory of the case, we've got materiality for both. I'm going to keep both the representation and omission in.

The next issue?

MR. NOVACK: Your Honor, on page 14, I think the last two paragraphs of that are probably gratuitous of the first two paragraphs on page 14. I think the elements of the crime are stated succinctly. The elements of an intention to impede are stated succinctly on page 13 and the rest is not necessary.

MR. BRENNAN: No, this is basic law. It

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APPENDIX T

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA,	*	Case No 14cr79 (JBA)
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Government,	*	
	*	
vs.	*	
	*	
JOHN G. ROWLAND,	*	September 18, 2014
	*	
Defendant.	*	
	*	
* * * * * * * * * * * * * * *	*	

TRIAL TRANSCRIPT
VOLUME XII

BEFORE: THE HONORABLE JANET BOND ARTERTON, U.S.D.J.

And jury

APPEARANCES:

FOR THE GOVERNMENT: LIAM BRENNAN, ESQ.
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New Haven, CT 06510

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BY THE COURT:

[Page 2544]

The elements of falsification of records in a federal investigation are three, each of which the government must prove beyond a reasonable doubt. These three elements are common to Counts One and Three. One, that the defendant materially falsified or made material false entries in the contract documents charged; two, that the defendant did so knowingly; and three, that the defendant acted with the intent to impede, obstruct or influence an investigation of a matter within the jurisdiction of an

agency of the United States or in relation to or contemplation of any such matter or case.

Let me detail each of those elements. The first one, material falsification of a document. The first element that the government must prove beyond a reasonable doubt as to Counts One and Three is that Mr. Rowland materially falsified a document which, as to Count One, is a draft contract for services purporting to be between Mr. Rowland and Mr. Greenberg, and, as to Count Three, is the contract that Mr. Rowland entered with Christian Shelton.

A defendant falsifies a document by knowingly including within the document any untrue statement or representation or by knowingly omitting from the document a material fact. The falsification or false entry in the contracts must have been material.

A fact is material if it had a natural tendency to influence and was capable of influencing the government's, here the FEC or the Department of Justice, decisions or activities. However, proof of actual reliance on the statement by the government is not required.

The second element that the government must prove beyond a reasonable doubt as to Counts One and Three is that Mr. Rowland acted knowingly with respect to each element of the offense. An act is done knowingly if it is done intentionally and voluntarily and not by mistake or accident.

The government is not required to prove that the defendant knew his actions were unlawful. You may consider evidence of the defendant's words, acts and omissions, along with all of the other evidence in deciding what was in the defendant's mind at the

time he drafted the contract for services and whether the defendant acted knowingly.

The third element that the government must prove beyond a reasonable doubt on Counts One and Three is that Mr. Rowland acted with intent to

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[Page 2611]

campaign. But there's not a single word about the campaign in this contract; not a single word.

And Judge Arterton instructed you that a document can be false both by an affirmative false statement and an omission. And so ask yourselves this: Why is it that if Mr. Rowland wanted this contract to be about campaign services there's not a word in here about it? And the reason there's not a word in here about it is because of what he told Mr. Greenberg: I don't want to be paid through your campaign. I can't be paid through your campaign. I need to be paid through some business or the Simon Foundation.

Now, it also mentions the Simon Foundation in here. Mr. Greenberg told you what he said standing in the foyer there was, I can't be paid by the campaign, I've got to be paid through the Simon Foundation or some other business, and, you know, maybe I can do some fund-raising for the Simon Foundation, too. And what did Mr. Greenberg tell you about that and what did he tell Mr. Katz and what did he tell Mr. Fischer? That that was going to be the cover; what Mr. Rowland would say if anybody ever came asking, that he was really consulting for the Simon Foundation and Mr.

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[Page 2624]

really thought that when he was proposing this he was making a good faith effort to contract with Mr. Greenberg for his campaign services.

The reason you know that's not true is because Mr. Greenberg told you over and over and over again Mr. Rowland did not, did not want it to be known that he was being paid to work for the campaign, that this proposal was drafted in a way so as to make this seem as if he was not working for the campaign.

Mr. Rowland's own lawyer said that. But his own lawyer this time is going to come up and tell you something different in about 45 minutes. So ask yourselves whether you can rely on that or whether you can rely on the e-mails and Mr. Greenberg's testimony and Mr. Katz's testimony that what Mr. Rowland was doing here was creating a cover so that no payments to him, no part of that $720,000 he was hoping to get, would be reported to the FEC.

And both with respect to this contract and the contract I'm going to talk about soon, I want you to keep one thing in mind, because I think this is going to help you get to your verdict. Ask yourselves this: What was Mr. Rowland selling? What was he selling? Was he selling his business consulting expertise, was he selling his devotion to the animal center, or was he selling the one thing that was most valuable, and that was his political expertise? Because if what he was selling was his political expertise, you can feel confident that this contract is fake because there's not a single mention of it.

Then I want you to ask yourself this: What was he being paid for? What was he selling? What was he being paid for? Because if you ask yourself those questions, you'll know that that contract is false.

Now, let's move on to Wilson-Foley, the Wilson-Foley campaign. Two years later, all right, Mr. Greenberg has turned him down, another congressional race coming up, Lisa Wilson-Foley. She's also a political novice. Sure, she's run one time before, but she's not an experienced politician. Like Mr. Greenberg, worth an awful lot of money.

And in April of 2011, she files her form with the FEC. So she's a candidate and she sets up her campaign with a few staff members, Lauren Casper, Tiffany Grossman, Chris Syrek, and she has a consultant in D.C. named Evan Koslow. That's the

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